

**THE PRINCIPLE OF *NON-REFOULEMENT* IN THE CONTEXT OF REFUGEE OPERATION IN
TANZANIA**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF PRETORIA,
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DECLARATION

I, **Janeth Apelles Chambo**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

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DEDICATION

I dedicate this dissertation first, to all refugees in the world. Together we can find sustainable solution to the plight of refugee problems. Second, to my family, my parents Mr. and Mrs. Apelles Chambo you could not have given me the best inheritance on earth, that is, education. Your inspirations, wisdoms, prayers, untiring support and encouragements have brought me to where I am today. My brothers and sisters, Margaret, Edwin, Juliet, Mosses, Julius, Jeremiah, Nicolas, Rehema and your individual families, I am truly grateful for your unswerving support.

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AI	Amnesty International
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CSFM	Centre for Study of Forced Migration, University of Dar es salaam
DFID	Department for International Development, United Kingdom
DRC	Democratic Republic of Congo
EXCOM	Executive Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
LCHR	Lawyers Committee for Human Rights
NEPAD	New Partnership for Africa Development
OAU	Organisation of African Unity (defunct)
SADC	Southern Africa Development Community
UDHR	Universal Declaration of Human Rights

UN	United Nations
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
USCR	United States Committee for Refugees
USDS	United States Department of States
WFP	World Food Programme

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Chapter 1: Introduction

1.1 Background to the problem

The rights of refugees and basic human rights are inextricably linked. Today's human rights abuse is tomorrow's refugee movements.¹ Quite often, refugees' rights are curtailed by the same states that declare them in accordance with international and domestic instruments only because they are non-nationals. While the foundation of refugee rights is the principle that all men and women have the right to belong to a society in which they are protected by the state, the respect to the principle of *non-refoulement* is at the core of being a refugee.² Even though the Universal Declaration of Human Rights (UDHR) proclaims rights to all, including refugees, states use international principle of sovereignty to shut their doors in front of asylum seekers.³ Furthermore, it is not easy to utilise international mechanisms of protection to instigate complaints against a potential host state, based on its arbitrary act to shut its doors. This is because one needs to seek remedies before authorities of the same country where she or he has been denied. In addition, international law has few precedents on the matter even assuming it was treated as an exception to the former rule. This situation puts *refoulement* victims in a dilemma.⁴

The 1951 United Nations Convention relating to the Status of Refugees (1951 UN Convention) is recognised as the first comprehensive international instrument created to deal with refugees.⁵ The 1969 African Union (formerly Organisation of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 AU Convention) is a regional instrument for the African continent and it incorporates the provisions of the 1951 UN Convention.⁶

¹ Amnesty International 'Refugees: Human rights have no borders' *AI Index: ACT 34/03/97*.

² For purposes of this research the term refugee is used to refer to both asylum seekers, persons declared *prima facie* refugees and those recognised as refugees via refugee status determination process.

³ There is no international instrument which defines the term 'asylum'. In the *Asylum case* (1950) the International Court of Justice said the practice of granting asylum involves: '...a derogation from the sovereignty of the (local) state...the refugee is outside the territory of the state where the offence was committed, and a decision to grant him asylum in no way derogates from the sovereignty of that state'.

⁴ See chapter II for the meaning of the term *refoulement*.

⁵ Adopted on 28 July 1951 under United Nations General Assembly (UNGA) Resolution 429 (V) and entered into force on 22 April 1954. Under the 1967 Protocol Relating to the Status of Refugees (1967 Protocol) the 1951 UN Convention became applicable to all people because initially it covered only those persons who became refugees because of events occurred before 1 January 1951.

⁶ AU Doc CAB/LEG/24.3 adopted on 10 September 1969 and entered into force on 20 June 1974.

A refugee in the 1951 UN Convention is defined as a 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 the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unwilling to return to it.⁷

Because of the special circumstances in Africa the 1969 AU Convention expanded the definition of a refugee to apply to:

Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁸

According to Oloka-Onyango, this definition reflects the most innovative and advanced aspect of the 1969 AU Convention.⁹ He further explains that it has three important implications. First, it recognises the predicament of person seeking refuge from natural disasters, *coups d'état*, civil strife and political unrest. Second, it covers large groups of refugee who are unable to prove individual well-founded fear of persecution. Finally, it also covers freedom fighters. The latter however is no longer important as all African countries are independent.

Both Conventions have extensively brought out the basic rights for refugees of which all member states have to respect. However, the right to *non-refoulement* has gained customary status, thus is binding on all states irrespective of accession.¹⁰ Despite that the 1951 UN Convention unlike the 1969 AU Convention, provides for exceptions to the principle of *non-refoulement*,¹¹ no state may return refugee(s) to places where their lives or freedoms could be threatened. However, there is a growing

⁷ Article 1(2). For an interpretation of the components of the refugee definition see UNHCR *Handbook on procedures and criteria for determining refugee status determination under the 1951 UN Convention and the 1967 Protocol relating to the status of refugees* (1992).

⁸ Article 1(2).

⁹ J Oloka-Onyango (1991) 3 *International Journal of Refugee Law* 453 455.

¹⁰ GS Goodwin-Gill (1996) Second Edition 167. RL Newmark (1993) 71 *Washington University Law Quarterly* 833 845.

¹¹ Goodwin-Gill (n 10 above) 140.

trend by many countries of refusing asylum seekers entry and returning refugees against their own will.¹²

Since the first time when the wave of asylum seekers from Rwanda hit Tanzania in 1959, the flow of refugees continues. Tanzania has hosted refugees not only from its neighbouring countries but also as far as from South Africa, Zimbabwe and Somalia. With an estimated number of 602,000 refugees population in 2004, Tanzania was among the top five refugee-hosting countries in the world.¹³ Tanzania ratified the international and regional refugee instruments as well as other human rights instruments that may enhance the protection of refugees.¹⁴ Subsequently, Tanzania enacted appropriate legislations in order to make the refugee instruments enforceable within the national legal framework.¹⁵ The principle of *non-refoulement* is enshrined in all legal instruments of which Tanzania has an international, regional and national obligation to respect. However, in recent years a trend of sporadic incidents in which the principle of *non-refoulement* was not respected has been observed. For instance, in October 2004, 68 Burundian asylum seekers were forced to return to Burundi following the orders of the local authorities.¹⁶ One of the most recent, incidents occurred in January 2005 when the government returned two families of nine persons despite assurances made to UNHCR that they would be granted refugee status.¹⁷

This research looks at the obligation of the Government of Tanzania to protect rights of asylum seekers and refugees. This is in line with the principle of *non-refoulement* as enshrined under international and regional instruments of which Tanzania ratified. It further explores the role of

¹² For instance, early October 2004 Italy collectively returned over 1000 would-be migrants in specially arranged flights to Libya. Similarly, on 18 January 2005, Japan returned two Turkish Kurds recognised as refugees under UNHCR Statute.

¹³ UNHCR 'Global report 2004' 166. All UNHCR reports are available at UNHCR's website <<http://www.unhcr.ch>>. As of May 2005, Tanzania hosted some 402,500 refugees in the camps receiving assistance from UNHCR, about 200,000 refugees in settlements and 200,000 living in the villages in North Western Tanzania.

¹⁴ Ratified the 1969 AU Convention on 10 January 1975; acceded to the 1951 UN Convention on 12 May 1964; and the 1967 Protocol on 4 September 1968.

¹⁵ The 1998 Refugee Act and 2003 National Refugee Policy. See Chapter 2 for a detailed refugee legal framework in Tanzania.

¹⁶ B Rutinwa 'Identifying gaps in protection capacity: Tanzania' UNHCR Strengthening Protection Capacity Project March 2005 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=429b19982>> (accessed on 22 August 2005) paragraph 51.

¹⁷ UNHCR 'Tanzania: UNHCR concern on forced return of Burundians' Briefing notes, Geneva, 1 February 2005 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=41ff85ef4>> (accessed on 25 March 2005).

international communities in responsibility sharing (often referred to in the humanitarian community as ‘burden sharing’) as a way to ensure that all states respect the principle of *non-refoulement*.

1.2 Problem statement

Tanzania has an established system for providing protection to refugees under the Refugee Act and the recent Refugee National Policy. Both the Refugee Act and National Policy provides for the respect of principle of *non-refoulement*.¹⁸ In reality however, recent reports suggests that Tanzania has developed a growing fatigue in their ‘open-door’ asylum policies. This has resulted in the breach of the principle of *non-refoulement*.

Violation of refugee rights needs to be exposed and addressed to ensure that refugees are not subjected to double violation. Meaning refugees are not subjected to a second violation of their rights. A need for undertaking this research was identified due to lack of properly documented research on the sporadic incidents of *refoulement*. Watching helplessly as the most vulnerable people are returned to places where their lives and freedom is in danger and determined to contribute in the efforts to ensure respect of refugee rights has motivated the researcher to undertake this research.¹⁹

This research investigates the motivation behind the Tanzanian Government’s recent practices of not respecting its international commitment with regard to refugees’ right to *non-refoulement*. Have they grown fatigued and why? What is the role of the international community in supporting hosts states share the refugee responsibility?

1.3 Scope of the research

This research is limited to respect of refugee rights in Tanzania, focusing on the principle of *non-refoulement*. The research explores the respect of the right to *non-refoulement* in relation to the relevant international, regional and national instruments. In addition, the research examines the interplay between the principle of *non-refoulement* and responsibility sharing.

¹⁸ Refugee Act, sections 28(1)(a)(i) and 5(e) and Refugee Policy, paragraph 11.

¹⁹ The researcher is a UNHCR staff in Tanzania.

1.4 Hypotheses

The research tests the following set of hypotheses:

- a) the sporadic expulsion of refugees contravenes the principle of *non-refoulement* as enshrined under international, regional and national legal instruments;
- b) the marked shift on refugee policies and practice in Tanzania is an example of the impact of public opinion on government policies; and
- c) the protracted refugee situation and lack of continued assistance from the international community leads to a double violation of refugee rights.

1.5 Objectives of the research

This research investigates the respect for the principle of *non-refoulement* in Tanzania. The main objectives of the research are to:

- a) assess the Government of Tanzania compliance with its international commitments towards respect for the principle of *non-refoulement* in an effort to enhance promotion and protection of refugee rights in Tanzania;
- b) examine the role of the international community in responsibility sharing with emphasis on how their actions or inactions affect host countries respect to the principle of *non-refoulement*; and
- c) make recommendations that would be useful not only to Tanzania but for other countries and stakeholders in similar situations.

1.6 Literature review

There are literatures on refugee rights including researches on the principle of *non-refoulement* in Africa. A lot has also been written about the situation of refugees in Tanzania. This research as emphasised above will focus on the lack of respect of the principle of *non-refoulement* in Tanzania. This focus was motivated by the need not only to document the marked shift of refugee policy and practice in Tanzania, but also the sporadic abuse of refugee rights in particular the right to *non-refoulement*.

Mendel extensively looks at refugee law and its actual practice in Tanzania.²⁰ The obligation of *non-refoulement* represents an important area of overlap between both conventions and, to a lesser extent, the municipal rules. He observed that although Tanzanian law and practice broadly conform to the

²⁰ TD Mendel (1997) 9 *International Journal of Refugee Law* 135-159.

1969 AU Convention, it breaches 1951 UN Convention obligations. He suggested that for poorer countries hosting large numbers of refugees, like Tanzania, the 1951 UN Convention is essentially an inappropriate instrument and one, which is substantially ignored in practice. With the legal and practical changes that occurred since 1997, another research is warranted specifically on the respect of the principle of *non-refoulement*.

Recent examination of the determinants and implications of the Tanzania Refugees Act was carried out by Kamanga.²¹ He has provided an opportunity to gain insight into how a pre-eminent country of asylum is responding to challenges of refugee protection and assistance. Furthermore, he has provided the possibility to assess the extent to which Tanzania has remained faithful to the 'open-door' policy for which the country earned international recognition through the Nansen Award in 1983. Although he pointed out the ambiguity of the *non-refoulement* provisions in the Act, his research does not cover the practical aspect on the respect of the right to *non-refoulement*.

The work of Rutinwa explores a retreat from fundamental principles of asylum on the African continent including rejection at the frontier and expulsion of refugees.²² Yet, there is a need to narrow this into a particular country specific situation.

Whitaker examines the reason behind mass expulsion of Rwandan refugees from Tanzania on December 1996.²³ Apart from the belief that the security situation in Rwanda was relatively calm, Tanzania's decision to return refugees was driven by the desire to avoid drawing the country into growing regional conflict. Whitaker observes that in the face of complex refugee crisis, international organisations are caught between their humanitarian mission and geopolitical dynamics. Often concerns about principle of *non-refoulement* came into direct conflict with political and security priorities, forcing humanitarian aid workers to make difficult decisions. Nevertheless, her research concentrates on mass expulsion of Rwandan refugees and not sporadic expulsion and it will serve as a resource material.

Chaulia approaches the politics of hosting refugees in Tanzania way back before colonialism with the aim of understanding continuity and change in Tanzania's refugee hosting policy.²⁴ Although he recommended ways to reverse the alarming trend of Tanzanian refugee fatigue, only significant conclusions might be drawn after analysing the recent trends of sporadic expulsion of refugees.

²¹ K Kamanga (2005) 18 *Journal of Refugee Studies* 1 100-116.

²² B Rutinwa *Journal of Humanitarian Assistance* (1999).

²³ BE Whitaker (2002) 21 *Refugee Survey Quarterly* 1 & 2 328-344.

²⁴ SS Chaulia (2003) 16 *Journal of Refugee Studies* 2 147-166.

Stenberg analyses the substantive rules of international law relating to the principles of non-expulsion and *non-refoulement* in relation to Nordic states.²⁵ He concluded that the principle of *non-refoulement* constitutes a rule of customary international law, binding on states regardless of their consent. Given the substantive differences between Nordic states and Tanzania, it would be of interest to find out what the analysis of the respect of principle of *non-refoulement* might reveal.

Goodwin-Gill has written extensively on international refugee law and in particular the principle of *non-refoulement*.²⁶ Although he acknowledges that in contrast to the 1951 UN Convention, the 1969 AU Convention is remarkable as it declares the principle of *non-refoulement* without exception. Attention to this aspect is due.

Therefore, this research has endeavoured to analyse the respect of the principle of *non-refoulement* in view of multi-dimensional problems faced by individuals seeking refugee status in African states particularly in Tanzania.

1.7 Research methodology

This research was essentially carried out in the library. Thus, the sources are secondary. It is an inductive analysis as it looks on a particular issue from general perspective. The researcher used library materials such as textbooks, journals, articles, newspapers, magazines, and different legal instruments. In addition, information and articles from the Internet, official documents of national, regional and international bodies such as human rights instruments, resolutions and reports were used. Personal experience gained in the refugee field in the Tanzanian operation gives the research a practical touch from an insider's perspective.

1.8 Outline of chapters

The first part of this research is the introduction, that is, the background to the problem, problem statement, scope of the research, hypotheses, objective of the research, literature review, research methodology, and outline of chapters. The second chapter looks at the right to *non-refoulement* under international, regional and national legal instruments. Chapter three deals with respect of the principle of *non-refoulement* in the refugee operation of Tanzania. Chapter four examines the relationship

²⁵ G Stenberg (1989).

²⁶ Goodwin-Gill (n 10 above).

between the principle of *non-refoulement* and responsibility sharing with a view to reflect on the role of the international community in promoting refugee rights. The last chapter is the conclusion of the research and recommendations.

Chapter 2: Legal framework governing the principle of *non-refoulement*

2.1 Introduction

The term *refoulement* appears on the title of article 33 of the 1951 UN Convention. It is derived from the French word '*refouler*' which means to drive back, to force back or to refuse entry.²⁷ According to Goodwin-Gill '*refouler*', means 'to drive back or to repel, as of an enemy who fails to breach ones' defences'.²⁸ Weissbrodt and Hortreiter are also of the opinion that the word '*refouler*' means literally to drive back or repel.²⁹ Garner defines *refoulement* as expulsion or return of a refugee from one state to another.³⁰ Therefore, *refoulement* in refugee law means the expulsion of persons who have the right to be recognised as refugee.

The reason behind the inclusion of French word '*refoulement*' in the final document of the 1951 UN Convention is that during the Conference of Plenipotentiaries the Switzerland delegate Mr. Zutter thought that the wording of article 28 (now article 33(1)) left room for various interpretations, particularly as to the meaning to be attached to the words 'expel' and 'return'.³¹ Article 28 of the draft document of the 1951 UN Convention provided that:

No Contracting State shall expel or return 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 or political opinion.

In Mr. Zutter's opinion, the word 'expulsion' relates to a refugee already admitted into a country, whereas, the word 'return' ('*refoulement*') had a vague meaning and could not be applied to a refugee who had not yet entered the territory of a country. Accordingly, article 33(1) would not create any obligations for states parties to admit asylum seekers in case of mass influx. For that reason, it was included in the final draft of the 1951 UN Convention because its non-conclusive meaning and it could not be necessarily applicable to a person who is outside the territory of the state party.

To ensure that the final article reflects what they agreed, delegates at the Conference of Plenipotentiaries adopted unanimously the suggestion of President of the Conference that the French

²⁷ P Terrel (ed) (1996) 779.

²⁸ Goodwin-Gill (n 10 above) 117.

²⁹ D Weissbrodt and I Hörtreiter (1999) 5 *Buffalo Human Rights Law Review* 1 2.

³⁰ BA Garner (ed) Eighth Edition (2004).

³¹ *Travaux préparatoire* 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary record of the Sixteenth Meeting' 23 November 1951 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.htm?tbl=PROTECTION&id=3ae68cdc14>> (accessed on 8 September 2005).

word '*refoulement*' be included after the English word 'return'.³² The delegates also agreed that mass migrations would not be covered by article 33.³³ Thus, the guarantee provided for by article 33 is independent of any sovereign decisions of the host state on whether or not to grant asylum. This implies that the moment an individual's asylum application is accepted, the principle of *non-refoulement* is activated.

This chapter seeks to establish that the basis for the principle of *non-refoulement* lies in conventions, declarations and UNHCR practices. In turn, this gives basis upon which states are obliged to protect refugees against *refoulement*.

2.2 Refugee instruments dealing with the principle of *non-refoulement* in Tanzania

The principle of *non-refoulement* did not exist before the 1930s.³⁴ It was first introduced in the 1933 Convention Relating to the Status of Refugees, which, however, was ratified by very few states.³⁵ Due to the huge number of refugees in Europe resulted from the Second World War, the UN General Assembly passed a resolution stating that refugees should not be returned to their countries of origin when they had 'valid objections'.³⁶ In addition, this concern led to the drafting of the 1951 UN Convention relating to the Status of Refugees, which embodied the principle of *non-refoulement*.³⁷ Since then, it has played a key role on how states parties should deal with asylum seekers and refugees in terms of their universal right to *non-refoulement*.

2.2.1 The 1951 United Nations Convention Relating to the Status of Refugees

The 1951 UN Convention does not require states parties to admit a refugee to their territory. It, however, contains specific provisions that limit this discretion. Article 33, which is one of the articles in respect of which states parties could not enter a reservation,³⁸ contains the most significant limitation, the principle of *non-refoulement*. It provides that:

³² *Travaux préparatoire* 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary record of the Thirty-fifth Meeting' 3 December 1951 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.htm?tbl=PROTECTION&id=3ae68ceb4>> (accessed on 8 September 2005).

³³ As above. The delegate from Netherlands Mr Baron van Boetzelaer requested this to be placed on record in order to dispel any possible ambiguity.

³⁴ Newmark (n 10 above) 837.

³⁵ Goodwin-Gill (n 10 above) 118.

³⁶ UNGA Resolution 8(I) of 12 February 1946, paragraph (c)(ii). See also Goodwin-Gill (n 10 above) 119.

³⁷ Newmark (n 10 above) 838.

³⁸ 1951 UN Convention, article 42. Other articles are 1, 3, 4, 16 (1), 36-46 inclusive.

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.³⁹

By not expelling refugees, states parties play pivotal role in protecting refugee fundamental human right to life. Enjoyment of all other civil, political, economic, social and cultural rights depends on the right to life. However, there are two exceptions to this principle under article 33(2), which provides that:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.⁴⁰

Suffice to note that the drafters of the 1951 UN Convention never included any exception to article 33(1). This shows the weight given to the principle of *non-refoulement*. As the Canadian delegate Mr. Chance commented, the drafters had regarded article 28 (now article 33(1)) as of fundamental importance to the Convention as a whole.⁴¹

Notwithstanding the fact that the 1951 UN Convention does not provide for temporary refuge, the duty of states parties not to return those who face threats to their life or freedom implies a duty to provide at least temporary refuge while seeking a durable solution. Consequently, many scholars consider *non-refoulement* as a principle of customary international law, that is, it is binding on all states, even those that have not ratified the 1951 UN Convention and its 1967 Protocol.⁴² While commenting on the judgement of the *Haitian refoulement case*, Goodwin-Gill emphasised that:

the principle of *non-refoulement* has crystallised into rule of customary international law, the core element of which is the prohibition of return in any manner whatsoever of refugees to countries where they may face persecution.⁴³

Though many acknowledge that the principle of *non-refoulement* is accepted as customary, there are concerns about its applicability in situations of mass influx.⁴⁴ Simply put, although states may have a

³⁹ 1951 UN Convention, article 33(1).

⁴⁰ The inclusion of this sub article with the two exceptions was proposed by France, United Kingdom and Sweden and supported by other delegates during the Conferences of Plenipotentiaries.

⁴¹ *Travaux préparatoire* (n 31 above).

⁴² Goodwin-Gill (n 10 above) 167. See also Newmark (n 10 above) 845; Stenberg (n 25 above) 272-280; and K Hailbronner in DA Martin (1988) 128-136.

⁴³ GS Goodwin-Gill (1994) 6 *International Journal of Refugee Law* 1 105. See also AP Pizor (1994) 17 *Fordham International Law Journal* 1062.

⁴⁴ Hailbronner (n 42 above) 128.

duty to accept refugees in general, the rules may differ in respect of situations of mass influx. During the Conference of Plenipotentiaries, the delegates agreed to the interpretation that the principle does not apply in mass influx situations.⁴⁵ Tanzania invoked article 33(2) on national security threats caused by the mass influx on Rwandan refugees in 1994.⁴⁶

One of the major weaknesses of the 1951 UN Convention is that it does not provide for a mechanism under which asylum seekers who fall within the refugee definition can protest or appeal the denial of refugee status by a state party. Lack of this mechanism has made genuine refugees become victims of *refoulement*. It is also difficult for such refugees to pursue local remedies against the same state, which has denied them protection because of time constraints or the lack of an effective functioning judicial system. The 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which re-enacts the principle of *non-refoulement*, does provide avenue to support such claimants in seeking remedies, though limited only to victims of states parties.⁴⁷

Another weakness of the 1951 UN Convention is the lack of obligation to allow asylum seekers to enter and reside in the territory of a state.⁴⁸ Goodwin-Gill commented in the *Haitian refoulement case* that *non-refoulement* 'is not so much about admission to a state, as about not returning refugees to where their lives or freedom may be endangered'.⁴⁹ The importance of admission however, could not be further stressed in circumstances where borders are closed on the face of asylum seekers.

Article 33 does not guarantee total *non-refoulement* to refugees as envisaged in article 28 of the draft 1951 UN Convention. Yet, with its international customary status it has effectively provided protection to millions of refugees who have crossed borders in search for safety.⁵⁰

2.2.2 The 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa

Refugee movements are caused not only by persecution but also by conflicts such as self-determination struggles, civil wars, change of government and natural disaster.⁵¹ Despite the 1967

⁴⁵ *Travaux préparatoire* (n 32 above).

⁴⁶ B Rutinwa (1996) 9 *Journal of Refugee Studies* 3 291.

⁴⁷ See detailed discussion on CAT under heading 2.3.3.

⁴⁸ M Fullerton in H Hannum (ed) (2004) Fourth Edition 249.

⁴⁹ Goodwin-Gill (n 43 above) 106.

⁵⁰ Fullerton (n 48 above) 254.

Protocol making the 1951 UN Convention applicable to the rest of the world, it nevertheless remained insufficient to cope with rising peculiarities of the African refugee crisis.⁵² Therefore, the 1969 AU Convention complemented the 1951 UN Convention not only in terms of refugee definition but also in one of the major six principles of refugee law namely *non-refoulement*.⁵³ It provides that:

No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.⁵⁴

While the 1951 UN Convention prohibits the expulsion or return (*'refoulement'*) of refugees, the 1969 AU Convention adds 'rejection at the frontier', prohibiting states parties to refuse refugees to cross their borders.⁵⁵ This is inline with the UDHR which provides that everyone enjoys the right to seek asylum, not limiting to actually being on territorial states but could also cover border fronts.⁵⁶ The right to *non-refoulement* in the 1969 AU Convention is also coupled with the liberty to appeal to other states parties to take appropriate measures to lighten the heavy responsibility of refugee hosting countries.⁵⁷ This is to ensure that states parties protect the fundamental rights of refugees in all circumstances.

In contrast to the 1951 UN Convention, the 1969 AU Convention addresses the issue of receiving and resettling refugees. States parties are requested to use their best endeavours consistent with their respective legislations to receive refugees and secure their resettlement.⁵⁸ This provision was included to ensure that refugee rights are protected even in situations where a state is already hosting large numbers.

Linked to the right of *non-refoulement* is the concept of voluntary repatriation. The 1969 AU Convention stresses the importance of voluntariness of repatriation.⁵⁹ Consequently, states parties have an obligation to ensure that no forced repatriation is practiced. This is essential in order to safeguard the fundamental rights of refugees, albeit the practice of some host countries have

⁵¹ BT Mapunda (2000) 34.

⁵² Oloka-Onyango (n 9 above) 454.

⁵³ Other major principles are the principle of asylum; protection; non-discrimination; international cooperation and responsibility sharing; and the principle of solutions.

⁵⁴ 1969 AU Convention, article 2(3).

⁵⁵ F Viljoen in C Heyns (ed) (2004) Vol.1 488. See also J van Garderen in Heyns (n 55) 840.

⁵⁶ See discussion on the UDHR under heading 2.3.2.

⁵⁷ This is discussed in chapter 4.

⁵⁸ 1969 AU Convention, article 2(5).

⁵⁹ Article 5.

sometimes been controversial. Some organisations condemned the 1996 Rwandans repatriation from Tanzania due to its involuntary nature.⁶⁰

Other significant features of the 1969 AU Convention include articles 2(1) and 2(5). Article 2(1) provides that states should use their best endeavours to receive refugees and secure their resettlement. Article 2(5) provides for the grant of temporary asylum. These provisions go a step further than what is provided in the 1951 UN Convention. In the 1951 UN Convention the issue of granting asylum and resettling refugee is left in the discretion of the concerned state and no mention of temporary asylum or a complementary forum of protection is made.⁶¹

However, like the 1951 UN Convention, there is no mention of any implementation mechanism in the 1969 AU Convention. It is important to note that, the AU has a Bureau devoted to refugee issues.⁶² It was established in 1968 to seek educational and economic opportunities for refugees in host countries and ensure realisation of the objectives of the 1969 AU Convention.⁶³ In addition, it has a specific role in issues involving the protection of refugees.⁶⁴ The Bureau is like a 'monitoring body' for the 1969 AU Convention. It operates as a secretariat to the Committee of Fifteen (C15) member states, which is the principal, policy-making organ of the AU on all matters relating to refugees in Africa.⁶⁵ Yet, refugees continue to be subjected to human rights violations including *refoulement* without much intervention from the Bureau or from any other AU organs. In addition, many states have not incorporated the principle of *non-refoulement* in their domestic legislation. Tanzania has recently incorporated the *non-refoulement* provision more explicitly in the Refugee National Policy.

Despite complementing the 1951 UN Convention with the best provision on *non-refoulement* of refugees, incidents involving forcible return to a country of origin have occurred in African particularly Tanzania. As we shall see in chapter three this is a failure by the Government of Tanzania to protect rights of refugees.

⁶⁰ Amnesty International and Human Rights Watch condemned the government of Tanzania for forceful returning refugees to volatile situation. For a detailed account of repatriation of Rwandans in December 1996, see Whitaker (n 23 above) 329-344.

⁶¹ For more discussion on these features, see Mapunda (n 51 above) 69-80.

⁶² On the Bureau, see J Oloka-Onyango (1994) 6 *International Journal of Refugee Law* 1 34-52.

⁶³ Though when the 1969 AU Convention was promulgated there was no mention of the Bureau (formerly Bureau for the Placement, Education and Training of Refugees), it existed.

⁶⁴ Oloka-Onyango (n 62 above) 36.

⁶⁵ Tanzania is a member of the secretariat. Others members are Algeria, Angola, Cameroon, DRC, Libya, Mali, Niger, Nigeria, Senegal, Swaziland, Sudan, Uganda, Zambia and Zimbabwe.

2.2.3 The 1998 Tanzania Refugee Act and 2003 Refugee National Policy

States have the responsibility to protect refugees from actions, which violates their rights. These actions may arise directly from acts or omissions of its government officials and agents, or indirectly where the domestic legal and administrative systems fail to enforce or guarantee the observance of international standards. To be able to fulfil its international obligations under the 1951 UN and 1969 AU Conventions, Tanzania enacted the Refugee Act of 1998 (Refugee Act)⁶⁶ and Refugee National Policy of 2003 (Refugee Policy).

While the 1951 UN and 1969 AU Conventions advocate for *non-refoulement* of refugees, the Refugee Act does not expressly provide for *non-refoulement*. Section 28 provides that any asylum seeker who has not qualified to be granted refugee status or a refugee who is dangerous to the security of the state shall be deported from Tanzania. Words as 'expulsion' or 'return' do not appear in the Refugee Act but instead deportation is wrongly used.⁶⁷ In practice, government officials deport refugees under pretence of 'a threat to national security' or on grounds of violation of domestic immigration laws such as the Immigration Act of 1995. The deportation of persons seeking asylum is not compatible with the right to seek asylum under the Refugee Act. The Refugee Act requires the Director for Refugee Services to ensure that no asylum seeker is removed from the territory of Tanzania until his or her asylum claim has been determined.⁶⁸ Similarly, the deportation of refugees is a misinterpretation of the law since a person who is recognised, as a refugee cannot be simultaneously illegally present in Tanzania.⁶⁹

The Refugee Policy has tried to cement the loopholes of the Refugee Act and the current trend of not respecting the principle of *non-refoulement*. It provides that '[r]efugees will not be expelled from Tanzania except on grounds of national security or public order and in accordance with the applicable principles contained in international instruments'.⁷⁰ Nevertheless, both fall short of the standards set up in the 1951 UN and 1969 AU Conventions.

In comparison to previous practices where Tanzania consistently respected the principle of *non-refoulement*, the current practices of the government forceful returning refugees to their country of

⁶⁶ It repealed the 1965 Refugee Control Act.

⁶⁷ See Kamanga (n 21 above) 112.

⁶⁸ Section 5(2)(e).

⁶⁹ Rutinwa (n 16 above) paragraph 52.

⁷⁰ Refugee Policy, paragraph 11.

origin hence exposing them to danger and even death, is alarming.⁷¹ It is an outright abuse of a refugee's fundamental right and should be discouraged.

2.2.4 Other refugee instruments

There are other refugee instruments, which are not binding as Conventions but contain important provisions, which are fundamental to the rights of refugees.

2.2.4.1 United Nations Declarations

The UN General Assembly has made declarations to address refugee issues particularly the principle of *non-refoulement*, in its efforts to supplement the 1951 UN Convention. Some of the important declarations are the 1967 Declaration on Territorial Asylum (1967 Declaration)⁷² and 1985 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985 Declaration)⁷³.

Similar to the 1951 UN Convention, the 1967 Declaration made an exception to the broad concept of *non-refoulement* only for overriding reasons of national security or in order to safeguard the population of the host country, as in the case of a mass influx of persons.⁷⁴ However, like the 1969 AU Convention it prohibits expulsion of refugees and rejection at the frontier.⁷⁵ In an attempt to balance the principle of state sovereignty and right of refugees to *non-refoulement*, the 1967 Declaration provides that for a state to invoke the exception provision it must:

consider the possibility of granting to the persons concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.⁷⁶

While joining the refugee and other human rights instruments to prohibit *refoulement*, the 1985 Declaration provides, amongst other issues, that states should accord a person an opportunity to submit reasons why she or he should not be expelled.⁷⁷ This is subsequent to a decision being reached in accordance with law.

⁷¹ CM Peter (1997) 4 *Journal of African Law* 1 94.

⁷² Adopted by UNGA resolution 2312 (XXII) of 14 December 1967.

⁷³ Adopted by UNGA resolution 40/144 of 13 December 1985.

⁷⁴ 1967 Declaration, article 3(2). See also Hailbronner (n 43 above) 127-128.

⁷⁵ 1967 Declaration, article 3(1).

⁷⁶ Article 3(3).

⁷⁷ Article 7.

2.2.4.2 UNHCR Executive Committee Conclusions

The UN General Assembly has entrusted the office of the UNHCR with the international protection of refugees. States in turn have formally undertaken to cooperate with UNHCR in the exercise of its functions and shall, in particular, facilitate its duty to supervise the application of the provisions of the 1951 UN Convention and its 1967 Protocol.⁷⁸ In discharging its duties, UNHCR has advocated and continue to advocate for respect of refugee rights throughout the world. It does this through, amongst others, Executive Committee Conclusions (ExCom) on international protection. For instance, in 1977 the Executive Committee issued a conclusion on *non-refoulement*.⁷⁹ It expressed its deep concern on the lack of respect of the principle of *non-refoulement*. It then reaffirmed the fundamental importance of the observance of the principle of *non-refoulement* of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees. This was reaffirmed in the ExCom on Detention of Refugees and Asylum-Seekers of 1986.⁸⁰

Though conclusions adopted by ExCom do not have force of law and do not create binding obligations, they may contribute in the formulation of *opinio juris*.

2.3 Human rights instruments and the principle of *non-refoulement*

Apart from enjoying special rights in the refugee instruments because of their vulnerable situation, refugees have a right to enjoy all other rights stipulated in human rights instruments. Human rights instruments play a key role in supplementing the refugee instruments especially in the most important right: the right to *non-refoulement*.

2.3.1 The 1981 African Charter on Human and Peoples' Rights

The ACHPR gives the 1969 AU Convention boost on the *non-refoulement* provision.⁸¹ It specifically provides for the non-expulsion of aliens legally admitted in a territory of a state party, unless in

⁷⁸ 1951 UN Convention, article 35. See also the Statute of the High Commissioner for Refugees adopted by UNGA resolution 428 (V) of 14 December 1950.

⁷⁹ ExCom No. 6 (XXVIII) of 1977.

⁸⁰ ExCom No. 44 (XXXVII) of 1986. *Non-refoulement* principle was also reiterated in ExComs 19 (XXXI) of 1980 and No.22 (XXXII) of 1981 for specific context such as in the case of large-scale influx.

⁸¹ Adopted in 1981 and entered into force on 21 October 1986. Tanzania ratified the ACHPR on 18 February 1984.

accordance with the law.⁸² In addition, it prohibits mass expulsion of aliens.⁸³ At one point in time, the African Commission on Human and People's Rights (African Commission)⁸⁴ commented that, the drafter of the ACHPR believed that mass expulsion presented a special threat to human rights.⁸⁵

The African Commission has addressed incidents of expulsion of refugees and asylum seekers. Some of the expulsion complaints brought before the African Commission includes *Union Interafricaine des Droits de l'Homme and others v Angola* where the African Commission declared the deportation of West African nationals by the Angolan Government a violation of articles 2(4) and 2(5) of the ACHPR.⁸⁶ In *Organisation Mondiale Contre la Torture and Others v Rwanda* the Commission observed that article 12(3) is a general provision of all those who are subjected to persecution and article 12(4) protects them from arbitrary expulsion.⁸⁷ The Commission found Rwanda in violation of the ACHPR when it expelled Burundian.

Like many monitoring bodies, the African Commission is intended to be the very last resort in search for justice. Normally, a complainant must show that he has exhausted domestic remedies for it to be accessed.

2.3.2 The 1948 Universal Declaration of Human Rights

The UDHR is the most important document on human rights of a universal character. It establishes natural law principles and concepts, which formulate the basis for concern of the international community in providing the solution to the refugee problems. Article 3 of the UDHR provides for the most important right of which enjoyment or exercise of other rights depends on: the right to life. It provides that everyone has the right to life, liberty and security of person. Refugees' rights to life, liberty and security have been curtailed in their country of origin, thus the motivation to seek asylum in other countries. Countries of asylum therefore have the responsibility to protect these very rights.

While the UDHR is technically not a binding document, its principles have acquired international customary recognition. Together with the UN Charter, states have reaffirmed their commitment to the

⁸² ACHPR, article 12(4). For a detailed discussion of the ACHPR, see Viljoen (n 55 above) 389-420.

⁸³ Article 12(5) of the ACHPR provides that 'mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups'.

⁸⁴ For a detailed discussion on the African Commission, see Viljoen (n 55 above) 420-486.

⁸⁵ *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR 1996) 324.

⁸⁶ (2000) AHRLR 18 (ACHPR 1997) 21.

⁸⁷ (2000) AHRLR 282 (ACHPR 1996) 282.

purposes and principles contained therein including the right to *non-refoulement*. Hence, states have responsibility to protect refugees against *refoulement*.

2.3.3 The 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The wording of article 3 of CAT is based on article 33(1) of the 1951 UN Convention but only applies to persons who face torture upon return. It provides that no state party shall expel, return ('*refouler*') or extradite a person to another state where he would be in danger of being subjected to torture. Unlike *refoulement* in the 1951 UN Convention, CAT guarantees absolute prohibition of *refoulement* under article 2(2).⁸⁸ Furthermore, the CAT provides for the criteria in determining the actual danger or real risk of being subjected to torture.⁸⁹

An important component of the CAT is the Committee against Torture (Committee), a monitoring body initiated to ensure implementation of CAT's provisions.⁹⁰ In addressing communications alleging violations of article 3, the Committee has concluded that *non-refoulement* applied not only to direct expulsion, return or extradition but also to indirect transfers to a third country from which the individual might be in danger of being returned to the country where she or he will be in danger of being subjected to torture.⁹¹ Given the lack of a monitoring body for the implementation of the 1951 UN Convention, CAT plays a vital role in protecting rights of refugee.⁹² In *Mutombo v Switzerland*, the Committee held that Switzerland had an obligation to refrain from expelling complainant Balabou Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.⁹³ Nevertheless, this institution is intended to be the very last resort. In order for the Committee to accept a communication as admissible, it will be necessary for a complainant to show that she or he has exhausted all available domestic remedies.

⁸⁸ Weissbrodt and Hortreiter (n 29 above) 16.

⁸⁹ Article 3(2).

⁹⁰ Article 17.

⁹¹ *Mutombo v Switzerland* Communication No. 13/1993, U.N. Doc. A/49/44 (1994) 45.

⁹² While article 38 of the 1951 UN Convention provides that disputes between states parties relating to its interpretation may be brought before the International Court of Justice, it says nothing on individual complaints.

⁹³ *Mutombo v Switzerland* (n 91 above). See also *Pauline Muzonzo Paku Kisoki v Sweden*, Communication No. 41/1996, U.N. Doc. CAT/C/16/D/41/1996 (1996).

2.3.4 The 1966 International Covenant on Civil and Political Rights

The ICCPR provides that no one who is lawfully within the territory of a state shall be expelled from that state without due process.⁹⁴ The importance of ICCPR in ensuring respect of refugee rights including *non-refoulement* can be seen in two folds: First, it specifies what action must be taken before anyone can be forcibly expelled. Second, it has a monitoring body called Human Rights Committee, where victims may direct incidents of *refoulement*.⁹⁵ This gives refugees an opportunity to seek remedies in case of threats to *refoulement*.

2.4 Conclusion

According to the principle of *non-refoulement*, a refugee shall not be forced back to a country where she or he will be in danger of persecution. This principle applies even where the state has not determined the refugee status of a person or where it rejects an asylum seeker. As seen in paragraph two of section 2.2.3 above, the refugee laws in Tanzania provides for the protection of refugees' right of *non-refoulement* even when her or his status has not been determined. It is no doubt that the most important tool for the states to protect refugee rights is the principle of *non-refoulement*. Indeed, the Canadian delegate reminded other delegates during the Conference of Plenipotentiaries that the drafters of the 1951 UN Convention had regarded article 33 as of fundamental importance to the Convention as a whole. He categorically said that 'in drafting it, members of that Committee had kept their eyes on the stars but their feet on the ground.'⁹⁶ It is high time for states parties to look at what members of the Committee saw in 1951 because the refugee situation has changed. Many people have fled and continue to flee in mass for fear of their lives in their own countries.

⁹⁴ Article 13. ICCPR was adopted by UNGA resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976. Tanzania acceded to the ICCPR on 11 September 1976.

⁹⁵ States that have become a party to the First Optional Protocol to the ICCPR recognise the competence of the Committee. Tanzania is not a party to the two Optional Protocols to ICCPR.

⁹⁶ *Travaux préparatoire* (n 31 above).

Chapter 3: Refugee operation in Tanzania and the principle of *non-refoulement*

3.1 Introduction

The framework of the 1951 UN Convention, its 1967 Protocol and the 1967 Declaration envisaged a relatively average number of refugees who fear persecution in their own countries. In the context of these instruments, a host state using its sovereign discretion may refuse to receive a refugee. Tanzania exercised its sovereign discretion on 31 March 1995 when it closed its borders with Burundi though on humanitarian grounds the authorities allowed tens and thousands of refugees to enter.⁹⁷ The principle of *non-refoulement* obligates states to ensure that a refugee is not returned to where he might be persecuted. In 1996, the Tanzanian President Mkapa sought reassurances from the Rwandan authorities that returning refugees would not be subjected to treatment amounting to persecution.⁹⁸

Generally, states have been respecting and continue to respect the principle of *non-refoulement*. They have allowed large number of refugee access to their territory and privilege to remain in their countries pending solutions to their problem. The refugee operation in Tanzania is one of UNHCR's largest operations in the world.⁹⁹ The operation covers 14 refugee camps in five regions throughout Tanzania. This chapter is not intended to un-earth the history of the refugee operation in Tanzania. It simply endeavours to look at how a country with such developmental deficit has responded to the challenges of refugee protection and assistance in the last decade, with a specific focus on whether the principle of *non-refoulement* was respected throughout.

3.2 Overview of the refugee operation in the last decade

Tanzania is a home to refugees since 1959 and throughout its post-independence period. Many scholars have classified it in two regimes: the 'open-door' policy regime or 'golden age' and 'semi

⁹⁷ USCR 'World Refugee Survey 1997 country report: Tanzania'. All World Refugee Survey country reports for Tanzania are available at <<http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=175> > (accessed on 17 September 2005).

⁹⁸ Whitaker (n 23 above) 340. See also T Howland (1998) 4 *University of California Davis Journal of International and Policy* 1 73-101 and Amnesty International 'Protecting their rights: Rwandese refugees in the Great Lakes Region' *AI Index: AFR 47/016/2004*.

⁹⁹ By the end of 2004, 10 countries hosting large number of refugees were Islamic Republic of Iran, Pakistan, Germany, Tanzania, USA, China, United Kingdom, Serbia and Montenegro, Chad and Uganda. For more information see UNHCR 2004 Global Appeal Trends.

open-door' policy regime.¹⁰⁰ This classification is based on the way refugees were viewed and treated. Before the mid 1990s, many refugees were a product of independence war, so states opened doors to receive them. From the mid 1990s refugees were the product of protracted civil wars caused mainly by ethnic conflicts and authoritarian regimes. Perhaps part of the President Mkapa's speech tells how they were viewed. He said:

Tanzania has hosted refugees for almost five decades now. We have often paid dearly for that humanitarian gesture, in terms of security, in terms of economic and social development, and in terms of strained relations with neighbours. *Today, we do not have freedom fighters that need bases in Tanzania to fight for the freedom and liberation of their countries from colonial or racist regimes, or murderers the like of Idi Amin.*¹⁰¹ [Emphasis by the researcher].

He also said that allowing refugees to leave their countries 'encourages using other countries as a sluice through which to offload those people certain regimes may find undesirable'.¹⁰² These kinds of remarks show how the current refugee regime is viewed.¹⁰³

There is rich literature on the history of refugee operation in Tanzania, which we are not going to replicate here.¹⁰⁴ Yet, to get a picture of what Tanzania has shouldered in the last decade the following detailed account of refugees movement into Tanzania will put it into a better perspective. It all started with the aftermath of the havoc in Rwanda. For two years consecutively, 1994 and 1995, Tanzania hosted an estimated 752,000 and 730,000 refugees respectively.¹⁰⁵ Severe logistical and environmental challenges faced Tanzania and all refugee agencies.

The situation did not get better in 1996. About 335,000 refugees were hosted in Tanzania at the end of 1996 of whom approximately 240,000 were from Burundi, an estimated 50,000 from Rwanda, about 40,000 from DRC (former Zaire), and 5,000 from other countries.¹⁰⁶ The Rwandans repatriation in

¹⁰⁰ Rutinwa (n 22 above). See J Milner 'Golden Age? What Golden Age? A critical history of African asylum policy' paper presented to the Centre for Refugee Studies, York University, 28 January 2004.

¹⁰¹ Closing Speech at the Symposium on the Great Lakes Region, Kampala 10 April 2002 available at <<http://www.tanzania-gov.it/article65.html>> (accessed on 13 September 2005).

¹⁰² As above.

¹⁰³ For recurrent assertions on the negative impact of refugees in Tanzania see CSFM 'The impact of the presence of refugees in Northwestern Tanzania' September 2003 available at <http://www.refugees.org/data/warehousing/tanzania/docs/Refugee_Impact_Study_Sep_2003.pdf> (accessed on 28 April 2005) 4.

¹⁰⁴ See Chaulia (n 24 above); Rutinwa (n 22 above); and Whitaker (n 23 above).

¹⁰⁵ USCR (n 97 above). See also Chaulia (n 24 above) 148.

¹⁰⁶ As above.

December 1996 caused a sudden decrease of number of refugees (compare to 1994 and 1995).¹⁰⁷ According to the U.S. Committee for Refugees (USCR), about 180,000 Burundian and Congolese refugees entered Tanzania in 1996.¹⁰⁸ November alone witnessed, some 90,000 refugees arrive in Tanzania.

The effect of civil unrest, which hit Burundi and DRC in 1996 to 1998, affected not only their neighbours but also the international community that supported the refugee operation. During 1997 to 1998 for example, whilst tens of thousands of new Burundian refugees sought safety in Western Tanzania, others departed Tanzania to areas of Burundi where security had improved.¹⁰⁹ While the eruption of civil war in DRC in 1996 to 1997 pushed more than 80,000 Congolese refugees into western Tanzania, a return to relative peace in the latter half of 1997 allowed some 25,000 to repatriate. The renewed war in August 1998 pushed some 20,000 or more new Congolese refugees into Tanzania, including many who had recently repatriated.

At the end of 1998, Tanzania hosted approximately 330,000 refugees from Burundi (260,000), DRC (about 60,000), Rwanda (about 5,000), and Somalia (4,000).¹¹⁰ August 1998 renewed war in DRC pushed an estimated 20,000 new refugees into Tanzania.

By December 1999, Tanzania hosted approximately 410,000 refugees of whom about 290,000 were from Burundi, 100,000 from DRC, 20,000 from Rwanda, and 3,000 from Somalia.¹¹¹ An estimated 130,000 new refugees fled to Tanzania from Burundi and DRC during the year. Despite continued instability in Burundi, some 10,000 refugees repatriated from Tanzania to Burundi with UNHCR assistance during 1999.¹¹² Thousands of others possibly repatriated spontaneously without help from UNHCR.

Flooded with more than a half-million refugees at the end of 2000, Tanzania topped the list of countries hosted large number of refugees in Africa.¹¹³ The refugees were about 400,000 Burundians, more than 110,000 Congolese from DRC, nearly 30,000 Rwandans, and about 3,000 Somalis. In

¹⁰⁷ For more information on the repatriation of Rwandan refugees see Whitaker (n 23 above) and Rutinwa (n 46 above).

¹⁰⁸ USCR (n 97 above).

¹⁰⁹ USCR 'World Refugee Survey 1999 country report: Tanzania'.

¹¹⁰ As above.

¹¹¹ USCR 'World Refugee Survey 2000 country report: Tanzania'.

¹¹² As above.

¹¹³ USCR 'World Refugee Survey 2001 country report: Tanzania'.

addition, an estimated 100,000 new refugees arrived in Tanzania from Rwanda, Burundi and DRC in year 2000.¹¹⁴ In January alone 24,000 Burundian refugees arrived in Tanzania.¹¹⁵

Tanzania hosted one of Africa's largest refugee population, approximately a half-million, at the end of 2001 including more than 350,000 from Burundi, nearly 120,000 from DRC, some 25,000 from Rwanda, and more than 3,000 from Somalia.¹¹⁶ At the same time, it had to deal with an estimated 30,000 new refugees fled to Tanzania from Burundi and DRC.

At the end of 2002, Tanzania hosted over a half-million refugees, including more than 370,000 from Burundi, some 140,000 from DRC, about 3,000 from Somalia, and fewer than 3,000 from Rwanda.¹¹⁷ In the same year, an estimated 51,000 new refugees entered Tanzania from Burundi, DRC, and Rwanda. Over 54,000 refugees of whom 23,534 (97 per cent of Rwandan refugee population in Tanzania) repatriated voluntarily from Tanzania in 2002.

Some 480,000 refugees were hosted in Tanzania at the end of 2003, including more than 325,000 from Burundi, some 150,000 from DRC, about 3,000 from Somalia, and 2,000 from other countries including Rwanda.¹¹⁸ An estimated 13,000 new refugees fled to Tanzania in 2003 primarily from Burundi and DRC.¹¹⁹ UNHCR also assisted voluntary repatriation of some 41,000 refugees mainly to Burundi and Rwanda. In the same year 22,000 babies were born.

By 31 December 2004, Tanzania hosted approximately 602,000 refugees accordingly ranking the fourth among top ten countries in the world hosting large number of refugees.¹²⁰ It also received an estimated 1,500 new refugees mainly from DRC. During 2004, UNHCR assisted to repatriate to Burundi some 83,000 refugees. They had lived in Tanzania for more than a decade. Tens and thousands of Congolese and other Burundians possibly repatriated spontaneously without UNHCR assistance.

¹¹⁴ USCR (n 113 above).

¹¹⁵ UNHCR 'Tanzania: 24,000 Burundi arrivals in 2 months' Briefing notes, Geneva, 4 February 2000 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3ae6b81f76>> (accessed on 18 September 2005).

¹¹⁶ USCR 'World Refugee Survey 2002 country report: Tanzania'.

¹¹⁷ UNHCR 'Global report 2002' 143.

¹¹⁸ USCR 'World Refugee Survey 2004 country report: Tanzania'. This figure does not include the additional 300,000 to 470,000 Burundians who resided in western Tanzania in refugee-like circumstances without official refugee status for over past three decades.

¹¹⁹ UNHCR 'Global report 2003' 164.

¹²⁰ UNHCR (n 13 above) 166.

Generally, the above refugee movement affect not only the host countries but also, everyone involved in the process of seeking durable solutions for the refugee problem. It affects UNHCR, the international community and Tanzania as host community in the following ways. Firstly, when UNHCR has just spent funds on repatriation, it faces a new challenge to assist the same refugees who have just repatriated and are now returning as new asylum seekers. For example, in August 1998 refugee who repatriated to DRC returned to Tanzania as asylum seekers because of the new fighting. Secondly, such active border movements are not viewed positively by Tanzania due to security concern such as possibility of arms proliferation.¹²¹ Thirdly, protracted refugee situations are reviewed burdensome by donor countries especially when other refugee emerging situations elsewhere also demand due attention.¹²²

3.3 Legal practice towards refugees

As seen in chapter two, the Refugee Act is the law that govern the refugee operation in Tanzania.¹²³ The definition of a refugee reflects both the 1951 UN and 1969 AU Conventions. Despite having a rich definition, its *non-refoulement* provision is ambiguous. Kamanga commented that the formulation of the relevant provision and marginal note ('Deportation of asylum seeker or refugee') are good cause to inquire true intentions of legislators.¹²⁴ The ambiguity of the *non-refoulement* provision in the Refugee Act may further be explained by actions of prominent refugee jurists like Rutinwa who opted to use the provision in Refugee Policy, which is clear.¹²⁵

Courts have always been of assistance to victims of law enforcers who try to bypass the Refugee Act. Immigration officials dragged a number of cases concerning refugees to court (under immigration law for illegal entry or stay in Tanzania) when it was obvious that the accused person was a refugee. In the case of *Republic v Ally Gibert and Others*, 10 people including a refugee were arrested by the immigration officials on 19 February 2002 and charged for unlawful presence in Tanzania under

¹²¹ Other concerns include creating ethnic imbalances in the host country, economic burden and environmental hazardous.

¹²² For instance, with the humanitarian emergencies in Bosnia the international spotlight shifted there and the Tanzania refugee operation was forgotten. For more information, see Whitaker (n 23 above) 336.

¹²³ As for the pre 1998 refugee legal regime and a thorough examination of the Refugee Act see Kamanga (n 21 above).

¹²⁴ Kamanga (n 21 above) 112.

¹²⁵ Rutinwa (n 16 above) paragraph 50.

section 31(1)(i) of the Immigration Act.¹²⁶ The refugee had an official permit to leave the camp and was due to expire on 25 February 2002. The court dismissed charges against him because he was a recognised refugee in Tanzania.

In another case, two new refugees arrived in Tanzania through Kaseke village in Kigoma rural district.¹²⁷ They reported to the village authorities as required by law.¹²⁸ The village authority took them to the police station for transporting them to UNHCR office for registration. Instead, the police opened a criminal charge against them for unlawful presence in Tanzania. They spent almost a year in remand prison before the court conditionally discharging them and ordered that they should be handed over to UNHCR.

Actions of some law enforcers' make one speculate whether it is lack of knowledge or just lack of coordination between police, immigration and refugee departments.¹²⁹ The confusion and lack of proper coordination within the government officials and departments has become a practice rather than an exception in the last decade.

3.4 Lack of respect of the principle of *non-refoulement*

The above magnitude and commotion in the Tanzania refugee operation went simultaneously with *refoulement* incidents. Some of these incidents like the 1996 Rwandans repatriation were publicised and protested.¹³⁰ Yet, the sporadic *refoulement* affecting a victim, family or small group continued unnoticed, undocumented and even publicly non-protested.

Refoulements that have been taking place in Tanzania can be characterised in two categories: *refoulement* of asylum seekers and *refoulement* of registered refugees.

¹²⁶ Criminal Case No. 106 of 2002, Kigoma District Court at Kigoma, Unreported. Section 31(1)(i) of the Immigration Act provides that any person who 'unlawfully enters or is unlawfully present within Tanzania is in contravention of the provisions of this Act'.

¹²⁷ *Republic v Ilola Shabani and Others* Criminal Case No. 162 of 2001, Kigoma District Court at Kigoma, Unreported.

¹²⁸ Refugee Act, section 9(1). For all Tanzanian Legislation relating to refugee issues see UNHCR 'refWorld 2004: Legal information' available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/rsd?search=legal&source=REFLEG&ISO=TZA>> (accessed on 7 April 2005).

¹²⁹ Police, Refugee and Immigration Departments are under the Ministry of Home Affairs. However, the practice on the refugee operation shows each department is not aware of what the other does or just ignores the mandate of each other.

¹³⁰ Amnesty International and Human Rights Watch condemned Tanzania for the repatriation of Rwandans. See Whitaker (n 23 above) 338.

3.4.1 *Refoulement* of asylum seekers

Burundians and Congolese are recognised as *prima facie* refugees in Tanzania. Government and UNHCR officials screen them upon arrival to get information of where they come from and identify combatants. In June 2003, the government authorities closed some refugee entry points and banned UNHCR to participate in the screening process.¹³¹ Since then only government officials carry out the screening process of new refugees. They often refuse to grant refuge status to some and immediately hand them over to immigration department for deportation.

The following is an account of some *refoulement* incidents, which took place in the last decade. According to USCR, even though Tanzania continued to grant refuge to large number of people in 1997, government officials expelled thousands of Rwandans and Burundians, many of whom might have been refugees.¹³² Some of those expelled had resided in Tanzania for many years.

The year 2003 was not better as there were numerous reports that the Government refused persons seeking asylum or refugee status. As reported by the U.S. Department of States (USDS),¹³³ in June, 29 refugees from the DRC were prevented from disembarking on the boat. They remained without access to food, medical care, and water for over 12 hours, and were returned to the DRC. In July, the Tanzanian army in Mtanga village, Kigoma region returned three boats with Congolese new refugees to the DRC. In August, a family of four people was refused asylum and Immigration authorities issued Prohibited Immigrant notice to leave Tanzania. In early October, MHA officials in Dar es salaam referred to MHA in Kigoma 10 Congolese refugees for camp allocation. In Kigoma, they were again screened, refused asylum on ground that are not 'genuine refugees', and *refouled* to DRC. This action and many more ignores the fact that Burundian and Congolese asylum seekers are declared *prima facie* refugee. In addition, the protracted civil war in DRC and Burundi could be construed to mean that people have not been able to live a normal life because of lack of infrastructures, food and effective government. This situation affects not only people's civil and political rights, but also their economic and social rights. Hence, denying a person refugee status on ground that is not a 'genuine refugee' is to subject that person to double violation of his civil, political, economic and social rights.

¹³¹ Before June 2003, officials from MHA and UNHCR jointly screened all Congolese and Burundian refugees who arrived in Western Tanzania to get information of the country of asylum and identify combatants. There was no individual refugee status determination because all refugees from DRC and Burundi enjoy *prima facie* status in Tanzania.

¹³² USCR 'World Refugee Survey 1998 country report: Tanzania'.

¹³³ USDS '2003 Country reports on human rights practices: Tanzania' available at <<http://www.state.gov/g/drl/rls/hrrpt/2003/27756.htm>> (accessed on 19 September 2005).

Unlike 2003, few *refoulement* incidents were reported in 2004. For example, during October and November, Tanzania refused to grant asylum to approximately 100 asylum seekers, most came from Kirundo province in Burundi.¹³⁴

On 23 January 2005, two families of asylum seekers were returned to Burundi after the government officials assured UNHCR that the families would be sent to the camp after screening procedures.¹³⁵ The International Court of Justice has emphasised in the *Nuclear Tests Case*¹³⁶ that one of the basic principles governing the creation and performance of legal obligations, is the principle of good faith. Trust and confidence are inherent in international co-operation. UNHCR trusted the government officials' promise that they would send the families to the camp. Tanzania broke that trust when it returned the families to Burundi.

The *refoulement* incidents ran concurrently with denying UNHCR access to screening new refugees as well as rejected asylum seekers. While acknowledgement is given to the sovereign discretion of states to grant asylum, states are expected to refer rejected cases to UNHCR for advice on possible solutions and further actions. If they have genuine reasons for fear of persecution, it is UNHCR's duty to ensure the government is made aware of this.

3.4.2 *Refoulement* of registered refugees

The consequence of wrong application of laws (Immigration versus Refugee Act) has led to many genuine refugees being *refouled* after serving their sentences. Often immigration officials' issue Prohibited Immigrant (PI) notices to refugees after their release from prison then they deport them.¹³⁷ This is contrary to the Refugee Act, which provides that 'no person claiming to be a refugee within the meaning of section 4 shall merely for reasons of his illegal entry be declared a prohibited immigrant, detained or penalized'.¹³⁸ The Refugee Act therefore prohibits application of immigration law against refugees. In addition, the basic law principle is that where there is conflict of laws, the most favourable one prevails, in this case the Refugee Act. In spite of this principle, the practice of the law enforcers did not respect the existing laws.

¹³⁴ USDS '2004 Country reports on human rights practices: Tanzania' available at <<http://www.state.gov/g/drl/rls/hrrpt/2004/41630.htm>> (accessed on 24 March 2005).

¹³⁵ UNHCR (n 17 above).

¹³⁶ ICJ (1974) paragraph 46.

¹³⁷ Section 14(1) of the Immigration Act provides that any person whose deportation is recommended by the Director consequent upon his conviction of an immigration offence may be deported from Tanzania.

¹³⁸ Section 9(3).

Following incidents will give a picture of the magnitude of the *refoulement* problem in Tanzania. In January 1997, Tanzanian authorities forcibly expelled more than 100 Burundian refugees after violence erupted at a refugee site.¹³⁹ Most of the refugees were killed within hours of their forced return to Burundi.¹⁴⁰ Tanzanian officials subsequently stated that the expulsions were unauthorised.¹⁴¹ Other *refoulement* incidents from Tanzania were reported in October and November 1997.¹⁴² One of the *refoulement* involved 181 Rwandan refugees and the other involved 28,000 (Burundians, Congolese and Rwandans) refugees. Some of these people have been living in Tanzania for decades and have well integrated. The *refoulement* affects other rights such as right to property and family as victims are not given time to collect their belongs or see their family members.

According to the USCR, Tanzanian authorities forcibly repatriated nine Burundian refugees in October 1999 and the Government later stated that the *refoulement* occurred accidentally because a local official misunderstood national policy.¹⁴³ The state is responsible for the actions or omission of its government officials and agents, so Tanzania could not hide behind the veil of ignorance of its officials.

The USDS reported that government authorities arrested, detained, and forcibly expelled 80 Rwandans and 580 Burundians in 2000.¹⁴⁴ Further that many of these refugees were denied the opportunity to collect their belongings or contact their families before being expelled. These refugees were living outside established camps and included Rwandans living in the country since 1960's.

On 16 May 2003, four Burundian refugees who had been arrested for being outside a camp without permit were charged, presented before a court, and acquitted.¹⁴⁵ However, Kasulu Immigration Officer, in collaboration with police, re-arrested and deported them to Burundi. In July 2003, 10

¹³⁹ USCR Press release 'Tanzania's expulsion of Burundian refugees should cease: Executions prove Burundi remains extremely dangerous' 15 January 1997 reported on the Africa Policy E-Journal available at <<http://www.africaaction.org/docs97/bur9701.htm>> (accessed on 18 September 2005).

¹⁴⁰ As above. See also Amnesty International 'Great Lakes Region still in need of protection: Repatriation, *refoulement* and the safety of refugees and the internally displaced' *AI Index: AFR 02/07/97* paragraph 3.

¹⁴¹ USCR (n 132 above).

¹⁴² Rutinwa (n 22 above) quoting D Cahn Reporter for *Voice of America*, 6 October 1997 and H Awori Editor for *Features Africa Network*, 14 November 1997 12 and 13.

¹⁴³ USCR (n 111 above).

¹⁴⁴ USDS '2000 Country reports on human rights practices: Tanzania' available at <<http://www.state.gov/g/drl/rls/hrrpt/2000/af/839.htm>> (accessed on 19 September 2005).

¹⁴⁵ USDS (n 133 above).

Burundian refugees who were in remand prison for unlawful possession of firearms and ammunitions were released for lack of evidence.¹⁴⁶ Immigration officials issued PI notices and handed them over to the Burundian Consulate in Kigoma with instructions that they should be returned to Burundi. At least three refugees of this group did not want to return to Burundi for fear of their life. In spite of this, they were all returned with the assistance of Burundi Consulate in Kigoma. The law provides for a procedure if a person wants to appeal against the PI notice. Section 14(6) of the Immigration Act provides that the Minister for Home Affairs may revoke the PI notice. The procedure is not user friendly because of the bureaucracy involved. On top of that, usually the PI notice would be between two and seven days which does not leave enough time to appeal.¹⁴⁷

Between 2 and 8 September 2003, Immigration authorities returned some 100 refugee ex-prisoners to Burundi and DRC although these prisoners had earlier benefited from a presidential amnesty.¹⁴⁸ Many of them were imprisoned for minor offences such as leaving the camp without a permit. In the same month, Tanzania expelled 922 Rwandan refugees who were living in refugee camps in Ngara district, Kagera region since 1994.¹⁴⁹

On 21 March 2004, the officials from immigration department arrested two Burundian refugees and immediately deported them.¹⁵⁰ In addition, Tanzania government officials deported between 400 and 700 persons whom it claimed were Burundians living in local villages in Ngara district, Kagera region in October and November 2004.

While the above practices show that refugees are *refouled* without given a chance to be heard or appeal against the decision of authorities, the refugee law is very clear. It provides that:

No order shall be made under subsection (1) or (2) in respect of an asylum seeker or a refugee if the Minister, the competent authority or the court, as the case may be, is of the opinion that such a person will be tried or punished for an offence of a political character after arrival in the territory from which he came or is likely to be the subject of physical attack in such territory.¹⁵¹

¹⁴⁶ USDS (n 133 above).

¹⁴⁷ The request to lift PI notice has to be sent to Dar es salaam where the office of the Minister of Home Affairs is located.

¹⁴⁸ USDS (n 133 above).

¹⁴⁹ As above.

¹⁵⁰ USDS (n 134 above).

¹⁵¹ Refugee Act, section 28(4).

The *refoulement* practices in Tanzania are against the Refugee Act and international standards enshrined in the 1951 UN and 1969 AU Conventions.¹⁵² They are also against the Constitution of Tanzania, which provides that:

...no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom save only under the circumstances and in accordance with the procedures prescribed by law; or in the execution of a judgement, order or a sentence given or passed by the court following a decision in a legal proceeding or a conviction for a criminal offence.¹⁵³

Besides, every person is entitled to a fair hearing and right of appeal or other legal remedies before the court or any other agency.¹⁵⁴ Therefore, the sporadic *refoulements* carried out by Tanzania infringes the right to be heard as provided for by the Constitution. In addition, the above account of *refoulement* incidents shows the extent of failure of the Government of Tanzania to protect refugees. The *refoulement* practices in the last decade have become a tradition rather than an exception. People were *refouled* to places where their lives were in jeopardy and others were killed. Right to life is paramount to the enjoyment of all other human rights enshrined in international, regional and national legal instruments and should not be jeopardised.

3.5 Factors behind change of policy and practice towards refugees

Refoulement of refugees has become so rampant in the last decade throughout the world. For instance in 1996 alone, more than 20 states expelled refugees from their countries.¹⁵⁵ As seen above, in Tanzania *refoulement* incidents have become prevalent in the last decade. The following factors shed some lights on this change of attitude towards refugees.

3.5.1 Democratisation process and change of ideology

During the period of 'open-door' policy, Tanzania was following a socialism ideology under one party system. It was a 'one party' show without much criticism because of political monopoly. Tanzania faced last decade with growing multi-party democracy where people had many forums to criticise the

¹⁵² In the past, Tanzania has *refouled* people who were declared refugees by the court. See the case of *R v Pancras Oteyo Okumu and Another*, Criminal Case No. 1059 of 1982 Ilala District Court at Dar es salaam, reviewed in CM Peter (1997) 62.

¹⁵³ Article 15(2). Other related provisions include articles 13(1) and (4); 14; and 15(1).

¹⁵⁴ Constitution of Tanzania, article 13(6)(a).

¹⁵⁵ USCR (n 97 above).

government demanding for accountability.¹⁵⁶ According to Songwa, the democratisation has little to do with the ongoing *refoulement* because people had the opportunity to express their opinion even before colonialism.¹⁵⁷ Even so, democratisation has created more forums, which were unavailable in Tanzania in the last two decades. Additionally, change of political ideology in Tanzania (socialism to capitalism) required effective implementation and accountability of government programmes. As Peter, correctly put it, with the capitalism ideology no country would want to be put 'on hold' by a refugee problem while other countries are economically progressing.¹⁵⁸ The economic liberalisation process and the pressure from International Monetary Fund, World Bank and other donors require non-free services to all. This has made local residents raise 'eye brows' on free services rendered to refugees.¹⁵⁹ Thus, because of the democratisation process led by good governance element, the Government accommodated more public opinion. In becoming more accountable to its people, the Government tightened refugee policies. This is because not only being accountable to public opinion is the essence of democracy but also failure to do so may come at a political cost, which no ruling government would want to risk.¹⁶⁰

3.5.2 Lack of equitable responsibility sharing

Lack of continued assistance from the international community is one of many factors, which led to not only closure of border but also the ongoing sporadic *refoulement* of refugees from Tanzania. For example, failure of the international community to give adequate assistance to Tanzania was the main reason for the closure of border with Burundi in March 1995.¹⁶¹ The magnitude and commotion of refugees into Tanzania in the last decade occurred at a time when donor support had diminished. In 1999, UNHCR stated that 'diminished donor support...hampers UNHCR's humanitarian programs' in Tanzania.¹⁶² Furthermore, financial contributions are not even meeting all the needs of long-time refugees, much less the newest arrivals. During his speech to the UN General Assembly in September 1999, President Mkapa urged greater international support for Tanzania's refugee

¹⁵⁶ For general information on the democratisation process in Tanzania see GP Mpangala 'Peace, conflicts and democratisation process in the Great Lakes Region: The experience of Tanzania' Research report, University of Dar es salaam (1999).

¹⁵⁷ Discussion with the researcher in December 2004. Mr. Whycliffe Songwa is a UNHCR staff.

¹⁵⁸ Discussion with the researcher on 8 August 2005. Prof. Chris Maina Peter is a lecturer at the Faculty of Law, University of Dar es salaam.

¹⁵⁹ As above. See also J Schneider *The Journal of Humanitarian Assistance* (1999).

¹⁶⁰ Rutinwa (n 22 above) 19.

¹⁶¹ Rutinwa (n 22 above) 18. See also Whitaker (n 23 above) 328-344 and Rutinwa (n 46 above) 298.

¹⁶² USCR (n 111 above).

programme.¹⁶³ Nevertheless, the Government saw little changes and it had to continue to shoulder the heavy responsibility of refugees alone. This subject is further discussed in chapter four.

3.5.3 Protracted refugee situation

Tanzania has been hosting refugees for about five decades now. It has been a home to millions of refugees in the last decade. Refugees prolonged stay in a host country risk spreading conflict to neighbouring states.¹⁶⁴ Consequently, measures such as *refoulement* could be justified as conflict prevention strategy.¹⁶⁵ Kamanga is of the view that the present restrictive refugee regime in Tanzania, and of which *refoulement* is only one dimension, is motivated more by the desire to 'contain' forced displacement within countries of origin, rather than solely by the conventional purposes of such restrictions.¹⁶⁶ This view is inline with government's perception that the solution lies in the countries of origin rather than in countries hosting refugees.¹⁶⁷ Recently, President Mkapa repeated what the government had said earlier that receiving refugees encourages countries of origin to use other countries as a sluice through which to get rid of unwanted people in certain governments.¹⁶⁸

3.5.4 Decrease in durable solution opportunities

During the 'open-door' policy regime, refugees from Rwanda and Burundi were granted permanent stay in Tanzania. Following a regime change in Rwanda in 1994, some Rwandans who were granted citizenship tore up their Tanzanian passports and returned to Rwanda. This made Tanzania change its law and policy to safeguard its interest. Tanzania no longer recognise local integration as a durable solution to refugee problems.¹⁶⁹ The Refugee Policy in which repatriation, resettlement and 'safe zones' are the considered durable solutions reflects this decision.¹⁷⁰ In spite of the fact that the Refugee Act and Policy do not offer local integration prospects, Tanzania generosity towards seeking durable solutions to refugees has not worn out. In 2003, Tanzania offered approximately 3,000

¹⁶³ As above.

¹⁶⁴ Former UN High Commissioner for Refugees Ms. Sadako Ogata quoted by Whitaker (n 23 above) 341.

¹⁶⁵ Whitaker (n 23 above) 341.

¹⁶⁶ Discussion with the researcher on 8 August 2005. Dr. Khoti Kamanga is a lecturer at the Faculty of Law, University of Dar es salaam and Coordinator of the Centre for Study of Forced Migration.

¹⁶⁷ Rutinwa (n 22 above) 16.

¹⁶⁸ See n 101 above. See also Rutinwa (n 22 above) 16.

¹⁶⁹ Refugee Act, sections 34 and 36.

¹⁷⁰ Refugee Policy, paragraph 15. President Mkapa has been advocating for 'safe zones' just like the 'safe havens' established in Iraq on what was claimed as the only way to avoid *refoulement*. For more information on 'safe havens' see AT Arulanantham 22 *Human Rights Quarterly* 1 (2000) 1-56.

Somali refugees' permanent settlement with the possibility of naturalisation. It also reduced naturalisation fees from US\$800 to 50.¹⁷¹

3.5.5 Nature of refugee population

Unlike the refugees in the 1960s to early 1990s, refugees in the last decade came from independent countries. As a result, host countries see no reason to strain their economy for their protection.¹⁷² Today's refugees carry with them arms, which do not only threaten Tanzanians' security but also government in countries where refugee originates. This state of affair sours the relationship between the host government and the country of origin, and hence heightens the security concerns along the border.¹⁷³ For instance, the Burundi Government has been accusing Tanzania of harbouring rebels, which the Government has denied vehemently saying these are 'baseless accusations'.¹⁷⁴ This affected the relationship between the two countries to the extent that at some point people predicted that it might turn into another conflict.¹⁷⁵ Therefore, the nature of the last decade refugees and their protracted situation has pushed Tanzania to harden its policy toward refugees.

3.5.6 Insecurity and economic burden

Recent studies show that security is still a critical problem in Northwest Tanzania but refugees cannot solely attribute it.¹⁷⁶ In 1999, Human Rights Watch reported that the Tanzanian Government had 'valid security concerns' but this should not be an excuse to violate refugee rights.¹⁷⁷ Even though crimes such as car hijacking happen in other parts of the country, is rampant in western Tanzania because of arms proliferation. The trend of comments in the last decade also revealed that there has been a growing anti-refugee sentiments expressed by both government officials and local communities.¹⁷⁸ The USCR reported on the refugee fatigue and intensified refugee population hostility observed throughout 2000.¹⁷⁹ Moreover, government officials complained on the strain on prisons and judiciary due to increased crimes though studies carried out refute these allegations.¹⁸⁰ President Mkapa has

¹⁷¹ Rutinwa (n 16 above) paragraph 307.

¹⁷² Rutinwa (n 22 above) 17.

¹⁷³ 'Refugees' presence poses critical security problem' *Daily Times* 22 April 2005.

¹⁷⁴ See USCR (n 111 above). See also USCR (n 118 above).

¹⁷⁵ USCR (n 111 above).

¹⁷⁶ CSFM (n 103 above) 16. See also *Daily Times* (n 173 above).

¹⁷⁷ HRW 'In the name of security: Forced round-ups of refugees in Tanzania' July 1999 Vol.11 No.4.

¹⁷⁸ CSFM (n 103 above) 4.

¹⁷⁹ USCR (n 113 above).

¹⁸⁰ See also *Daily Times* (n 173 above).

repeatedly expressed the insecurity concern calling on international community to intervene.¹⁸¹ According to Peter, refugees are viewed as a problem rather than people who needs humanitarian assistance.¹⁸² They are seen as source of insecurity and economic burden for Tanzania.

3.6 Conclusion

We have seen in this chapter that there is no coordination between law enforcement agencies in Tanzania in addressing refugee issues. In addition, public opinion on government policies has an impact on refugee practice and policy. Under no circumstances should factors such as lack of adequate international community and fatigue undermine the Tanzania's responsibility to protect refugees. Government officials' actions are contrary to international standards and laws of Tanzania. The strategy of the government to use *refoulement* as a push factor for countries that produce refugees to find solution to their problem is unacceptable. Tanzania therefore has failed to discharge its obligation to protect refugees against *refoulements*. Its failure is attributed by direct acts or omissions of government officials and agents who *refouled* or failed to prevent *refoulement* of refugees. Besides, failure of the domestic legal and administrative systems to guarantee respect of international standards makes Tanzania indirectly accountable for the sporadic *refoulement* practices.

¹⁸¹ *Daily Times* (n 173 above).

¹⁸² n 158 above.

Chapter 4: Principle of *non-refoulement* and responsibility sharing

4.1 Introduction

Countries providing international protection to refugees bear a great responsibility since they have to protect the rights of refugees and to discharge their usual obligation towards their citizens. The concept of responsibility sharing (often referred to in the humanitarian community as 'burden sharing') has been conceived as measures taken by international community to share the responsibility of protecting refugees.¹⁸³ As part of their responsibility sharing, the international community has been assisting countries hosting refugees financially and technically. During the Rwandan refugee crisis, for example, countries like USA, Canada, Japan, Germany, Netherlands, Belgium, Denmark, Ireland, UK and Switzerland provided monetary contributions to assist Tanzania.¹⁸⁴ In fact, the early days of the Rwandan refugee emergency have been described as the 'tap on' period with the international community generously contributing financial aid to discharge their international responsibility.¹⁸⁵ As time elapsed and with growing compassion fatigue of the international community towards the protracted refugee situation in Tanzania, financial aid has drastically reduced.

We have seen in the preceding chapter that *refoulement* practices are associated with many factors. One of factors is lack of equitable international responsibility sharing. Tanzania government officials claim that the international community has left the whole refugee responsibility to Tanzania. This chapter intends to show that there is a relationship between *refoulement* practices and diminishing international community support.

4.2 The conceptual perspective

The distribution of the refugee responsibility usually depends on unfortunate geographical position of countries. This may result in some countries like Tanzania to bear a disproportionate share. In anticipation of this situation, the legal framework has provided a solution: responsibility sharing.

¹⁸³ B Rutinwa 'Asylum and refugee policies in Southern Africa' Paper presented at SAMP/LHR/HSRC Workshop on Regional Integration, Poverty and South Africa's Proposed Immigration Policy, Pretoria, 23 April 2002 61.

¹⁸⁴ Mapunda (n 51 above) 159. In 2004, UNHCR received donation from over 100 donors for its operations worldwide.

¹⁸⁵ Rutinwa (n 46 above) 318.

4.2.1 The legal framework

The principle of responsibility sharing is recognised in the refugee regime. Bearing in mind the unduly heavy responsibility on certain countries hosting refugees, the preamble of the 1951 UN Convention provides that international co-operation is important in the achievement of a satisfactory solution of refugee problem. It is not binding on member states but its inclusion in the 1951 UN Convention shows its importance.

The 1967 Declaration on Territorial Asylum expanded on the 1951 UN Convention though is a non-binding instrument. It provides that:

Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.¹⁸⁶

At the regional level, the 1969 AU Convention also recognises the importance of responsibility sharing. It provides that in case of difficulty in continuing to grant asylum to refugees, a refugee hosting country may appeal directly to other member states and through the AU to lighten the responsibility in the spirit of African solidarity and international cooperation.¹⁸⁷ This provision was invoked by Botswana, Lesotho and Swaziland with regard to South African refugees who were transferred to Tanzania, Zimbabwe, Zambia and other countries.¹⁸⁸ Furthermore, UNHCR airlifted Rwandan refugees from DRC to Tanzania in the early 1960s because of insecurity.¹⁸⁹ To ensure respect of the principle of *non-refoulement*, resettlement to third countries is considered a powerful tool of effective international responsibility sharing. For that reason the 1969 AU Convention further provides that:

Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with [article 2(4)].¹⁹⁰

However, lack of procedural guidelines, criteria or set mechanisms, makes it difficult for states requiring such assistance to seek eager ears. In Europe, states may enter into bilateral agreements to

¹⁸⁶ 1967 Declaration, article 2(2).

¹⁸⁷ 1969 AU Convention, article 2(4).

¹⁸⁸ Rutinwa (n 22 above) quoting M Rwelamira and LG Buberwa 'Refugees in Botswana, Lesotho and Swaziland: Some preliminary notes on their magnitude, characteristics and social support systems' paper presented at the Africa refugee seminar, Arusha 30 July to 3 August 1990 7.

¹⁸⁹ Rutinwa (n 22 above) 7.

¹⁹⁰ Article 2(5).

share refugee responsibility. For instance, the governments of France and UK entered into such an agreement in 2002, when refugees from France were transferred to UK.¹⁹¹

4.2.2 UNHCR initiatives

The 1951 UN Convention and its 1967 Protocol define responsibilities of states toward refugees. However, it cannot address all pressing issues of responsibility sharing in today's changing world. Thus, UNHCR launched the Global Consultations on international protection in late 2000 to explore how best to revive the existing refugee regime to address new problems.¹⁹² Its outcome is the Agenda for Protection adopted by UNHCR and states in 2002 to improve on the protection of refugees around the world.¹⁹³ It is therefore about building on the 1951 UN Convention and it is called the 'Convention Plus' approach.¹⁹⁴ It has two sections: the Declaration of States Parties and a Programme of Action. The Declaration of States Parties provides that states should respect their international responsibility towards refugees by strengthening international solidarity.¹⁹⁵ In addition, one of the six inter-related goals under the Programme of Action is about sharing responsibilities more equitably and building capacities to receive and protect refugees.¹⁹⁶

UNHCR has also prepared a document with different measures, which can be used by states to develop a mechanism for responsibility sharing.¹⁹⁷ Using this document, UNHCR then work with states to develop mechanism to activate and implement the principle of responsibility sharing.

The Executive Committee of UNHCR has also endorsed a number of conclusions on international responsibility sharing in refugee protection. These conclusions have reaffirmed and emphasised that refugees' problem is the concern of international community and there should be equitable

¹⁹¹ UNHCR 'Sangatte: Burden-sharing agreement swings into action' Briefing notes, Geneva, 6 December 2002 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3df0b6b12>> (accessed on 26 September 2005).

¹⁹² For information on the Global Consultation on international protection, see the Global Consultation page of UNHCR's website at <<http://www.unhcr.ch>>.

¹⁹³ UNHCR 'Agenda for Protection' available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3e637b194>> (accessed on 28 September 2005) 9.

¹⁹⁴ Foreword by the former UN High Commissioner for Refugees Mr. Ruud Lubbers UNHCR in the 'Agenda for Protection' (n 193 above) 6.

¹⁹⁵ Paragraph 8.

¹⁹⁶ Goal 3. For other goals, see n 193 above.

¹⁹⁷ UNHCR 'Mechanisms of international cooperation to share responsibilities and burdens in mass influx situations' Global Consultation EC/GC/01/7 19 February 2001.

responsibility sharing.¹⁹⁸ They aim at ensuring respect of refugee rights from the time a person seeks refuge to finding durable solutions. Simply put, these conclusions aim at ensuring amongst other obligations, respect of principle of *non-refoulement*.

4.2.3 Other initiatives

The 1981 International Conference on Refugees in Africa (ICARA I) was the first initiative to address the heavy refugee responsibility in African countries.¹⁹⁹ It did not succeed because no sufficient funds were raised. Consequently, the UN General Assembly passed a resolution on ICARA I regretting that in spite of the efforts made; the assistance provided to an increasing number of African refugees was still very inadequate.²⁰⁰ The General Assembly passed another resolution on ICARA I when it noted that the over-all results in terms of financial and material assistance have fallen short of the expectations of the African countries.²⁰¹ It therefore urged the international community to give the necessary assistance to enable countries that shoulder heavy refugee responsibility to provide essential services effectively.

The second initiative was a follower to ICARA I; that is, ICARA II in 1984. However, it did not succeed as well.²⁰² According to Chen, since ICARA I, many African states hosting refugees expected international donor community to provide assistance to mitigate the alleged heavy responsibility of refugees on their countries' economic development, but donors had a different agenda.²⁰³ The Addis Ababa Document on Refugees and Forced Population Displacements in Africa was another visible initiative. It recommended that states should uphold the 'principles of the Convention on the humanitarian nature of asylum, prohibit activities inconsistent with refugee status, safeguard refugees

¹⁹⁸ See for example ExComs No. 22 (XXXII) of 1981; No. 52 (XXXIX) of 1988; No. 74 (XLV) of 1994; No. 77 (XLVI) of 1995; No. 85 (XLIX) of 1998 and No. 89 (LI) of 2000 available at <<http://www.unhcr.ch>>.

¹⁹⁹ See BN Stein 'Regional efforts to address refugee problems' paper presented at the 1997 Annual Meeting of the International Studies Association, Toronto, 21 March 1997 available at <<http://www.msu.edu/course/pls/461/stein/isa-regional.htm>> (accessed on 29 September 2005).

²⁰⁰ Preamble of the UNGA Resolution A/RES/36/124 of 14 December 1981.

²⁰¹ Preamble of the UNGA Resolution A/RES/37/197 of 18 December 1982.

²⁰² For reasons of its failure See G Kibreab 'The state of the art review of refugee studies in Africa' Uppsala papers in Economic History, Research report No. 26 (1991). See also C Gasarasi (1986) 20 *International Migration Review* 2 283-298.

²⁰³ G Chen 'Confinement and dependency: The decline of refugee rights in Tanzania' World Refugee Survey 2005 available at <http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRS_Archives/2005/Chen_chen.pdf> (accessed on 13 September 2005) 11.

against *refoulement* or expulsion... practice burden-sharing and solidarity among states'.²⁰⁴ It neither says anything else on how states should practice the responsibility sharing, nor lays down any procedural guidelines for the same.

In its efforts to address root causes of refugee flows, the Southern Africa Development Community (SADC) signed a Memorandum of Understanding with the UNHCR in July 1996. It provides that SADC and UNHCR establish or strengthen existing mechanisms, procedures and institutions at all levels in order to give effect to the concept of responsibility sharing.²⁰⁵

With mass influx from the Great Lakes Region to SADC members such as DRC and Tanzania, SADC Council of Ministers reiterated that the cornerstone of SADC is 'the need to support the most vulnerable peoples through regional integration based in the promotion of democracy, good governance and the respect for human rights'.²⁰⁶ Thus, a working group of nine countries was set up to draw a Declaration on Refugees. This initiative though, has not yet been realised.

The New Partnership for Africa's Development (NEPAD) is a recent initiative, which calls for efforts to build Africa's capacity to manage conflicts in addition to its broader aim of creating conditions for developments in Africa.²⁰⁷ Its realisation can address root causes hence minimise refugee flow. This may eventually lead to a manageable number of refugees, which may eventually lead to a minimised dependency on multi-lateral responsibility sharing.

4.3 The interplay between *non-refoulement* and responsibility sharing

The international community is involved in responsibility sharing through different ways. They do this through funding UNHCR and other organisations dealing with providing services to refugees. Some donors support specific programmes that deal with issues such as durable solutions. For instance, in efforts to find durable solutions for refugees in Tanzania, donors are funding resettlement to third country projects and financing the local integration of Somali refugees in Chogo, Tanga region.²⁰⁸ The international community also shares the responsibility of protecting refugees in Tanzania through programmes such as refugee security package and support to refugee hosting areas.

²⁰⁴ Recommendation V (ii) of the Addis Ababa Document of September 1994.

²⁰⁵ Rutinwa (n 183 above) 61.

²⁰⁶ Rutinwa (n 183 above) 62.

²⁰⁷ As above.

²⁰⁸ Rutinwa (n 16 above) paragraph 323.

4.3.1 Resettlement programme

Resettlement is one of the durable solutions to address refugee problems. It has also been used by states as a responsibility-sharing tool. In the last decade, countries such as USA, Canada, Australia, Norway, Sweden, Benin resettled refugees from Tanzania in their countries.

UNHCR Tanzania is actively involved in resettlement activities, which have led to quite a good number of refugees gaining a durable solution. In 1999, 166 refugees departed to different countries.²⁰⁹ Three hundred thirty three refugees, departed for resettlement in 2000.²¹⁰ Five hundred thirty four refugees departed in 2001. In 2002, 707 refugees were accepted for resettlement, 423 departed.²¹¹ UNHCR also reported that 1,281 refugees were processed for resettlement in 2003, 660 departed.²¹² In 2004, files of more than 1,300 refugees were submitted for resettlement, 814 departed.²¹³

In total, 2930 refugees departed for resettlement between 1999 and 2004. This is a relatively low number compared to the huge refugee population. The reason for such low number of resettlement referrals to third countries is largely due to the very strict eligibility criteria such as; a refugee has to meet the refugee criteria within the context of the 1951 UN Convention.²¹⁴ Majority of refugees in Tanzania are recognised on *prima facie* basis. This might be another reason behind this low number.²¹⁵

Objective six of goal three of the Agenda for Protection targets potential use of resettlement as a responsibility-sharing tool in mass influx and protracted situation. Therefore, flexibility in resettlement criteria for refugees recognised on a *prima facie* basis is important.²¹⁶ This will ensure the respect of principle of *non-refoulement* because states will share responsibility through resettlement of *prima*

²⁰⁹ UNHCR 'Regional overview 1999: Great Lakes Region' 82.

²¹⁰ UNHCR 'Global report 2000' 119.

²¹¹ UNHCR (n 117 above) 143.

²¹² Rutinwa (n 16 above) paragraph 319.

²¹³ UNHCR (n 13 above) 165.

²¹⁴ For resettlement criteria see UNHCR *Resettlement handbook and country chapters* (2004).

²¹⁵ Other reasons may be the number of quota set up by resettlement countries and the resettlement process, which usually takes long time.

²¹⁶ For more information on the *prima facie* see B Rutinwa ' *Prima facie* status and refugee protection' UNHCR Evaluation and Policy Analysis Unit, Geneva, October 2002.

facie refugees. For this reason, countries like Tanzania will not breach their international obligation to protect refugees on grounds such as lack of equitable responsibility sharing.

4.3.2 Aid to refugee hosting areas

In 2001, UNHCR reported that the long-term hosting of refugees has strained the infrastructure in North Western Tanzania.²¹⁷ In addition, the protracted refugee situation has contributed not only to environmental degradation, but also to anti-refugee sentiments in the last decade.

To address the impact of refugee presence in host areas, UNHCR undertook a number of initiatives. In the last decade, it provided assistance totaling US\$38 million to the refugee hosting areas in North Western Tanzania.²¹⁸ This assistance targeted programmes such as projects in the environment, education and health sectors. Other programmes included administrative support and capacity building to government authorities and programmes to enhance security in and around the camps.²¹⁹ For example, in 2004 refugee hosting areas benefited from the construction of 18 secondary schools, medical wards (in Ngara and Kasulu districts) road repairs and reforestation.²²⁰ In addition, camp health facilities were made available to neighbouring local communities.

WFP, UNICEF and UNDP also had carried out significant assistance programmes to the host communities in North Western Tanzania as well.²²¹ Nonetheless, these organisations have been facing funding crisis in the last decade. For instance, from 1998 to 2002 lack of donor interest prevented UNHCR from completing programmes such as road repairs, school renovations and other infrastructures intended to aid refugee-affected areas.²²² This increased anti-refugee sentiments and *refoulement* incidents on grounds that the international community has become less cooperative.²²³

²¹⁷ UNHCR 'Global Report 2001' 137.

²¹⁸ UNHCR 'Report of the national consultation on strengthening protection capacity and support to host communities' Dar es salaam Tanzania, April 2005 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=42a070092>> (accessed on 18 August 2005).

²¹⁹ Administrative and capacity building programmes benefited the Ministry of Home Affairs, regional and district authorities.

²²⁰ UNHCR (n 13 above) 166.

²²¹ Bilateral donors such as DANIDA had also extended additional assistance. DANIDA is currently funding a three-year programme of over USD 10 Million in North Western Tanzania, with 50% of the programmes benefiting the local population directly.

²²² UNHCR (n 210 above) 121. See also Chen (n 203 above) 12.

²²³ CSFM (n 103 above) 4. See also Appendix I.

4.3.3 Security package programme

In 1998, UNHCR established a 'security package' in refugee hosting districts in Tanzania. The main purpose of the package is to ensure that the civilian and humanitarian character of refugee camps is maintained through a full-time presence of a dedicated civilian police contingent.²²⁴ In addition, the package addresses the general problem of law and order in and around the camps. The cost of the package is around US\$1.5 million per year.²²⁵

To ensure the humanitarian and civil character of refugee camps and refugees' physical security, UNHCR continues to support the security initiatives in Tanzania. In 2004, UNHCR supported the maintenance of a separation facility for armed combatants and 287 police officers.²²⁶ The police officers were deployed in the camps with vehicles and communication equipments to ensure security in and around refugee camps.

The study conducted in 2003 recommended that the international community should extend adequate support to Tanzania to enable it deal with external and internal security problems caused by the presence of refugees.²²⁷ President Mkapa has also repeatedly called on international responsibility sharing without much success.²²⁸ Efforts of international organisations dealing with refugees in Tanzania have also not been fruitful. Response for the request of funds to cater for security fell far short in 2004.²²⁹ For example, the UNDP request for funds to collect weapons from border regions was poorly adhered to.²³⁰

Generally, the commitment of the international community in the above programmes has not been smooth. UNHCR has had many experiences of funding shortfalls but these did not move the international community to act. For example, UNHCR's failure to develop a new site (at Ilagala in the

²²⁴ For more information on the 'security package', see JF Durieux *Track Two* Vol.9 No.3 (2000).

²²⁵ J Crisp 'Lessons learned from the implementation of the Tanzania security package' UNHCR Evaluation and Policy Analysis Unit EPAU/2001/05.

²²⁶ UNHCR (n 13 above) 167.

²²⁷ CSFM (n 103 above) 56.

²²⁸ Whitaker (n 23 above) 337.

²²⁹ Chen (n 203 above) 12.

²³⁰ For more information, see Chen (n 203 above) 10.

Kigoma region) allocated by the Government for new Congolese refugees was a result of fund shortfall.²³¹ It is also reported that the year 2003 ‘was the third successive year of a significantly reduced budget with no substantial reduction in the number of refugees needing assistance’ in Tanzania.²³²

Lack of adequate support from the international community affected WFP in Tanzania as well. Due to problems with food supply pipelines, food rations to refugees were reduced for most of the year 2002.²³³ This was the situation even in 2001 when due to food pipeline problems Congolese refugees in the Lugufu I camp boycotted food distribution demanding full rations.²³⁴ Subsequently, over 5,000 refugees left the camp on foot on the way to Kigoma town. The Tanzanian police intercepted them at Simbo, which is about 24 kilometres to Kigoma town and brought the situation under control.

In 2004, UN agencies requested US\$4.7 million for additional projects to aid refugee-hosting areas but donors contributed US\$865,000 only.²³⁵

4.4 Conclusion

The international community has sometimes responded to emergencies with such enthusiasm, which ensured respect of principle of *non-refoulement* and other rights of refugees. The trend of response in the last decade nevertheless shows that such enthusiasm wanes away with a protracted refugee situation while the needs are the same. All states have a responsibility to ensure respect of refugee rights in all circumstances. Refugees are not a ‘burden’ but a responsibility, to be shared by Tanzania and international community equally. It does not mean that if refugees are not physically in the country then a state has no responsibility to ensure respect of their rights. The international community should understand that lack of sufficient responsibility sharing in any operation exposes refugees to a double violation of their rights. Therefore, the principle of responsibility sharing constitute key elements in permitting economically, politically and socially challenged host countries to fully meet their obligations in refugee protection.²³⁶ Subsequently, respect of principle of *non-*

²³¹ UNHCR (n 117 above) 144.

²³² UNHCR (n 119 above) 168.

²³³ UNHCR (n 117 above) 144.

²³⁴ UNHCR ‘Mid-year progress report 2001’ 58.

²³⁵ Chen (n 203 above) 11.

²³⁶ K Kamanga ‘Regional paper 1: Great Lakes Region’ Developing DFID’s policy approach to refugees and internally displaced persons Vol.2 February 2005 33.

refoulement depends to some extent on commitments of the international community to share refugee responsibility.

Chapter 5: Conclusion and recommendations

This research was undertaken because of lack of properly documented research on the sporadic *refoulement* incidents in Tanzania. We set the hypotheses to prove three issues first, that sporadic expulsion of refugees contravenes the principle of *non-refoulement*. Second, that the marked shift of refugee policies and practices is an example of the impact of growing public opinion. Third, that protracted refugee situation and lack of continued assistance from the international community leads to a double violation of refugee rights. We have seen in the previous chapters that the sporadic *refoulement* incidents contravene the international, regional and national laws. For instance, the 1969 AU Convention strictly prohibits *refoulements* thus Tanzania contravenes not only its national laws but also international laws. We have also seen that the refugee policies and practices in the last decade reflects the impact of growing democratisation in Tanzania, reaction for increasing refugee fatigued and lack of adequate international responsibility sharing.

Largely, in the last decade, Tanzanian's approach to refugee protection has changed from 'open-door' policy to limited respect of refugee rights. This change is evident in not only sporadic *refoulement* of refugees but also in restrictive admission policies, decreased durable solution opportunities, and general disregard of other refugee rights. For instance, the *ad hoc* screening procedure of new *prima facie* refugees instead of conducting proper refugee status determination is a case in point.

The major factors, which influenced Tanzania's new policies and practices are, democratisation process and change of ideology, lack of equitable responsibility sharing and increasing compassion fatigued. Tanzania has tried to justify its *refoulement* practices as necessary to address the lack of adequate support from the international community. But it is unacceptable to trade-off refugee rights with lame excuses like this. Accordingly, safeguarding the rights of refugees require collective action at the international level to address problems facing countries like Tanzania.

Tanzania should cease its expulsion practices, which violates not only the fundamental principle of *non-refoulement*, but also other rights such as the right to seek asylum. Tanzania should resort to requesting effective and adequate international community support and this be incorporated into the larger domestic and foreign policy agenda. As a member of the UNHCR Executive Committee and AU Committee of Fifteen (C15) Tanzania should take advantage of this position and appeal for

adequate international responsibility sharing. This will not only make effective use of existing mechanisms but also ensure proper protection of refugees.

The UN General Assembly has appealed to the international community to respond positively, in the spirit of solidarity and responsibility sharing, to the resettlement needs of African refugees.²³⁷ If used broadly and effectively, resettlement should be able to ease the heavy refugee responsibility shouldered by Tanzania and, hence, avoid unacceptable *refoulement* practices. Albeit UNHCR's resettlement efforts in Tanzania are commendable, it should establish a mechanism to ensure that, *prima facie* refugees are considered for resettlement without having to meet strict criteria. This in turn will ensure large number of refugees from Tanzania being transferred to other countries on a responsibility-sharing basis.

In addition, the General Assembly has called on the international community to provide financial and material assistance for implementation of programmes that benefit both refugees and host communities.²³⁸ These development programmes should target rehabilitation of the environment and infrastructure affected by protracted refugee situation. In addition, community-based development programmes should be initiated to address the syndrome of viewing refugees as an economic burden and hence ensure respect of their rights to work, freedom of movement and social integration.

However disproportionate the Tanzanian's version of the refugee situation may be, refugee protection is an international responsibility. The international community should seek to mitigate any negative impact refugees have on host countries, as this will ensure respect of refugee rights particularly the right to *non-refoulement*.²³⁹ The mitigation can be in the form of responding effectively to fund requests by UN organisations, which implement security and environmental programmes in refugee hosting areas. As we saw in the previous chapters, the international community response to fund request in the last decade was poor. To ensure protection of refugee the international community's attitude towards funding refugee-hosting areas must change.

As meticulously suggested by Chen, 'donors should fund Tanzania generously' and hold it accountable to respect international standards of refugee protection.²⁴⁰ He, however, warns that calls for accountability are more effective when accompanied by a clear commitment. The international donor community should make a long-term commitment to share the refugee responsibility in

²³⁷ UNGA Resolution A/RES/59/172 of 20 December 2004, paragraph 21.

²³⁸ UNGA (n 237 above) paragraphs 22 and 23.

²³⁹ Chen (n 203 above) 10.

²⁴⁰ Chen (n 203 above) 16.

Tanzania on condition that it observes the rights of refugees. It is necessary to put conditions for a country to observe its international responsibility, because this is the best way to ensure accountability. As suggested, the international donor community needs to link its development assistance with refugee aid and require countries like Tanzania to honour refugee rights before granting aid.²⁴¹ The USA for example, has a system to track human rights records of all countries. The condition that a country must comply with refugee legal instruments for it to get development assistance should be linked with such system.

The international community may also play the responsibility-sharing role through making a solid commitment to reimburse Tanzania for costs directly related to the hosting of refugees, such as administrative costs.²⁴² This could be on condition that Tanzania allows refugees to participate in economic development activities. For example, the incident of refugees rioting because of the decline in WFP food pipeline could have been avoided if they are involved in economic development activities outside the camp. These activities will not only reduce dependency but also security incidents and environmental degradation, as they are a source of income. As a result, this will allow UNHCR to return to its primary mandate. It will also reduce the anti-refugee and economic burden sentiments in Tanzania.

The international community should extend their responsibility in supporting countries of origin in developing amicable and sustainable situation for the return of refugees. As we have seen, SADC has made efforts to address root causes of refugee flows. Addressing root causes of the problem should entail holding the country of origin responsible for the impact of refugee flows in neighbouring countries. The international community should use the same measures suggested for countries of origin, that is, link development assistance with condition to compensate returning refugees and country of asylum.

Overall, no single excuse outlives the fundamental right of a refugee to *non-refoulement*. Tanzania, UNHCR and the international community at large have a crystal-clear responsibility to ensure that under no circumstances should refugee rights be jeopardised.

World count

17 882 (including footnotes).

²⁴¹ Chen (n 203 above) 16.

²⁴² As above.

Bibliography

Books

Dugard J *International Law: A South African Perspective* Second Edition (2002).

Evans M and Murray R (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* (2004).

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

Goodwin-Gill GS *The refugee in international law* Second Edition (1996).

Garner BA (ed) *Black's law dictionary* Eighth Edition (2004).

Helton AC *The price of indifference: Refugees and humanitarian action in the new century* (2002).

Heyns C (ed) *Human rights in Africa* Vol.1 (2004).

Hannum H (ed) *Guide to international human rights practice*, Fourth Edition (2004).

Lawyers Committee for Human Rights *African exodus: Refugee crisis, human rights and the 1969 OAU Convention* (1995).

Mapunda BT *An introduction to international refugee law* (2000).

Martin DA *The new asylum seekers: Refugee law in the 1980s* (1988).

Melander G, Alfredsson G and Holmström L (eds) *The Raoul Wallenberg Institute compilation of human rights instruments* Second Edition (2004).

Nicholson F and Twomey P (eds) *Refugee rights and realities: Evolving international concepts and regimes* (1999).

Peter CM *Human rights in Tanzania: Selected cases and materials* (1997).

Peter CM *Human rights in Africa: A comparative study of the African Human and People's Rights Charter and the new Tanzania Bill of Rights* (1990).

Stenberg G *Non-expulsion and non-refoulement: The prohibition against removal of refugee with special reference to article 32 and 33 of the 1951 Convention Relating to the Status of Refugees* (1989).

Terrel P (ed) *Harrap's shorter dictionnaire* (1996).

UNHCR *Handbook on procedures and criteria for determining refugee status determination under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Re-edited version) Geneva (1992).

UNHCR *Resettlement handbook and country chapters* (Re-edited version) Geneva (2004).

UNHCR *International instruments relating to refugees Tanzania* (2000).

Villiger M *Customary international law and treaties* (1985).

Articles in books

Fullerton M 'The international and national protection of refugees' in H Hannum (ed) *Guide to International Human Rights Practice* Fourth Edition (2004) 245-265.

van Garderen J 'Refugee protection in Africa' in Heyns C (ed) *Human rights in Africa* Vol.1 (2004) 840-842.

Goodwin-Gill GS '*Non refoulement* and the new asylum seekers' in Martin DA *The new asylum seekers: Refugee law in the 1980s* (1988) 103-121.

Hailbronner K '*Non refoulement* and humanitarian refugees: Customary international law or wishful legal thinking?' in Martin DA *The new asylum seekers: Refugee law in the 1980s* (1988) 123-158.

Lauterpacht E and Bethlehem D 'The scope and content of the principle of *non-refoulement*: Opinion' in Feller E, Türk V, and Nicholson F (eds) *Refugee Protection in International Law* UNHCR's Global Consultations on International Protection (2003) 87-177.

Vedsted-Hansen J 'Non-admission policies and right to protection: refugees' choice versus states' exclusion?' in Nicholson F and Twomey P (eds) *Refugee rights and realities: Evolving international concepts and regimes* (1999) 269-288.

Viljoen F 'Introduction to the African Commission and regional human rights system' in Heyns C (ed) *Human rights in Africa* Vol.1 (2004) 389-486.

Articles in journals

Arulanantham AT 'Restructured safe havens: A proposal for reform of the refugee protection system' *Human Rights Quarterly* Vol.22 No.1 (2000) 1-56.

Chaulia SS 'The politics of refugee hosting in Tanzania: From open door to unsustainability, insecurity and receding receptivity' *Journal of Refugee Studies* Vol.16 No.2 (2003) 147-166.

Durieux JF 'Preserving the civilian character of refugee camps: Lessons from the Kigoma refugee programme in Tanzania' *Track Two* Vol.9 No.3 (2000).

Luca D 'Questioning temporary protection' *International Journal of Refugee Law* Vol.6 No.4 (1994) 535-538.

Gasarasi C 'Beyond ICARA II: Implementing refuge related development assistance' *International Migration Review* Vol.20 No.2 (1986) 283-298.

Goodwin-Gill GS 'The language of protection' *International Journal of Refugee Law* Vol.1 No.1 (1989) 6-19.

Goodwin-Gill GS 'The Haitian *refoulement* case: A comment' *International Journal of Refugee Law* Vol.6 No.1 (1994) 103-109.

- Howland T 'Refoulement of Rwandan refugees: The UNHCR's lost opportunity to ground temporary refugee in human rights law' *University of California Davis Journal of International and Policy* Vol.4 No.1 (1998) 73-101.
- Kamanga K 'The (Tanzania) Refugees Act of 1998: Some legal and policy implications' *Journal of Refugee Studies* Vol.18 No.1 (2005) 100 -116.
- Mendel TD 'Refugee law and practice in Tanzania' *International Journal of Refugee Law* Vol.9 No.1 (1997) 35-59.
- Newmark RL 'Non-refoulement run afoul: The questionable legality of extraterritorial repatriation programs' *Washington University Law Quarterly* Vol.71 (1993) 833-870.
- Oloka-Onyango J 'Human rights, the OAU Convention and the refugee crisis in Africa: Forty years after Geneva' *International Journal of Refugee Law* Vol.3 No.3 (1991) 453-460.
- Oloka-Onyango J 'The place and role of the OAU Bureau for refugees in the African refugee crisis' *International Journal of Refugee Law* Vol.6 No.1 (1994) 34-52.
- Peter CM 'Rights and duties of refugees under municipal law in Tanzania: Examining a proposed new legislation' *Journal of African Law* Vol.41 No.1 (1997) 81-99.
- Pizor AG 'Sale v Haitian Centre Council: The return of Haitian refugees' *Fordham International Law Journal* Vol.17 (1993-1994) 1062-1114.
- Rutinwa B 'Beyond durable solutions: An appraisal of the new proposals for prevention and solution of refugee crises in the Great Lakes Region' *Journal of Refugee Studies* Vol.9 No.3 (1996) 312-325.
- Rutinwa B 'The end of asylum? The changing nature of refugee policies in Africa' *Journal of Humanitarian Assistance* (1999) 1-28.
- Rutinwa B 'The Tanzanian Government response to the Rwandan emergency' *Journal of Refugee Studies* Vol.9 No.3 (1996) 291-302.

Schneider J 'The refugee crisis in Southern and Central Africa' *The Journal of Humanitarian Assistance* (1999).

Viljoen F 'Africa's contribution to the development of international human rights and humanitarian law' *African Human Rights Law Journal* Vol.1 No.1 (2001) 18-39.

Weissbrodt D and Hörtreiter I 'The Principle of *Non-refoulement*: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in comparison with the *non-refoulement* provisions of other international human rights treaties' *Buffalo Human Rights Law Review* Vol.5 (1999) 1-73.

Whitaker BE 'Changing priorities in refugee protection: The Rwandan repatriation from Tanzania' *Refugee Survey Quarterly* Vol.21 No.1 & 2 (2002) 328-344.

Whitaker BE 'Changing opportunities: Refugees and host communities in Western Tanzania' *Journal of Humanitarian Assistance* Working Paper No.11 (1999) 1-23.

Whitaker BE 'Refugees in Western Tanzania: The distribution of burdens and benefits among local hosts' *Journal of Refugee Studies* Vol.15 No.4 (2002) 339-358.

Other materials

Amnesty International 'UNHCR's Forum & Executive Committee: Basic human rights principles applicable to responsibility and burden-sharing arrangements' *AI Index: IOR 42/007/2004*.

Amnesty International 'Protecting their rights: Rwandese refugees in the Great Lakes Region' *AI Index: AFR 47/016/2004*.

Amnesty International 'Great Lakes Region still in need of protection: Repatriation, *refoulement* and the safety of refugees and the internally displaced' *AI Index: AFR 02/07/97*.

Amnesty International 'Refugees: Human rights have no borders' *AI Index: ACT 34/03/97*.

Amnesty International 'Refugee protection is human rights protection: Amnesty' *AI Index: IOR 51/011/2001*.

- Crisp J 'Lessons learned from the implementation of the Tanzania security package' UNHCR Evaluation and Policy Analysis Unit EPAU/2001/05.
- Human Rights Watch 'In the name of security: Forced round-ups of refugees in Tanzania' Vol.11 No.4 July 1999.
- Kamanga K 'Regional paper 1: Great Lakes Region' Developing DFID's policy approach to refugees and internally displaced persons, Refugee Study Centre Vol.2 February 2005.
- Kibreab G 'The state of the art review of refugee studies in Africa' Uppsala papers in Economic History, Research report No. 26 (1991).
- Milner J 'Golden Age? What Golden Age? A critical history of African asylum policy' paper presented to the Centre for Refugee Studies, York University, 28 January 2004.
- Mkapa B 'Symposium on the Great Lakes Region' Closing speech by the President of the United Republic of Tanzania, His Excellency Benjamin William Mkapa, at the Symposium on The Great Lakes Region, Nile International Conference Centre, Kampala, 10 April 2002.
- Mpangala GP 'Peace, conflicts and democratisation process in the Great Lakes Region: The experience of Tanzania' Research report, University of Dar es salaam (1999) 1-59.
- Rutinwa B 'Asylum and refugee policies in Southern Africa' paper presented at SAMP/LHR/HSRC Workshop on Regional Integration, Poverty and South Africa's Proposed Immigration Policy, Pretoria, 23 April 2002 (2002) 50-62.
- Rutinwa B '*Prima facie* status and refugee protection' Working Paper No.69 UNHCR Evaluation and Policy Analysis Unit, Geneva, October 2002 (2002) 1-27.
- UNHCR 'Executive Committee of the High Commissioner's Programme: Protracted refugee situations' Thirtieth Standing Committee, 10 June 2004 EC/54/SC/CRP.14.
- UNHCR 'Mechanisms of international cooperation to share responsibilities and burdens in mass influx situations' Global Consultation EC/GC/01/7 19 February 2001 (2001) 1-6.

Legal instruments

International

- 1946 United Nations General Assembly Resolution 8(I) on question of refugees adopted on 12 February 1946.
- 1948 Universal Declaration of Human Rights.
- 1950 Statute of the High Commissioner for Refugees adopted by UNGA resolution 428 (V) of 14 December 1950.
- 1951 United Nations Convention Relating to the Status of refugees.
- 1966 International Covenant of Civil and Political Rights.
- 1967 United Nations Declaration on Territorial Asylum of adopted by General Assembly resolution 2312 (XXII) of 14 December 1967.
- 1977 UNHCR Executive Committee Conclusion on *Non-refoulement* No. 6 (XXVIII) of 1977.
- 1980 UNHCR Executive Committee Conclusion on Temporary Refuge No. 19 (XXXI) of 1981.
- 1981 United Nations General Assembly Resolution A/RES//36/124 on International Conference on Assistance to Refugees in Africa (ICARA I) adopted on 14 December 1981.
- 1981 UNHCR Executive Committee Conclusion on Protection of Asylum-seekers in Situations of Large-Scale Influx No. 22 (XXXII) of 1981.
- 1982 United Nations General Assembly Resolution A/RES/37/197 on International Conference on Assistance to Refugees in Africa (ICARA I) adopted on 18 December 1982.
- 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- 1985 United Nations Declaration Human Rights of Individuals Who are not Nationals of the Country in which They Live adopted by General Assembly resolution 40/144 of 13 December 1985.
- 1986 UNHCR Executive Committee Conclusion on Detention of Refugees and Asylum-Seekers No. 44 (XXXVII) of 1986.
- 1988 UNHCR Executive Committee Conclusion on International Solidarity and Refugee Protection No. 52 (XXXIX) of 1988.
- 1994 UNHCR Executive Committee Conclusion No. 74 (XLV) of 1994 International Protection.
- 1995 UNHCR Executive Committee Conclusion No. 77 (XLVI) of 1995 on International Protection.
- 1998 UNHCR Executive Committee Conclusion No. 85 (XLIX) of 1998 on International Protection.
- 2000 UNHCR Executive Committee Conclusion No. 89 (LI) of 2000 on International Protection.
- 2004 United Nations General Assembly Resolution A/RES/59/172 on Assistance to refugees, returnees and displaced persons in Africa adopted on 20 December 2004.

Regional

- 1969 African Union Convention Governing Specific Aspects of Refugee Problems in Africa.
- 1981 African Charter on Human and Peoples' Rights.

National

- 1977 The Constitution of the United Republic of Tanzania of 1977.
- 1995 Immigration Act of 1995.

- 1998 Tanzania Refugee Act of 1998.
- 2003 Tanzania Refugee National Policy of September 2003.

Electronic materials

Centre for Study of Forced Migration 'The impact of the presence of refugees in Northwestern Tanzania' University of Dar es salaam, September 2003 <http://www.refugees.org/data/warehousing/tanzania/docs/Refugee_Impact_Study_Sep_2003.pdf> (accessed on 28 April 2005).

Chen G 'Confinement and dependency: The decline of refugee rights in Tanzania' World Refugee Survey 2005 available at <http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRS_Archives/2005/gregory_chen.pdf> (accessed on 13 September 2005).

Rutinwa B 'Identifying gaps in protection capacity: Tanzania' UNHCR Strengthening Protection Capacity Project available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=429b19982>> (accessed on 22 August 2005).

Stein BN 'Regional efforts to address refugee problems' paper presented at the 1997 Annual Meeting of the International Studies Association, Toronto 21 March 1997 available at <<http://www.msu.edu/course/pls/461/stein/isa-regional.htm>> (accessed on 29 September 2005).

Travaux préparatoire 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary record of the Sixteenth Meeting' 23 November 1951 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.htm?tbl=PROTECTION&id=3ae68cdc14>> (accessed on 8 September 2005).

Travaux préparatoire 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary record of the Thirty-fifth Meeting' 3 December 1951 available at <<http://www.unhcr.ch/cgi->

bin/texis/vtx/protect/opendoc.htm?tbl=PROTECTION&id=3ae68ceb4> (accessed on 8 September 2005).

UNHCR 'Agenda for Protection' available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3e637b194>> (accessed on 28 September 2005).

UNHCR 'Global Reports and Refugee Trends' are available at <<http://www.unhcr.ch>> (accessed on 26 September 2005).

UNHCR 'Report of the national consultation on strengthening protection capacity and support to host communities' UNHCR Strengthening Protection Capacity Project, Dar es salaam Tanzania, April 2005 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=42a070092>> (accessed on 18 August 2005).

UNHCR 'refWorld 2004: Legal information' available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/rsd?search=legal&source=REFLEG&ISO=TZA>> (accessed on 19 September 2005).

UNHCR 'Sangatte: Burden-sharing agreement swings into action' Briefing notes, Geneva, 6 December 2002 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3df0b6b12>> (accessed on 26 September 2005).

UNHCR 'Tanzania: 24,000 Burundi arrivals in 2 months' Briefing notes, Geneva, 4 February 2000 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=3ae6b81f76>> (accessed on 18 September 2005).

UNHCR 'Tanzania: UNHCR concern of forced return of Burundians' Briefing notes, Geneva, 1 February 2005 available at <<http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=41ff85ef4>> (accessed on 24 March 2005).

U.S. Committee for Refugee 'Tanzania's expulsion of Burundian refugees should cease: Executions prove Burundi remains extremely dangerous' Press release 15 January 1997 reported on the Africa Policy E-Journal available at <<http://www.africaaction.org/docs97/bur9701.htm>> (accessed on 18 September 2005).

U.S. Committee for Refugee 'World Refugee Survey Country report: Tanzania' All reports are available at <<http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=175>> (accessed on 17 September 2005).

U.S. Department of States '2000 Country reports on human rights practices: Tanzania' released by the Bureau of Democracy, Human Rights, and Labour on 23 February 2001 available at <<http://www.state.gov/g/drl/rls/hrrpt/2000/af/839.htm>> (accessed on 19 September 2005).

U.S. Department of States '2003 Country reports on human rights practices: Tanzania' released by the Bureau of Democracy, Human Rights, and Labour on 25 February 2004 available at <<http://www.state.gov/g/drl/rls/hrrpt/2003/27756.htm>> (accessed on 19 September 2005).

U.S. Department of States '2004 Country reports on human rights practices: Tanzania' released by the Bureau of Democracy, Human Rights, and Labour on 28 February 2005 available at <<http://www.state.gov/g/drl/rls/hrrpt/2004/41630.htm>> (accessed on 24 March 2005).

Table of Cases

Asylum case International Court of Justice (1950).

Mutombo v Switzerland Communication No. 13/1993, U.N. Doc. A/49/44 at 45 (1994).

Nuclear Tests Case (Australia v France) International Court of Justice (1974).

Organisation Mondiale Contre la Torture and Others v Rwanda (2000) AHRLR 282 (ACHPR 1996).

Pauline Muzonzo Paku Kisoki v Sweden Communication No. 41/1996, U.N. Doc. CAT/C/16/D/41/1996 (1996).

Republic v Ally Gibert and Others Criminal Case No. 106 of 2002, Kigoma District Court at Kigoma, Unreported.

Republic v Ilola Shabani and Others Criminal Case No. 162 of 2001, Kigoma District Court at Kigoma, Unreported.

Republic v Pancras Oteyo Okumu and Another Criminal Case No. 1059 of 1982, Ilala District Court at Dar es salaam.

Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia (2000) AHRLR 321 (ACHPR 1996).

Union Interafricaine des Droits de l'Homme and others v Angola (2000) AHRLR 18 (ACHPR 1997).

APPENDIX I

NEWSPAPER CLIPPING ABOUT PUBLIC OPINION ON REFUGEE RESPONSIBILITY SHARING

