

Problems of Refugees in International Law, Causative Factors and Solutions in Some African Countries

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ABSTRACT

The refugee crisis is a pervasive and complex issue that has plagued the international community for decades. Africa, in particular, has been beset by numerous conflicts, natural disasters, and humanitarian crises, resulting in the displacement of millions of people. This article examines the problems faced by refugees in international law, with a focus on the causative factors and solutions in some African countries.

The article begins by exploring the concept of refugee protection in international law, highlighting the relevant treaties, conventions, and protocols that govern refugee protection. It then delves into the causative factors of refugee flows in Africa, including conflict, persecution, poverty, and environmental degradation. The article also examines the challenges faced by refugees in Africa, such as inadequate access to healthcare, education, and employment opportunities.

The article concludes by proposing solutions to the refugee crisis in Africa, including the strengthening of international cooperation and burden-sharing, the enhancement of refugee protection and assistance, and the promotion of durable solutions such as repatriation, local integration, and resettlement.

Keywords: refugees, international law, Africa, conflict, persecution, protection, solutions.

INTRODUCTION

In its Global Trends 2012 report, The United Nations High Commissioner for Refugees (UNHCR, herein referred to as the United Nations Refugee Agency) estimated that there are over 45.2 million people in the world who have been forced to flee from their homes - 35.8 million of them are of '*persons of concern*' to the United Nations Refugee Agency¹. This is an increase of over five million from the 40 million that was reported by the same refugee agency only four years ago².

Human displacement can be a result of natural disasters, such as earthquakes and severe droughts. However, the African Union recently observed that, especially in the African context, displacement is mostly caused by "the acts or omissions of the state, such as human rights violations, political and socio-economic marginalization, conflicts over natural resources and bad governance."³ These issues often result in political and social instability, causing people to flee their countries. But no matter why people leave their countries, they have rights as human beings. If it is determined upon arrival in their host countries that they are refugees, they also have special rights based on the 1951 Convention Relating to the Status of Refugees. That is why there are various international human rights instruments that were established to provide legal protection to refugees, including the right to seek

¹ UN High Commissioner for Refugees Global Trends Report, Displacement: The New 21st Century Challenge 2012 at <<http://unhcr.org/globaltrends/june2015/>> accessed November 2024.

² Id.

³ African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), 22 October 2009 at <<http://www.refworld.org/docid/4ae572d82.html>> accessed 1 December 2024.

gainful employment, which is described in articles 17, 18, and 19 of the 1951 Refugee Convention.

Refugees have legal rights, not all people who are displaced forcibly are refugees. This is especially so for those who find themselves in countries that are not party to the African Refugee Convention, which has a broader definition of ‘refugee’. Displaced populations who are not yet to be considered refugees are therefore not automatically guaranteed the same rights that refugees are afforded in the 1951 Refugee Convention. In addition, forced migration, refugee and asylum issues, by definition, are often a matter of international politics as they affect the relationship between countries of origin and countries of destination⁴. Recent estimates by the United Nations High Commissioner for Refugees suggest that more than 43 million people worldwide are now forcibly displaced as a result of conflict and persecution, the highest number since the mid-1990s. Several million people remain displaced because of natural disasters, although updated statistics are not available.⁵

Similarly, more than 15 million of the uprooted are refugees who used their home countries, while another 27 million are people who remain displaced by conflict within their own homelands - so-called ‘internally displaced people.’ Major refugee populations include Palestinians (4.8million), Afghans (2.9million), Iraqis (1.8million), Somalis (700,000), Congolese (456,000), Myanmar (407,000), Colombians (390,000) and Sudanese (370,000)⁶.

“Refugees have been deprived of their homes, but they must not be deprived of their futures.” UN Secretary-General Ban Ki-moon⁷.

In international refugee law, and because of the idea of states sharing the burden and responsibility of those who seek refuge, countries agree to abide by certain instruments in order to ensure that refugees are allowed to live in dignity. Natarajan states that “concepts of asylum and refuge have at times helped address the human suffering and public disorder caused by mass displacement, including during and between the First and Second World Wars.”⁸ This study seeks to provide an overview of the multidisciplinary academic literature on the refugees’ problems in the international law and causative factors together with solutions in Africa. Also it attempts to provide as balanced and comprehensive account as possible, the sheer scope of the subject means that choices as to the geographical, theoretical and empirical coverage of the study had to be made. Also it shall describe the current refugee situation on the African continent, while also introducing the documents that outline the legal framework for refugees, cover the historical background of the international legal documents that provide guidelines concerning the treatment of refugees. These instruments include the 1951 Refugee Convention and the Convention Governing the Specific Aspects of Refugee Problems in Africa. This study will further discuss various viewpoints on the issue of duties and rights of refugees and their causative problems with regards to, refugees’ right to work, and whether providing the right to work to refugees is beneficial to host communities.

The 21st Century has witnessed different forms of migration and new refugee situation all facilitated by globalisation⁹. The rights of refugees are of growing concern as the international community strives to maintain international peace and security which is the prime objective or *raison d’être* of the United Nations¹⁰. Mass exoduses of people can pose a threat to international peace¹¹, therefore the organ charged with presiding over refugee matters is the Office of the United Nations High Commissioner for Refugees. Many complexities

⁴ Forced Migration Online (FMO) provides instant access to a wide variety of online resources dealing with the situation of forced migrants worldwide. Designed for use by practitioners, policy makers, researchers, students or anyone interested in the field, FMO aims to give comprehensive information in an impartial environment and to promote increased awareness of human displacement issues to an international community of users. <http://www.forcedmigration.org/>

⁵ Ibid

⁶ UN High Commissioner for Refugees/António Guterres comment on Refugees:< <http://www.unhcr.com>> accessed 29 October, 2024

⁷ Ibid

⁸ Usha Natarajan, *Forced Displacements from Syria or How to Institutionalize Regimes of Suffering*, ESIL Reflections (2013) <<http://www.esil-sedi.eu/node/348>> accessed 29 October, 2024

⁹ Kneebone, S. (Ed.), *The Refugees Convention 50 Years On, Globalisation and International Law*, 2003, Ashgate Publishing, p. 5 (henceforth Kneebone, *The Refugees Convention 50 Years On*)

¹⁰ Article 1, Charter of the United Nations, 892 UNTS 119, 26 June, 1945

¹¹ Resolution 841 (1993) on Haiti

surround refugee law and the issues involving refugees continue to grow in magnitude and convolution¹². Essentially, refugee law is premised on the concept that refugees are entitled to claim the benefit of a premeditated and coherent system of rights¹³. This body of law seeks to alleviate the suffering of victims of persecution and acts as a surrogate form of protection in the absence of national protection¹⁴, thus conferring refugee status upon an individual on a temporary basis and has as its main goal voluntary repatriation.

Human rights have developed at a rapid pace over the past sixty years impacting profoundly on the renovation of International Law¹⁵. Refugee Law may be regarded as a remedial or analgesic branch of Human Rights Law¹⁶ with its aim being to ensure that the rights of the individual, although not protected by their State of nationality, are protected elsewhere in the international community. In essence, it is a vehicle which provides surrogate protection for individuals and tries to guarantee their enjoyment of fundamental rights and freedoms. Cruelty and domestic abuse, for example, are not considered punishable in many States therefore, International Law allows for the victims to seek refuge in other States¹⁷. International Law is focused on intercourse between States, whereas Human Rights Law is concerned with the rights of individuals. Traditionally, Refugee Law existed independently of Human Rights Law and was primarily focused on State territorial jurisdiction and the crossing of borders. However, in recent years Humanitarian Law and human rights have penetrated the Refugee Law field and currently, Refugee Law exists between these two areas veering more towards the human rights sphere. It is important that such conditions are taken into account however, while Refugee Law is expanding this must not impinge on the existing established principles of Refugee Law as it stands¹⁸.

The fear always exists in the international realm that in broadening a definition one would place greater responsibilities upon States and further reduce their sovereignty and autonomy in international affairs. It seems that States are becoming more restrictive in their definitions of what criteria an individual must satisfy in order to be recognised as a Convention refugee¹⁹. Governments' concerns seem to be at odds with one another, wishing to maintain a reputation of respect for human rights while trying to shed the 'burden' of the refugee 'problem'. A narrow definition does not adequately safeguard those who are in need of the protection of a host State. As modern International Law is premised on the maintenance of international peace and security and the protection of fundamental human rights, States should not continue to monopolise the international legal system. Therefore, a balance must be struck between the two interests in order to maximize protection for potential refugees whilst upholding fundamental principles of International Law such as State equality and sovereignty. This study will commence by giving a brief overview of Refugees problem and International Law as a backdrop for the main body of the paper which will examine the meaning, scope and concepts of rights and duties of Refugees in International Law; discuss the word Refugee in its conceptional and historical perspectives; identify major International Law, Conventions, Declarations and Principles bordering protection of Refugees; undertake a survey of the number of people in many Countries who had become Refugees, their problems and causation factors; and Appraise the existing International Legal Instruments identified in the study with a view to discovering their effectiveness or otherwise and probable solutions to Refugee problems in many countries.

Finally, this dissertation will take as its main focus the meaning, scope and concepts of rights and duties of refugees in international law and question of how the global refugee framework and regional legal regimes on forced migration have come about, and identify major international law, conventions, declarations, and principles bordering protection of refugees. By way of conclusion, the piece shall identify a number of key areas

¹² Gowlland-Debbas, Vera (Ed.), *The Problem of Refugees in the Light of Contemporary International Law Issues*, 1996, Martinus Nijhoff Publishers, 3, (henceforth Gowlland-Debbas, *The Problem of Refugees*)

¹³ Hathaway, J.C., *The Rights of Refugees under International Law*, 2005, Cambridge University Press, p. 4, (henceforth Hathaway, *The Rights of Refugees*)

¹⁴ *Attorney General v Ward* [1990] 2 FC 667, 67 DLR (4th) 1.

¹⁵ Agius, E. et al, *Future Generations & International Law*, Law and Sustainable Development Series, 1998, Earthscan Publications Ltd, p. 40

¹⁶ Hathaway, J.C., *The Rights of Refugees under International Law*, 2005, Cambridge University Press, p. 5

¹⁷ *Ibid.*,

¹⁸ Gowlland-Debbas, *The Problem of Refugees in the Light of Contemporary International Law Issues*, 1996, Martinus Nijhoff Publishers.

¹⁹ Goodwin-Gill, Guy, S., McAdam, J., *The Refugee in International Law*, Third Edition, 2007, Clarendon Press, p. 15 (henceforth Goodwin-Gill, *The Refugee in International Law*)

for future research.

Concept of “International refugee law”

It is a set of rules and procedures that aims to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments. Its legal framework provides a distinct set of guarantees for these specific groups of persons, although, inevitably, this legal protection overlaps to a certain extent with international human rights law as well as the legal regime applicable to armed conflicts under international humanitarian law²⁰. The main sources of refugee law are treaty law, notably the 1951 Convention relating to the status of refugees (1951 Refugee Convention) and its 1967 Protocol, and customary international law. Customary international law applies to all states irrespective of whether they are a party to relevant treaties or not. Regional instruments represent a further set of protections, particularly the 1969 Organization of African Unity Convention (for Africa) and, although it is not formally legally binding, the 1984 Cartagena Declaration (for Latin America)²¹.

Defining Refugees

As people who are coming into the country in order to resettle, refugees can be categorized as immigrants. In fact, the ways in which people are categorized as voluntary or involuntary immigrants or refugees depend on the definitions one chooses to use for these terms, and the definitions are often politically motivated. For instance, Suarez-Orozco²² and Fernandez-Kelly & Curran²³ pointed out that many adolescents who fled to the United States from Central American countries did not have the protection of refugee status because the United States would not recognize them as refugees, even though they had left their homelands to escape war and violence. Therefore, they fit the United Nations definition of refugee (see below) but would be termed "illegal immigrants" by U.S. authorities. Reviewing the literature that argues in favour of various definitions for immigrants and refugees could easily be the topic of a separate article. For the purposes of this review, I will adopt the United Nations definition used by the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. By that definition, a refugee is a person

who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.²⁴

The U.S. Refugee Act of 1980 reflects this definition, even though political scientists debate whether the United States applies the definition equally and justly.

Given the Convention definition, there are important distinctions between refugees and voluntary immigrants. The circumstances that bring refugees to a new country create unique needs and problems that are not prevalent among voluntary immigrants. Voluntary immigrants choose to reside in a new country, and many are highly educated (Rong & Preissle, 1998). Usually, they have time to think about their choice, and they may have visited the country of choice on past occasions²⁵. Many immigrants have sufficient financial means and are aware of family members, friends, or other people from their native country with whom they can settle

²⁰ Feller, E., Türk, V. and Nicholson, F. (eds.), *Refugee Protection in International Law, UNHCR's Global Consultations on International Protection*, Cambridge, University Press, 2003.

²¹ Goodwin-Gill, G.S. and McAdam, J., *The Refugee in International Law*, 3rd edition, Oxford University Press, 2007.

²² Suarez-Orozco, M. M. (1989). Central American refugees and U.S. high schools: A psychosocial study of motivation and achievement. Stanford, CA: Stanford University Press. (pp. 56-60)

²³ Fernandez-Kelly, P., & Curran, S. (2001). Nicaraguans: Voices lost, voices found. In R. Rumbaut & A. Portes (Eds.), *Ethnicities: Children of immigrants in America* (pp. 127-155). Berkeley: University of California Press.

²⁴ Ibid [1]

²⁵ Cowart, M. T., & Cowart, R. E. (2002, November). Invisible no more: Including the refugee and immigrant experience in the curriculum. Paper presented at the annual meeting of the National Association of Multicultural Education, Washington, DC.

in a community.²⁶

Unlike most immigrants, refugees do not leave their homes by choice²⁷ (UNHCR, 2000). Refugees are forced out of their native countries, often in violent circumstances such as civil war, and many homeless refugees must take up residence in temporary refugee camps²⁸. Living conditions in the camps are frequently poor, with inadequate food, shelter and medical care.²⁹ The living conditions contribute to significant, often chronic ailments, such as tuberculosis, hepatitis, malaria, kidney damage, and liver damage.³⁰ Many refugees suffer from post-traumatic stress disorder after enduring rape or torture and witnessing killings, often including the brutal murders of family members.³¹

People who flee their countries out of fear of persecution can apply for "Convention refugee" status. Whenever possible, voluntary repatriation is the UNHCR's preference. However, political and civil turmoil in many countries may endure indefinitely. In these cases, the UNHCR seeks to settle refugees in their country of first asylum, the country to which they fled. The last solution chosen is permanent resettlement in a third country. Refugees may live in camps for years before they receive notice that a country is willing to resettle them.³² Except in special circumstances, they are not able to choose the new country.³³ Many refugees are poor and have few possessions to bring to their new life.³⁴ Those with deficient language skills in their new country often suffer from high levels of alienation.³⁵

Kunz³⁶ distinguishes between anticipatory refugee movements, in which refugees foresee upcoming strife in their homeland, and acute refugee movements, in which danger is immediate. Anticipatory refugees have more time to plan their departure and may be able to learn some of the language of the country to which they will flee. Like voluntary immigrants, refugees in this group tend to be educated and financially solvent.³⁷ An example would be the first wave of Vietnamese refugees who arrived in the mid-1970s, immediately after the fall of Saigon. Most of those refugees were well-educated professionals whose children excelled academically. Their successes contributed to the "Asian model minority" stereotype.³⁸ Aside from their phenotype, this first group from Vietnam resembled what Stein³⁹ described as traditional refugees. Historically, traditional refugees are represented by Eastern Europeans fleeing persecution during the Cold War. They tended to be more culturally and ethnically similar to those in the host countries, and many could locate kin who had migrated previously. They were also well educated and had skills that were valued by their host country. A similar group was the first wave of Cuban refugees who arrived in the early 1960s.⁴⁰

²⁶ Delgado-Gaitan, C. (1994). Russian refugee families: Accommodating aspirations through education. *Anthropology & Education Quarterly*, 25(2), 137-155.

²⁷ UNHCR, *The State of the World's Refugees 2000. Fifty Years of Humanitarian Action*, Oxford University Press, 2000

²⁸ Cowart, M. T., & Cowart, R. E. (1993). Southeast Asian refugee youth and the cycle of violence. *NASSP Bulletin*, 77(557), 41-45.

²⁹ Westermeyer, J., & Wahmanholm, K. (1996). Refugee children. In R. J. Apfel & B. Simon (Eds.), *Minefields in their hearts: The mental health of children in war and communal violence* (pp. 75-103). New Haven: Yale University Press.

³⁰ Trueba, H. T., Jacobs, L., & Kirton, E. (1990). *Cultural conflict and adaptation: The case of Hmong children in American society*. New York: Falmer Press.

³¹ Tollefson, J. (1989). *Alien winds: The reeducation of America's Indochinese refugees*. New York: Praeger publisher.

³² Hones, D.F., & Cha, C. S. (1999). *Educating new Americans: Immigrant lives and learning*. Mahwah, NJ: Erlbaum

³³ Cowart, M. T., & Cowart, R. E. (2002, November). *Invisible no more: Including the refugee and immigrant experience in the curriculum*. Paper presented at the annual meeting of the National Association of Multicultural Education, Washington, DC.

³⁴ Caplan, N., Choy, M. H., & Whitmore, J. K. (1994). *Children of the boat people: A study of educational success*. Ann Arbor: University of Michigan Press.

³⁵ Nicassio, P. M. (1983). Psychosocial correlates of alienation: A study of a sample of Indochinese refugees. *Journal of Cross-Cultural Psychology*, 14, 337-351.

³⁶ Kunz, E. F. (1973). The refugee in flight: Kinetic models and forms of displacement. *International Migration Review*, 7, 125-146.

³⁷ Rumbaut, R. G., & Portes, A. (2001). The forging of a new America: Lessons for theory and policy. In R. G. Rumbaut & A. Portes (Eds.), *Ethnicities: Children of immigrants in America* (pp. 301-317). Berkeley: University of California Press.

³⁸ Caplan, N., Whitmore, J. K., & Choy, M. H. (1989). *The boat people and achievement in America: A study of family life, hard work, and cultural values*. Ann Arbor, MI: University of Michigan Press.

³⁹ Stein, B. N. (1981). The refugee experience: Defining the parameters of a field of study. *International Migration Review*, 15, 320-330.

⁴⁰ Huyck, E. E., & Fields, R. (1981). Impact of resettlement on refugee children. *International Migration Review*, 15, 246-254.

Later refugees from Vietnam were categorized by Kunz⁴¹ as part of an acute refugee movement. They arrived in greater numbers and were lacking in education, job skills, and finances.⁴² This second wave of refugees, most of who married from 1978 to the mid-1980s, became known as the "boat people." Those who did not die at sea arrived in Thailand, Malaysia, and Hong Kong, where they awaited resettlement. In addition, hundreds of thousands of Khmer fled the *Pol Pot* regime, and thousands of Laotians and Hmong escaped from the *Pathet Lao*. These refugees went to Thailand, and more than 300,000 were resettled in the United States.

Since the 1990s, most refugees from violence in Iraq, the Balkans, sub-Saharan Africa, and Afghanistan have belonged to the acute refugee category. People from these countries are unlikely to have high levels of education or vocational skills. Many recent refugees have two additional barriers to overcome: (a) many are Black Africans with significant cultural differences from African Americans, yet they are often perceived by native-born White Americans to be in the same cultural group; (b) many refugees from Africa and the Middle East are Islamic, a religious tradition that many Americans have come to fear and despise, associating it with violence and terrorism.⁴³

Internally displaced persons

Internally displaced persons (IDPs) are defined in the 1998 Guiding Principles on Internal Displacement as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border"⁴⁴.

Internally displaced persons, who now constitute some 22 million persons, are persons whose situation is similar to that of refugees. However, there are several differences between IDPs and refugees. First, IDPs are not the subject of a treaty adopted at the universal level, although the Guiding Principles are based on binding international human rights and humanitarian law. Second, as opposed to refugees, IDPs have not crossed an international border from their country of origin. Third, the definition of IDPs in the Guiding Principles is significantly broader than the refugee definition, including those displaced by armed conflict, human rights violations and natural disasters, while the refugee definition is restricted to those with a well-founded fear of being persecuted on at least one of five grounds.⁴⁵

This article main focus shall be on the problems facing refugees and asylum seekers in origin and host countries, which pose major challenges to host countries' government, civil society and the international community. These problems include policy implementation, xenophobia, and access to services, corruption and lack of awareness of human rights for refugees. Although these problems negate the constitutional rights, and interest of refugees and asylum seekers in the international law.

Refugee Law

International Legal Instruments

Refugee Law is a polemical field and a number of issues and philosophical debates are often raised. There is concern that an overly vague definition of the word 'refugee' would place excessive obligations and duties upon States while a very rigid and restrictive definition would limit the protection refugees may receive.⁴⁶

The Universal Declaration of Human Rights⁴⁷, under article 14 (1), imparts the right to asylum. The 1951

⁴¹ Kunz, E. F. (1973). The refugee in flight: Kinetic models and forms of displacement. *International Migration Review*, 7, 125-146.

⁴² Zhou, M. (2001). Straddling different worlds: The acculturation of Vietnamese refugee children. In R. G. Rumbaut & A. Portes (Eds.), *Ethnicities: Children of immigrants in America* (pp. 187-227). Berkeley: University of California Press.

⁴³ McMurtrie, B., Bollag, B., Brender, A., del Castillo, D., Cheng, M., & Overland, M. A. (2001). Arab students in U.S. head home, citing growing hostility. *Chronicle of Higher Education*, 48(6), A42-A45.

⁴⁴ Special Rapporteur on the Human Rights of Internally Displaced Persons

⁴⁵ Deng, F.M., "The Global Challenge of Internal Displacement", *Journal of Law and Policy*, Vol. 5, 2001.

⁴⁶ Goodwin-Gill, *The Refugee in International Law*, 35

⁴⁷ Universal Declaration of Human Rights, UNGA Res 217A (III), 10 December 1948 (henceforth UDHR 1948)

Convention Relating to the Status of Refugees⁴⁸ was the first International Law document which defined refugees and stipulated their rights and the duties of States. Originally, it was brought into force to deal with refugees that were created by the Second World War and had temporal and geographic qualifications.⁴⁹ This was later supplemented by the 1967 Protocol⁵⁰ which provides that the Refugee Convention will apply irrespective of the dateline, 1 January 1951, and it removes the geographic limitation.⁵¹ Article 1 of the 1951 Convention defines a refugee as someone with a ‘well-founded fear’ of persecution due to race, religion, nationality or membership of a particular social group or persecution owing to political opinion. The person must be situated out-with the country of their nationality: Refugee status cannot be claimed while the individual is situated in his/her country of origin or place of habitual residence. The individual should be unable or unwilling (owing to such a fear) to avail oneself of the protection of their country of nationality.⁵²

The main aim of Refugee Law is voluntary repatriation, however, repatriation on a large scale can often have disastrous consequences for example, in 1997 four million refugees returned to Afghanistan. Such a huge influx of people can put immense pressure on an already vulnerable and volatile State infrastructure.⁵³

It must be borne in mind that the granting of asylum is at the discretion of individual States: ‘the granting of asylum is not required by International Law and States are not obliged to grant asylum and the characterisation of who meets the definition of ‘refugee’ lies within the discretion of each State.’⁵⁴ The only provision that States are bound by is that of non-refoulement.⁵⁵

Well Founded Fear of Persecution

The characterisation of persecution has been widely contested however, it may be inferred from article 33 of the Refugee Convention⁵⁶ that a threat to life or freedom would satisfy a claim.⁵⁷ Other exploits may be tantamount to persecution where a discriminatory element exists in prosecution, punishment or in a breach of criminal law provision.⁵⁸ Convention refugee status requires that the fear of persecution must be a ‘well-founded’ fear, that is to say, there is a reasonable probability that if the person were to return to their country of origin they would be persecuted and this is assessed on a subjective and objective basis.⁵⁹ Accepted forms of persecution include, brutal beatings, incarceration, electric shocks and mock executions to name but a few.⁶⁰ The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status 1992, although non-binding is a good source of guidance for domestic authorities.⁶¹ It holds that, ‘...the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would be for the same reasons be intolerable if he returned there.’⁶²

Grounds for Claiming Refugee Status

The individual must demonstrate that a nexus exists between the persecution and any one of the five grounds

⁴⁸ 1951 Convention

⁴⁹ Article 1, Ibid.

⁵⁰ Protocol Relating to the Status of Refugees, 660 UNTS 267, 31 January 1967, (henceforth 1967 Protocol) UN, Basic Facts about the United Nations, 255

⁵¹ 1967 Protocol

⁵² Article 1, 1951 Convention

⁵³ UN, Basic Facts about the United Nations, 253

⁵⁴ Article 4, General Assembly Declaration on Territorial Asylum, Resolution 2312 (XXII) December 14, 1967

⁵⁵ Expounded by article 33 1951 Convention and article 3 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, 10 December 1984, Article 4, General Assembly Resolution 2312 (XXII) 1967

⁵⁶ 1951 Convention

⁵⁷ Wallace, R.M.M., International Human Rights, Text and Materials, Second Edition, 2001, Sweet & Maxwell, p. 259 (henceforth Wallace, International Human Rights)

⁵⁸ Ibid., 262

⁵⁹ Ibid., 258

⁶⁰ Kelley, Ninette, Presentation, Canadian Council for Refugees, International Conference on Refugee Women Fleeing Gender-Based Persecution, 04/05/2001 (henceforth Kelley, Presentation, International Conference)

⁶¹ Ibid., 257

⁶² UNHCR ‘Handbook on Procedures and Criteria for Determining Refugee Status’ 1992, para. 42

contained in article 1 of the 1951 Refugee Convention⁶³ specifically, race, nationality, religion, membership to a particular social group and political opinion. Race has not been defined, although it has been broadly interpreted to encompass ethnic, cultural and linguistic groups. Racial discrimination is regarded as persecution under the 1951 Convention.⁶⁴ Persecution on the basis of religion concerns prohibitions against worship in a private or a public sphere and severe discriminatory attitudes against individuals who practice a certain religion.⁶⁵ Nationality is not confined to citizenship: it extends to ethnic and linguistic groups. It is somewhat complex as it often overlaps with ethnicity and race.⁶⁶ Like religion, this area involves measures of discrimination against those belonging to a national minority. However, the UNHCR Handbook also highlights that it is possible for an individual belonging to a majority group to be in fear of persecution from a dominant minority.⁶⁷

With regards to the fourth criterion, membership of a particular social group, this was included latterly at the instigation of the Swedish delegate.⁶⁸ The concept has given rise to much debate as it often overlaps with the other criteria.⁶⁹ Although it was intended to encompass a myriad of groups, it is believed to induce uncertainty and lead to a dilution of the refugee definition, expanding the notion to include women and grounds which did not fit into the other criteria. Again, there must be a nexus between the membership and the persecution. It is imperative that the group is not created out of, or as a result of persecution.⁷⁰ Moreover, it is not necessary for the person to know the other members of the group. For example, left handed persons may constitute a group: this is something that cannot be changed and members do not necessarily know the other members. As highlighted by Professor Rebecca Wallace⁷¹, the imprecision of the definition of ‘a particular social group’ serves to avoid a narrow interpretation and application of the law.⁷²

Political opinion involves expressing a dissenting political opinion. What the person actually believes is entirely irrelevant- the crucial factor is the persecutor’s perception of what the person believes.⁷³ The aforementioned alone does not satisfy all criteria required for refugee status. Additionally, a risk of persecution on return must exist and be demonstrated regardless of whether the person was persecuted before leaving the country. The risk may be a low risk. There is no requirement to prove the existence of the risk beyond reasonable doubt or on the balance of probabilities, a low risk will suffice.⁷⁴ This is one of the factors that, differentiates Immigration Law and Refugee Law. The former uses the balance of probabilities standard of proof, while the latter employs a lower standard of proof. Furthermore, the individual is obliged to satisfy that they were at risk of persecution more-so than others thus, civil war, for example, would not necessarily give rise to refugee status.

State Protection

The inability or unwillingness on the part of a State to provide protection is an important factor in the determination of refugee status. However, the applicant must also demonstrate that a broader pattern exists with regards to the State’s failure to provide protection.⁷⁵ The above is generally not debated: it is the appropriate standard of protection that is most often the contested issue. Some assert that the protection should be ‘adequate’ while others deem that it must be rendered to be ‘effective’.⁷⁶ According to article 8 of the UDHR⁷⁷, the protection should be effective and provide an effective remedy for the individual. There are four situations in which it is accepted that there is a failure of State protection: persecution committed by the State; persecution

⁶³ “Race, religion, nationality, membership of a particular social group or political opinion.” Article 1, 1951 Convention

⁶⁴ Wallace, *International Human Rights*, 263

⁶⁵ *Ibid.*, 264

⁶⁶ *Ibid.*, 265

⁶⁷ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status 1992, para. 76 Wallace, *International Human Rights*, 265

⁶⁸ Wallace, *International Human Rights*, 266

⁶⁹ *Ibid.*, 266

⁷⁰ *Ibid.*, 266

⁷¹ Professor of International Human Rights Law

⁷² Wallace, *International Human Rights*, 266

⁷³ Goodwin-Gill, *The Refugee in International Law*, 35

⁷⁴ Wallace, *International Human Rights*, 270

⁷⁵ Kelley, Presentation, International Conference

⁷⁶ *Ibid.*

⁷⁷ Universal Declaration of Human Rights, UNGA Res 217A (III), 10 December 1948

condoned by the State; persecution tolerated by the State; and persecution for which the State was unable or unwilling to offer adequate protection.⁷⁸

Refugee protection is intended merely to be a temporary status hence, at present the status is only granted for five years after which, the person's circumstances and situation will be reconsidered.⁷⁹ The Refugee Convention precludes those who have committed serious crimes from obtaining refugee status. The provisions of the Convention do not apply to individuals who have committed, or there are serious reasons to believe he or she has committed, war crimes, crimes against humanity or serious non-political crimes outside the country of refuge.⁸⁰

State protection should exist in practice, not solely in theory and should be available and accessible to all irrespective of race, sex, religion, class, ethnicity, age, disability and occupation.⁸¹

Internal Flight Alternative

The individual must illustrate that there was no possibility of an internal flight alternative; basically that internal relocation was not an option because the civil strife or persecution was prevailing throughout the entire territory.

Some maintain that relocation within the State may allow State protection to function more effectively. States who are receivers of many refugees would like to think that domestic abuse or discrimination may be eradicated by the woman moving to another part of the territory in order to alleviate the burden on the receiving States and reduce their responsibilities and the potential number of individuals who may seek asylum in their State. Nevertheless, IFA poses a number of difficulties. For example, in a country where it is not appropriate for a woman to live alone without male members of her family, it would be no more appropriate in another region of the territory.⁸² Additionally, should a woman be forced to relocate to somewhere that has inadequate health facilities or transport links as compared with her home? Other factors in the determination of the IFA are 'age, mental and physical health, religion, language, the ability of the person to raise a family and seek employment there.'⁸³ Therefore, responses in defence of the IFA argument include: the person could not practice their religion; the conflict could extend to the safe region in the future; language barriers would pose problems; no access to healthcare in the region; and a single woman would be harassed in that part of the territory.⁸⁴

Cessation of Refugee Status

The provisions of the 1951 Convention cease to apply where an individual has a) voluntarily re-availed his or herself of the protection of the country of nationality b) voluntarily reacquired nationality c) acquired a new nationality d) voluntarily re-established his or herself in the country which he or she left e) there has been a change in circumstances, that is to say, the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist.⁸⁵

It has been contested that when a change in circumstances occurs, such as the end of civil strife in the country of origin, returning someone to their country of origin after spending ten years in the host country would serve to violate their rights under article 8 of the UDHR. However, very seldom will article 8 rights trump immigration rules.

⁷⁸ Haines, 'Gender-related persecution', 332

⁷⁹ Refugee Legal Centre, 'The Asylum Process',

http://www.refugee-legal-centre.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=171

⁸⁰ Article 1 (F), 1951 Convention and article 14 (2) UDHR 1948

⁸¹ Haines, 'Gender-related persecution', in, 333

⁸² Kelley, Presentation, International Conference

⁸³ Ibid.

⁸⁴ Wallace, International Human Rights, 268

⁸⁵ Article 1(C), 1951 Convention

Theoretical Review of Refugees

Refugee Aid and Development Theories

Over the last two decades the debate on refugee situations has shifted slightly from concentrating on only refugees and their welfare towards both refugees and their impact on host communities. The debate has in fact shifted towards a clearer understanding of the ‘two predicaments’ of underdevelopment and refugee movements, which has led to the assumption that “they are in a very real sense linked and that neither can be fully resolved without taking into account the other” (Gorman, 1994:1). As part of UNHCR’s mandate, various discussions around targeting development assistance for refugee solutions were developed within the organization building upon the legacy of the Refugee Aid and Development (RAD) debate. Refugee Aid and Development (RAD) theory, which identifies the multifaceted links and synergies between development and refugee issues focuses mainly on building infrastructural capacity to facilitate the hosting of refugee populations as well as recognizing the need for refugee assistance to be development oriented, taking into serious account host populations’ needs (Betts, 2004).

RAD theories managed to draw the attention to the situation of host populations working along the assumption that refugees represent a burden rather than an opportunity (Kuhlman 1990). Harrell-Bond (1990) cited in Mehta & Gupte, (2003:18) associating himself in this regard asks: “Why are refugees and displaced people defined as a welfare problem requiring ‘relief’ or ‘care and maintenance’, rather than as people who have problems, but who also have the determination to survive and who are ready to put their energies into productive work that could also benefit their hosts?” For it has been recognized in recent times that refugee situations bring both costs and benefits to their host communities. Refugee resource in this context should be identified and utilized as contribution towards socio-economic development of host countries.

Burdens and Benefits of Refugees on Host Countries

Whitaker’s (2002) work on the impact of refugees in host communities also gives a brighter attraction in this regard. He states that social relations between refugees and hosts also had negative consequences. He indicates that refugee camps or settlements are associated with problems such as drunkenness, prostitution, and social promiscuity. And that crime rate rise sharply in refugee situations, especially for murder, armed robbery, and illegal possession of firearms. His study of Western Tanzania revealed that refugees and local hosts often collaborate and cooperate with one another to rob local host communities as well as engage in other criminal activities and armed banditry becomes a norm in the settlement. The case study revealed that this is mainly as a result of drastic population increase without corresponding increase in employment leading to frustration among the already aggrivated and distressed population. On this basis Whitaker (2002:345) opined that the sudden presence of refugees and relief resources changed social and economic opportunities for host communities in both negative and positive ways. For instance the local hosts who already had access to resources, education, or power positively benefit from the refugee presence as some local hosts take advantage of changing opportunities for their own benefit, especially with increased local upsurge in business and trade.

Whitaker conclude that the changing dynamics associated with refugee presence in a community also creates different impacts on host based on the socio-economic conditions, the nature of host-refugee relations and gender among other factors. He stated for instance, that many women in the host community according to his findings saw their opportunities shrink in various levels for they often shoulder much of the burden of the impact. Husbands would assume control over resources, crop sales and other responsibilities that were previously the preserve of women just for the fact that prices would shoot up due to the refugee presence, and larger sums of money would be involved. Hence, depending on settlement patterns, existing socio-economic conditions, and nature of the host-refugee relations hosts experiences can be different from one area to another. In this light, the changing dynamics induced by refugees changed the structures of rewards in host communities as the impacts are different for different groups in the host communities.

Sanjgta (2003) explored the socio-cultural impact of refugees on developing or host communities. This study encompasses the issues of social or relational as well as religious, linguistic and ethnic character which arise when large groups of refugees arrive within a given host community. She explored this type of impact in relation

to communities within the nations of Pakistan and Tanzania - two of the main refugee hosting nations in the world. Pakistan currently provides asylum for around 2 million Afghans, a number which has continued to rise and fall since 1979 when the Soviets invaded that country during the Cold War. The host government sometimes responds negatively toward the refugees, suggesting it holds a fear that the refugees might pose a threat to national security.

Group Identity and Simple Scarcity Theory

Ethnic and group identification on the basis of cultural identity is frequently, though not always one variable involved in the chemistry of conflict (Smith, 2001). On this basis, host societies may sometimes find refugees socially unacceptable for various reasons. These reasons according to Smith may range from cultural incompatibilities to economic fears relating to such things as employment or land and other resource usage. While cultural commonalities help to develop bonds of solidarities and co-existence between the refugees and hosts, competition for resources, services and opportunities are bound and generate in security or conflicts. The broader dilemma lies in the problem of burden sharing of the refugee case load in the international system especially between donor nations (which sometimes also receive refugees) and developing countries which do not have the full political, economic and social capacities in dealing with the causes and solutions of refugee crisis (Zolberg *et al*, 1989) cited in Jacobson, K. (1996).

Homer-Dixon (1991) in his work, “On the Threshold: Environmental Changes as Causes of Acute Conflict” presents an argument on induced population movement. Homer-Dixon’s rationale on the possibility of conflict arising from large-scale population movements is grounded in Group Identity Theory. Proponents of this theory in fact, use social psychology to help explain conflicts involving nationalism, ethnicity and religion. According to the Group Identity Theory, group identity conflicts are likely to arise from large-scale movements of population brought about by social strife, environmental change and conflicts. The theory posits that as different ethnic and cultural groups are propelled together under the circumstances of deprivation and stress, we should expect inter-group hostility, in which a group would emphasize its own identity while denigrating, discriminating against, and attacking outsiders. The focus of this theory is on the way groups reinforce their identities and the “we-they” cleavages that often result (Homer-Dixon, 1999: 105). He further reveals that the social psychology of intergroup conflict also suggest that social identity groups become more permeable (communities become more deeply segmented) under conditions of relative deprivation and threats to self-esteem. Where these conditions exist, quite trivial differences can be instrumentalized, fuelling hostility towards out-groups.

Homer-Dixon identifies four key social effects of change in the environment which generates large scale population movement and three principal types of acute conflict that is likely to result from these social effects. In fact, these social effects are often causally interlinked. Homer-Dixon hypothesizes those four social effects to a large extent increase the probability of conflict in developing countries are: decreased agricultural production, population displacement, economic decline, and disruption of legitimized and authoritative institutions and social relations. Drawing on the traditional theories of conflict, it is postulated that severe change in the socio-economic structure and environment may generate among others simple scarcity conflicts. The conflicts (simple scarcity conflicts) that result from induced population movement may arise over three types of resources in particular: agricultural productive land, river water and fish.

Refugee-Host Relationship

A. Martin’s (2005) conceptual model on Environmental Conflict between Refugees and Host Communities is worth considering. In this conceptual work as he indicates, there is a growing concern that scarcity-induced insecurities can contribute to an amplification of perceived significance of ethnic differences and inequalities, creating the conditions for unproductive conflict. His work showed that influxes of refugees into an area can place considerable stress on natural resources, leading to both environmental and social impacts. Also see UNHCR, (1996); Black & Sessay (1997). He further explains that resource demand can dramatically increase following the creation of settlements, leading to accelerated conversion of forest agricultural land, collection of firewood, extraction of surface and ground waters, fishing and hunting. That is why many case studies argue that large numbers of refugee presence place stress on fragile local resources in the reception areas and this leads to over-exploitation of common property resources such as wood, charcoal, water to mention but a few.

Refugees are increasingly perceived as burden creating recipe for bad refugee-host relationship as most refugee experiences have shown. Adisa (1996) made this observation in the Great Lakes region and vividly found that the process of settlement in camps gave further impetus to the depletion of forest resources. Certainly refugees would depend on the forest to find fuel-wood for energy and building materials. This eventually leads to serious deforestation which has direct and indirect consequences for the host community. In direct terms as her conceptualization observed, local host population had to adjust to and cope with shortages of fuel and construction wood. This imposed an extra burden on particularly women and children in the local communities who had to travel much longer distances to collect wood and water for household use at the expense of other activities such as farming or going to school.

The indirect impact on sustainability of local farming systems is equally substantial as the depletion of forest resources leads to increased soil erosion, pollution and damage to water resources of the host community. Hence, population increase, especially when it occurs suddenly and in a protracted manner like refugee situations, undoubtedly places additional stress on local resources. She concludes that in such cases at worst, conflict following refugee settlements can equally lead to further population displacement, aggravating the very problem to which such settlements are a response.

The concept of “refugee-host communities as ‘Hidden Losers’” by Chambers (1996) which examines the impact of rural refugees and refugee programmes on poorer hosts throws more light on this theoretical discussion. He particularly identifies impacts of refugee situations on people or different groups among host population. His model argues that in rural refugee-affected areas, the better-off and more visible hosts usually gain from the presence of refugees and from refugee programmes. In contrast, the poorer among the hosts can be hidden losers. This is more so now than in the past, especially where land is scarce and labour is relatively abundant. The poorer hosts can lose from competition for food, work, wages, services and common property resources. Development programmes in refugee-affected areas and refugee studies will therefore, do a disservice if they neglect adverse effects of refugees on vulnerable hosts. These effects further strengthen the case for development to benefit the whole population in refugee-affected areas. In general, Chambers (1986) states that, the host-refugee relationship appears to be multifaceted with those hosts who already had access to resources and power being able to exploit the refugee situation and capitalize further while the most disadvantaged hosts struggle to maintain access to the most basic resources.

RECOMMENDATIONS ON SOLVING ISSUES OF REFUGEES

Local Integration: African countries can provide refugees with the opportunity to integrate into their local communities. This can be achieved by providing refugees with naturalization and acquisition of citizenship access to education, employment, and healthcare, as well as facilitating their

Resettlement: African countries can work with international organizations, such as the United Nations High Commissioner for Refugees (UNHCR), to resettle refugees in third countries. This can provide a durable solution for refugees who are unable to return to their country of origin.

Voluntary Repatriation: African countries can work with international organizations to facilitate the voluntary repatriation of refugees to their country of origin. This can be achieved by providing refugees with information about the situation in their country of origin, as well as providing them with assistance to return home.

Community-Based Solutions: African countries can work with local communities to develop community-based solutions to refugee problems. This can include providing refugees with access to land, housing, and livelihoods, as well as facilitating their integration into local communities.

Regional Cooperation: African countries can work together to develop regional solutions to refugee problems. This can include sharing best practices, coordinating policies, and providing mutual support to address refugee crises.

International Cooperation: African countries can work with international organizations and other countries to address the root causes of refugee crises. This can include addressing conflicts, promoting economic

development, and protecting human rights.

Protection of Refugee Rights: African countries can ensure that refugees are protected from violence, exploitation, and abuse. This can be achieved by providing refugees with access to justice, protecting their human rights, and ensuring that they are treated with dignity and respect.

Sustainable Livelihoods: African countries can provide refugees with access to sustainable livelihoods, including education, training, and employment opportunities. This can help refugees to become self-sufficient and reduce their reliance on humanitarian assistance.

Inclusive Policies: African countries can develop inclusive policies that address the needs of refugees and host communities. This can include policies that promote social cohesion, address poverty and inequality, and protect the environment.

Capacity Building: African countries can build their capacity to respond to refugee crises by developing their institutional capacity, improving their infrastructure, and enhancing their ability to provide humanitarian assistance.

Examples of African countries that have implemented durable solutions to refugee problems include:

- i. **Rwanda:** Rwanda has implemented a local integration program that provides refugees with access to education, employment, and healthcare.
- ii. **Tanzania:** Tanzania has worked with international organizations to resettle refugees in third countries.
- iii. **Uganda:** Uganda has implemented a community-based solution that provides refugees with access to land, housing, and livelihoods.
- iv. **South Africa:** South Africa has developed inclusive policies that address the needs of refugees and host communities.

Overall, implementing durable solutions to refugee problems in Africa requires a comprehensive and multi-faceted approach that involves various stakeholders and addresses the root causes of refugee crises.