LEGAL IMPLICATIONS OF CESSATION OF REFUGEE STATUS: A CASE STUDY OF RWANDAN REFUGEES

BY

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DECLARATION

I, the undersigned hereby declare that the research work done on the topic entitled **"LEGAL IMPLICATIONS OF CESSATION OF REFUGEE STATUS: A CASE STUDY OF RWANDAN REFUGEES"** is written and submitted under the guidance of **Dr. GODARD BUSINGYE**, School of Law, Kampala International University.

The findings and conclusions drawn in this research are based on the data and other relevant information collected by me during the period of my research study for the award of Master of Laws Degree in the School of Law from Kampala International University.

I further, declare that this research is my original work and has not been presented for examination in any other institution or university.

Sign: ……**Date**: …….

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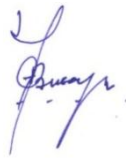
DEDICATION

To the Lord God Almighty for everything; and to my parents for the culture they taught me, the invaluable efforts invested in my education and all the enduring moments they might undergone in my upbringing. Their contribution is actually beyond mere appreciation.

APPROVAL

This research has been submitted for examination with my approval as university supervisor.



Sign: **Date:** 26 May 2018

DR. GODARD BUSINGYE

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Organic Law number 13/2008 of 19 May 2008 modifying and complementing organic law number 16/2004 of 19 June establishing the organization, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 01 October 1990 and 31 December 1994 as repealed by organic law number 04/2012/OL of 15 June 2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction, O.G. number special of 15 June 2012.

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The law number 04/2011 0f 21 March 2011 on Immigration and Emigration in Rwanda, O.G number 13bis of 28 March 2011.

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The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984.

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The Protocol on establishment of East African Common Market of 20 November 2009 entered into force on the 01 July 2010.

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LIST OF ABREVIATIONS

ACCHPR: African Commission on the Charter on Human and Peoples Rights

ACERWC : African Committee of Experts on the Rights Welfare of the Child

ACHPR : African Charter on Human and Peoples Rights

ACHPR : African Court on Human and peoples' Rights

ACRWC : African Charter on the Rights and welfare of the Child

AU : African Union

DRC : Democratic Republic of Congo

EAC : East African Community

ECOSOC : Economic and Social Council

EXCOM : Executive Committee

GC : Geneva Convention

http : Hyper Text Transfer Protocol

ICEAFRD : International Convention on Elimination of All Forms of Racial Discrimination

ICRC : International Convention on the Rights of the Child

ILC : International Law Commission

KIU : Kampala International University

MIDIMAR : Ministry of Disaster Management and Refugee Affairs

NUR : National University of Rwanda

N° : Number

O.G : Official Gazette

OAS : Organization of American States

OAU : Organization of African Unity

P : Page

PP : Pages

Para : Paragraph (s)

UDHR : Universal Declaration on Human Rights

UN : United Nations

UNCERD : United Nations Committee on the Elimination of Racial Discrimination

UNHCR : United Nations High Commissioner for Refugees

Vol : Volume

WWW : World Wide Web

ABSTRACT

This study explores States obligations in the application of cessation clause of refugee status. The study is inspired by three growing concerns amongst refugees, States, United Nations, scholars in refugee studies and stakeholders namely; intensified debates by States questioning their obligations under the refugee cessation clause; the increased call by States through tripartite agreements for precipitated repatriation of refugees vis a vis the low turn-out of refugees willing to repatriate; and the growing jurisprudence challenging the application and modalities in implementing the cessation clause. Using Rwandan refugees as a case study, the study examines the reception, refugee status determination process and management of refugees. The study affirms that though repatriation in the country of origin is the best durable solution for refugees, measuring whether the changes are fundamental, durable and sustainable is often a difficult balancing act for States and the United Nations commissioner for Refugees. In addition and due to the strict application of the non-refoulement principle, States sovereignty is threatened by the growing numbers of abandoned refugees and asylum seekers. The study finds that the States review of their obligations under the refugee cessation clause are well intended and calls for concerted efforts from the United Nations and all Stakeholders. The study recommends two (2) areas in the need for further scholarly research namely; on the adopted Common Asylum Procedures and their contribution in the refugee burden sharing; and on the right to asylum for rejected refugees and asylum seekers.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

More than fifty years since 1951 the United Nations Refugee Convention was ratified by States, today the refugee problem remains a complex and constant threat to State stability. This is compounded by global changes and emerging trends relating to the free movement of people and goods, that have made States vulnerable to fighting terrorism, proliferation of small and big arms, competition over scarce resources just to mention a few. The refugee problem is as complex as complex as the very reasons that cause refugees to flee from their own countries. Tackling the refugee puzzle needs a number of dimensions in addressing the root causes that influence people to flee in the first place. As Albertson rightly put it, the most important problem confronting the world today is the problem of stable and permanent peace.[1] This has been Africa's nightmare for many decades. Indeed in the last 50 years, Africa remains a fragile continent crowded by interstate conflicts that sadly have led to repeated and sustained mass influx of refugees. Stable and permanent peace is a delicate process heavily influenced by democratic climate of States. This translates to good governance of citizens, strong legal frameworks, citizen engagement and participation, strong economic development, peaceful co-existence, good neighborliness and many more. In today's modern times, States are constantly reinventing themselves due to the threat to survival. The fragility of peace weakens States identities and their sense of belonging. Sadly, these vested interests have further widened the refugee puzzle making it very complicated. The principle of refugee burden sharing has some truth in harnessing some of the challenges stated above this principle is grounded in States expressing Solidarity to one another and in their commitment to protecting refugees. Though well intended, the effectiveness of this principle has been a subject of debate by academia, scholars and the United Nations in recent times. In the context of refugees, two (2) pioneering scholars in international refugee law reform, Garvey[2] and Coles[3]have spurred the interest of scholars and research experts around the world calling for a fundamental shift to

[1] M. Albertson, 'Peace Research – Past, Present and Future' Vol. 6, No. 4. pp.39, 1963.

[2] *J. Garvey, 'Towards a Reformulation of International Refugee Law', The Harvard International Law Journal, Vol. 26, No. 2, 1986 accepted paper series.*

[3]G. Coles, 'Approaching the Refugee Problem today ', eds. G. Loescher and L. Monahan, 'Refugees and International Relation', Oxford University Press, 1989.

traditional refugee protection to take into account modern realities. Scholars like Hathaway[4] have supported these views, researched and written extensively demonstrating that indeed international refugee protection needs a revolution albeit with caution that the legitimate concerns of States must not compromise the rights of at risks person in seeking asylum. A major concern has been the indefinite nature of refugee protection that is majorly influenced by political and economic complexities in refugee producing States. This study will analyze the concerns of States in rethinking their obligations in refugee protection. The study will narrow down to Rwanda's experiences in the Refugee cessation clauses.

Refugee law is branch of international law which deals with the rights and protection of refugees. Under international law, refugees are individuals who: are outside their country of nationality or habitual residence; have a well-founded fear of persecution because of the race, religion, nationality, membership in a particular social group or political opinion; and are unable or unwilling to avail themselves of the protection of the country, to return there, for fear of persecution. The protection and rights accorded to refugees continue, unless and until such a time the cessation clauses can be legitimately brought into effect.

In 1991, the Executive Committee of United Nations High Commissioner of Refugees (UNHCR) highlighted the possibility of using the cessation clauses of the 1951 Convention in situation where, due to a change of circumstances in their home country, refugees no longer require international protection and cannot, therefore, refuse to avail themselves of the protection of their country. In this context, the Executive Committee called on UNHCR to explore issues relating to the application of the cessation of refugees status referred to as "cessation clause". The subject of cessation clause was considered at the forty-third session of the Executive Committee, which in its conclusion number 69 set out certain guidelines on the application of the so-called "ceased circumstances" cessation clause.[5]

The underlying rationale for the cessation clauses was expressed to the Conference of plenipotentiaries in the drafting of the 1951 Convention by the first United Nations High Commissioner for Refugees, G. J. Van Heuven Goedhart, who stated that refugee status should "not be granted for day longer than was absolutely necessary, and should come to an end…if, in accordance with the terms of the Convention or the statute, a person had the status of de facto citizenship, that is to say, if he really had the rights and

[4] J. Hathaway, 'Reconceiving International Refugee Law ', Ed. The Hague: Martinus Nijh off Publishers, 1997.

[5] Conclusion Number 69 (XLIII), adopted by the Executive Committee at its forty-third session (A/AC.96/804, paragraph 22) relating to the international protection of refugees.

obligations of a citizen of a given country". Cessation of refugee status therefore applies when the refugee, having secured or being able to secure national protection, either of the country of origin or of another country, no longer needs international protection.[6] This linkage of international protection to the duration for which it is needed distinguished the cessation clauses from the exclusion clauses in the article 1(F) of the 1951 Convention, which address situations in which the refugee does not deserve the benefits of international refugee protection.

The cessation clause is applicable in two different broad set. The first set comprises the clauses which relate to a change in personal circumstances of the refugee, brought about by the refugee's own act, and which results in the acquisition of national protection and hence international protection is no longer necessary.[7] The second set compromises the clauses which relate to a change in the objective circumstances in connection with which the refugee has been recognized, so that international protection is no longer justified (the "ceased circumstances" cessation clause).[8]

The inclusion of article 1(C) in the 1951 Convention, together with the absence of a right to permanent residence, indicate an intention by the founders to maintain the right of signatory states to decide for how long they admit refugees. According to Hathaway and Castillo,[9] the article reflects a concern that states be able to divest themselves of their protection 'burden' once national protection is available once more. Grahl-Madsen[10]considers that it is intended to prevent a person from having the 'best of two worlds', so that they cannot at the same time avail themselves of the benefits of their country of nationality and claim the status of refugee.[11]

1.2 Statement to the Problem

Given increasing number of unresolved conflicts that produce number of Refugees and returnees, the cessation clauses are subject to be questioned in their applicability and relevance. African countries

[6] UN High Commissioner for Refugees, Note on cessation Clauses, 30 May 1997, EC/47/CC/CPR.30, Available at: http://www.unhcr.org/refworld/docid/47fdfafld.html, [Last visited on 15 October 2016].

[7] UN High Commissioner for Refugees, Note on Cessation Clause, 30 May 1997, EC/47/SC/CPR.30, Available at: http://www.unhcr.org/refworld/docid/47/fdfafld.html, [Last visited on 15th October 2016]

[8] UNHCR, "The Cessation Clauses: Guidelines on their Application", p. 5.

[9] Hathaway &Castillo, Reconceiving International Refugee Law, London, Martinus Nijh off Publishers, 1997, p. 2.

[10] Grahl-Madsen, The status of refugees in international law, Vol.1, Leyden, A.W. Sijth off, 1996, p. 39.

[11] UN High Commissioner for refugees, Commentary of the Refugee Convention 1951 (Article 2-11, 13-37), October 1997, available at: http://www.unhcr.org/refworld/docid/4785ee9d2.html, [Last visited on 17 April 2016].

continue to host an unknown number of Rwandan refugees who are neither protected nor recognized as a result of refugee revocation or denial of status. These revoked Rwandan refugees populations remain a constant security threat to the government challenging its sovereignty which essentially leaves them more vulnerable to abuse and intimidation. The cessation clauses remain silent on the fate of the many asylum seekers who continue to tickle into the host countries soon after the revocation clauses.

The focus on Rwandan refugee populations whose status has been renounced by the UNHCR and Governments was carried out as a comparative analysis to ascertain the connection between the invocation of the cessation clauses and the resulting number of high returnee flowing back to the country which goes against the principles of UNHCR mandate and international law.

Case study of Rwandan refugee populations, including the refugees between 1959 and 1998, the resulting revocation of status and tripartite agreement and repatriation plan of December 2017. The study critically examines the gaps in protection of refugees where contracting governments invoke the cessation clauses. Challenges and consequences associated with the striking out of refugee status will also be highlighted together with the resulting impact on the fear of persecution.

1.3 Objectives

1.3.1 Main Objective

The main objective of this study is to analyze the legal implications of cessation of refugee status under international refugee law using a case of Rwandan refugees.

1.3.2 Specific Objectives

The specific objectives of this study are:

i. To critically analyze States obligations in invoking the refugee cessation clauses in current time using to Rwandan refugees as a case study.

ii. To determine whether the enforcement of tripartite agreements amounts to forcible return of the Rwandan refugees thereby deepening refugee vulnerability.

iii. To identify existing gaps in the application of cessation clauses of Rwandan refugees and emerging approaches in the enforcement of refugee's cessation clauses today.

1.4 Research Questions

The following questions were formulated in this research:

i. Have there been any fundamental and profound changes in Rwanda according international refugee law, to justify a cessation of refugee status?

ii. Is there any protection under international refugee law for long term of Rwandan refugees who have strong family, social and economic links in the host countries?

iii. Are Changed circumstances in Rwanda, the best determinant of promoting repatriation as the most durable solution for Rwandan refugees?

1.5 Scope of the Study

1.5.1 Subject Scope

The perspective of the topic of this research reflects an analysis and study in international law relative to refugees as far as cessation of refugee status is concerned. The aim of this study is to explore the application of international refugee law to unrecognized entities, with an emphasis on the case of cessation clause on Rwandan refugees' status.

1.5.2 Geographical Scope

Concerning the limitation in space, the researcher puts a special emphasis on Rwandan refugees, but nothing prevents me from having a look at other countries where there has application of cessation clauses for experience and best practices. The study is limited to the cessation clause on refugee status which has clearly been developed and acknowledged under various conventions provisions.

1.5.3 Time Scope

On the basis of these fundamental developments, the scale and nature of refugee displacements that have occurred, consultations with the principal countries of asylum and the country of origin, and an in-depth analysis of the situation by situation by the Office, UNHCR considers that the refugee status of Rwandan refugees who fled the country between 1959 and 31st December 1998 as a result of the different episodes of inter-ethnic violence between 1959 and 1994, the genocide of 1994 and its aftermath, and the renewed armed conflict that erupted in north-western Rwanda from 1997 to 1998, can now be brought to an end pursuant to the "ceased circumstances" cessation clauses contained in paragraphs 6(A)(e) and (f) of the UNHCR Statute, Article 1C(5) and (6) of the 1951 Convention relating to the status of refugees, and Article 1(4)(e) of the 1969

1.6 Significance of the Study

In October 2009, UNHCR announced a strategy situation of Rwandan refugees who fled their country before 31 December 1998. Strategy contains four components: voluntary repatriation, local integration, retention of refugee status for people still in need of international protection, and finally the invocation of the so-called cessation clause. Cessation clause is built into the 1951 refugee Convention and the

1969 Organization of African Unity refugee Convention. They provide for refugee status to end once fundamental and durable changes have taken place in the country of origin and the circumstances that led to flight no longer exist.[12]

All the major asylum countries hosting the Rwandan refugees, as well as Rwanda itself, have been implementing the strategy and following a Ministerial meeting on 18 April 2013, they have agreed to apply cessation at different rates. This means that some states are moving ahead giving effect to cessation of refugee status while other governments in view of domestic legal and practical constraints prefer to push forward the other components of the strategy first. All are indeed pursuing the respective components of that strategy, including local integration-namely the grant to the Rwandan refugees who would qualify alternative legal status, including the prospect of naturalization. UNHCR is working very closely with all the government and other stakeholders concerned, including, the refugees themselves, on the implementation of the different aspects of the strategy. More than 3.5 million Rwandan became refugee in the wake of the 1994 Rwandan genocide and armed clashes in 1997 and 1998-the last time the country experienced generalized violence. All but an estimated 100,000 have since returned home, owing to lasting peace and stability in their country.[13]

The 100,000 Rwandan refugees are hosted mainly by Burundi, Democratic Republic Congo (Zaire), Kenya, Malawi, Mozambique, Republic of Congo, South Africa, Uganda, Zambia, and Zimbabwe. In line with its mandate, UNHCR is working to solve protracted refugee situations in Africa. Cessation of refugee status for Sierra Leonean refuges took place in 2008 and for Angolan and Liberian refugees on 30 June 2012.

1.7 Literature Review

The success and sustainability of voluntary repatriation is questionable. Repatriation is regarded as the most desirable durable solution provided that return is genuinely voluntary. The scenarios of the 1990s dubbed the decade of repatriation, noted global precipitated action by host countries to repatriate refugees back to their home countries. Interestingly, UNHCR noted that out of those repatriated, more than 9 million returned soon after between 1991 and 1997. With this alarming trend, many countries

[12] One of African's longest-standing refugee situations set to end soon, available at: http//www.un.org/africarenewal/news/one-africa%E2%80%99s-longest-standing refugee-refugee-situations-set-end-soon-says-un-agency.

[13]Ending of refugee status for Rwandans, available at http://www.unhcr.org/news/brifieng/2013/6/51/cd7df06/ending-refugee-status-rwandans-approaching.html.

agree with Loescher and are now raising questions on the degree of voluntariness and the role of compulsion in 'imposed return' especially since the number of returnees has increased.[14]

International refugee law is clear that the refugee title is not permanent and does come to an end. This is mainly in the three (3) ways dubbed the durable solutions namely; Local integration, voluntary repatriation, and Resettlement. Voluntary repatriation is the most preferred solution and is given prominence by States and UNHCR in settling refugee problems. States and UNHCR are mandated to revoke refugee status cessation where there are changed circumstances in the country of origin that caused refugee plight in the first place. In Africa, the fragility of States has made it challenging in measuring 'changed circumstances' while invoking the refugee cessation clauses due to difficulty in measuring State competences in support of durable changes. The most difficult reason has been the ambiguous nature of refugee recognition that is tested against the two (2) refugee Conventions (the 19951 Convention and the 1969 OAU Convention). Where asylum seekers do not are qualify for individual persecution, and especially in en-mass movements, they are granted *Prima Facie* refugee protection under the 1969 OAU Convention.

The cessation clause of the 1951 Refugee Convention Relating to the Status of Refugees and parallel provisions in other international refugee instruments were long neglected as a subject of refugee law. While it is understood that the purpose of the clauses was to stipulate provisions for the end of refugee status, it is important to understand the provisions of the clauses in their exact context to enable us identify whether they are truly practical in their application.

The cessation clauses are provided for in various treaties. To start with, the 1951 Refugee Convention Relating to the Status of Refugees provides a comprehensive definition of the cessation clauses applicable to refugees in article 1C.[15] This article states that the convention will cease to apply to the

[14] G. Loescher, 'The UNHCR and World Politics: A perilous Path', Oxford: Oxford University Press 2001.

[15] This Convention shall cease to apply to any person falling under the terms of Section A if:

1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
2) Having lost his nationality, he has voluntarily re-acquired it; or
3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; provided that this paragraph shall not be applicable to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
6) Being a person who has no nationality, he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided

persons protected under the Convention when certain events either undertaken by the person or regarding his country of origin infer that there is no longer any need to obtain protection as a refugee.

The clauses set out in Article 1C can be divided broadly into two categories: those relating to a change in the personal situation of the refugee brought about by his/her own acts (contained in sub paragraphs 1 to 4) and those relating to the change in objective circumstances which formed the basis of the recognition of refugee status (contained in sub-paragraphs 5 and 6).

The OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa[16] also provides for a cessation clause in Article 1(4) e.[17] From this Article it is clear that the OAU Convention and the 1951 Convention both have similar provisions regarding the cessation clause, however, the two can be contrasted by virtue of the fact that the OAU Convention does not recognize exceptions to the cessation clause. Furthermore, the cessation clause of the 1951 Convention applies only to those with 'a well-founded fear of being persecuted for reasons of race, religion, nationality, and membership of a particular social group or political opinion'. Article 8(2) of the OAU Convention encompasses two definition of a refugee, being the traditional definition contained in Article 1(1) and broader that includes:

…….every person who owing to external aggression, occupation, foreign domination or events seriously disturbing the public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of citizenship or nationality.[18]

According to the Refugee Studies Center, this extended definition generally characterizes mass outflows in Africa.[19] This is because the OAU Convention provides a much wider qualification of refugee status, thus increasing the number of applicants seeking status and protection under the Convention.

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that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

[16]Convention Governing the Specific Aspects of Refugee Problems in Africa. The Convention was adopted on 10 September 1969 and entered into force on 20 June 1974, available at http://www.africa-union.org/Official_documents/treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf. [last visited 16/07/2017].

[17] He (a refugee) can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality.

[18] OAU Refugee Convention, article 1(2).

[19] Refugee Studies Center, working paper series, Oxford Department of International Development, University of Oxford, August 2011, available at http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents. [last visited 16/07/2017].

To further enhance the definition and understanding of the cessation clause, UNHCR has drafted Guidelines[20] to assist in the implementation of the cessation clause. These Guidelines specify the qualification of the cessation clause and further provide guidance on how these qualifications are to be understood and applied, however the Guidelines do not go into detail regarding certain specifics as to the application of the clause and only suggest ways in which interpretation can be inferred through analysis of the specific sub articles referring to cessation. Hathaway[21] furthermore notes that the UNHCR's interpretation of the 1951 Convention's obligations regarding cessation, though authoritative, are not binding on States therefore giving States the leeway to use them or create their own interpretation of the clause, which may be detrimental to refugees.

The Statute of the UNHCR also provides for the cessation clauses that allow the High Commissioner to cease recognizing refugee status in circumstances similar to those of the convention, including a 'ceased circumstances' clause. The clause states:

He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, claim grounds other than personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked.[22]

The statute of the UNHCR guides and complements the 1951 Refugee Convention in reiterating the need to have refugee status end once the reason that compelled flight has ceased to exist.

A number of States have also domesticated to cessation of refugee status in their national laws. The South Africa Refugee Act[23] provides for the cessation of refugee status in section 5(1) a-e, which is virtually verbatim, the provisions of the 1951 Refugee Convention and the OAU Refugee Convention. Kenya also provides for cessation in section 5(a-g) in its Refugee Act 2006.[24] Through its 2010 Constitution[25] it is recognized through Article 2(6) that all treaties ratified by the country are applicable

[20] UNHCR, The Cessation Clauses: Guidelines on their on Their Application, 26 April 1999, available at http://www.unhcr.org/refworld/docid3c061c4.html. [last visited 16/07/2017].
[21] James Hathaway. The right States repatriate former refugees, 2005, Ohio St. J Disp. Re, P. 204-206.
[22] Article 6A (e), United Nations General Assembly (1950), available at http://untreaty.un.org/cod/avl/ha/prsr.html. [Last visit 16/07/2017].
[23] South Africa Refugee Act 130 of 1998, available at: http://www.home-affairs.gov.za/PDF/Acts/Refugees%20Act130.pdf. [Last visited on 16/07/2017].
[24] The Refugee Act 2006, available athttp://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/RefugeesAct13of200601.pdf [Last visited 16/07/2017].
[25] The Constitution of Kenya 2010, Available at http://www.google.co.ke/url?sa=t&rct=j&qesrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%=http%3A%2F%2Fwww.

in Kenya hence the provision of the 1951 Refugee Convention and the OAU Refugee Convention and the OAU Refugee Convention are part of Kenyan law.

The cessation clauses are divided into two main categories, one that applies to an individual and another one that applies to specific groups who hold the same nationality. Restricting ourselves to the Rwandan context, it would be prudent to concentrate on the clauses that apply to the group refugees. These clauses are known as the ceased circumstances clause.

The ceased circumstances clauses are contained in the 1951 Convention but are limited to subparagraphs 5 and 6. They make reference to a change in the objective circumstances which formed the basis for the recognition of refugee status. According to Fitzpatrick and Bonoan, substantial similarity exists among the ceased circumstances clauses of the UNHCR Statute, the 1951 Refugee Convention and the OAU Refugee Convention. They further reiterate the Guidelines by stating that State parties to the 1951 Refugee Convention possess the authority to invoke Article 1C (5) and (6), while the UNHCR can declare that its competence ceases to apply with regard to persons falling within situations spelled out in the statute. This interpretation essentially dictates out the extent of the cooperation between UNHCR and State parties in the interpretation and implementation of the ceased circumstances provisions.

The ceased circumstances clause in reference to the UNHCR comprehensive strategy on Rwanda states that the ceased circumstances clause is not invoke in an open-ended manner. This ultimately means that the determination of cessation restricts itself to specify events, against which fundamental changes can be measured as the sole basis of cessation. Furthermore, the restriction is based on changes with specific reference to what caused the refugees to flee, ensuring that the country has taken steps to alleviate all basis of fear of persecution with reference to the conflict making the country suitable for return.

Cwik[26] submits that the ceased circumstances clause implies state cessation of refugee status which is termed 'mandated repatriation'. Cwik further states that mandated repatriation through the ceased circumstances clause is not well developed in international practice. This support the notion by Hathaway of the lack of strength which the Guidelines have in ensuring that State parties restrict themselves to the procedure prescribed in the cessation Guidelines. One may however state that because

parliament.go.ke%2Findex.php%3Foption%3Dcomdocman%26task%3Ddocdownload%26gid%3D460%ltmid&ei=q7WjUOaJLMGYhQebxYGYBQ&usg=AFQjCNF995LT6uUoMtD2aghW0IW6WGK6ppg. [visited 16/07/2017]

[26] Marissa Elizabeth Cwik. Forced to flee and forced to repatriate. How the cessation clause of Article (5) and (6) of the 1951 Refugee Convention operates in international law and practice; Vanderbilt Journal of Transnational Law; Vol. 44.711; P. 715, 2011, available at http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Cwik-CR.pdf. [Last visited on 16/07/2017].

the majority of these countries enlist the services of the UNHCR in refugee status determination they shall have no option but to follow the Guidelines as they do not have the resources or data to ensure implementation of the clause. For the ceased circumstances clause to come into force, there are certain qualification that asylum states as well as UNHCR ought to examine to determine whether a country is safe for return.

Hathaway states that it is evident that the practice and procedures in the invocation of the cessation clause are not well developed. This fact is supported by Cwik who speculates that this gap in international law places refugees at a high risk of prematurely losing protection and increase the burden on asylum countries to try and implement the clause the best way by know-how. Cwik further notes that state jurisprudence on Article 1C (5) to (6) is limited and inconsistent.

Case law on the ceased circumstance clause has been relatively obscure with few cases centered on it. This is because case law on refugee law primarily concerns refugee status and hardly ever on the cessation clause, however there have been a number of cases that have attempted to analyze the ceased circumstance clause

The High Court of Australia, in the Minister for Immigration & Multicultural Affairs v QAAH, found that when determining whether a fear of persecution exists, the refugee has the burden of providing that there is continued fear of persecution.[27] According to the court, the 1951 Refugee Convention as well as domestic law requires that Australia ought to extend protection only to persons who continue to meet the definition set in article 1A (2) which governs the initial determination of refugee status. This implies that determination of refugee status and cessation is done in the same way, however this cannot be sustainable, as it would mean that each refugee be interviewed to determine whether the ceased circumstance clause ought to apply to him or her. The court determined that the ceased circumstance clause ought to operate automatically in direct contradiction to the stipulations in the UNHCR Guidelines. The court went a step further and rejected the affirmative burden UNHCR placed on asylum states to investigate the fundamental changes in the country of origin. This created immense confusion, leaving open the question of whether removing the burden to investigate from asylum states would result in more harm than good for refugees.

[27] Kneebone & O'Sullivan, at 514 citing of immigration & Multicultural & indigenous Affairs v QAAH (2006) 231 CLR 1 (Austl.).

Germany, like Australia, has a similar interpretation of the burden of protection. In 2008, the German Federal Council withdrew refugee status form an individual because the court determined that the fear of persecution had ceased.[28] Similar to Australia, the German court highlighted the linkage between the refugee status determination and the ceased circumstance clause. The court rejected the broad articulation of protection advanced by UNHCR that includes an investigation into fundamental, durable changes in the country of origin.

Cwik further adds that in an advisory opinion on the German cessation cases, The European Court of Justice (ECJ) set forth a more inclusive understanding of protection than that outlined by the German court in deciding whether the country of origin has a functioning legal system and whether the individual in question will have access to that system. The ECJ also recommended the need to take into account the human rights situation in the country of origin. The ECJ is far clearer in its suggestion as compared to the previous judgments. In response to the ECJ ruling, UNHCR adopted an interpretation of the ceased circumstance clause as follows:

Application of the 'ceased circumstances' clause should be informed by the overall objective of refugee protection, which aims at finding durable solutions for refugees. Durable solutions are integration in the host State, resettlement to a third State and voluntary return to the home State if this is possible in safety and dignity.

UNHCR, through the statement above, fails to mention mandatory repatriation as a result of asylum states declaring the ceased circumstances clause. The discretion to determine whether a ceased circumstance clause applies to a refugee community is conferred on the asylum state and this prerogative, especially where the asylum state plays host to numerous refugee communities, will most likely overlook the concerns that refugees have in returning home and invoke the ceased circumstance clause merely to reduce the refugee population in the country.

The ceased circumstances clause results in mandated repatriation which in essence goes against the principle of *non-refoulement* especially where refugees have expressed concern about their return home. In the South African case of RM v Refugee Appeals Board & 2 others,[29] Patel J ruled in favor of the applicant who was denied refugee status based on the fact that Angola was now safe for return and thus he could not be accorded refugee status.

[28] *Citing Joined* Cases 175-179/08, *Abdullah et al. v Bundes republik Deutschland*, 2010 ECR 113/4.
[29] *Unreported Case, Case number 16491/06 TPD (2007) High Court of South Africa,* available at http://www.refugeecaselaw.org/CaseAdditionalallInfo.aspx?caseid=1159 [Last visited 16/07/2017]

The applicant argued that he had faced a significant amount of trauma and thus returning him to Angola would further worsen his mental and physical health, as he had not yet fully recovered from the ordeal he went through when the country was at war. The court stated that returning him to Angola would go against the principle of *non-refoulement* enshrined in the South African Refugee Act that protected refugees from return to the country of origin when they continued to suffer from a well-founded fear of persecution. The applicant's fear was genuine and thus the court ordered the Ministry of Home Affairs to avail him refugee status.

Furthermore in the case of Tantoush v The Refugee Appeals Board and 5 others[30] Murphy J ruled against the Refugee Appeals Board granting the applicant refugee status based on the fact that returning him to Libya would violate the principle of *non-refoulement.* He took judicial notice of the human rights situation in Libya stating that the likelihood of the applicant being persecuted on return was quite high and thus he had satisfied the qualifications of refugee status.

Cases such as General Faustin Kayumba Nyamwasa[31] and Rafiki Muhindo Hyacinthe Nsegiyumva[32] illustrate the concern of repatriating refugees to Rwanda based on the political situation in the country. This necessitates availment of refugee status to the applicants based on the likelihood that they would suffer persecution upon return as they were considered enemies of the state. In the General Faustin Kayumba Nyamwasa case, he had survived an assassination attempt perceived to have been orchestrated by the Rwandan Government thus returning him to Rwanda would be sure death or persecution.

It is important to understand what UNHCR has done to uphold the principle of *non-refoulement* in order to protect those refugees who still express concern about the fear of persecution they may face in their country of origin. Consequently, UNHCR has formulated a number of legitimate exceptions to the ceased circumstances clause.

As the researcher mentioned above, there are approximately 100,000 Rwandan refugees and others in refugee-like situations in some forty countries of asylum, mainly in Africa. The majority of Rwandan refugees fled the country of origin as a result of the 1994 Genocide and its aftermath which involved

[30] *Unreported case No. 13182/06 TPD (2007) High Court of South Africa,* available at http://www.saflii.org/za/cases/ZAGPHC/2007/191.html [Last visited on 16/07/2017].
[31] *In the Matter of General Faustin Kayumba Nyamwasa, South African Refugee Case*, available at http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2012/11/Briefing-Paper.pdf.
[32] *Rwandan Government Loses case Against Rafiki Muhindo Hyacinthe Nsengiyumva. Afro American Network* Reported on 19/12/2012, available at http://www.afroamerica.net/AfricaGL/2012/12/19/rwandan-government-loses-case-against-rafiki-muhindi-hyacinthe-nsengiyumva/. [Last visited on 17/07/2017].

armed clashes in North-Western Rwanda that occurred in 1997 and 1998. There were also a large number who had fled inter-ethnic violence that occurred following the death of the Rwandan monarch in 1959 and that continued until the 1994 Genocide. The country's conflicts were generally as a result of inter-ethnic violence between the warring Hutu and Tutsi tribes.

In October 2009, UNHCR announced at the 60th Executive Committee of the High Commissioner's Program (EXCOM) a comprehensive strategy to bring a proper closure to the Rwandan refugee situation. The recommendations made by UNHCR to States regarding the application of the ceased circumstances clause in Rwanda is the commencement of all the aspects of cessation of refugee status (including exemption procedures) for Rwandan refugees who had fled Rwanda from 1959 to 1998 so as to enable their status to definitively cease by 31 December 2017. The basis of the invocation of the clause was merely based on the fundamental changes in the country setting far-reaching grounds for invocation of the clause. These grounds were essentially centered on political stability through a stable government and free and fair elections. They also examined the infrastructure, reconciliation and the economy, among others.

As stated earlier, the invocation of the clause was not received with enthusiasm from Rwandan refugees across the world. They stated that the country was far from safe and that requiring them to return to Rwanda would be a violation of their rights. Understanding the context under which these concerns have been raised by various groups which include the state of the country and the reasons why the ceased circumstance clause ought not to be invoked. Cooke, on behalf of the Center for Strategic and International Studies[33]in its June 2011 report listed the Government of Rwanda's inability to manage political competition within a democratic framework as one of its key concerns.

It stated that there was evidence of mutual fear and suspicion along ethnic lines within the Government which was a subsequent product of state manipulation that had country's stability masks deep-rooted tensions, unresolved resentments, and an authoritarian Government that is unwilling to countenance criticism or open political or open political debate. Their analysis was that given the country's past, instability could escalate very quickly and could become potentially violent. This relation to the clause puts in doubt the political stability of the country questioning reasons for the invocation of the clause. Cooke reports further on the ruling Rwandan Patriotic Front stating that although domestic opposition

[33] Jennifer G. Cooke, Center for Strategic and International Studies, Rwanda: Assessing Risk to Security, June 2011, available at http://csis.org/files/publication/110623CookeRwandaweb.pdf. [Last visited 17/07/2017].

parties can criticize certain policies and programs, there is no possibility of more fundamental debate on how the Government deals with issues of accountability, ethnic equity, or state legitimacy.

It states that domestic critics of the Government are effectively silenced through exile, intimidation, imprisonment or assassination. Timothy Longman, the Director of the Boston University's African Studies Center, states that Rwanda has made a transition from one type of regime to the other with the current regime in Rwanda tolerating very little public criticism and strictly limiting freedoms of speech, press and association. He further added that political parties are restricted and intimidated, while constraints and manipulation of the electoral process have prevented elections from being truly free and fair. He then states that Rwanda's persistent authoritarian rule may ultimately prove disastrous for the country's long-term stability.

Through analysis of fundamental changes in the country of origin, the clause lays emphasis on democracy; however it is silent in analyzing authoritarian rule through democracy. Does it suggest that democracy through elections is the only ground for determining the political stability of a country of origin? Even if so, isn't there a need to examine in detail the analysis of how the elections are conducted and determine whether they have been deemed free and fair before using it as a justification for invoking the clause?

Straus and Waldorf[34] also state their support for classifying Rwanda as an authoritarian state. This adds emphasis to authoritarian rule and impacts tremendously on the lack of transparency that rights group have in monitoring the Government.

The Fund for Peace's Failed States Index 2011,[35]ranked Rwanda 34th out of 117 with a score of 90.1, a 2.3 point decline from the previous year, placing the country in their danger category. The noted the increasing authoritarian rule of President Paul Kagame including further restrictions on the media and opposition groups. It listed areas of concern in the Rwandan state as the rise of factionalized elites, vengeance-seeking groups and violation of human rights and the rule of law. It is notable that states have also expressed their concern regarding the fact that Tutsi (though the minority tribe) maintain majority leadership positions disregarding the Hutu tribe. According to a confidential United States Embassy

[34]*Scott Straus and Lars Waldorf. Remaking Rwanda: State Building and Human rights after Mass Violence,* University of Wisconsin Press, 2011, p 12-13.

[35] Fund for Peace. Failed States Index 2011, June 20, 2011, available at http://www.org/grobal/libray/cr-11-14-fs-failedstatesindex2011-1106q.pdf.[Last visited on 17/07/2017].

cable released by Wiki Leaks[36], despite the Tutsi representing only about 15 percent of the population, an analysis of the ethnic breakdown of the current Rwandan Government Tutsis hold a preponderant percentage of senior positions. Hutus in very senior positions often hold relatively little real authority while senior Tutsi exercise real power.

The cable notes that the military and security agencies are controlled by Tutsis. It further noted that if the Rwandan Government were ever to surmount the challenges and divides of Rwandan society, it must begin to share real authority with Hutus to a much greater degree than it does now. An allegation like this would certainly raise eyebrows as this goes back to the causes of 1959 massacres in the country. Were these allegations ever examined and investigated before declaration of the clause? These are some of the questions that we ought to look into to clarify the extent to which UNHCR examined the circumstances in Rwanda before declaring the invocation of the clause.

Human rights groups have at the forefront of raising awareness about the rights situation in Rwanda. Groups such as Amnesty International and Human Rights Watch have documented concerns about the human rights violations taking place in the country. According to Carina Tertsakian, a senior researcher in the Africa Division of Human Rights Watch she states that despite an outward appearance of calm, Rwanda is a fragile country ruled by fear. The deep mistrust from the genocide has been exacerbated by a Government which does not tolerate criticism and keeps a close watch on all its citizens – Tutsi as well as Hutu – to ensure that no one is stepping out of line.[37] Amnesty International[38] raised several concerns about the state of Rwanda. The report highlighted the concerns pertaining to the political situation of the country, the trials in the Gacaca courts and human rights violations taking place in the country. The report raised further concerns of the readiness of the country to receive returnees especially those of Hutu ethnicity. There is a need to undertake a detailed objective analysis of the Rwandan situation through the qualifications suggested in invoking the clause. This will enable us to understand fully why

[36] US Embassy – Kigali; "Ethnicity in Rwanda – Who Governs the Country?", 5 August 2008 (Reference ID Created Released Classification Origin 08KIGALI525 2008-08-05 16:34 2011-08-30 01:44 SECRET//NOFORN Embassy KigaliVZCZCXYZ0000 PP RUEHWEB DE RUEHLGB #0525/012181634ZNYSSSSS ZZH P 051634Z AUG 08FM AMEMBASSY KIGALI TO SECSTATE WASHDCPRIORITY 5505); available at www.rwandainfo.com/eng/ethnicity-in-rwanda-who-governs-the-country/?utmsource=feedburner&utmmedium=email&utmcampain=feed%3A+RwandainfoEN+%28Article+on+Rwandinfo+English%29. [Last visited 17/07/2017].

[37] Carina Tertsakian. Human Rights Watch (HRW), Time for a review of UK policy on Rwanda, African Arguments, 29 July 2011, available at www.hrw.org/news/2011/07/29/time-review-uk-policy-rwanda.[Last visited on 17/7/ 2017].

[38] The Memorandum to the Government of Uganda about the cessation of Refugee protection for Rwanda.Amnesty International, December 2011, available at http://doc.es.amnesty.org/cgibin/ai/BRSCGI/AFR590111?CMD=VEROBJ&MLKOB=30224985959. [Last visited on 17/7/2017]

the clause was invoked and whether the grounds for invocation are justifiable by humanitarian standards.

1.8 Research Methodology

The study was qualitative in nature as an effort to investigate the shortfalls in provision of international protection once the cessation clause is invoked by contracting government. According to the purpose of this study the design that was adopted is desk legal research meaning the research was done using the library materials involving both primary source and secondary source. The primary sources that the researcher used included the 1951 Convention, its 1967 Protocol, and 1969 Organization of African Unity (OAU) Convention. The secondary sources that the researcher used included the available literature on cessation of refugee status and protection of refugees such as books, articles, papers, reports and journals by visiting libraries and internet website.

1.8.1 Study Design

Research design is one of the most important parts of any given research.[39] It refers to the detailed technical or scientific activities, tools and procedures taken to plan gather and analyze data. In any research there, there are two types of research methods. That is, quantitative and qualitative methodology. Quantitative methodology is the systematic empirical investigation of observable phenomena via statistical, mathematical or computational techniques.[40] The objective of quantitative research is to develop and employ mathematical models, theories and/or hypotheses pertaining to phenomena. Quantitative methodology has the following strength: study findings can be generalized to the population about which information is required; samples of individuals, communities, or organizations can be selected to ensure that the results will be representative of the population studied; and structural factors that determine how inequalities (such as gender inequalities) are produced are produced can be analyzed, however the weaknesses of quantitative methodology include the following: research methods are inflexible because the instruments cannot be modified once the study begins; reduction of data to numbers results in lost information; untested variables may account for program impacts; and Errors in the hypotheses tested may yield misimpressions of program quality or influential factors.

On the other hand, qualitative methodology is a method of inquiry employed in many different academic disciplines, traditionally in the social sciences, but also in market research by the business sector and

[39] D. A. Katebire, (2007), Social Research Methodology .An Introduction. Kampala: Makerere University Press.
[40] M. Lisa Given, (2008).The sage encyclopedia of qualitative research methods. Los Angeles, Calif.: Sage Publications.

further contexts including research and service demonstrations by the non-profit sectors,[41] however qualitative methodology also has some weaknesses which include among others: the researcher's theories that are used might not reflect local constituencies' understandings; the researcher might miss out on phenomena occurring because of the focus on theory or hypothesis testing rather than on theory or hypothesis generation (called confirmation bias); and knowledge produced might be too abstract and general for direct application to specific local situations, contexts, and individuals.

In an attempt to properly address the research objectives and questions, the study adopted qualitative methodology. Qualitative research is a method of looking at things 'holistically and comprehensively, to study it in its complexity and to understand it in its context'.[42] The major feature of qualitative research is reflected in its designs, being naturalistic and preferring to study things, people and events in their natural settings.[43] Silverman adds that qualitative methods are 'especially interested in how people observe and describe their lives.' He argues that this gives for flexibility and for an in-depth focus on the study being conducted since the data that will be obtained is in form of words rather than in numbers.

1.8.2 Document Reviews

Documents, both historical and contemporary, remain a major source of data for social research.[44]For this study, the researcher analyzed national and international documents which provide for cessation of refugee status and protection of Refugee this include: 1951 Refugee Convention, 1967 Protocol, 1969 (OAU) Convention, written report by various authors in the area of study, UNHCR documents, books, pamphlets and general publications on refugee protection.

The researcher also balanced between the different sources so as to make a contribution through understanding of the different legislations.

The review of documents as a source of data in this study is also supported by the argument by MacDonald and Tipton[45], that with the development of social sciences research, documents have proved to be useful sources of data. Similarly, sociologists like Durkheim, Marx, and Weber did their research

[41] K Norman Denzin & S. Yvonne Lincoln (Eds.). (2005). the Sage Handbook of Qualitative Research (3rd Ed.). Thousand Oaks, CA: SA

[42] K. F. Punch, (2005). Introduction to Social Research, Qualitative and Quantitative approach, Sage publication limited, London. P.186.

[43] D. Silverman, (2005). Doing Qualitative Research, Los Angeles: Sage Publications P. 140.

[45] MacDonald and Tipton (1996). P.187

primarily relying on documents.[46] Documents were important for this research because it provided the study with a 'rich vein for analyses'.[47]

1.9 Conceptual and Theoretical Framework

The literature review concurs that war results from a failure to balance power symmetrically which creates a disequilibrium that manifests itself into aggression. This proposition settles well with Rogers Gore ideology that, forced migration is epitomized by social exclusion out of a set of functioning social networks.[48] The concept of relative deprivation proves that political rebellion and insurrection happens when people feel frustrated that they are receiving less than their due. This forms the basis of structural violence in the policies and administrative decisions that are made by a chosen few which adversely affect the majority.

States are made of people with a collective group identity binding diverse individuals into a people. Where human needs are not met, there is bound to be tension, suspicion and a further escalation of violence leading to conflicts. Most of the conflict in Rwanda are related to unfulfilled needs that lead to threatened existence forcing the individual to run away in fear of his or her life. The Social Constructivism theory has been used by international relations authors to explain conflict from a social perspective. This theory fits well with this study in demonstrating that addressing social imbalances is more sustainable to addressing the refugee problem than merely settling on material things.

Repatriation decision affect the refugee returnee in his home country and it is therefore important that addressing social factors are taken into consideration when invoking the ceased circumstances clause. Constructive criticize this mere observation of development agendas and the human rights are not a guarantee that the individual refugee feels safe to return home. The literature review identified two (2) completely diverse reasons why States condone the refugee problem namely; i) as a way of shifting burden to other States and ii) as a bargaining opportunity for more resources and donor aid. Put candidly, The Constructivism theory will show that these selfish reasons of States have vested interests and are political in nature and do not seek to address the deep rooted reasons for creating inequalities that eventually cause human flight.

The researcher analyzed the situation of the Rwandan refugees upon revocation of their refugee status as well as their place in the reconstruction in their home country and how this affects the decision to repatriate and settle peacefully. It will be crucial to consider the circumstances that cause continued fear of persecution of the refugee returnee. A critical examination of tripartite agreements between States will be done.

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[46] K. F. Punch, (2005) Introduction to Social Research, Qualitative and Quantitative approaches, Sage publication limited, London. P. 184.

[47] M. Hammersley, & P. Akison, (1995).Ethnography; Principles in practice. 2nd (ed.) London: Routledge. P. 173.

[48] R. Gore and J. Figueiredo, *The concept of exclusion* 1995

1.10 Conclusion and Research Structure

1.10.1 Conclusion

This study therefore re-emphasizes that the interpretation and application of the ceased circumstances cessation clause is replete with difficulties. It's for this reason, that the study is intended to cast light on the invocation of the clause in the practical setting of Rwanda. This analysis will illustrate the shortfalls in the blind application of the clause without proper regard for all the pertinent facts and circumstances and the danger this poses to refugees who are, by their very nature vulnerable. It will also expose the dangers of invoking a cessation clause based on certain qualifications that may not particularly be in the refugees' best interests. This study explores the current refugee law in relation to cessation in an effort to question whether as it is, it enhances refugee protection and further ensures that refugee rights are promoted even upon their return to their country of origin. It examines this mainly from a human rights perspective. By understanding this country of asylum can be able to take pertinent steps in enhancing refugee protection through the invocation of cessation clauses.

1.10.2 Research Structure

As the topic suggests, this seems to be a wide research that involves of the legal implications of cessation of refugee status: "case study of Rwandan refugees" as far as refugee's law concerned Thus, this paper comprises of six chapters. The first chapter gives general introduction to the study; the second chapter of the research deals with a background to the refugee status, protection and termination procedure; the third ones gives general consideration on human rights and protection of refugees in Africa; the fourth chapter examines the cessation of refugee status; the fifth chapter deals with fair and efficient cessation of Rwandan refugee status, and then the last chapter deals with summary of findings, conclusion and recommendations.

CHAPTER TWO

BACKGROUND OF REFUGEE STATUS, PROTECTION AND DETERMINATION PROCEDURE

2.0 Introduction

The first Chapter has brought out that States remain committed to refugees' protection as an international obligation that binds them in the spirit of solidarity and cooperation. Consequently, States contributions to the refugee burden are at various levels depending on their comparative advantage. The refugee status has been originally a concern of their national in the era prior to second World war, after this period, it has been a concern of international community and have subjected to evolution in the definition so as not to let a human being behind the legal coverage and protection. This chapter discusses deeply the refugee status determination and protection process from entry to exit.

2.1 The General Consideration of a Refugee

Prior to the Second World War, refugees were defined on an ad hoc basis with reference to their national origin. Following the war, the United Nations General Assembly decided to adopt a "general" refugee definition, which was included in UNHCR's 1950 statute[49]and shortly after in the 1951 Convention[50] relating to the status of refugees and its 1967 Protocol.[51] Nearly identical formulations were used in both instruments. The refugee definitions in the 1950 Statute was subsequently extended by resolutions of the UN General Assembly and Economic and Social Council (ECOSOC). In addition, refugee definitions are also contained in regional refugee instrumental and/or national legislations.

[49] This general definition has been annexed to Resolution 428 (V) of the United Nations General Assembly of 14th December 1949.

[50] United Nations Conventions relating to the Status of Refugees was adopted in 1951 and entered into force on 22nd April 1954.

[51] The Protocol relating to the Status of Refugee (also known as the New York Protocol) was entered into force on October 4th 1967

2.1.1 Definition of Refugee under International Law

The 1951 Convention remains the foundation of international refugee, and its refugee definition is the principal basis for establishing a person's refugee status by States Parties,[52] however, there are also other regional instruments.

2.1.1.1 The 1951 Convention Refugee Definition

From the refugee's point of view, recognition as a refugee within the meaning of the 1951 Convention provides the most favorable status: not only is it a guarantee against *refoulement*,[53] but it also confers a number of rights which are specifically provided for in the 1951 Convention and 1967 Protocol, including, for example, the right to obtain travel documents. According to the 1951 Convention in its article 1A (2), a refugee ids defined as any person who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his/her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[54]

Because the 1951 Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin and are refugees as a result of events occurring in before 1st January 1951. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. The temporal limitation was formally removed by the 1967 Protocol, while the geographical restriction was withdrawn by the vast majority of States which are Party to the two instruments, thus giving a universal dimension to the Convention's Provisions.

[52] It is important to note that as of 1st April 2011, 147 States were Parties to the 1951 Convention and/or its 1967Protocol (142 States are bound by both Instruments. See more details at http://www.unhcr.org/3b73b0d63.html [last visited on 12th April 2017].

[53] This principle is seen as the cornerstone of international refugee protection, it is explicitly provided for in article 33(1) of the 1951 Convention. By virtue of this principle, refugees enjoy protection against return to a country where they face a risk of persecution.

[54] UNHCR, Convention and Protocol relating to the status of refugee, Geneva, p. 5, available at http://www.unhcr.org/3b66c2aa10.pdf [Last visited on 12th April 2017].

2.1.1.2 Refugee Definition in Regional Refugee Instruments

The refugee definition of the 1951 Convention id complemented by regional refugee instruments, notably the "1996 OAU Convention Governing Specific of Refugee Problems in Africa" and the "1984 Cartagena Declaration on Refugees" countries have incorporated its principles, including its refugee definition, into their national legislation and practice.

2.1.2 Refugee Definition in National Legislation

Normally, many States simply adopt the refugee definition found in the relevant international instrument(s) to which they are Party. However, nothing prevents a country from adopting a refugee definition that is wider than that required under its international obligations.

In number of Countries, legislation provides protection for persons who have been found not to meet the criteria of the 1951 Convention, but who are nevertheless in need of international protection. This is referred to as "complementary forms of protection" or, in Europe, "subsidiary protection". Some States, particularly in Europe, have also provided "temporary protection" in situations where large numbers of people had fled situations of generalized violence and/or armed conflict as a pragmatic short term measure to provide those affected with protection against *refoulement* and assistance, without however making a determination on their status. There are administrative or legislative mechanisms for regularizing the stay of persons who are not recognized as refugees, but for whom return is not possible or advisable for a variety of reasons. They represent a positive, pragmatic response to certain international protection needs.[55]

In Rwandan the term refugee applies to:

Any person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, ethnic or tribal origin or political opinions, is outside the country of his/her nationality or whose opinions are contrary to the administration of the country of his/her nationality and as a result, owing to such fear, is unable to receive protection from that country;

Any person who, no longer having a nationality and being outside the country of her/his former habitual residence, owing to a well-founded fear of being persecuted for reasons of race, religion, ethnic or tribal origin, nationality, membership of a particular social group or whose opinions are contrary to the administration of the country, is unable or unwilling to return to it; and

[55] UNHCR, The International Protection of Refugees: Complementary form of Protection, Geneva, 2001, p 1.

Any person who, owing to an external aggression, occupation, foreign domination or events seriously disturbing public order in either part or in the whole of his/her country of origin or nationality, was compelled to leave his/her place of habitual residence in order to seek a refuge in another place outside his/her country of origin or nationality.[56]

It is important to say that Rwanda has also ratified all international instruments relating to refugee status. So refugees are referred to in accordance with these international conventions. In addition, refugees are referred to in the law on immigration and emigration.[57]

2.1.3 Refugee Definition under UNHCR's International Protection Mandate

The mandate of UNHCR to provide international protection to refugee originally stems from its 1950 Statute, which provides that the competence of the High Commissioner shall extend, in addition to those considered refugees under treaties and arrangements in place of the time when the statute, was adopted, to the following categories:

Any person who, as a result of events occurring before 1st January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his/her nationality and is unable or, owing to such or for reasons other than personal convenience, is unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it[58];

Any other person who is outside the country of his/her nationality or, if he/she has no nationality, the country of his/her former habitual residence, because he/she has or had well-founded fear of persecution by reasons of his /her race, religion, nationality, or political opinion and is unable or, because of such fear, is unwilling to avail him/herself of the protection of the government of the country of his/her nationality, or, if he/she has no nationality, to return the country of his /her former habitual residence.[59]; and

[56] See article 1 of the law nº34/2001 of o5thJuly 2001 relating to refugees, Official Gazette (O.G) nº 24 ter of 15th December 2001 modified and completed by law nº 29/2006 of 20th July 2006.

[57]See article 29 of the law nº04/2011 of 21/03/2011 on immigration and emigration in Rwanda O.G nº13 bis of 28/03/2011.

[58] See Article 1A (2) of the 1951 Convention relating to refugee status.

[59] See paragraph 6B of UNHCR Statute.

The 1950 Statute has been supplemented by other instruments for it does not encompass the entire mandate of UNHCR with regard to refugee. Development –in particular, resolutions adopted by General Assembly and the economic and Social Council (ECOSOC), organizational and State practice –have resulted in a widening of the refugee definition for the purposes of UNHCR's international protection mandate. In fact, in the late 1950s and early 1960s, the General Assembly authorized UNHCR to provide assistance on a "good offices" basis to specific groups of persons who did not fully meet the refugee definition contained in the statute, or generally to refugees who did not "come within the competence of the United Nations".[60]

From the mid-1960s onward, resolutions of the General Assembly regularly refer to "refugee of concern" to UNHCR, while ECOSOC and General Assembly resolutions adopted during the period from 1975-1995 have extended UNHCR's competence with regard to refugees generally to persons who are affected by the indiscrimination, intervention, occupation or colonialism.[61]

At present, UNHCR's competence to provide international protection to refugees covers the following two board categories of persons:

Those who meet the eligibility criteria for refugee status set out in the 1951 Convention and 1967 Protocol, which are virtually the same as those provided for under the 1950 Statute; and

Those who come within the extended refugee definition under UNHCR's mandate because they are outside their country of origin or habitual residence and unable or unwilling to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

For UNHCR, all persons (women, men, girls and boys) who meet the eligibility criteria under either of these categories are refugees within the competence of UNHCR (that is, refugee of concern to the Office), unless they come within the scope of one of the exclusion clauses contained in Article 1F of the 1951 Convention.[62]We are on this view that none can be left outside the protection of international

[60]UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate, Geneva, UN Refugee Agency, 2005, p. 8.

[61]Hathaway, "The Development of Refugee Definition under International Law" available at http://www.refugeecaselaw.org/pdfs/Hathaway_LRS_Chp1.pdf, at 7 [Last visited 12th April 2017].

[62] The provision of this article reads as follow: the convention shall not apply to any person with respect to whom there serious reason for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as

community in case he does meet the requirements to qualify protected person under the mandate of UNHCR or mandate refugees.[63]

2.2 Refugee Status Eligibility Criteria

Within the meaning of the 1951 Convention, a person is a refugee as soon as he/she fulfils the criteria contained in the definition. The provision of the 1951 Convention defining who is a refugee consist of three parts, which have been termed respectively "inclusion", "cessation" and "exclusion" clauses. The determination of refugee status consists of the process of ascertaining the relevant facts of the case and lastly, in applying the facts thus ascertained to the definition.

2.2.1 Inclusion Criterion under 1951 Convention

The inclusion clauses define the criteria that a person must satisfy in order to be a refugee. In fact, they form the positive basis upon which the determination of a refugee status is made. As we stated above, the definition of refugee encompasses any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. [64] the reading of this paragraph stresses that a person qualifies for refugee status within the meaning of the 1951 Convention if he/she meets some criteria, provided that none of the exclusion provisions of the Convention apply and for as long as he/she does not come within the scope of a cessation clause.[65]

When examining whether an asylum-seeker meets the inclusion criteria of the 1951 Convention refugee definition, decision-makers must take into account all relevant facts and circumstances of the case and determine whether each of its elements is present. Applicants who have more than one nationality must

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defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed serious non-political crime outside the country of refugee prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

[63] Persons who are recognized as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol.

[64] See Article 1A (2) of the 1951 Convention.

[65] For more information on the cassation clauses, see infra Chapter four.

establish a well-founded fear of persecution with respect to each of the countries concerned in order to qualify for refugee status. Decision-makers must distinguish between the possession of nationality merely in a legal sense and the actual availability of protection in the country, or countries, concerned.[66]

The 1951 Convention does not require that the applicant was a refugee already at the time when he/she left the country of origin or habitual residence, nor is it necessary that his or her departure from that country was caused by a well-founded fear of persecution, in fact, the grounds for recognition as a refugee may arise when the individual concerned is also out of the country of origin and hence qualify for instance of refugee "sur place".[67]

2.2.2 Cessation clauses

The so-called "cessation clauses" spell out the conditions under which a refugee ceases to be a refugee. They are based on the consideration that international protection should not be granted where it is no longer necessary or justified. Once a person's status as a refugee has been determined, it is maintained unless he comes within the terms of one of the cessation clauses.[68] This strict approach towards the determination of refugee status results from the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes of a fundamental character-in the situation prevailing in their country of origin. The cessation clauses are contained in article 1C of the 1951 Convention with an exception basing on compelling reasons arising from previous persecution where when founded, the cessation clause ceased to apply.[69]

2.2.3 Exclusion Clauses

The 1951 Convention, sections D, E and F of Article 1, contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1, Section A, are excluded from refugee status. Such persons fall into three groups. The first group (Article 1 D) consists of persons already receiving United Nations protection or assistance; the second group (Article 1E) deals with persons who

[66]UNHCR, Refugee status determination, Geneva UNHCR, 2005, p. 35.

[67] UNHCR, Handbook on Procedures and criteria for Determining Refugee Status (1979, reedited January 1992), at paragraph 87-96 and 106-107.

[68] In some cases refugee status may continue, even though the reasons for such status have evidently ceased to exist

[69] See article 1C from (1) to (6) of the Convention relating to the status of refugee.

are not considered to be in need of international protection; and the third group (Article1F) enumerates the categories of persons who are not considered to be deserving of international protection.[70]

Normally it will be during the process of determining a person's refugee status that the facts leading to exclusion under these clauses will emerge. It may, however, also happen that facts justifying exclusion will become known only after a person has been recognized as a refugee. In such cases, the exclusion clause will call for a cancellation of the decision previously taken.

2.3 Protection of Refugee and Determination Procedures

2.3.1 The Protection of Refugees

International lawyers concerned with refugee protection typically divide international law relating to refugee into two parts: refugee law and asylum law. Of the two, refugee law seems primarily, although not exclusively, a matter of public international law, and is considered a component of international humanitarian law general.[71] The protection of refuges is ensured by international, regional and national instruments.

2.3.1.1 Refugee Status under the 1951 Convention and its 1967 Protocol

This Convention is the foundation of international refugee law. It defines the term "refugee" and sets minimum standards for the treatment of persons who are found to qualify for refugee status. The 1951 Convention and the 1967 Protocol are the modern legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk and in danger. Both instruments reflect a fundamental human value on which global consensus exists and are the first and only instruments at the global level which especially regulate the treatment of those who are compelled to leave their homes because of a rupture with their country of origin.[72]

2.3.1.2 Regional Laws

The core instrumentals of regional refugee laws and standards as they relate to Africa, Latin America; Other relevant standards contained in international human rights law, and international humanitarian law; and further sources of law and guidance.

[70] See article 1F of the 1951 refugee convention.

[71] G. Goodwin-Gill, International law and movement of persons between States, 1978.

[72] See UNHCR, the state of the World's Refugees, Oxford, Oxford University Press, 2000, p.21.

2.3.1.2.1 The Organization of African Unity (OAU) Convention, 1969

The conflicts that accompanied the end of the colonial era in Africa led to a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption of not only the 1967 Refugee Protocol but also the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, asserting that the 1951 Refugee Convention is "the basic and universal instrument relating to the status of refugees". To date, the OAU Convention is the only legally binding regional refugee treaty. This Convention states that persons fleeing civil disturbances, widespread violence and war are entitled to claim the status of refugee in States that are parties of this Convention, regardless of whether they have a well-founded fear of persecution.[73]

2.3.1.2.2 The Cartagena Declaration, 1984

The Declaration stressed that persons who have fled their country "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" are refugee to be protected throughout the Latin America region. Although the declaration is not legally binding on States, most Latin America States recognized that status as a matter of practice and have incorporated it into their own national legislation. This declaration has been endorsed by the Organization of American States (OAS), the United Nations General Assembly, and UNHCR's advisory Executive Committee.

2.3.1.3 International Humanitarian Law and International Human Rights Law

International humanitarian law provides that victims of armed conflict, whether displaced or not, should be respected, protected against the effects of war, and provided with impartial assistance. The Fourth Geneva Convention Relative to the protection of Civilian Persons in Time of war (1949) contains an article that deals specifically with refugees and displaced persons.[74] This is supplemented by the additional Protocol I (1977) which provides that refugees and stateless persons are to be protected under the provisions of parts I and III of the Fourth Geneva Convention. It is important to note that humanitarian law can protect refugee only where it applies, i.e. in situations of international or internal armed conflict.

[73]See article 1 (1) of the OAU 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.

[74] See article of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12th August 1949 (GC IV 1949)

If a refugee flees armed conflict, but finds asylum in a country that is not involved in international or internal armed conflict, humanitarian law will not apply to that refugee.[75]As far as international related human rights law is concerned, the most important protection accorded to refugees is through the principle of *non-refoulement*. Although enshrined in the 1951 Convention relating to the status of refugee, the refugee's right to be protected against forcible return or *refoulement*,[76] this principle is also set out in different other international human rights related instruments such as the Convention against Torture and other cruel, Inhuman or Degrading Treatment or punishment (Article3),[77] the International Covenant on Civil and Political Rights (Article 7), the Declaration on the Protection of All Persons from Enforced Disappearance (article 8); regional human rights instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the American Convention on Human Rights (article 22), the OAU Refugee Convention (article II), and the Cairo Declaration on the Protection of Refugee and Displaced Persons in the Arab World (article 2).

2.3.1.4 National Laws

The adoption of national refugee legislation that is based on international standards is a key to strengthening asylum, making protection more effective and providing a basis for seeking solutions to the plight of refugee. Incorporating international law into national law legislation is particularly important in areas on which the refugee Convention is silent.[78]

The Countries parties to the Refugee Conventions have responsibilities pertaining to that membership and they are duty bound by effective application of the provisions set out in the Convention. Countries that have ratified the refugee Convention are obliged to protect refugees on their territory according to its terms especially in the Cooperation with UNHCR in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.[79]; in providing

[75] See more information in Respect for international Humanitarian Law, Handbook for Parliamentarians n°1, 1999.

[76] Article 33 (1) of the 1951 Refugee Convention which reads as follow: " No Contracting State shall expel or return ('*refouler')* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

[77]Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which says: "*Non-Refoulement".*

[78] See for example the law (Rwanda) n°34/2001 of 05/07/2001 relating to the refugees, O.G.n°24 ter of 15/12/2001 modified and completed by law n° 29/2006 of 20/07/2006.

[79] See article 35 of the 1951 Refugee Convention and article II of the 1967 Protocol.

information on National Legislation[80] and by abiding with exemption from Reciprocity.[81] In fact, where, according to a country's law, the granting of a right to an alien is subject to the granting of similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees.

2.3.2 Determination Procedure

Then 1951 Convention and 1967 Protocol define who is eligible for refugee status and establish key principles of international refugee protection, in particular, the principle of *non-refoulement*[82] but they do not set out procedures for the determination of refugee status. The systems put into place by countries for examining asylum claims vary, as they are shaped by differences in legal traditions, resources and circumstances. It is generally recognized, however, that fair and efficient procedures are an essential element in the full and inclusive application of the 1951 Convention whenever refugee status determination is done on an individual basis, otherwise States would not be in a position to effectively implement their obligations under international refugee law.

International and region human rights instruments, as well as, in particular, relevant conclusions adopted by UNHCR's Executive Committee, contain the international standards to be observed by States when they set up individual asylum systems under their domestic law. While it is a general legal principle of the law of evidence that the person who makes a claim must present the evidence necessary for establishing that his or her assertions are true, in the asylum context, however, the special situation of applicants must be taken into account. In most cases, it is not possible for an asylum-seeker to provide documentary or other proof, given the circumstances of his or her departure and the nature of the claims made. Therefore, the responsibility for establishing the facts is shared between the applicant and the decision-maker.

The asylum-seeker has a duty to provide a complete and truthful account of the facts which are material to his or her claim. The adjudicator should guide the application in providing pertinent information and, using all the means at his or her disposal to produce the necessary elements verify alleged facts which

[80] The States Parties to the Refugee Convention agree to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention.

[81] The notion of reciprocity does not apply to refugees since they don't enjoy the protection of their home country.

[82] *Non-refoulement* is a principle of the international law, i.e. of customary and trucial Law of Nations which forbids the rendering a true victim of persecution to their persecutor; generally referring to a state-actor (country/government). *Non-refoulement* is a key facet of refugee law that concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened.

can be substantiated. The decision-maker must assess the reliability of any evidence and the credibility of the applicant's statements. Credibility is established where the applicant has presented a claim which is coherent, plausible, consistent with generally consistent with the facts and therefore, on balance, capable of being believed, however misrepresentations or failure to disclose relevant fact should not automatically lead to the conclusion that an applicant does not have a credible claim. Untrue statements may be due to a variety of reasons, including fear or distrust, the effects of traumatic experiences, or the. The standard of proof to be met for a well-founded fear of persecution to be established a reasonable possibility that the harm or intolerable predicament feared will materialize if the applicant were to be returned to the country of origin or habitual residence. Asylum-seekers are not required to prove their fear "beyond reasonable doubt". The adjudicator should consider the applicant's fear well-founded if there is a reasonable possibility that the applicant would face some of harm if returned to the country of origin or habitual residence. Where exclusion under Article 1F of the 1951 Convention is being considered, the standard of proof relating to the application of its clauses is that of "serious reasons for considering", which requires credible and reliable information. In other words, the State or UNHCR must show that there are indeed "serious reasons" for considering that the person concerned comes within the scope of article 1F.

2.3.2.1 Institutions in Asylum Procedures

Certain minimum requirements for procedures to determine eligibility for refugee status in the context of individual refugee status determination have been identified in a number of conclusions adopted by UNHCR's Executive committee.[83] International protection principles require that the countries set up procedures which are fair, non-discriminatory and appropriate to the nature of asylum claims. Asylum applications raise issues which require specialized knowledge and expertise. It is in this context that best State practice provides for a clearly identified authority staffed with persons knowledgeable of refugee and asylum matters responsible to examine asylum applications and taking decision in the first instance.[84] In Rwanda, asylum issues are treated and addressed by the ministry of Disaster Management and Refugee Affairs and the Generation Directorate of Immigration and Emigration.

2.3.2.2 Procedural Safeguards

Given that the decision on an asylum application affects the fundamental rights of the individual concerned and the grave consequences of an erroneous decision, procedural guarantees are an essential

[83] UNHCR's Hand book on Refugee status determination, p. 121.

[84] UNHCR's Hand Book on Procedures and Criteria, p.32.

element of refugee status determination procedures. Core safeguards which must be available to all applicants throughout the process include the following:[85]

2.3.2.2.1 Individual Assessment of Each claim, Including a Personal Interview

Wherever possible, asylum-seekers should be permitted to present their case in person to a full qualified official of the authority competent to determine refugee status. The personal interview is extremely important given the difficulty of assessing credibility solely on the basis of an interview transcript or report. It allows the decision-maker to assess the applicant's manner and demeanor, and to ask supplementary and detailed questions.

2.3.2.2.2 Confidentiality of the Decision

Information provided by the applicant to the authorities in the course of the asylum procedure is confidential and can only be used by the authorities for the purpose for which it was solicited, that is to determine eligibility for international protection. Information should not be shared with the authorities of the applicant's country of origin, or be released to any third party without the express consent of the individual concerned and the decisions on an asylum application should be issued in writing. If the claim is rejected or declared inadmissible, the decision should give an account of the reason including the right for applicant to appeal within an indicated timeframe.

2.3.2.2.3 Appeal or Review

As noted above, negative decisions should set out the reasons for inadmissibility or rejection as well as information on how the applicant may exercise his or her right to appeal or review. The instance dealing with the appeal should have the authority to conduct a full review, that is, to examine matters of fact as well as of law. The appeal procedure should foresee the possibility for a hearing/interview, as it may be essential for the appeals authority to gain a personal impression of the applicant.

2.4 Conclusion

In this chapter, we attempted a general consideration of refugee as conceived in international regional and national instruments; we have the criteria for eligibility to the status of refugee, determination procedures and their protection. From the foregoing the refugee burden remains complex today. Clear and transparent refugee determination process and procedures need to be reviewed to ensure that only genuine refugees are accorded protection. The worrying States fatigue, unresponsiveness by States and

[85] UNHCR's Hand book on Refugee status determination, p, 123; see also UNHCR's Hand Book on Procedures and criteria, p.31.

the UNHCR to sustainable ways of handling the rising numbers of refugees and rejected asylum seekers, unclears and unenforceable tripartite agreements that are not clearly implementable and the rising number of a special category of rejected asylum seekers continues to pose challenges in the management of refugees and asylum seekers. In the following chapter is going to focus on the overview on human rights in Africa and the protection of refugees.

CHAPTER THREE

HUMN RIGHTS AND PROTECTION OF REFUGEES IN AFRICA

3.0 Introduction

The meaning of concept "rights" is itself controversial, but some authors tried to define it. A right is a legally enforceable claim that another will do or not to do a given act; a recognized and protected interest that violation of which is a wrong.[86] This section seeks to analyze and give an overview on human rights in Africa it contains different sub-sections some of them focuses of human rights in Africa.

Rights are widely characterized as legitimate claim that give rise to correlative obligations or duties. Thus, to have right is to have legitimate claim against some person, group or organization such as social or economic institution, a state or an international community. The later in turn, has an obligation or a duty to assist the rights holder in securing the rights.[87]

3.1 Brief History of Human Rights in Africa

Human rights is, however, defined as the freedoms, immunities and benefits that, according to modern values (especially at the international) all human beings should be able to claim to claim as a matter of right in the society live. Protection of human rights on the one hand, may be regarded as to ensure that people receive some degree of decent and humane treatment, while violation of the most basic human rights, on the other hand, is to deny individuals their fundamental moral entitlements. That is to treat them as if they are less than human and undeserving of respect and dignity.

The aim of this chapter is to discuss the general overview of human rights in Africa including, brief history human rights in Africa, causes of human rights abuses in Africa, expulsion of undesired nationals and the problem of refugees in Africa as they are still unsolved queries in the continent. Africa is a continent of 30.37 million square kilometers and almost 1.2 billion inhabitants.[88] Historically, from pre-colonial period to modern times Africa has witnessed substantial violations of human rights in which unfortunate practices such as human sacrifices, torture and infanticide were carried out. During colonization, Africa was economically and politically exploited and served as source of slaves, trade and

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[86] *G. A. Bryan, Black's Law Dictionary Abridged, 7th edition (ed.), Dallas, Texas, West group, 2000, p.1060.*

[87] R. Alsop, Power, Rights and Poverty; Concepts and connections, World Bank, Washington DC 2000, p.30.

[88] D. Torou, "An Overview of progress of Human Rights in Africa", p.1, available at www.peace.ca/afstrugglehumanrights.htm. [Last visited on 06/05/2017]

European expansionism. Experience shows that Africans have their own histories of struggle and human rights preoccupations that, in very complex ways, are linked to, but also, distinctive from struggles and preoccupations in other parts of the world. African States, through interaction with other States like USA, have a shaped or strengthened many principles of international human rights law such as the rights to self-determination. African culture had notions of human dignity which was either superior or similar to the Europe's due to the fact that. Africa struggled against slavery, colonialism and post-colonial tyrannies to reclaim their inherent integrity and dignity.

Despite of the existence of human rights in society as represented by governments and its officials, elected or not, post colonialism Africa has witnessed substantial violations of individual and collective rights. When the new African States emerged from colonialism from the mid-fifties to the mid-sixties, hopes were high that finally, the era of liberty has come. Unfortunately, the newly independent Africa States inherited the colonial States' structures and for political support, the new leaders had to rely on the same mechanisms such that the constitutions were modeled after those of the West. In the mid 1960's and 1970's, the system became unstable and centralized bureaucratic regimes were created in which all the powerful president, with the help of the bureaucratic regimes were created in which all the powerful president, with the help of the bureaucracy, police and the army, controlled all the machinery. At the international level, several instruments have been adopted to give effect to the demands made in the name of human rights. The most important is the UN Charter and the international Bill of Human Rights added to it.

The African Regional Human Rights system was, later created with the dynamism of human rights, both the Organization for African Unity (OAU) and African Union (AU) began to take broad emerging human rights issues over the years, as evidenced by the increasing number of conferences, meetings, declaration and resolutions adopted pertaining to human rights, in addition to the express human rights instruments such as the African Charter on Human and Peoples' Rights (ACHPR) of 1981 entered into force in 1986, the Convention Governing the Specific Aspects of Refugee Problems in Africa, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, the Protocol to the African Charter on Human and peoples' Rights (ACHPR) adopted on 11th July 2003, and the Charter on Democracy, Governance and elections adopted on 30th January 2007.

Nevertheless, to effectively to effectively enforce these instruments, various bodies were established with an express human rights mandate such as the African Committee for Human Rights (ACHPR) of 21st October 1986, the African Committee of Experts on the Rights and welfare of the child (ACERWC)

and the Protocol on the Establishment of the African Court of Human and People's Rights (ACHPR) of 1998 entered into force on 25th January 2004.[89] Thus, in spite of this progress, the human rights situation in the Africa States has remained bleak. The negation of human rights was not by force, but through instrumentalism and through legislation. In other words, the colonial modus operandi (mode of operating) was well suited for post-independence governance.

3.1.1 Effects of Colonial System and Cold war on Human Rights in Africa

At the conference of Berlin in 1885, colonial powers partitioned Africa into territories in which kingdoms, States and communities in Africa were arbitrarily divided. Unrelated areas and people were arbitrarily joined. Consequently, African States inherited those boundaries together with the challenges that legacy posed to integrity and attempt to achieve national unity. They adopted the framework of colonial laws and institutions that were aimed at exploiting local divisionism, however the necessary building of national unity was pursued by heavy centralization of political and economic power and suppression of political pluralism, predictably, political monopolies often led to corruption, nepotism, complacency and the abuse of power.[90]

3.1.1.1 The Cold War on Human Rights in Africa

Noteworthy, the new Africa States were born during the worst period of the Cold War. During that period the ideological confrontation between East and West placed a premium on maintaining order and stability among friendly States and allies, through superpower rivalries, which fuelled some of Africa's longest and most deadly conflicts. This affected much African continent especially on human rights. Issues of competency were left aside; the good example is the former Zaire (DRC) and support given to Jonas SAVIMBI against Angola regime since 1975. The repressive one party political system and the dictatorial regimes of men have been instrumental in the denial of all fundamental rights.

At the birth of ACHPR following cold war, mostly, because of political insecurities and pervasive suspicion of notion of human rights, none of the African leaders who met in Nairobi in June 1981 to adopt charter could claim anything like credible electro legitimacy, and supranational oversight

[89] A. Bosl & J. Diescho, "Human rights in Africa, legal perspectives on their protection and promotion", 2009, P.138, available at: http://www.kas.de/namibia/en/publications/16347 [last visited on 07/05/2017]

[90] Christ of Heyns and Karen Stefiszyn, Human Rights, Peace and Justice in Africa, Pretoria University Law press (PUPL), 2006, p. 240.

mechanisms for monitoring.[91] Essentially, the African charter was the product of cleavages of the cold war and post-independence. Lastly, as a result of colonial system and cold war, most of the African administration failed to inspire loyalty in the citizenry, inculcate in the military that culminated in persisting internal conflicts with all the consequences in terms of human impacts.

3.1.2 Causes of Human Rights Violations of Refugees in Africa

Abuse of human rights often leads to conflict, and conflict typically results in human rights violations. Indeed, many conflicts are sparked or spread by violations of human rights. For example, massacres or torture may inflame hatred and strengthen an adversary's determination to continue fighting, however, the progression of human rights law has generally been in the direction of according protection to individuals against their states, with the anti-State stance (negative obligation) flowing from assumption that individual persons must be protected from the abuse of powers of parliament, governments and public authorities. Form this point of view; States are principal subjects of international law. This means that the States are bound by agreements either in treaty or by customary law and they present obligation not only not to violate human rights themselves but also to undertake to secure or to ensure the rights of individuals.

Nonetheless, sixty-nine (69) years after the UN adopted the 1948 UDHR and almost thirty six (36) years after the OAU adopted its own ACHPR; the human rights situation on the African continent is discouraging. A big number of African countries have been afflicted by wars and related human rights abuses. In 1998, Amnesty international reported that twenty-four (24) African countries had serious and widespread human rights violations and that armed conflicts, social and political unrest continued unabated, leading to appalling human rights abuse throughout the continent. Now, here one would ask; what are the causes of extensive human rights abuses in Africa? OAU attributed Africa's poor human rights record general to racism, post-colonialism, poverty, ignorance, disease, religious intolerance, conflicts, debt, bad management, corruption, the monopoly of power, the lack of judicial and press autonomy, and border conflicts.

Moreover, human rights abuses can be a cause as well as consequence or symptom of violent conflicts. The symptomatic nature of human rights violations is armed conflict around the world and its consequences in terms of life and the mass movements of people trying to escape from violence and

[91] *African Human Rights Journal: peer-reviewed open access Journal on human rights in Africa, published since 2001, pp. 229-230, available at http://www.ahrlj.up.ac.za/odinkalu-c-a.*

destruction. Noteworthy, numerous conflicts have been caused by human rights issues such as limited political participation, the quest for political determination, limited access to resources, exploitation, forced acculturation and discrimination. In this respect, few examples are; flight of hundreds of thousands of Rwandan Tutsi into exile, and 1994 Rwandan Genocide where some 800,000 Tutsi and moderate Hutus were killed, and more than two million Rwandans flee across the borders into refugee camps in neighboring countries like Democratic Republic of Congo (former Zaire) and Tanzania.[92] The Zanzibar revolution of January 12th January 1964 that put an end to the local Arab dynasty in which thousands of Arabs and Indians in Zanzibar were massacred in riots, and thousands more were detained or fled the island. The event that occurred on March 21st, 1960 in Sharpeville, South Africa, where police killed student demonstrators peacefully protesting the apartheid regime.[93]

Armed conflict often leads to the breakdown of infrastructure and civic institutions which result in denial of rights, including the rights to privacy, fair trial, and freedom of movement which in turn leads to refugee problems. When hospitals and schools are closed, rights to adequate health and education are threatened. The collapse of economic infrastructure often result in pollution, food shortages, and overall poverty. Various forms of political oppression are often enacted, where individuals who pose a threat to those in power or do not share their political views may be arbitrarily imprisoned, and either never brought to trial or subject to grossly unfair trial procedures. Mass groups of people may be denied the right to vote or excluded from all forms of political participation or, measure restricting people's freedom of movement may be enforced to include forcible relocations, mass expulsions, and denials of the right to seek asylum or return to one's home.

3.2 General Consideration on the Protection of Refugee in Africa

Soon after the Second World War, as the refugee problem had not been solved, the need was felt for a new international instrument to define the legal status of refugees. Instead of ad hoc agreements adopted in relation to specific refugee situations, there was a call for an instrument containing a general definition of who was to be considered a refugee. The Convention relating to the status of refugees was adopted by a conference of plenipotentiaries of the UN on 28th July 1951, and entered into force on 21st April 1954. In this section the researcher intends to analyze the protection of refugee by starting with determination of refugee status then the procedure for determination of the refugee status.

[92] M. Kamau, Rwanda a new, united Nations Development Program in Rwanda, Kigali, March 2003, p.5.

[93] X, "Racism", available at http://en.wikipedia.org/wiki/Racism, [last visited 0n 07/05/2017].

3.2.1 Analytical Overview of the OAU Convention, 1969

The 1969 Convention governing the Specific Aspects of Refugee problems in Africa ('1969 Convention') is the regional legal instrument governing refugee protection in Africa. It was adopted on 10th September 1969 at the sixth ordinary session of the Organization of African Unity (OAU), now African Union (AU). It entered into force on 20thJune 1974 after ratification by one third of the member States. It has since been signed or ratified by 49 of the 54 of the AU. The 1969 Convention is a relatively short instrument, containing a preamble and 15articles. Each substantive article is analyzed in turn below.

3.2.1.1 Refugee Definition: African perspectives

The first article provides two refugee definitions: One replicating the 1951 Convention relating to the Status of Refugees[94] ('1951Convention relating to refugee Status') definition and second unique definition. The 1951 Convention defines a refugee "as someone with a well-funded fear of persecution on the basis of his or her race, religion, nationality, membership of particular social group or political opinion". The 1969 Convention includes that definition[95] minus the 1 January 1951 date limit that most states later agreed, by way of a Protocol[96], not to apply –and provides at article 1 paragraph 2[97].

The term refugee shall also apply to every person who, wing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. This unique definition explicitly introduces objective criteria, based on the conditions prevailing in the country of origin, for determining refugee status, and 'requires neither the elements of deliberateness nor

[94] See the article 1 of the Convention relating to the Status of Refugees adopted 28 July 1951, entered in to force 22 April 1954) 189 UNTS 137 (1951).

[95] See the article 1 paragraph 1 of the 1969 Convention.

[96] See the article 1 paragraph 2 of the Protocol relating to the Status of Refugees adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (1967 Protocol).

[97] See the article 1 paragraph 2 of the 1969 Convention.

discrimination inherent in the 1951 Convention definition'.[98] Both definitions are employed by UNHCR in its operation in Africa.[99]

Article 1 also includes paragraphs on cessation[100] and exclusion.[101] Each paragraph follows the 1951 Convention, with three additions. The additional cessation clauses provide that the 1969 Convention shall cease to apply to any refugee who has 'committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee'[102] or has seriously infringed the 1969 Convention's purposes and objectives.[103] A further point of distinction is that the 1969 Convention does not include the clause president in the 1951 Convention mitigating against cessation in respect of a refugee who can 'invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality'.[104]The additional exclusion clause adds 'acts contrary to the purposes and principles of the AU as a further ground of exclusion.[105]

As far as criteria for the determination of refugee status is concerned, in this part of the work the researcher distinguishes the inclusion clauses, cessation and exclusion clauses. The inclusion clauses define the criteria that a person must satisfy in order to be a refugee.[106] They form the positive basis upon which the determination of refugee status is made. The so-called cessation and exclusion clauses have a negative significance; the former indicate the conditions under which a refugee ceases to be a refugee and the latter enumerate the circumstances in which a person is excluded from the application of the 1951 Convention although meeting the positive criteria of the inclusion clauses.

3.2.1.2 Prohibition of Subversive Activities

The third Article articulates refugees' duty to respect the laws and regulations of the state, echoing Article 2 of the 1951 Convention, and prohibits them from engaging in subversive activities against any

[98]Ruma Mandal, 'Protection Mechanism Outside the 1951 Convention ("Complementary Protection")' (2005) UNHCR Legal and Protection Policy Research Series accessed 08 December 2010.

[99] UNHCR, 'Note on International Protection' A/AC96/830 (07 September 1994)

[100]1969 Convention, article 1 (4).

[101]1969 Convention, article 1 (5).

[102] D. Anker and Harvard Law Student Advocates for Human Rights, Bordering on Failure: the US-Canada Safe Third Country Fifteen Months after Implementation, The International Human Rights Clinic, Human Rights Program, March 2006.

[103] *Rainer Hofmann, 'Refugee Law in the African Context' (1992) 52 Heidelberg Journal of International Law 318,* 324.

[104] 1969 Convention article 1 (4) (f)

[105]1969 Convention article 1(4) (g).

[106]1951 Convention article1C (5).

AU member state. Article three is operationalized by the cessation clause described above, which terminates the refugee status of an individual who commits a serious nonpolitical crime after the acquisition of such status.

Article Four: Non Discrimination

Article four of the 1969 Convention on non-discrimination in the application of the Convention follow article three of the 1951 Convention, however discrimination is prohibited on the additional grounds of nationality, membership of a particular social group or political opinion.[107]

Article Five: Voluntary Repatriation

Article five of the 1969 Convention addresses voluntary repatriation. Its first paragraph articulates the core principle: 'the essentially voluntary character of repatriation shall be respected in all case and no refugee shall be repatriated against his will'. This is an important corollary of article 2' provisions on asylum, particularly Article 2 (3) on *non-refoulement*. The clauses that follow the core principle are premised on the assumption that the conditions for safe return have been met and detail the duties of countries of asylum and origin and refugee assisting agencies. The sending state, in collaboration with the receiving state, must make adequate arrangements for the safe return of refugees who request repatriation,[108] while the country of origin must facilitate their repatriation and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.[109]

The Convention mandates countries of asylum, country of origin, Voluntary agencies and international and inter-governmental organizations to assist refugees with the process of return, providing in particular that states of origin should use the news media and the AU to invite refugees home and provide assurances regarding the circumstances prevailing there, and host countries should ensure that such information is received.[110] Article five also provides that upon return, refugees must not be penalized for having fled.[111]

[107] The 1951 Convention prohibits discrimination on the grounds of race, religion or country of origin (1951 Convention article 3).

[108] 1969 Convention article 5(2).

[109] 1969 Convention article 5(3).

[110] 1969 Convention article 5(5).

[111] 1969 Convention article 5(4).

The 1969 Convention is the first and remains the only international legal instrument to formally insist on the voluntariness of refugee repatriation, however it is worth noting that the concept appears in UNHCR's Statute, the result of UN General Assembly resolution adopted 19 years prior to the 19969 Convention. Its originality aside, article5(1) is a powerful statement of principle, which is hailed as representing an early articulation of a principle that went on to represent a cornerstone of the international regime for refugee protection.[112] Unfortunately, it has been misinterpreted to suggest that repatriation is the primary solution for refugees on the continent. Rutinwa explains that in fact, Article five is much more about elaborating the principles and the modalities of effecting voluntary repatriation than a prescription of it as the only solution.

Article Six: Travel Documents

Article six, like Article 28 of the 1951 Convention, mandates contracting States to provide refugee with travel documents. In view of article 2 (5) on temporary protection, article 6(2) provides, where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.[113]

Article Seven and Eight: Cooperation

Article 7 and 8 relate to state cooperation with the AU and UNHCR, respectively. Article 8(2) provides that the 1986 Convention 'shall be the effective regional complement in Africa' of the 1951 Convention, which means, among other things, that refugees recognized only under Article 1(2) of the 1969 Convention are entitled to the refugee rights enumerated in the 1951 Convention.

3.3 Expulsion of People in Africa and its Impact on Human Rights Protection

The architecture of international human rights law is built on the premise that all persons should enjoy all human rights unless exceptional distinctions to serve a legitimate State objective and are proportional to the achievement of that objective.[114] International law grants noncitizens virtually all rights to which

[112] See the 1969 Convention: voluntary repatriation is one of the trifecta of durable solutions for Refugees; the others are local integration and resettlement.

[113] 1969 convention article 6(2).

[114] J. A. Goldstone "Racial Discrimination, Citizenship and the Rights of Noncitizens", p.322, available at: http://www.soros.org/initiatives/justice/focus/equality_citizenship/news/citizenship_20091021 [last visit on 09/05/2017].

citizens are entitled, except the rights to vote, hold public office, and exit and enter at will. The UDHR affirms that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[115]

Thus, noncitizens should enjoy equal rights to, inter alia, life, freedoms of religion, assembly, expression, and movement; and freedom from torture and inhuman treatment, arbitrary arrest, unfair trial, and invasion of privacy and family life.[116] Similarly, so-called minority rights to enjoy and practice one's culture, language, or religion ought not to be dependent on citizenship status. Though the international law protects all members of the human family, some States parties to international conventions of human rights deliberately expel non-nationals legally admitted in a territory of a State Party to the convention without observance of legal procedure, and in certain cases their citizens. In this subsection some examples of instances of mass expulsion and their impact to human rights protection in Africa are to be elaborated.

3.3.1 Arbitrary Expulsion of Legally Admitted Persons in Africa

It is a principle that States have a right to control their borders, and this includes a right to expel foreigners who are not legally present in the country. This right is, however, circumscribed by art. 12 of the ACHPR para.4, which states that non-nationals legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. Article 12(5) categorically prohibits mass expulsions.[117] This was reflected by the ACCHPR in the Organization Mondiale Contre La Torture VS Rwanda; Comm. Nº 27/89 alleges the expulsion from Rwanda of Burundi nationals who had been refugees in Rwanda for many years. They were told on 02 June 1989 that they had a month to leave the country. The reason given for their expulsion was that they were a national security risk due to their subversive activities. The refugees were not allowed to defend themselves before a competent court.[118]

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[115] See ICEAFRD, preamble 2.

[116] J.A., Goldstone, P322.

[117] X, "Collective expulsion", P.1, available at: http://www.citizenshiprightsafrica.org/thematic/collectiveexpulsion.htmlnincitizenshipright [accessed on 16/04/2011].

[118] See comm. Nº 27/89, 46/91, 49/91, 99/93(1996), Organization Mondiale Contre la Torture VS Rwanda, African Commission on Human and Peoples' Rights, para. 1, available at: http://www.umn.edu/humanrts/africa/comcases.html [last visited 09/05/2017].

The ACCHPR found that the Burundian refugees in this situation were expelled in violation of Article 2 and 12 of the ACHPR. The ACCHPR concluded that the violations of the rights of individuals have occurred on the basis of their being Burundian nationals or members of the Tutsi ethnic group. The denial of numerous rights to individuals on account of their nationality or membership of particular ethnic group clearly violates article 2. The ACCHPR found ample evidence that group groups of Burundian refugees have been expelled on the basis of their nationality. This constitutes a clear violation of article 12(5). By expelling these refugees from Rwanda, however, without giving them the opportunity to be heard by the national judicial authorities, the government of Rwanda has violated article 7(1) of the Charter. Perhaps most importantly, the Africa Commission has found that the provision of article 5 that states every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status applies specifically to attempts to denationalize individuals and render them stateless.[119] In several cases relating to deportations or denial of citizenship, the commission has held that the fact that someone is not a citizen by itself does not justify his deportation; there must be a right to challenge expulsion on an individual basis. Founding its decision on article 2, 7 as well as article 12 of the ACHPR, the Commission has ruled against both Angola and Zambia in cases relating to individual deportations or mass expulsions on the basis of ethnicity, commenting that mass expulsions constitute a special violation of human rights. Zambia had expelled West Africans indiscriminately, without giving them the opportunity to appeal against their deportation, and had kept them in a special camp for up two months. Those have brought about development to protection of human rights such that, prohibition of mass expulsion represents a highly valuable ordinance and is aimed at preventing recurrences, similar to the expulsion of Asians from Uganda under the president Idi Amin Dada.

Moreover, international convention, including the ICEAFRD and ACHPR do not specifically prohibit discrimination based on nationality. But applying nondiscrimination norms to noncitizens, UNCERD recently observed that, Xenophobia against non-nationals constitutes one of the main sources of contemporary racism and human rights violations against them occur widely in the context of discriminatory, xenophobic and racist practices. It is for good reason, then that the prohibition against racial discrimination is not limited to citizens.

[119] B. Manby, "Citizenship law in Africa: a comparative study", p.18, available at http://www.soros.org/initiatives/justice/articles, [accessed on 16/04/2011].

3.3.2 The Right to Nationality in Africa

The laws governing citizenship in most African countries as in most countries in the world reflect a compromise between two basic concepts: jus soli (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and jus sanguinis (law or right of blood), where citizenship is based on descent from parents who themselves are or were citizens.

In addition to these principles based on birth, two other factors are influential in determining citizenship for adults: marital status; marriage to a citizen of another country can lead to the acquisition of the spouse's citizenship, and naturalization for residence within a country's borders. In Africa, for example, more than 24,671 people became naturalized citizens of South Africa during 2006-2007 alone, in Senegal, 12,000 people have been naturalized since independence in 1960, of the nearly 20,000 foreigners who have applied for naturalized in Swaziland since its independence, almost 6,000 have become citizens, Botswana granted 39,000 people citizenship between 1966 and 2004, and Tanzania naturalized 20,000-26,000 Rwandan refugees in 1980s.[120]

Legal recognition of nationality or citizenship is the most critical link between an individual and the state whose nationality is claimed. Yet international law related to nationality is relatively undeveloped. But certain basic principles have been laid down.

The grant of nationality or was long regarded under international law as being within the reserved domain of states, a position affirmed by the Permanent Court of International Justice 1923; in its Advisory Opinion in the case concerning nationality decrees issued in Tunis and Morocco, the Permanent Court of International Justice emphasized that: "the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations."[121] Since that date, however, international human rights law has increasingly asserted limits to state discretion, in this as in other areas.

In 1930, the Hague Convention on Certain Question Relating to the Conflict of nationality Laws affirmed in its preamble that it is in the interest of the international community to ensure that all

[120] C. Gasarasi, Transitional and Peace in Great Lake Region: the question of the expulsion of Banyarwanda from Tanzania, international conference, Kigali 31 May - 01 June 2007, p.1.

[121] E. Simperingham, "The International Protection of stateless Individuals: A Call for Change" University of Auckland, June 2003, p.8, available at: www.refugee.org.nz/Comment/Michael.html, [last visited on 10/05/2017].

countries recognize that every person should have a nationality, article 1 on the Convention notes that other States will recognize these laws only insofar as they are consistent with international convention, custom, and principles of law generally recognized with regard to nationality.

When the UDHR was adopted in 1948, citizenship was one of the rights guaranteed. Article 15 provides "that everyone has a right to a nationality and that no one shall be arbitrarily deprived of his nationality." Scholars are split on whether the UDHR is itself international customary law or simply a reflection of such law, but in either case the inclusion of citizenship in the declaration implies that even states that have ratified none of the relevant treaties are bound to respect citizenship as a human right. The 1961 Convention on the Reduction of Statelessness, which entered into force in 1975, makes it a duty of States to prevent Statelessness in nationality laws and practices. Article 1 mandates that a contracting state shall grant its nationality to a person born in its territory who would otherwise be Stateless. Article 8(1) directs that a contracting state shall not deprive a person of his nationality if such deprivation would render him stateless.

In regard to persons who would not become Stateless, the convention also forbids denationalization on racial, ethnic, religious or political grounds. Many human rights treaties mention citizenship briefly in relation to their own subject matter, for example, the ICEAFRD requires that the right to the nationality not be denied for discriminatory reasons. The CEAFDW provides that women be granted equal rights with men in respect of citizenship. The ICCPR does not discuss the citizenship of adults, but recognizes the right of every child to acquire a nationality. The International Convention on the Rights of the Child (ICRC) also guarantees the right of every child to acquire a nationality, placing a duty on states parties to respect this right.

The African Charter on Human Peoples Rights(ACHPR) does not contain a provision on nationality, however, the African Charter on the Rights and Welfare of the Child(ACRWC) gives right a child to acquire a nationality and also requires States parties to undertake to ensure that their constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he/she has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (ACHPRRW) places strong nondiscrimination requirements on States in general, but is very weak on citizenship rights. It provides in Article 6 (g) and (h) only that a woman shall have the right to retain her

nationality or to acquire the nationality of her husband and a woman and a man shall have equal right with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interest respectively.

For State succession, the basic principle in international law says, in the absence of agreement to the contrary, person habitual resident in the territory of the new State automatically acquire the nationality of that State, for all international purposes. And lose their former nationality, but this subject to a right in the new State to delimit more particularly who it will regard as its nationals. However, International Law Commission (ILC) an intergovernmental body established under UN auspices in 1948 has prepared draft articles on nationality of natural persons in relation to the succession of States, including this provision in article 1: "Every individual who, on the date of the succession of States, had the nationality of the predecessor State, Irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned". Article 4 of the ILC draft articles obliges states to take all appropriate measures to prevent Statelessness arising from State succession.

3.3.2.1 Denial and Arbitrary Deprivation of Citizenship in Africa

The adoption and entry into force of International Convention on Elimination of All Forms of Racial Discrimination (ICEAFRD) provided a significant step forward in attempt to combat racial discrimination at the global level. Furthermore, it is important to note the situation where the convention as provided in paragraphs of article (1) is not applicable. The convention not applicable in case of distinctions, exclusions, restrictions, or preferences made by State party between citizens and non-citizens and con not be interpreted as affecting the laws regulating nationality, citizenship or naturalization provided that, such provisions do not discriminate against any particular nationality. This represents the unfortunate reality that non-nationals can be denied equal treatment under international law. Noncitizens, however, remain among the most vulnerable segments of humanity. Increasingly, States have improperly deployed the concept of citizenship to carve out significant exceptions to the universality of human rights protection. This happens primarily in two ways: through deprivation of, and/or restrictions on access to citizenship and though the imposition of distinctions between citizens and noncitizens.

When taken together, the powers to deny citizenship and treat noncitizens differently can particularly when employed arbitrarily result in the denial of fundamental human rights: for instance, entire groups of native-born residents may be excluded from access to public benefits; citizens suddenly stripped of their status may be physically expelled; long-term residents may be fearful of deportation and denied the

vote, denied access to education, housing, and health care; to police protection from acts of violence and discrimination against noncitizens may be abetted or allowed to go unpunished.

Some international conventions prohibit arbitrary deprivation of citizenship, for example, the 1961 international convention on reduction of Statelessness. But till 02nd June 2011, only nine (9) African States had ratified this convention.[122] Article 8(4) of the 1961 Convention the reduction of Statelessness provides that a Contracting States shall not exercise a power of deprivation except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

Article 15 of the UDHR provides that no one shall be arbitrarily deprived of his nationality. This means, any decision to revoke citizenship, which has such an important effect on an individual's rights, must be judicial and not administrative, and must respect due process of law. Thus under international law a person cannot be expelled from his or her country of citizenship, no matter what the destination. A state may expel individuals it claims are non-nationals form its territory or deport them to their alleged State of origin only if it respects minimum rules of due process, including the right to challenge on an individual basis both the reasons for expulsion and the allegation that a person is in fact a foreigner.

The principle was reaffirmed in May 2007 by the International Court of Justice (ICJ), ruling in a case brought by Guinea that the government of Zaire (now DRC) had not provided available and effective remedies enabling an individual to challenge an expulsion, because the decision which was technically to refuse entry could not be appealed. Even treaties that do not specifically mention citizenship, such as the ACHPR, provide for the right to a fair hearing and the right to appeal to competent national organs in respect of acts violating fundamental rights.[123] Nonetheless, denationalization or revocation of citizenship on racially discriminatory criteria will be considered arbitrary no matter what procedural due-process guarantees are in place, because of the jus cogens a fundamental principle from which no derogation is permitted under international prohibition on racial discrimination. The UN Commission on Human Rights, guided by article 2 and 15(2) of the UDHR, reaffirmed in 2005 that the right to a nationality is a fundamental human right and that arbitrary deprivation of nationality on racial,

[122] X, "Key for protecting the Stateless", p.1, available at: http//www.unhcr.org/pages/4a2535c3d.htm. [Last visited on 25/06/2017]

[123] See ACHPR, article 7.

national, ethnic, religious, political, or gender grounds is a violation of human rights and fundamental freedoms.

3.3.2.2 An Approach Towards *non-refoulement* Rule in Africa

Article 1A (2) of the Refugee Convention of 1951 defines a refugee as a person who, owing to well-founded fear of being persecuted for reasons of race, nationality, membership of 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,[124] however poor human rights record in Africa result in refugees problem. Since 1970, for example, more than 30 wars have been fought in Africa and in 1996 alone, 14 of the 53 countries of the continent were afflicted by armed conflict, accounting for more than half of war related deaths worldwide and resulting in more than 8 million refugees, returnees and displaced people.

Recently, Amnesty International reported that twenty-four African countries had serious and widespread human rights violations 1n 1998 and that armed conflicts, social and political unrest continued unabated, leading to appalling human rights abuse throughout the continent.[125] The UNHCR estimated that in 1998 there were about 3.5 million refugees in Africa, 80% of them were women and children under the age of five. In its 1999 survey, HRW reported that Africa's refugee population had increased to 6.3 million of the ten top refugee producers in the world, five were: Burundi, Eritrea, Sierra Leone, Somalia, and Sudan.

Moreover, while many African countries continue to host large numbers of refugees without violating the principle of *non refoulement*, there have been some very worrying instances of *refoulement* on the continent over the past few years. For example, in 2006, more than 4,000 refuge seeker Burundians were expelled from the district of Ngara in Tanzania to Muyinga province.[126]In addition, reports indicate that 2,000 Zimbabweans are being deported from South Africa each week.[127] And the trend seems to point towards an increasing wariness on the part of African States to host refugees.

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[124] R Dowd, "Dissecting discrimination in refugee law: an analysis of its meaning and its cumulative effect", p.30, available at: www.lexadin.nl [accessed on 20/4/2011].

[125]www.peace.ca/afetrugglehumanrights.htm, [last visited on 12/05/2017].

[126] X, "Report on human rights Violations during the expulsion of Burundians living in Tanzania August-October 2006",p.4, available at: www.nrc.no/arch/img/9188210.pdf [last visited on 12/05/2017].

[127] O. Bueno, "perspectives on *refoulement*in Africa", P.6, available at: http//: www.refugeerights, [last visited on 12/05/2017].

Non refoulement refers to as the key principle of international refugee law, which requires that, on State shall return a refugee in any manner to a country where his or her life or freedom may be endangered. The principle also encompasses non-rejection at the frontier. Its provision is contained in article 33 of the 1951 Convention Relating to the Status of Refugees and constitutes the legal basis for States' obligation to provide international protection to those in need of it. Article 33(1) of 1951 Convention provides that "no contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. In the following chapter, the focus is put the instances in which the refugee status and their protection under legal instruments ceases to apply in addition I attempt legal implications, consequences and challenges to cessation of refugee status taking into account Rwandan refugees as a case study.

3.4 Conclusion

Refugee protection must be analyzed, interpreted, implemented, and enforced through a human rights framework. The Refugee Convention, as the only universal, legally binding instrument to deal specifically with refugees and asylum seekers, must be considered as a complement to the various human rights treaties, which are applicable to all human beings regardless of status and regardless of their position vis a vis the State. While it is true that the expanded refugee definition provided for in the OAU Convention represent progress within the field of international refugee law, the level of progress achieved at the practical level is disappointing. Finally, the principal problem remains unresolved, namely that refugees exist in first place. Improvement in written law, such as the proliferation of human rights treaties, and the OAU convention do not automatically translate into an improvement in refugees 'lives. Current state policy and restrictive interpretations of international refugee law and international human rights law are product not of states' lack of ability to provide better protection, but rather of their lack of will to do so.

CHAPTER FOUR

THE CESSTION CLAUSES OF REFUGEE STATUS

4.0 Introduction

Refugee status as conceived in international law is, in principle, a temporary status. This means that once an individual is determined to be a refugee, his/her status is maintained unless he/she falls within the terms of the cessation clauses or the status is cancelled or revoked.[128] Once a refugee can safely return and re-establish him or her in the country of origin or habitual residence, or obtains the full protection as a citizen of another country, international protection is no longer justified or necessary as consequence, his refugee is terminated and he/she loses rights attached to it.

4.1 Triggering Circumstances to Cessation Clauses of Refugee Status

The circumstances in which the cessation clause of refugee status maybe permitted are exhaustively enumerated in the so-called "cessation clauses" of article 1C of the 1951 Convention. These cover two broad categories of situations; either through the actions of the refugee,[129] or through fundamental changes in the country of origin upon which refugee status was based.[130]

4.1.1 Refugee Status Cessation by Acts of a Refugee

The need for international protection may come to an end if a refugee's own voluntary acts have brought about a change in his or her personal situation which means that he or she no longer requires international protection as a refugee.[131] When a refugee can either reclaim the protection of her own state or has secured an alternative form of enduring protection. Under the 1951 Convention, the sufficiency of national protection may be manifested in different ways resulting in the will of the concerned refugee and apply on individual basis. In fact, the refugee status comes to an end by an act of the concerned refugee in the four instances:

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[128]UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status", para.112.

[129] In these guidelines, "country of origin" is understood to cover both the country of nationality and the country of former habitual residence, the letter in relation to refugees who are stateless. For more on article 1C (1-4), see UNHCR, "The Cessation Clauses: Guidelines on their Application", April 1999.

[130]See article 1C (5) and (6) of the 1951 Convention.

[131] UNHCR's Handbook, para 111-134; UNHCR," the Cessation Clauses: Guideline on their application", p.2.

4.1.1.1 Voluntary Re-availement of National Protection

Cessation based on re-availement of national protection generally involves the consideration of efforts by a refugee to secure diplomatic or consular protection from the authorities of the states of which she is formally a citizen. Typically, the refugee will seek the issuance or renewed of a passport or other identity document.[132]

The protection intended her is the diplomatic protection by the country of nationality of the refugee. The notion of diplomatic protection principally relates to the actions that a state is entitled to undertake vis-à-vis another State in order to obtain redress, in case the rights of one of its nationals have been violated or have been threatened by the later State. If a refugee re-avails him or herself of such form of protection, his or her refugee status should come to an end.[133] Diplomatic protection more broadly also subsumes consular assistance. Where consular authorities provide documents and certificates that the nationals of the country may need while being abroad, including renewal of passport, birth and marriage certificates, authentication of diplomas, etc., this may also constitute re-availment of national protection.

4.1.1.2 Voluntary Re-acquisition of Lost Nationality

Nationality is generally considered to reflect the bond between the citizen and the State and, as long as the refugee [134]has of his own free will re-acquired the lost nationality, the intent to obtain the protection of his or her government may be presumed. We can say that the voluntary re-acquisition of the nationality is a clear indication that there is a normalization of the bond between the refugee and the government in relation to which he or she has had a well-founded fear of persecution.

In a situation where the laws in the refugee's country of origin automatically confer nationality and the refugee has re-acquired nationality in this way, there is obviously no act on the part of the refugee which would automatically trigger the application of this clause. Nor, a fortiori, is the mere possibility of re-acquiring the lost nationality by exercising a right of option sufficient to put an end to refugee status. This matches the provision of the Rwandan constitution with regards to Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31st December 1994 by reason of acquisition of foreign nationalities; these acquire Rwandan nationality once they come to settle in

[132] C. Wydrzynski, Canadian Immigration Law and procedure, 1983, p. 337.

[133] UNHCR, The Cessation Clause: Guidelines on their Application, Geneva, UNHCR, April 1999, p.2.

[134]United Kingdom Border Agency, Cancellation, cessation and revocation of refugee status, version 3.0, policy, guidance and Casework Instruction, December 2008, p.15.

Rwanda,[135] however, where the laws give an option to reject the attribution of nationality and the refugee, with full knowledge of the option, does not exercise it, then the refugee could be deemed to have voluntarily re-acquired the former nationality. Although there is usually little scope for explanation of extenuating circumstances, the refugee may nonetheless, in this particular situation, invoke special reasons to demonstrate that there was in fact no intention to obtain the protection of the government.[136]

4.1.1.3 Acquisition of a New Nationality, and Enjoyment of the Protection of the Country of New Nationality

Unlike the other cessation clauses, this particular cessation relates not to the normalization of relations between the refugee and his country of origin but to the establishment of relations between the refugee and a new country. This country is usually the country of refugee, but it may also be another country. It is a condition that the new nationality being acquired. There must be conclusive evidence to regard the refugee a national of another country, taking into account both the applicable law and actual administrative practice. The possession of the passport of another is in itself insufficient evidence unless it is clear that the bearer of the passport is, by law of that country of national.[137]

The enjoyment of the protection of the country of new nationality is the crucial factor, two conditions must be fulfilled in order that a person who has acquired a new nationality enjoys the protection of the country of new nationality: (i) the new nationality must be effective in the sense that it must correspond to a genuine link between the individual and the state, and (ii) the refugee must be able and willing to avail himself or herself of the protection of the government of his or her new nationality.

This element of cessation clause is particularly relevant in case where the new nationality has been acquired through marriage. In such cases, the protection available from the new country of nationality will depend on whether or not a genuine link has been established with the spouse's country. Where the effective protection of the country of the spouse is available and the refugee avails himself or herself of such protection, the cessation clause would apply. Should the new nationality be lost, it is possible to re-claim the previous refugee status, although this is not automatic and would depend on the

[135] See article 7 para. 5 of Rwandan Constitution of 04 June 2003, O.G., no special of 04/06/2003. This case is for Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31st December 1994 by reason of acquisition of acquisition of foreign nationalities.

[136] United Kingdom (UK) Border Agency, p.16.

[137] See also International Organization for Migration (IOM) N° 70/98 of 28 September 1998 (Guidelines: Field Office Activities Concerning Statelessness).

circumstances relating to the loss. Thus, in case where the person had lost his newly acquired nationality by voluntary renunciation, the cessation clause may still apply. On the other hand, if the new nationality was lost as a result of circumstances beyond the individual's control, such as political events relating to the state of the individual's new nationality, then the individual's refugee status maybe revived. As far as Rwandan refugees are concerned, this means that the cessation clause applies to those who have acquired nationalities of other countries, these are no longer refugees under refugee law.

4.1.1.4 Voluntary Re-establishment in the Country of Origin

This is the only cessation clause which requires the refugee to have returned to his or her country of origin. The term "re-established" denotes not only return to the country of origin but also resettlement. The requirement of voluntariness qualifies both the return and the stay in the country of origin. Where the return is involuntary, this cessation clause is not applicable, however, should the refugee have returned to his or her country of origin involuntarily, but nonetheless settled down without problems and resumed a normal life for a prolonged period before leaving again, the cessation clause may still apply. On the other hand, where the refugee returned to his or her country voluntarily, but his or her stay was not voluntary, such as due to imprisonment, then cessation may not be applicable.

There are no definite criteria as to when a person could be considered as being "re-established". Prolonged stay is an indication of re-establishment, however, a short stay may warrant cessation of refugee status if the refugee had carried on a normal livelihood without problems and performed obligations which a normal citizen would, such as paying taxes. Such behavior would be indicative of a normalization of relations with the country. On the other hand, short visits to the country of origin for compelling reasons would not normally suffice for application of this clause. For instance, the return of a refugee to his or her country of origin to assess the situation should not be considered as "re-establishment" within the meaning of this provision. It is important to raise here that the application of this cessation clause does not preclude the person from having a new refugee claim based on circumstances in the country of origin which had occurred after he or she re-established himself or herself.[138] This situation is normally understood for Rwandan Refugees who returned in the country by virtue of voluntary repatriation to Rwanda and are carrying out their daily activities.

[138] In Conclusion N° 18 (XXXI) of 1980, the Executive Committee of UNHCR recognized the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate, and recognized further that "visits by individual refugees or refugee representatives to their country of origin to

4.1.2 Refugee Status Cessation by a Fundamental Change in Circumstances

While the cessation clauses in paragraphs 1 to 4 article 1(C) are linked to a change in an individual's personal circumstances brought about by that person, article 1(C)(5) relates to a fundamental changes in the objective circumstances in connection with which the refugee has been recognized.[139]

4.1.2.1 General Analysis of Ceased Circumstances

Since the 1979 explication of the cessation clause by the UNHCR, states and academics have grappled with what "fundamental" change meant. Fitzpatrick and Boanan described the change needed to justify a declaration of cessation as "change that must be of substantial political significance, comprehensive in nature and scope in the sense that the power structure under which persecution was deemed a real possibility no longer exists.[140]

A fundamental change in circumstances typically involves developments in governance and human rights that result in a complete political transformation of a country of origin[141] evidenced by significant reforms altering the basic legal or social structure of the State or democratic elections, declaration of amnesties, repeal of oppressive laws and dismantling of former security services[142]the annulment of judgments against political opponents and, generally, the re-establishment of legal protections and guarantees offering security against the reoccurrence of the discriminatory actions which had caused the refugees to leave.[143] Changes in these areas must also be effective in the sense that they remove the basis of the fear of persecution[144] and should be "profound and enduring".[145]

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inform themselves of the situation there –without such visits automatically involving loss of refugee status- could also of assistance in this regard".

[139]Article 1C (5) and (6) of the 1951 Convention.

[140] Fitzpatrick and Boanan , Cessation of refugee protection,2003, p513. Available at http://www.unhcr.org/refworld/pfdid/470a33bc0.pdf, [last visited on 14/05/2017].

[141] Executive committee of the High Commissioner's" program, Sub-Committee of the Whole on International Protection, 'Discussion Note on the Application of the "Ceased Circumstances" Cessation Clause in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1, para. 11, 20 December 1991.

[142] Note on the Cessation Clauses, para. 20. UNHCR, 'Note on the Cessation Clauses', UN doc. EC/47/SC/CRP.30, 30 May 1997.

[143]Executive Committee of the High Commissioner's Program, Sub-Committee of the Whole on International Protection, 'Discussion Note on the Application of the "Ceased Circumstances" Cessation Clause in the in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1 para11, 20 December 1991.

[144] UNHCR, 'Note on the Cessation Clauses', UN doc EC/47/SC/CRP.30, 30 May 1997, Para. 19.

According to the Commission of the European Communities, a profound change of circumstances is not the same as improvement in conditions in the country of origin. Indeed, a complete political change is the most obvious example of a profound change of circumstances, although the holding of democratic elections, the declaration of an amnesty, repeal of oppressive laws, or dismantling of former [security] services may also be evidence of such a transition.[146]

The observance of these rights need not exemplary, significant improvements in these areas and progress towards the development of national institutions to protect human rights are necessary to provide a basis for concluding that a fundamental change in circumstances has occurred.[147]The refugees may choose to return to their country of origin well before fundamental and durable changes have occurred, large-scale successful voluntary repatriation may also provide evidence of a fundamental changes in circumstances.[148] Positive developments in a country of origin are conditioned to stability and durability. A situation which has changed, but which also continues to changes or shows signs of volatility, is not by definition stable, and cannot be described as durable.

Time is required to allow improvements to consolidate. UNHCR has thus advocated a minimum 'waiting period' of twelve to eighteen months before assessing developments in a country of origin.[149] A situation which has changed, but which also continues to show signs of volatility, is by definition not durable. There must be objective and verifiable evidence that human rights are generally respected in that country, and in particular that the factors which gave rise to the refugee's well-founded fear of being persecuted are durably suppressed or eliminated. Practical development such organized repatriation and the experience of returnees, as well as the reports of independent observers should be given considerable

[145]Executive Committee of the High Commissioner's Program Conclusion N° 65 (XLII), Cessation of Refugee status (1991).

[146]Explanatory memorandum, article 13 (1) (e). commission of European Communities, 'Proposal for a council Directive on Minimum Standard for the Qualification and Status of third country Nationals and Stateless Persons as Refugee or as persons who Otherwise Need International Protection', Communiqué (2001) 510 final , 12 September 2001.

[147] UNHCR, 'Note on the Cessation Clauses, UN doc. EC/47/SC/CRP.30, 30 May 1997, para. 23.

[148] UNHCR, 'Note on Cessation Clauses, UN doc. EC/47/SC/CRP/.30, 30 May 1997, para. 21 and 29.

[149] Executive committee of the High Commission's program, Sub-Committee of the whole on International Protection, 'Discussion Note on the Application of the " Ceased Circumstances" Cessation Clause in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1,para. 12, 20 December 1991.

weight. In sum, the cessation of refugee status based on ceased circumstances should only be considered when developments in the country of origin are:[150]

Substantial, the power structure under which persecution was deemed a real possibility no longer exists;

Effective, the exist in fact, rather than simply promise, and reflect a genuine ability and willingness on the part of the home country's authorities to protect the refugee; and

Durable, rather than transitory shifts which last only a few weeks or months.

4.1.2.2 Analysis of Fundamental Change in Rwanda

In Rwanda, the country has changed significantly since the 19994 genocide, and today enjoys an essential level of peace and security. Significant efforts have been undertaken to promote reconciliation, important steps towards democracy have been taken including the adoption of a new constitution and the holding of parliament and presidential elections. Rwanda has acceded to several human rights treaties and established a National Human Rights Commission for the promotion and protection on human rights. The death penalty has been abolished; the proceedings of the Gacaca courts, which have been a source of apprehension for many refugees who have been largely concluded.[151] In addition, estimates of around 3.5 million of Rwandan refugees voluntarily returned in Rwanda from 1994 to date and are now contributing to the development of their country[152] in line with the constitutional provision which expressly provides that no one shall be forced onto exile, and that every Rwandan has the right to leave and to return to the country.[153]

Supplement to this the progress is also acknowledged by reports from international institutions and organizations such as the World Bank, the country has higher governance scores along with developing and emerging economies, and it is ranked top global reformer as according to the Doing Business report

[150] Refugee and Humanitarian Division, Department of Immigration and Multicultural Affairs, Australia, "The Cessation Clauses (article 1C): An Australian Perspective', October 2001, p. 16.

[151] UNHCR, Implementation of the comprehensive strategy for the Rwandan refugee situation including UNHCR's recommendation on the applications on the applicability of the "Ceased Circumstances" Cessation Clauses, Geneva, UN Refugee Agency, December 2011, p.6.

[152] MIDIMAR, an overview of the progress towards social and economic development of Rwanda, Kigali, 2011, pp. 5-6 also available at http://www.midimar.gov.rw/index.php/cessationclausecentre/cat_view/40-cessation-clause, [last visited on 15/05/2017].

[153] Article 23, and 24 of the Rwandan Constitution 2003 as amended to date, O.G N° special of 04 June 2003.

2013.[154] As we can Rwanda made tremendous improvement especially on economic side, however, reports by some non-government international organization and some authors question substantial change in Rwanda for human rights issues. On one side , Human Rights Watch by recognizing the progress made by the country shows that the progress continues in the fields of development, delivery of public services, health, and the economy, draft revisions of the laws contained some positive amendments, but leave open the possibility for inappropriate prosecutions for 'genocide ideology'. Moreover, freedom of expression and political space are still severely restricted. Members of opposition parties, journalists, and other perceived critics of the government were arrested, detained, and tried, some solely for expressing their views and charges such as endangering state security and inciting public disobedience is increasingly used to prosecute government critics.[155] This is also confirmed by Amnesty International in its annual report on the freedom of expression and association especially for opposition politicians.[156]

To the other side, the implementation of laws, policies, and social programs perceived by some as biased, constraints on judicial independence, land issues, right of access to justice and the due process of law, arbitrary arrests and detentions, have been identified in the country. [157] It is unfortunate that these loopholes are fundamental to human being in general and refugees in particular and it should to the reluctance refugees to voluntarily return in their origin country.

4.1.3 Exception to Cessation of Refugee Status

The exceptions recognized and provided for the cessation clauses are contained in the 1951 Convention and the UNHCR Executive Committee Conclusion Nº 69.

4.1.3.1 Compelling Reasons

The 1951 Refugee Convention allows a refugee to invoke "compelling reasons arising out of previous persecution for refusing to avail him or herself of the protection of the country of origin where his or her

[154] The World Bank and the International Finance Corporation, Doing Business 2013: Comparing Business Regulations for Domestic Firms in 185 economies, 10th ed. Washington DC, World Bank, 2012, p.4.

[155] Human Rights Watch, World Report 2016: Rwanda, Available at http://www.hrw.org/world-report-2016/world-report-2016-Rwanda, [last visited on 15/05/2017].

[156] Amnesty International, "annual report 2016," Available at http://www.amnesty.org/en/region/rwanda/report-2016, [last visited on 15/05/2017].

[157] K. M. Mwajuma, A socio-legal analysis of the challenges to a durable return and reintegration of refugees: the case of Rwanda, University of Ghana, 2009, p.3.

specific circumstances are such that continued international protection is necessary and justified despite the fact the situation gas generally changed to such an extent that refugee status would no longer be required. [158]

This exception is also provided for by the comprehensive strategy on the applicability of the "ceased circumstances" cessation clauses for the Rwandan refugee whereby cessation does not apply to refugees who continue to have a well-founded fear of persecution and persons who have compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of origin.[159] It is intended to cover cases where refugees, or their family members, have suffered atrocious forms of persecution and there cannot be expected to return to the country of origin[160] or former habitual residence.[161] It is presumed that such persons have suffered grave persecution, inclusion at the hands of elements of the local population, and cannot reasonably be expected to return.[162] This exception reflects a more general humanitarian principle that is now well-grounded in State practice, which recognizes that a person who – or whose family – has suffered under atrocious forms of persecution should not be expected to repatriate.[163]

In fact, even if the circumstances have generally changed to such an extent that refugee status would no longer be necessary, all refugees affected by general cessation must have the opportunity, upon request, to challenge the decision to apply in their case on the basis that they continue to have a well-founded fear of persecution in the country concerned or because the "compelling reasons" exception applies to their particular circumstances and hence their cases reconsidered on international protection grounds relevant to their individual case.[164] There may also be instances where certain groups should not be included in the application of general cessation because they remain at risk of persecution.[165]

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[158]See article 1C (5) and (6) of the 1951 Convention relating to refugee status.

[159] See UNHCR, "Implementation of the comprehensive strategy for the Rwandan situation including UNHCR's recommendations on the applicability of the "Ceased circumstances", p. 7.

[160] Executive Committee Conclusion Nº. 69, para. (e); UNHCR's Cessation Guidelines, para.21.

[161] See amongst others, UNHCR handbook, para. 136.

[162] See UNHCR and UNHCR Study, "Daunting Prospects Minority Women: Obstacles to their Return and Integration", Sarajevo, Bosnia and Herzegovina, April 2000, p. 12.

[163] J. Fitzpatrick and R. Bonoan, "Cessation of Refugee Protection" in Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, eds E. Feller, V. Turk and F. Nicholson, Cambridge University Press, 2003, p. 31.

[164]Executive Committee, Conclusion Nº 69 (XLIII) (1992), para. D.

4.1.3.2 Long-term Residents

Although, this exception is not provided for in the comprehension strategy on the applicability of the "ceased circumstances" cessation clauses for the Rwandan refugee and it is not required by the 1951 Convention, it is consistent with the instrument's broad humanitarian purpose and with respect for previously acquired rights, as set out in the Executive Committee Conclusion Nº 69 and international human rights law standards.[166] It is recommended to States to consider "appropriate arrangements" for persons "who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links". Countries of asylum are encouraged to provide, and often do provide, the individuals concerned with an alternative residence status, which retains previously acquired rights, though in some instances with refugee status being withdrawn. It is unfortunate that this practice is applied with reserve in the context of southern countries (where a number of Rwandan refugees are hosted) as shown in the following sections.

4.2 Legal implication of the Cessation of Refugee Status

UNHCR decision on cessation of Rwandan refugee considers that the refugee status of Rwandan refugees who fled the country between 1959 and 31st December 1998 as a result of the different episodes of inter-ethnic violence between 1959 and 1994, the genocide of 1994 and its aftermath and renewed armed conflict that erupted in north-western Rwanda from 1997 to 1998 be brought to an end pursuant to the "ceased circumstances" cessation clauses.

Refugee flows from in the above mentioned periods share the character of group or large-scare forced population movements and the vast majority of refugees fleeing these events were granted refugee status under Article 1.2 of the 1969 OAU Convention on a prima facie basis. According to UNHCR decision on cessation clause, the implication of the cessation of refugee status will commence progressively to cease latest 31st December 2017. The impact of this decision is that on this date, no Rwandan who fled the country as at and including 1998 will have rights as refugee. Rwandan refugees will no longer be entitled, if they remain outside Rwanda after that date, to claim international protection as refugee or the mandated functions of UNHCR.

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[165] UNHCR's Guidelines on International Protection: Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), Issued on 10 February 2003.

[166] See article 12(4) of the 1966 International Covenant on Civil and Political Rights declaring: "No one shall be arbitrarily deprived of the right to enter his own country" and Human Rights Committee, article 12 (freedom of movement), 1999.

This means all the legal rights granted by international, regional and local regulations which guarantee refugees status or condition as stipulated in the 1951 Convention generally governing that status and treatment of refugee etc…, the legal status in respect of resolving individual cases and the right to appear before the courts etc…, the right to acquire employment and the guarantees, the issue of comprehensive guidance and supply of shelter, health and treatment, education, Food, social security, the various administrative assistance, and permits like travel permits, employment permits, driving licenses, identity cards, residence and travel documents for traveling abroad and commercial licenses etc…, all will cease to exist forthwith.

The cessation under Article 1C (5) and (6) does not require the consent of or a voluntary act by the refugee. It terminates rights that status and may bring about the return of the person to the country of origin and may thus break ties to family, social networks and employment in the community in which the refugee has become established.[167] In absence of an independent residence status or special considerations which would justify the adoption of exceptional arrangements for the continued stay of the former refugee in the country of asylum, the application of cessation clauses will lead to the repatriation of the concerned person.

It has been argued that once the criteria of cessation clause have been met, States are permitted to withdraw protection and repatriate former refugees to their country of origin by force if necessary.[168] It is aspect of the "ceased circumstances" cessation clause (the ability to forcibly repatriate refugees) that has become particularly attractive to states faced with mass influxes, (a situation of Rwandan refugees) with its numerous consequences.

4.3 Consequences and Challenges of Cessation of Refugee Status

The cessation terminates rights and may bring about the return of the person of the person to the origin and hence break ties to family, social networks and employment in the community in which the refugee has become established. Thus, a premature or insufficiently grounded application of the ceased circumstances has serious consequences. The application of cessation places the individual and his or

[167] UNHCR, guideline on international protection: Cessation of refugee Status, Geneva. UN Refugee Agency, 2003, p.3.

[168] Yasmeen Siddiqui, Reviewing the application of the cessation clause of the 1951 Convention, University of Oxford, Refugee Studies Centre, 2011, p. 8.

her family members in an extremely vulnerable situation. It leads to disruption of the refugee status[169]and return to a country to a country where living conditions may be uncertain.

4.3.1 Consequences of Cessation of Refugee Status

As far as UNHCR decision on cessation of Rwandan refugee status is concerned, refugees falling under it (as of 1998) will no longer have a well-founded fear of persecution. These refugees have been given a deadline until 31th December 2017 to come forward with any request for continued protection. If, with that time-frame, no such grounds have been presented or upon review, those grounds have been found invalid. The cessation clauses become effective and these persons case to be refugees. Pre-1998 Rwandan refugees who remain outside Rwanda after of cessation clause of refugee status, will no longer be entitled to international protection and their continued stay in the asylum country will depend upon the authorization of the concerned asylum countries regarding their legal status and rights in that country.

Unlike, the principle is that none would be forcibly returned to the country of origin, basing on international refugee law which provide wide protection including respect of acquired rights, local integration and long term residence which could having created substantial family, social or economic links, in virtue of UNHCR Comprehensive Strategy for Rwanda Situation, UNHCR itself admits that the likelihood for local integration remains low. Governments in countries of asylum have yet to step forward with concrete offers of local integration for Rwandan refugees generally, or to define the categories of refugees who may be eligible for the solution.[170]

Many documents note the serious consequences that may result from a declaration of cessation including illegal stay; the issue of residual caseloads is one that confounds all cessation declarations, particularly in the South where they tend to be large and states are reluctant to provide an alternative status or

[169] The rights attached to refugee status under the 1951 Convention(Article 2 to 34 contribute to integration, in particular provision on access to education, the labor market and to social assistance as well as certain civil liberties. Article 34 of the 1951 Convention urges States "as far possible to facilitate the assimilation and naturalization of refugees". The Qualification Directive contains a catalogue of rights similar to that of the 1951 Convention and party going beyond it (Articles 20 to 34). Article 33 of the Qualification Directive contains an obligation for Member States to facilitate the integration of refugees through integration programs.

[170]UNHCR Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendation on the applicability of the "Ceased Circumstances' Cessation Clauses" Inter-Office Memorandum Nº 093/2011, 31 December 2011, AF/00/DIR/048/11.

durable solution in such cases.[171] In the context of Africa (where many Rwandan refugees are hosted), conducting cessation procedures presents significant challenges. Southern states do not have the funding, expertise or infrastructure to conduct the individualized assessments required to determine whether there are "compelling reasons" or continuing protection needs that may apply to those refugees who do not repatriate after a cessation declaration.[172] The sheer numbers involved can overwhelm even the UNHCR, which conducts procedures for states that are unable to do so. By experience, repatriation remains the most used solution to refugees in Africa. Local integration is an unlikely solution in the south given the number of refugee involved. In fact, temporary protection in Africa rarely translates into permanent status regardless of the amount of time that passes. As for resettlement in a third country, there is no legal obligation for state parties to resettle the refugees.[173]

Cessation declaration prove challenging not only because of the legal and procedural issues but because repatriation of refugees is closely implicates in politics, including the position of the host country, the conditions in and attitude of the country of origin, the role of the UNHCR, and the position of refugees representatives and advocates.[174] Host states reasons for wanting to see refugees repatriate are generally motivated by matters of national interest, including relations between states, Again institutions are similarly driven by considerations of "self-interest". Practically, except Northern and Western (Europe and America) where there is a small number of targeted refugees, the countries in South African where there is a large number of refugees apply this slightly due especially to limitation on access to land and property.

4.3.2 Challenges to Reintegration of Rwandan Refugees after Cessation Clause

It has proved that there can be no hope of normalcy until the majority of those displaced are able to reintegrate themselves into their societies.[175] Getting the refugees home, a difficult task, is only half the challenges. Helping the returnee populations become self-sustaining, productive members of society and

[171] Note on the cessation clauses (UNHCR 1997). In this Note there was an effort to de-link a cessation declaration from durable solutions that was later rescinded in the 2003 guidelines. The guideline reminds states to keep in mind the broad durable solutions context of the refugee protection informing the object and purpose of these clauses (UNHCR 2003c).

[172] As witnessed in the case of Ethiopia refugees, evidences that may have suggested the possibility of "compelling reasons" for refugees not returning remained unexplored. See more in Yasmeen Siddiqui, pp.26-27.

[173] *See the case of Ethiopian refugee Yasmeen Siddiqui*, pp. 38-39.

[174] *Case of Yasmeen Siddiqui*, p.39.

[175] S Holtzman 'post conflict reconstruction' Environment Department Work in Progress, Washington Dc, World Bank (2002), p. 29.

facilitating their social and cultural integration remain the other half of the challenge.[176] While reintegration has its own challenges, such as being forced to return, not being able to carry all one's belongings, and loss of one's meager possessions, the challenge of starting a new life once in one's own country can be daunting. In other words, the choice to return may be an easy one, but returns can also be accompanied and marked by the start of a challenging process in the restoration of livelihoods and social protection. According to Rwandan government, the big challenge to repatriation and reintegration of Rwandan with regard to cessation clause is absorbed by disinformation on the situation inside the country by refugees[177]however; as have been witnessed, Rwandan refugees also fear Gacaca courts and oppressive legislation.

4.3.2.1 Fear of Gacaca Courts Decision

Article 54 of the Gacaca provides for the right to the procedure of confessions, guilty plea, repentance and apologies for any person who committed offences of Genocide.[178] Viewed as an instrument to overcome the general lack of evidence available to try suspects of genocidal crimes, the confession and guilty pleas were also intended to establish the truth about the genocide and to serve justice and reconciliation, a pre-set fixed reduction in the penalty is available to all perpetrators in return for an accurate and complete confession, a plea of guilty to the crime committed, and an apology to the victims.

While it remains important that no innocent person be punished, it is not obvious what weight is given to statements of those perpetrators who name others while making their confessions during Gacaca proceedings. In some instances, while making testimonies during Gacaca proceedings, prisoners or accused also attempt to shift the blame accusing people who are dead or in exile. The reluctance of several refugees to return is attributed to the fact that they do not trust the Gacaca courts and fear that they have been accused in absentia. In addition, various reports have documented on the inadequacy and

[176] US Committee for Refugees 'Getting home is only half the challenge: Refugee reintegration in war ravaged Eritrea" (2004), p. 8.

[177] Testimony of Capt. KAYITANA Jean Damascene, Advisor to the minister in MIDIMAR in interview held on 23 November 2012.

[178] See article 54 of Organic Law N° 13/2008 of 19/05/2008 modifying and complementing organic law n° 16/2004 of 19/06/2004 establishing the organization, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 01/10/1990 and 31/12/1994 as repealed by Organic law N° 04/2012/OL of 15/06/2012 terminating Gacaca Courts and determining mechanisms for solving issues which were under their jurisdiction, O.G N° Special of 15/06/2012.

low standards of the evidence and confessions produced in the Gacaca it has been accused for the lack in fair trial standards. All these are challenges to repatriation of Rwandan refugees.

4.3.2.2 Oppressive Legislation: The Genocide Ideology Legislation and Freedom of Expression

The freedom of expression is a fundamental human right. It is recognized as a core value and bare minimum of an open society, essential to the discovery of truth, the promotion of democracy and personal fulfillment.[179] The right, however, is not absolute.[180] Public order, safety, health, and democratic values justify the imposition of restriction on this right, however, the reasons for limiting a right as fundamental as the right to expression should be exceptionally strong.

In Rwanda, the need to curtail the potentially destructive role of the media saw the post-genocide government limiting certain modes of expression through constitutional (article 13& 33) and other legislative.[181] Prohibitions culminated in the adoption by parliament of a law which made "genocide ideology" a crime.[182] However, the lack of a clear and precise definition of this crime has led to situation in which it has been abused, raising concerns that have been increasingly used as a tool to secure power, by suppressing dissent, for the ruling party.[183] As noted, some refugees fear to repatriate because they have no trust in current government and that they heard innocent people were being arrested and charged

[179] S. Bulto 'The promise of new constitutional engineering in post-genocide Rwanda' African Human Rights Law Journal (2008), p.186.

[180] See article 19 of International Covenant on Civil and Political Rights.

[181]Article13/07/2008 relating to the punishment of the Crime of Genocide Ideology, O.G. Nº 20 of 20 October 2008.

[181]Human Rights relating to the punishment of the Crime of Genocide Ideology, O.G. Nº 20 of 20 October 2008.

[181] Human Rights Watch 'Law and Reality' July 2008.

[181] K. M. Mwajuma, a socio-legal analysis of the challenges to a return and reintegration of refugees: the case of Rwanda, University of Ghana, 2009, p. 40.Watch 'Law and Reality' July 2008.

[181] K. M. Mwajuma, a socio-legal analysis of the challenges to a return and reintegration of refugees: the case of Rwanda, Accra, University of Ghana, 2009, p. 40.5 and 136 of Organic Law instituting the panel code Nº 01/2012/OL of 02/05/2012, O.G Nº Special of 14/06/2012 the Rwandan penal Code which punishes the crime of genocide ideology and other related offences and the crime of discrimination and sectarian practices.

[182] Law Nº 18/2008 of 23/07/2008 relating to the punishment of the Crime of Genocide Ideology, O.G. Nº 20 of 20 October 2008.

[183] Human Rights Watch 'Law and Reality' July 2008.

under the genocide ideology legislation and that the genocide ideology law is not being fairly implemented, and has affected innocent people including returnees.[184]

4.4 Conclusion

This chapter covered the circumstance in which refugee status ceases to apply; those include acts of refugee which result in the availment of his/her protection by a given state and the change in circumstances which caused the refugee status. We have also analyze implication, consequences and challenges which follow the cessation of refugee status basing on the UNHCR comprehensive strategy for implementation of decision of Rwandan refugee status.

The implementation of refugee cessation clause is huge burden on States in this era of repatriation. Its lack of manageability threatens States sovereignty in the management and control of refugees and asylum seekers. More so because it actualizes voluntary repatriation, which is mooted as the most preferred durable solution in international refugee law. As the most critical yet difficult provision for States today, tackling the crippling underlying issues that affect the implementation of cessation clause is that of clarity in the concept of changed circumstances, conflict of laws and effectiveness of Tripartite agreements. Clarifying the gaps highlighted above and any other emerging issues will address the underlying issues of States fragility and breakdown of political, economic and social safety nets which form more than 95% of the reasons that cause refugee flight.

The presumptuous nature of this clause on mutual cooperation of stakeholders, comprehensive planning, financing, monitoring and evaluation, collection of reliable up to date information and the participation of communities are timely and provide great insights today as States re-think their obligations in the implementation of cessation clause of refugee status.

[184] K. M. Mwajuma, a socio-legal analysis of the challenges to a return and reintegration of refugees: the case of Rwanda, Accra, University of Ghana, 2009, p. 40.

CHAPTER FIVE

FAIR AND EFFICIENT CESSATION OF RWANDAN REFUGEE STATUS

5.0 Introduction

As we have seen above, the cessation clause terminates rights and may bring about the return of the person to the country of origin and hence break ties to family, social networks and employment in the community in which the refugee has become established. Thus, a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to establish a fair and efficient legal and institutional framework to counterpart challenges and consequences that may result in the application of the cessation of refugee status.

5.1. Review to Previous Cases of Cessation Clause

The cessation clause once applied may lead to repatriation of refugees, although the cessation clauses language appears theoretically to be coherent, it has proven to be troublesome in its application both on account of premature declarations of cessation that return refugees to situations that are still uncertain as well as on account of the legal consequences for those refugees refusing to return.[185]

What has been remarked id that in the North, states which are party to the 1951 Convention have rarely applied the cessation clause to refugees, generally providing individual refugees with an alternate status once their protection needs have ended. In contrast, Southern States have invoked the cessation clause twenty-five times between 1973 and 2008 for a variety of refugee groups in a more logically challenging and complex legal landscape for refugees. Moreover, the vast majority of refugees in the South across international borders en masse and are accepted as refugees on a prima facie or group basis, although the "ceased circumstances" provisions have received regular consideration within UNHCR, they have only been applied to refugee under UNHCR mandate on 25 occasions since 1973.[186]According to UNHCR, the cessation clauses have not been used extensively for two reasons. First, the availability of alternative solutions, such as voluntary repatriation, has usually obviated the need to invoke the cessation clauses. Secondly, it has often been difficult to determine whether developments in a country of origin warranted

[185]Yasmeen Siddiqui, Review the application of the cessation clause of the 1951 Convention relating to the status of refugees in Africa, Oxford, University of Oxford, 2011, p. 4.

[186] UNHCR, Note on Cessation Clauses, p. 32, UN Doc. EC/47/SC/CRP.30 available at http://www.unhcr.org/refworld/docid/47fdfafld.html, [last visited on the 22/05/2017]

the application of the cessation clauses. Rather, Article 1C (5) and (6) have been employed mainly to "provide a legal framework for the discontinuation of UNHCR's protection and material assistance to refugees and to promote with States of asylum concerned the provision of an alternative residence status to the former refugees.

The cases in which UNHCR has ultimately invoked article 1C (5) and (6) on a group basis can be organized according the kind of change that has occurred in the country of origin. Three basic types of change in circumstances can be identified: (i) accession to independent statehood; (ii) achievement of a successful transition to democracy; and (iii) resolution of a civil conflict.[187] In seven cases, the application of article 1C (5) and (6) was related to the achievement of independence by the country of origin (Mozambique, Guinea-Bissau, Sao Tome and Principe, Cape Verde, Angola, Zimbabwe, and Namibia). Such independence cases account for six of the ten instances in which UNHCR invoked the ceased circumstances provisions prior to 1991 (the exception being Namibia in 1995).
In twelve cases, UNHCR has invoked the ceased circumstances provisions based upon a change in the regime (typically involving a transition to democracy) in the country of origin. This is a case of cessation clauses to refugees from Chile (1994), Romania (1997), and Ethiopia (1999).[188]

The procedural aspects provided for the cessation clause have been flagged as being particularly problematic: the objective assessment of the situation in the country of origin, procedural fairness to ensure risk of persecution has been eliminated for individual applicants and consideration of exceptions to the clause.[189] Taking Ethiopia refugees in Sudan as an example, closer examination suggests that the situation is far more complex. First, as these refugees fled for a variety of reasons –the secessionist war, ethnic and political conflicts, a brutal regime and famine –they have remained in exile for a number of years, forging new links within their country of asylum that are difficult to break when a cessation of protection id declared. Thirdly, the case highlights the extent of UNHCR involvement in a cessation declaration while demonstrating the shortcoming of their procedures in situations of mass influx.[190]What has been remarked in this case is that the implementation of the cessation clause has been problematic.

[187] Fitzpatrick and Boanan, Cessation of refugee protection, 2003, p. 501 available at http://www.unhcr.org/refworld/pdfid/470a33bc0.pdf, [last visited on 22/05/2017].

[188] Rafael Bononan, The "Ceased Circumstances" provisions of the cessation Clauses: Principles and UNHCR Practice, 1973-1999, 2001, p. 7.

[189] *Case of Yasmeen Siddiqui*, p. 5.

[190]*Fitzpatrick, J. 1998-1999 Legal Standard for Cessation of Refugee Status and Withdrawal of Temporary Protection", Georgetown Immigration Law Journal 13"The End of Protection.*

After the cessation, Ethiopia refugees witnessed that the UNHCR and the Government of Ethiopia entered into an agreement to forcibly repatriate them. This action consisted of several steps, including the withholding of social welfare benefits such a medical attention, food, clothing, and housing entitlements; and the implementation of an unfair screening procedure where refugees who protested the removal of their refugee status were sometimes arrested and deported or threatened with arrest and deportation, forcing many of them to flee to neighboring countries.[191]

It has been remarked that this procedure did not provide the basic minimum standards of due process, the refugees were not allowed to be legally represented; the screening did not take into account the 1969 African Refugee Convention or the African Charter in their evaluation of individual cases and it did not start until months after the threat of forcible *refoulement* had been made, and implemented in large parts. This experience from Ethiopian refugee case clearly proves the practice of the countries in South (African countries) in implementing cessation clauses. The tendency for these countries is more converged to repatriation rather than granting alternate status to refugees reluctant to repatriate for different reasons. It has been remarked from past experience that the protection of refugees in Africa is more theoretical than practical.[192] It is therefore important to establish a framework for a fair and efficient cessation of refugee status for Rwandans.

5.2 Fair and Efficient Cessation of Refugee Status

Reintegration of returning refugees is a complex legal, political, economic, social and cultural process that goes beyond a simple physical reintegration of refugees in their home communities.[193] In fact, returning refugees are most immediately in need of legal and political reintegration taking into account respect for the human rights as the confidence grows when there is evidence that the existing laws will enable them to enjoy reasonable citizen rights and that in the places they live the rule of law operates.

5.2.1 The Respect of The principle of *non Refoulement* –Voluntary Repatriation

The primary instruments governing refugee are the 1951 Convention relating to the Status of refugees and its 1967 Protocol. This Convention and its Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognized

[191] UNHCR, Curtis Francis Debber / Sudan: summary of Alleged Facts available at http://www.unhcr.org/refworld/pdfid/4facc98a2.pdf, [last visited 0n 22/05/2017].

[192] F. Amida, La protection jurdique de la femme refugie: cas des femmes congolaises refugiees au Rwanda, memoire, Butare, Univeriste National du Rwanda, 2000, p. 68.

[193] K.M. Mwajuma, op. cit. notes, p.12.

internationally. Beside these instruments, there are other regional instruments like the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa [194] and national legislations.[195]

These instruments recognize the transitory character of the refugee status which may cease once a refugee resumes or establishes meaningful national protection and hence the person can no longer refuse to avail himself or herself of the protection of the country of his or her nationality of former habitual residence, however, in the ambit of these instruments, refugee's status should not in principle be subject to frequent review to the detriment of his or her sense of security, which international protection is intended to provide. Thus, even when a country of origin have undergone a fundamental change, individual refugees may continue to have a well-founded fear of persecution or compelling reasons not to return arising out of previous persecution.

Member countries to the convention relating to the status of refugee are obliged to refrain from forcing refugees returning in their home countries. This is in line with the provision of the 1951 convention relating to the principle of non *refoulement*, i.e. that no Contracting State shall expel or return (*"refouler*") a refugee, against his or her will, in any manner whatsoever, to territory where he or she fears persecution.[196] Professor Guy Goodwin-Gill describes the principles of non *refoulement* as a fundamental basis of international refugee law.[197] Many believe that non *refoulement* is a part of customary international law, meaning even states which have not ratified the Refuge Convention are prohibited from expelling or turning away people seeking asylum.[198]

The principle of non *refoulemen*t has acquired a status of jus cogens, that is, peremptory norm of international law from which no derogation is permitted.[199] The 1951 Refugee Convention obliges states

[194] Apart from this OAU Convention, include the Cartagena Declaration, 1984. See chapter two. Other regional instruments.

[195] It is an obligation for member states to refugee convention to incorporate and legislate into their own legislation refugee laws. See for instance law N° 34/2001 of 05/07/2001 relating to refugees, O.G. N° 24 ter of 15//12/2001 modified and completed by law N° 29/2006 of 20/07/ 2006 in Rwanda.

[196] See article 33 of the 1951 Convention relating to refugee status. Ess, 1996, p. 137.

[196] G. Goodwin-Gill, p. 138

[197] G. Goodwin-Gill, the Refugee in International Law 2nd ed., Oxford Press, 1996, p. 137.

[198] G. Goodwin-Gill, p. 138 of expulsion or *refoulement*).

[198]Article 53 and 64 of Vienna Convention on the Law of Treaties, 169 (1969). These provision provide that treaties maybe invalidate upon their ratification or may later terminated if their content are in conflicts with a peremptory.

[199] Jean Allain, the jus cogens nature of *non-refoulemnt*, (2002) 13 IJRL, 537, p. 540.

party not to *refoule* a refugee in any manner whatsoever.[200] The notion of jus congens is expressed in international law through articles 53 and 64 of the 1969 Vienna Convention on the law of treaties.[201] It is translated into the voluntariness encouraged in the case of cessation of refugee status.[202] The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees, the involuntary return of refugees or the creation of conditions which make remaining in exile impossible.[203] Would in practice amount to *refoulement* and it is illegal. In fact, a person retaining a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate. Importantly, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is the only international refugee instrument to date formally elaborating the principle of voluntary and stresses the voluntary character of repatriation both in the country of origin and that of asylum.[204]

This right is fully recognized in Universal Declaration of Human Rights,[205] although, this is not a treaty requiring signature or consent, it sets the code of conduct and serves as a point of reference foe all universal and regional human rights instruments, the reason why this right has been enshrined in various binding international human rights instruments, including the International Covenant on Civil and Political Rights, article 13 which saying that "an alien lawfully in the territory of a State party to the present Covenant maybe expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reason against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

[200]Article 33 of the 1951 UN Refugee Convention (prohibition of expulsion or *refoulement*).

[201] Vienna Convention on the Law of Treaties, 169 (1969) Article 53 and 64, these provision provide that treaties maybe invalidate upon their ratification or may later terminated if their content are in conflicts with a peremptory norm of general international law, which is accepted and recognized by international community of states as a whole as a norm from which no derogation is permitted.

[202] See UNHCR, "implementation of the comprehensive strategy for the Rwandan refugee situation including UNHCR's recommendations on the applicability of the 'ceased circumstances' cessation clauses", p. 2.

[203] Often called constructive *refoulement*; see L. Hovil et al., Resisting repatriation, International Refugee Rights Initiative, 2011, p.11.

[204] See inter alia, article 5, 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

[205]See article 13 (2) of Universal Declaration of Human Rights of 1948.

Voluntariness means not only the absence of measures which push the refugee to repatriate, but also means that he or she should not be prevented from returning, for example by dissemination of wrong information or false promises of continued assistance. In certain situations economic interests in the country of asylum may lead to interest groups trying to prevent refugees from repatriating.[206] The primary objective of voluntary repatriation is successfully bringing about the re-establishment of an effective state citizen relationship and averting future refugee flows amongst the returnees.[207] It is this context that we call upon host countries of Rwandan refugees to abide by these different legal instruments in respecting the non *refoulemnt* principle thereby envisaging voluntary return or otherwise seeking to grant alternative legal status.

5.2.2 Grant of Alternatives Legal Status to Refugees

International refugee law does contain provision for cessation of refugee status, and those who no longer enjoy refugee status may legally be returned to their countries of origin, the process of applying cessation clause must be accompanied by due process protection. Pursuant to the application of cessation clause, refugee with founded grounds should be given opportunity to have their case individually reconsidered as well as the possibility to appeal the decision taken which can result in the grant of another status (permanent resident, integration…). In this process, host states should ensure the following guarantees to refugees:

5.2.2.1 Right to a Fair Trial

In refugee determination process, eventually in appeal of their claims, the host government shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all refugees within their territory and subject to their jurisdiction, without distinction of any kind. They shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary to the disadvantaged refugees. Again, professional association of lawyers shall cooperate in the organization and provision of services, facilities and others resources.[208]

Specifically in relation to refugee status determination, before hearing the applicant should be offered the opportunity an time to contact lawyer. Further that legal assistance should be available before the

[206] UNHCR, Handbook on Voluntary Repatriation, Geneva, UN Refugee Agency, 1996, p.10.

[207] UNHCR, Protection Guideline on Voluntary Repatriation, Geneva, UN Refugee Agency, September 1993, p. 61.

[208] Dagmar Soennscken Legal aid an access to the courts for refugees in a comparative context available at http://www.allacademic.com/meta/p_mla_apa_research_citation/1/1/7/0/0p117002_index.html, [accessed on 30/05/2010]

hearing in all stages of the procedures.[209] Arrangements should be made for refugees with acquired family rights such as residency, family unity visa, or citizenship to stay and integrate into the host community prior to cessation clause declaration. National laws in host countries should foresee the suspension or stay of administrative decisions, subject to the principles of fairness, legality, consistency, rationality, equality, impartiality, proportionality, due care, and good faith. In particular for Rwandan refugees hasted in East African Community, there needs to be an exploration of the possibilities that may exist for applying the framework of the East African Community (EAC), including the regulations surrounding the rights of residence and establishment created by the protocol on the establishment of the East Africa Common Market, which came into force in July 2010.[210] In fact, Rwandan refugees in EAC countries members are not only citizens of Rwanda but also citizens of the EAC.

5.2.2.2 Right to Appeal

The decision on the asylum seekers must be communicated to the asylum seeker in written form. If the application is rejected, he must be informed of reasons and of any possibility of having the decision reviewed.[211] The asylum seekers must have to opportunity, in as much as national law so provides, to acquaint him or herself with or be informed of the informed of the main purport of the decision and a possibility to appeal.

5.3 Cessation of Rwandan Refugee Status

After the cessation clause, UNHCR's competence for Rwandan refugees falling under the auspices of the decision will be in principle ceased. These refugees outside Rwanda will henceforth be encouraged to repatriate or deal directly with the asylum country on their status and rights in those countries. In this context, we have three players in this cessation of Rwandan refugee status: the government of Rwanda, host countries and UNHCR as discussed below.

5.3.1 The Role of Government of Rwanda

According to the comprehensive strategic for cessation of Rwandan refugee status for refugees who had fled the country as at and including 1998, it is stipulated that voluntary repatriation must be intensified and reinforced. Even through the application of cessation concerns mostly host countries, from

[209]European Consultation on Refugees and Exile (ECRE) (1991) 'Fair and Efficient Procedure for Determining Refugees status' IJRL 12.

[210] See article 13 of the protocol establishment of East Africa Common Market of 20/11/2009 entered into force on 1st July 2010.

[211] European Union 'Resolution on minimum guarantees for asylum procedures' (1995) Justice and home Affairs Council 18.

experience of previous cessation clause cases where the process has been characterized by political motivated interests and self-interest especially based on land and properties issues, the government of Rwanda should ensure that the process of repatriation of Rwandan refugees be founded on the free will of refugees.

The government of Rwanda should reinforce and spread up the program of "go-and-see" "come-and-tell" in the meantime before the cessation clause deadline date. The reasoning behind this program and strategy is that the information returned by refugees is often considered by the refugees to be the most reliable of all possible information sources. Because they have been refugees themselves, they understand what kind of information is most valued by those still in exile. After the cessation clause, there should be a mass influx of returnee of Rwandan refugees, the government should elaborate a plan providing guiding principles for the reception and reintegration processes in such case. This will include facilitating the safe and rapid repatriation for Rwandan refugees who express the will to return by providing transport fees and easy process of securing travel documents.

Considering that refugees will repatriate and should be reintegrated in the society, the government should develop a plan for sustainable reintegration of returnees which should ensure that strategies for the effective reintegration of returnees are in place. In fact, measures must urgently be taken to ensure that those who return are able to access livelihoods and reintegrate successfully in Rwanda. In this respect, the government should:

Ensure the peaceful, safe and sustainable reintegration of all returnees into their communities;

Promote access to basic needs such a health and education, as well as livelihood support. Other vital considerations, such as access to land and justice will also be addressed;

Facilitate access to free legal aid especially for those refugees with land, property related claims and those that should be convicted in absentia; and

Facilitate effective and peaceful cohabitation between returnees and local population in their communities.

The government in collaboration with UNHCR and other stakeholders should ensure the effective implementation of this program. Returns to Rwanda must be effectively monitored and appropriate re-integration packages provided.

The government of Rwanda, recognizing UNHCR legitimate concern for the well-being of returnees, should ensure UNHCR and other actors to the some end direct and unhindered access to all returning refugees in order to monitor their situation, in particular the fulfillment of any guarantees or assurances provided by the country of origin which may have played a part in the refugees' decision to return. It should seek lasting solutions to refugee problems, inter alia by assuming responsibility for the elimination of root causes of refugee flows and the creation of conditions conductive to voluntary return and reintegration.

5.3.2 The Role of Host Countries

The primary intent of the cessation clause is to put an end to refugee status, however, this does not mean that concerned individuals must be forcibly returned in their country of origin. In contrast, refugees are encouraged to voluntarily repatriate or seek the coverage of other legal protection in asylum countries. This also embodied by the comprehensive strategy to bring to a proper closure to Rwandan refugees situation in these components: (i) enhancing promotion of voluntary repatriation and reintegration of Rwandan refugees in Rwanda; (ii) pursuing opportunities for local integration or alternative legal status in countries of asylum; and (iii) elaborating a common schedule leading to the cessation of refugee status.[212] The comprehensive strategy emphasized that the closure of the refugee status for those refugees affected by cessation be accomplished in a humane and just manner, taking into account the apprehension that many refugees feel about returning to their country of origin after a long absence. Countries are encouraged to accommodate, to the extent possible, the strong ties that Rwandan refugees have established in their countries of asylum, as well as on the need to involve refugees throughout the different stages leading to cessation of status.

As a host or asylum countries play a big role in the implementation of the decision on cessation of Rwandan refugee status, they should fairly implement it in accordance with the procedure provisions set out by refugee law. They should refrain from forcibly return refugees with justifiable motives qualifying to a deep assessment which can result in the granting of alternates status. Host countries should also respect claims by refugee status holder on dependency basis. Refugees who have obtained their status on the basis of dependency maintain their status until they individually fall within the cessation clauses. This means that loss of refugee status on the part of any refugee family member would not, as such, affect the refugee status of any other member of the family.

[212] See UNHCR, Implementation of the comprehensive strategy for the Rwandan refugee situation, including UNHCR's recommendations on the applicability of the "Ceased circumstances" cessation clauses, Geneva, December 2011, pp. 2-4.

Furthermore, although voluntary repatriation is the preferred outcome for most refugees and countries of asylum, other durable solutions should not be overlooked. Local integration in the country of asylum is one such solution. Host countries are bound by the fundamental principle of *non refoulement*. They are obliged to continue to treat refugees according to internationally accepted standards as long as they are on their territory. They should facilitate arrangements and UNHCR involvement in them, for ensuring that accurate and objective information on condition in Rwanda is communicated to the refugees. In the event of refugees wishing to visit Rwanda to assess the conditions there in the context of possible repatriation, both UNHCR, government of Rwanda and host countries should seek to facilitate such visits.

5.3.3 The Role of UNHCR

As we have seen, the application of cessation clause places the refugee and his or her family members in an extremely vulnerable situation. It leads to disruption of the refugee's life and integration process in the host country, the loss of rights attached to refugee status and return to a country where living conditions may be uncertain. In view of the serious consequences of article 1C (5) of 1951 Convention, for the refugee and the fact that this provision does not require his/her consent, UNHCR's Executive Committee calls for a "careful approach" to its application.[213] In addition UNHCR's cessation clause guidelines prevent "Unnecessary review" in light of "temporary changes, not of a fundamental character, in the situation prevailing in the country of origin".[214] Thus, a restrictive interpretation of the "ceased circumstances" clause is therefore warranted. Application of the "ceased circumstances" clause should be informed by the overall objective of refugee protection, which aims at finding durable solutions for refugees.[215] These solutions should be integration in the host State, resettlement to a third State and voluntary return to the home State if this is possible in safety and dignity.[216] The "ceased

[213] UNHCR Executive Committee Conclusion Nº 69, para. 4.

[214] UNHCR Cessation Guidelines, para. 4.

[215] This aim has been recognized in a series of Executive Committee (ExCom) Conclusion, see: ExCom Conclusions Nº 29 (XXXIV) (1983), Nº 50 (XXXIX) (1988), Nº 58 (XL) (1989), Nº 65 (XLII) (1991), Nº 79 (XLVII) (1996), Nº 81 (XLVIII) (1997), Nº 85 (XLIX) (1998), Nº 87 (L) (1999), Nº 89 (LI) (2000), and Nº 90 (LII) (2001), all available at: http://www.unhcr.org/doclist/excom/3bb1cd174.html, [Last visited on 25/05/2017].

[216] See UNHCR, Conclusion on Local Integration, ExCom Conclusion Nº 104 (LVI) -2005, 07/10/2005, para.1, at: http://www.unhcr.org/excom/EXCOM/4357a91b2.html; UNHCR, Agenda for Protection, third edition, October 2003, pp. 74-81 at: http://www.unhcr.org/refworld/docid/4714a1bf2.html, [Last visited on 25/05/2017].

circumstances" clause should therefore not result in uncertain status in the host State nor compel individuals to return to a volatile situation.

Even though, naturally the right of decision is left to governments of the asylum/residence countries concerned to determine whether and how to apply the cessation clause in accordance with domestic legislation, UNHCR representatives should draw the attention of governments to the exception contained in Article 1C (5) of the Convention, which provides that the cessation clause shall not apply to persons who are able to invoke compelling reasons arising out of previous persecution.

Again UNHCR Representatives should endeavor to ensure that whatever acquired rights Rwandan refugees concerned may possess will be taken into account by the authorities and due regard be taken of the need to avoid unnecessary individual hardship, particularly where the loss of refugee status might lead to an automatic loss of residence and therefore disrupt any successfully initiated integration process by refugees in the host society.

5.4 Conclusion

The fruitful implementation of the arrangements above remain to be tested and tried in the quest for renewed State international cooperation. Similarly, East Africa Community (EAC) can borrow a leaf from other international region organizations in the management of forced migration. A beginning points is the East Africa Treaty that calls on member States to device common ways of dealing with refugees.

The membership of Tanzania and its experiences would be a good discussion point since the refugee problems are very similar within the region. In addition, practicing burden sharing through Comprehensive Agreements in support of reconstruction of fragile States is a durable and sustainable approach that acts as an incentive to promote the spirit of nationhood and nation building for refugees to go back and participate in their countries development.

CHAPTER SIX

SUMMARY OFFINDINGS, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

At the end of this research entitled "legal implications of cessation of refugee status: A case study of Rwandan refugees", it is a good time to take this opportunity for summarizing the key research finding, drawing up conclusions and suggesting possible recommendations. The conclusions were derived from the research findings and they are related to the research objectives and research questions, while the recommendations are based to the weak areas and application of cessation of refugee status.

6.1 Summary of Findings

Cessation clause because of changed circumstances in the country of origin are the best determinants of promoting repatriation as the best durable solution for Rwandan refugees. The traditional understanding of cessation clause based on changed circumstances has moved from a developmental perspective to that of a social perspective in addressing social imbalances that are responsible for forced migration. The removal of personalized fear of persecution based on Changed circumstances cannot be measured.

It is however depended the individual's perceptions on the circumstances surrounding their flight. A wholesome and social means builds more confidence in the refugee and has high chances of sustainable repatriation. The evolving area in Rwandan refugees status determination through the concept of common asylum procedures is presumably both a good and bad concept. Good in the sense that it has the commitment of its member States and bad in the sense that it is heavily politically driven in which case it may overshadow refugee rights.

The face of international law is taking a new shape. Today, States are re-thinking their obligations in tacking the Rwandans refugee problem that has bedeviled them for many years. Increasingly, there is consensus in promoting 'repatriation' as the best durable solutions by way of addressing the underlying causes of refugee migrations. In Africa especially Great Lakes Region, after many years of internal and external conflicts, there is evidential commitment by States to support reconstruction and peace initiatives as modes of controlling unnecessary forced migration. Prayers in Refugee migration studies i.e. States, UNHCR, implementing partners and scholars agree that though principles in international protection are relevant, the application of the refugee Convention as conceived are problematic and irrelevant today. They are unrealistic in addressing the changing face of forced migration, constituting a threat to State sovereignty and therefore responsible for creating resistance by States. Also, the problems of ambiguity in the universal character of defining refugees and cessation of status as a determinant in

repatriation, challenges of complementarities of international refugee Conventions with national refugee laws, lack of clarity in the complementarities role of stakeholders and many others have emerged in the study as reasons that warrant States to re-evaluation of their obligations under international refugee law.

Desirous of overcoming the above challenges, States are making concerted efforts to pro-actively deal with forced migration with the goal of precipitating repatriation aimed at improving the situation of refugees and controlling numbers requiring protection. States have therefore adopted new approaches of tackling forced migration from a social perspective. These approaches include regional cooperation through pro-active and re-active approaches where, like in the case of Rwanda, where it plays the dual roles of pro-active prevention through peace-keeping and peacemaking missions and re-active prevention through hosting and providing refugee protection. Regional groupings like the shared perspectives from the European Union and Southern African are becoming popular in adapting workable 'common asylum procedure' for purposes of uniformity in refugee burden sharing.

It has in this research been proved that in order to enhance the protection of human rights of refugees, legal and institutional mechanisms are of a great importance, therefore the framed "protection of the rights of refugees is weakened by the lack of strong legal and institutional mechanisms" is validates. Other approaches include, balancing States legitimate interests to control and the legitimate interests of refugee to be protected, addressing structural violence that contributes to social exclusion of groups to address perceived injustices and loss of confidence of refugees, are mooted as some of the best approaches existing today.

The question of state international obligation to international law has been subject to interrogation by Scholars in refugees studies. For instance, the movements of Rwandan refugees across borders have troubled States for many years. This is because of the principles of non *refoulement* and right to grant asylum to refugees that bind. As such this is directed threat on their sovereignty to be in charge of who comes in and leaves their territorial jurisdiction. In the context of refugees (for example Rwandans), forced migrations is a characteristic of States failure in meeting their obligations. These failures include provision for citizens civil, political, economic, and social rights, control of internal and external conflicts among others.

These failures have regrettably led to high production of Rwandan refugees displacements across borders. This in essence has led to disproportional burdens among States bearing heavy presence of asylum seekers. This pressure has also led to sour relations among States and hence a challenge to

principle of burden sharing. The advent of binding partnerships such as through Comprehensive Plan of Action, Peace Agreements has in addition to tripartite agreements been popularized across the world.

6.2 Conclusion

In the introduction questions of this research work, researcher raised with regard to the legal implications of cessation of refugee status, the following main questions:

Has been the fundamental and profound changes in Rwanda, according to international refugee law to justify a cessation of Rwandan refugees' status?

Is there any protection under international refugee law for long term refugees who have strong family, social and economic links in the host countries?

Trying to respond to these questions, a researcher found that there have been fundamental change in Rwanda but a cessation of refugee status must take in consideration individual cases as refugees fled the country in the different periods and based on different grounds. In addition, it is important in the sense of application of the cessation clause to Rwandan refugee status, to first develop a way of sensitization for voluntary repatriation but also to grant alternative legal status to those with justifiable motives.

The objective of the research was to analyze the cessation of refugee status under international law, throughout in this research, the researcher realized that both the 1951 Refugee Convention and the 1969 OAU Refugee Convention provide for the cessation of refugee status when positive changes have taken place in the country of nationality or country of habitual residence such that the causes of refugee flight no longer exist.

In analysis of the Rwandan case, the researcher found that from 1994 genocide, the country has made much improvement in terms of good governance. This progress is also evidenced by the invocation of cessation clause to Rwandan refugees by UNHCR after a long period of request by the government of Rwanda. The period between the first request to invoke cessation clause and the date of grant is proof of successful assessment, however, along the study, the researcher found different critics to the country for respect of human rights especially opposition politicians by some international Non-Governmental Organizations.

In this study, the researcher found that the reason behind the limitation to the cessation of refugee status to only refugee who fled before the end of 1998 is based on the fact that it is during such period when refugees fled the country en masse due especially to ethnicity based discrimination, the 1994 genocide

and the war triggered by rebels from neighboring country (Democratic Republic of Congo) in the northern-western part of the country in 1997-1998 years. Thus the reasons which have led to refugee status for Rwandans are different in substance meaning the cessation of refugee status for Rwandans should take into consideration all these fundamental reasons. The researcher found that cessation is not invoked in an open-ended manner, with the intention of declaring that a country no longer produces refugees. Rather, application of the cessation clauses is generally fixed to specific events, against which "fundamental and durable changes" can be measured. A declaration of cessation should not serve as an automatic bar to refugee claims, either at the time of the declaration or subsequent to it, and asylum-seekers from that country should continue to have their claims fully and fairly considered.

The cessation of refugee status terminates rights that accompany that status and may bring about the return of the person to the country of origin and hence break ties to family, social networks and employment in the community in which the refugee has become established. Many Rwandan refugees are long-term residents in their countries of asylum. They have established family ties through marriage to nationals of the country of asylum or third-country nationals residing there and there are contributing to the local economy, the local integration or an alternative legal status should be the most appropriate durable solution to their case.

6.3 Recommendations

With the passage of time, prolonged displacements have transformed the refugee title from its original temporary nature to a perpetual title. This has precipitated the popularization of repatriation through the support of proactive and reactive measures based on States comparative advantages in State reconstruction. On the hand, preference repatriation has gained ground over resettlement and naturalization of refugees. Consequently, cessation clause of Rwandan Refugees' is now popularized by States, but the following recommendations are vital for the successful implementation of the cessation of refugee status to Rwandan refugees:

In the course of this study, six (6) areas in need of further research have emerged; First, the UNHCR, countries of asylum, the government of Rwanda and other partners to work actively and decisively in promoting voluntary repatriation and facilitating the return home of Rwandan refugees who make the decision to do so ;

Secondly, the Government of Rwanda, with the support of the international community, to maintain and enhance its commitment to supporting the sustainable voluntary return and re-integration of refugees, as well as to seek to address, to extent possible, concerns about return expressed by refugees;

Thirdly, the Rwandan refugees in Sub-Saharan African countries wishing to repatriate voluntarily with UNHCR assistance to receive assistance for transportation and a cash grant to help them to reintegrate upon return, subject to the availability of funding;

Fourth, the countries hosting Rwandan refugees should favorably consider the granting of naturalization or an alternative legal status to refugees with strong family, social and economic ties to their countries, consistent with Executive Committee Conclusion N^{o} 69 (XLIII) (1992) on "cessation of Rwandan refugees' status", UNHCR to take steps to confirm or secure with the concerned countries appropriate arrangements that will enable refugees seeking to remain to do so;

Fifth, the Government of Rwanda to provide national passports, consular cards or relevant documentation to Rwandan refugees in countries of asylum so as to facilitate the issuance of residence and work permits by those countries in a timely manner; and

Finally, recognizing the costs associated with local integration, UNHCR to support countries of asylum with local integration efforts to extent funding is available. UNHCR and countries of asylum to advocate with donor countries and NGO's to make available increased funds for this critical element of the comprehensive strategy.

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