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The American University in Cairo
School of Global Affairs and Public Policy

**THE REALITY OF REFUGEE RIGHTS IN AFRICA:
HOW TO IMPLEMENT THE RIGHT TO WORK
IN AN ERA OF REFUGEE CAMPS**

A Thesis submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Nezia Munezero-Kubwayo

June 2014

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THE REALITY OF REFUGEE RIGHTS IN AFRICA: HOW TO IMPLEMENT
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Nezia Munezero-Kubwayo

Supervised by Professor Jennifer Terrell

ABSTRACT

The importance of one's ability to pursue fulfilling employment is undeniable. People all over the world spend most of their days at work in various fields in order to find or maintain a fulfilling life. They imagine a stable future in which their children and communities will benefit from their hard work. Unfortunately, this hope is often not practical for people who flee persecution and war and become refugees in other countries. With over 45 million refugees in the world, it is critical to evaluate existing systems that either provide or prevent refugees from accessible gainful employment in their host states. This thesis seeks to do just that, specifically in regards to those who live in camps in Africa. This work argues that implementing the right to work for refugees not only benefits them as individuals, but that it also contributes to the development of their host communities as well as their countries of origin. To get to that conclusion, I will discuss legislations that guide the treatment of refugees in Tanzania, Kenya, and Mozambique.

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I. Introduction

In its Global Trends 2012 report, The United Nations High Commissioner for Refugees (UNHCR, herein referred to as the United Nations Refugee Agency) estimated that there are over 45.2 million people in the world who have been forced to flee from their homes - 35.8 of them are of 'persons of concern' to the United Nations Refugee Agency.¹ This is an increase of over five million from the 40 million that was reported by the same refugee agency only four years ago.² In 2009, the United States Committee for Refugees and Immigrants (USCRI) also reported that nine million of the forced displacement population lives in camps around the world.³ According to the same UNHCR report cited above, the world now hosts 15 million people in camps.⁴ In most cases, residing in camps means that people can only stay within the space provided to them by host countries and cannot leave the designated space without permission. Examples of countries that have laws restricting residents from leaving camps include Kenya and Tanzania. This will be discussed in more detail in chapter two of this thesis. For the purpose of this work, it is worth noting that approximately 40% of the 15 million people who find themselves in camps flee from African countries to host states on the African continent.⁵

Why do most African host countries often prefer to confine displaced people to camps instead of allowing them to move freely within their territory? Who is responsible for the protection of people residing in camps? There are many reasons why people become displaced

¹ UN High Commissioner for Refugees Global Trends Report, *Displacement: The New 21st Century Challenge 2012* at <<http://unhcr.org/globaltrends/june2013/>> accessed March 2013.

² *Id.*

³ United States Committee for Refugees and Immigrants, *World Refugee Survey: 2009* at <<http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-world-refugee-survey.html>> accessed 1 May 2014.

⁴ *Supra note 1.*

⁵ Clement Abrokwa, *Conflict, Refugees and the Perpetuation of Underdevelopment*, Think Africa Press 1 (2011) at <<http://thinkafricapress.com/refugees/silent-and-undocumented-loss>> accessed May 1 2014.

from their homes, and in some cases have to leave their countries altogether. Human displacement can be a result of natural disasters, such as earthquakes and severe droughts. However, the African Union recently observed that, especially in the African context, displacement is mostly caused by “the acts or omissions of the state, such as human rights violations, political and socio-economic marginalization, conflicts over natural resources and bad governance.”⁶ These issues often result in political and social instability, causing people to flee their countries. But no matter why people leave their countries, they have rights as human beings. If it is determined upon arrival in their host countries that they are refugees, they also have special rights based on the 1951 Convention Relating to the Status of Refugees. That is why there are various international human rights instruments that were established to provide legal protection to refugees, including the right to seek gainful employment, which is described in articles 17, 18, and 19 of the 1951 Refugee Convention. All of these articles will be discussed further in sections to come.

While refugees have legal rights, not all people who are displaced forcibly are refugees. This is especially so for those who find themselves in countries that are not party to the African Refugee Convention, which has a broader definition of ‘refugee’, as will be discussed further in Chapter Two. Displaced populations who are not yet to be considered refugees are therefore not automatically guaranteed the same rights that refugees are afforded in the 1951 Refugee Convention.

The first chapter of this thesis is an introduction, which briefly describes the current refugee situation on the African continent, while also introducing the documents that outline the

⁶ African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (“Kampala Convention”), 22 October 2009 at <<http://www.refworld.org/docid/4ae572d82.html>> accessed 1 May 2014.

legal framework for refugees. Chapter Two will cover the historical background of the aforementioned international legal documents that provide guidelines concerning the treatment of refugees. These instruments include the 1951 Refugee Convention and the Convention Governing the Specific Aspects of Refugee Problems in Africa. Chapter Three will discuss various viewpoints on the issue of refugee camps, refugees' right to work, and whether providing the right to work to refugees is beneficial to host communities. Chapter Four will give the reader an in-depth look in the current situation of displacement on the African continent to evaluate the case of camps and their effects. This chapter will also discuss some challenges and successes that African host countries have experienced in the effort to care for people who have fled their home countries. Unlike the general regional evaluation in the previous section, Chapter Five will focus on Kenya, Tanzania, and Mozambique to analyze what happens in practice versus what is agreed upon in legislations and international legal frameworks that guide refugee law. It is here where the reader will get to understand the impact that is felt by the host countries and the refugees based on whether the right to work, as it is defined in legal documents, is implemented in practice. The thesis will conclude with a list of recommendations for how people as well as host countries can benefit from the right to work while they live in camps.

II. Historical Background

In international refugee law, and because of the idea of states sharing the burden and responsibility of those who seek refuge, countries agree to abide by certain instruments in order to ensure that refugees are allowed to live in dignity. Natarajan states that “concepts of asylum and refuge

have at times helped address the human suffering and public disorder caused by mass displacement, including during and between the First and Second World Wars.”⁷ The instruments that were written during those times, as well as in the years that followed, to guide the treatment of refugees will be discussed in this chapter. The first section will outline the document that guides all signatory countries around the world in matters of the treatment of refugees. The next section will give a short historical overview of the legal instrument that provides guidelines for refugee rights specifically on the African continent. The two documents share similarities in the sense that the language that was used in the international instrument inspired the language that is used in the African Convention. Some articles in both documents are also similar, if not completely the same in some sections. However, the purpose and application of the two conventions differ due to different definitions of ‘refugee’.

A. The International Legal Framework for Refugees: The United Nations Convention Relating to the Status of Refugees

The most commonly used document to govern the treatment of refugees is the United Nations Convention Relating to the Status of Refugees. This Convention was adopted in 1951 in order to properly accommodate a large number of refugees that was produced after the Second World War.⁸ The document provides a definition of the term “refugee”, which is used to determine the refugee status of any individual seeking asylum. The second paragraph of article 1 defines a refugee as one who

...owing to well- founded fear of being persecuted for reasons of race, religion, national- ity, membership of a particular social group or political opinion, is out- side 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 unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if,

⁷ Usha Natarajan, *Forced Displacements from Syria or How to Institutionalize Regimes of Suffering*, ESIL Reflections (2013) <<http://www.esil-sedi.eu/node/348>> accessed 29 April 2014

⁸ Amy Slaughter and Jeff Crisp, *Protracted Refugee Situations*, 124 (Gil Loescher ed. and James Milner ed. et al., United Nations University Press, 1, 2008).

without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.⁹

In this case, the 1951 Refugee Convention provides refugees the legal right, through the principle of non-refoulement found in article 33, to be received by the host country until it is safe for them to return to their homes. According to this article, non-refoulement means that:

1. 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.
2. 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 judgment of a particularly serious crime, constitutes a danger to the community of that country.¹⁰

Therefore, any country that has ratified this convention is obligated by international law to ensure that this right, and all others, is implemented and practiced. In recent years, this courtesy is extended “not only to refugees, but to any person at risk of torture or inhuman or degrading treatment or punishment, and – at least where the risk is clear and extreme – applies also where any of the rights to life, freedom from slavery, liberty and security of person, to protection against ex post facto criminality, the right to privacy and family life, and to freedom of thought, conscience or religion is threatened.”¹¹ In cases where countries have not respected this norm, such as the recent stories in Kenya of returned Somali refugees, the host states become the subject of international shaming. African countries often want to avoid this because they need to maintain a positive image in the international community and especially to donor countries in order to continue receiving international monetary and political support.

⁹ *UN Convention Relating to the Status of Refugees*, Art.1, Para 2.

¹⁰ *Id.*, Art. 33.

¹¹ James Hathaway, *Leveraging Asylum*, U of Melbourne Legal Studies Research Paper No. 430; *Texas International Law Journal* (2009), Vol. 45, No. 3, at <<http://ssrn.com/abstract=1507308>> accessed 1 May 2014.

The meaning of a refugee as defined in this document clearly does not include groups of people who flee their countries because of wars, disasters, economic hardship, or other similar reasons that do not amount to personal persecution. In order to carry the legal status of a refugee, one has to demonstrate without a doubt that if he or she returned to the country of origin, he or she will face a well-founded fear of persecution for one of the five Convention grounds. While conflict is something that causes loss of life to hundreds and even sometimes hundreds of thousands of people, it often does not target an individual based on Convention grounds. As a result, many displaced people in the world are left in a protracted state for years, sometimes for decades, without ever going through the individual refugee status determination process.

Protracted situations occur when people live in a host country for many years without having been legally determined to be refugees. This is the case in nearly all restricted camps situations, where people usually flee their countries en mass and gather in one area for security. UNHCR does not often take the time to complete the refugee status of each camp resident, which leaves them in the pending stage for decades. The 1951 Refugee Convention does not provide clear guidelines as to how refugee status should be determined. In addition, although UNHCR is mandated to manage refugee situations in their host countries, its ability to conduct refugee status determination is completely dependent on the host government's permission. This is the case for any other activities that UNHCR carries out around the world. The sovereignty of the host countries must be respected.

The main focus of this thesis is on chapter three of the 1951 Refugee Convention, in which the rules for gainful employment are established for those who qualify as refugees. In article 17, which addresses wage-earning employment, states that host countries "shall accord refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a

foreign country in the same circumstances, as regards the right to engage in wage-earning employment.”¹² Along the same lines, article 18 emphasizes that “the Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.”¹³ It is worth noting here that this article does not give specific areas of the host country to which self-employment activities must be restricted. The article opens up the opportunity to any lawful refugee who is able and willing to engage in these activities in any part of the contracting state. Finally, in article 19 indicates that “each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”¹⁴

In addition to outlining basic standards on the treatment of refugees in host countries, the 1951 Refugee Convention was set up as a tool to provide a mandate for the United Nations Refugee Agency to protect refugees and ensure that the interests of refugees are not mistreated in their host countries. The United Nations Refugee Agency works with persons of concern around the world to ascertain whether they are treated in a fair and acceptable manner by their host countries. Among those served by this agency are refugees, internally displaced populations, victims of human trafficking, as well as communities of people who have fled their countries and find themselves in camps around the world. The agency often works with the international

¹² *Supra note 14*, Art. 17.

¹³ *Id.*, Art. 18.

¹⁴ *Id.*, Art. 19.

community to provide people with basic needs, such as food, water, and temporary shelter within their host communities.

By design, the 1951 Refugee Convention excludes many ‘third world’ refugees “as their flight is frequently prompted by natural disaster, war, or political and economic turmoil rather than by ‘persecution’...as the term is used in the Western Context.”¹⁵ As a result, the vast majority of those in flight today are not included in the international definition. As this thesis is concerned with the African context, it will rely on the different refugee definition utilized in the African context to determine who is a refugee.

B. The African Context: The Convention Governing the Specific Aspects of Refugee Problems in Africa

In the African context, there is the Convention Governing the Specific Aspects of Refugee Problems in Africa. This legal document was adopted by the Organization of the African Union (OAU) in order to include special circumstances of refugees on the African continent.¹⁶ The United Nations refugee definition is mostly individualistic, which means that each person’s refugee status is determined on a personal basis. According to Natarajan,

[the United Nations Convention] does not directly protect those forcibly displaced due to invasion and occupation, internal conflicts, widespread indiscriminate human rights abuses, drought, famine or natural disaster (unless the individual faces discrimination on Convention grounds). While international human rights, humanitarian, and environmental law target some of these issues, they do not directly address mass population movement. Thus, despite such movements posing long-standing global and regional challenges, there is a legal vacuum on how to cooperate internationally.¹⁷

The African definition, on the other hand, includes situations in which large numbers of refugees are compelled to leave their countries due to “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [their]

¹⁵ B.S Chimni, *International Refugee Law: A Reader*, Sage Publications 2000 (7).

¹⁶ *Id.*, at 126.

¹⁷ *Supra* note 7.

country of nationality.”¹⁸ This includes all people who become refugees due to civil wars and other conflicts that do not necessarily target individuals particularly. One of the most pressing situations as defined above is the crisis that is taking place in the Democratic Republic of Congo, which has produced millions of refugees into neighboring countries, such as Burundi, Kenya and Tanzania. These individuals are covered as refugees under the African context, even though this recognition may not necessarily be accurate under the 1951 Refugee Convention.

The current refugee phenomenon on the African continent can be traced back to the late 1960s, when post-colonial leadership failed to fulfill expectations of social, political, and economic equality.¹⁹ In the first period of this phenomenon, countries were normally more than willing to accept their neighbors fleeing conflict and treat them to the best of their financial and social ability, usually among the host communities. According to one author, “during this period, newly independent neighboring countries generally allowed refugees to enter, remain and work in their countries freely, due to the shared political process of decolonization and the expectation of quick return once independence had been gained.”²⁰ This was done in the name of solidarity and responsibility sharing, which is mentioned in both the United Nations Refugee Convention, as well as the OAU extended refugee Convention.

However, countries have run out of resources over the years and have been left with little choice but to look to international organizations, such as UNHCR, to take primary refugee protection responsibilities. The African Union also has only an advisory board that handles refugee matters among other issues, but it does not have implementation authority on the

¹⁸ *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Art. 1. Para 2.

¹⁹ Bonaventure Rutinwa, *Asylum and Refugee Policies in Southern Africa: A Historical Perspective*, at <www.sarpn.org/documents/d0001212/rutinwa/rutinwa.pdf> accessed 8 June 2012.

²⁰ Mpho Makhema, *Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC)*, Social Protection and Labor at the World Bank, 6 (2009), at <<http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0906.pdf>> accessed July 14, 2013.

continent. As a result of lack of resources as well as the gap in the governance of refugees, millions of refugees are hosted in camps in Africa as well as in other parts of the world. This work will examine several reasons why camps have become the norm, including the fact that host countries and the international community believe that this makes it easier for the United Nations refugee agency, UNHCR, and its partnering organizations to provide assistance to refugees.

This research is a result of my experience with the struggles of people in camps in Africa. I am especially concerned with the lack of possibility for adults to be able to obtain the employment that they need in order to maintain their families' self-sufficiency and to pursue a fulfilled life, despite their status as refugees. People who continue to live in restricted encampment situations deserve the attention of this thesis because of several reasons. First, they have been forced to move from their homes, lands, and communities. They have had their lives literally put on hold, sometimes for several decades. During an interview that I conducted in Mtabila camp as part of my undergraduate senior project, several of my interviewees for *The Faces of Hope* compared life in a camp to being in prison. Mtabila Refugee Camp, where my family lived for over five years, was a restricted residence for refugees for almost 20 years.

Secondly, refugees most of the time leave everything behind and join host communities that often treat them with little or no kindness, taking away even the basic dignity that should be afforded to every individual. The conditions in which refugees are forced to live do not always allow them to enjoy many of the rights provided to them by the various international documents intended to protect refugees as stated above. Moreover, they have no means of standing and fighting for their rights because they are usually closed off from the rest of the world. Their freedom of movement within their countries of refuge is usually limited. Most importantly,

refugees realize that they are dependent on others for their survival. Therefore, they are afraid to represent their own interests to those who are in positions of power. Unfortunately, this ultimately leads to the fact that refugees in Africa not only survive under harsh realities, they hardly have the opportunity to learn how they can leave such situations.

In addition, as resources have become scarce and countries have increasingly impoverished populations²¹, African host countries have become known to view refugees as a burden on their economic resources.²² As a result, the policies that are made in response to refugees often negatively affect not only the refugees, but also the host countries' own populations. As one researcher puts it, the encampment of people is "linked to increased security problems, but in some cases it is also because the government or local authorities seek to sustain or augment their legitimacy by adapting refugee policies to be more in keeping with the host population's unwillingness to allow the refugees to continue living amongst them."²³ In this thesis, the author hopes to bring a new light to the refugee situation, allowing host communities to see the benefits of respecting a refugee's right to seek employment opportunities while residing in a host country. The point of this thesis is to show that once countries are fully aware and willing to acknowledge the fact that refugees are not just a waste of resources, they will be less inclined to act in violation of international refugee law in regards to the right to work.

Finally, this thesis will look into some of the problems that have been presented by human rights activists in the case against camps. We know how host countries react to large influxes of refugees. We even have our ideas of what solutions can be used to improve the lives of refugees in host communities. Refugees themselves are hardly ever given the opportunity to

²¹ Ved P Nanda, *The African Refugee Dilemma: A Challenge for International Law and Policy*, Africa Today, 61-75 (1985).

²² Karen Jacobsen, *Can Refugees Benefit the State? Refugee Resources and African Statebuilding*, 40 Journal of Modern African Studies, 577(2002).

²³ *Id.*, at 591.

partake in finding solutions for their problems. The issues of host states and those of refugees should be debated together in order to find a solution that works for both parties. This thesis intends to do just that. In this work, the hope is to present another voice in the camp debate, especially in regards to refugees' rights to gainful employment, from the author's memory and experience as a refugee.

C. The Right to Work Elsewhere in Human Rights Law

The right to work is a human right. Consequently, it is provided for refugees in their countries of protection in the provisions found in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This document was created to ensure that signatory states are protecting those who live in their territories and to also prioritize their well-being. Although refugees are not the focus of the ICESCR, it clearly states that the rights within this document “derive from the inherent dignity of the human person.”²⁴ No matter what opinion a state or person maintain on the issue of refugees, no one can deny that they are individual human beings who deserve to have dignity, if nothing else. Therefore, the right to work must be afforded to them among other human rights that are addressed in this Convention.

The ICESCR indicates a need for all people to be protected by their state of residence. In fact, Article 7 says that “[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.”²⁵ For one thing, this comes to further highlight the fact that camps are already an infringement on the rights of refugees. No country in the world has forced all of its aliens to stay in camps. Additionally, the focus on the ICESCR is to provide a legal framework for states so

²⁴ *International Covenant on Economic, Social and Cultural Rights*, Preamble.

²⁵ *Id.*

that their people can “freely pursue their economic, social and cultural development.”²⁶ This provision complements the right to seek gainful employment written in the 1951 Refugee Convention to safeguard the legal protection of the interests of refugees

It is worth mentioning that, in international human rights law, it is an acceptable norm of sovereignty for countries to have legal ground in restricting the ability to work for aliens. However, as clarified in the legal document mentioned in the previous paragraph, in regards to work, refugees are to given the same treatment as other foreigners in the host country. They should not be singled out and excluded from the opportunities that are given to other non-nationals. Having clear balance between a state’s freedom to decide and the provisions in the 1951 Refugee Convention as well as the ICESCR would benefit refugees in accessing the right to work. By excluding such people and restricting them into camps, host countries eliminate their chance of legal treatment equal to the most favored foreigner.

D. The Role of International Community and its Impact

The international community is often involved when dealing with the issue of refugees whether they are in small or large groups, living in camps or in urban areas. The international community that I am discussing here includes the host countries, the countries of origin, the countries who donate money that is used to provide assistance for refugees, and finally, the organizations that deliver said assistance to any location the refugees may have found themselves in their host countries.

In general understanding, refugee assistance from the international community includes food rations, materials for shelter, such as plastic sheeting to cover mud houses, basic health care in refugee camps or host communities, and basic education provided to children by organizations

²⁶ *Id.* Art. 1. Para 1.

like the United Nations Children’s Fund. This organization is the branch of the United Nations that strives to ensure that the rights of children are respected, with a strong emphasis on the right to compulsory primary education even for the children in refugee camps.²⁷ The services to refugees that are not quickly noticed are those of organizations that work to bring justice and to ensure that the human rights refugees are fully recognized in legislations as well as in practice. Among these organizations are those who share the view that “refugee protection is...fundamentally oriented to creating conditions of independence and dignity which enable refugees themselves to decide how they wish to cope with their predicaments.”²⁸

The international community has done a lot of work to bring the host states to operate in ways that do not affect the lives of refugees negatively in all of the countries discussed in this thesis. The organizations dedicated to activism collaborate between the world far away from the refugee situations and the one near them. As a result, everyone involved works together to find solutions to the problems that continue to hurt the refugee community. These activist organizations are usually smaller in size than the tremendous United Nations Refugee Agency. Some examples of organizations operating on a local or regional level, such as Samasource, will be discussed in later chapters. It is this kind of collaboration that often leads to a better understanding of refugee rights for people that are affected, be it the forcibly displaced or the communities in which they have taken residence.

III. The Refugee Camp Debate

The debate about camps is not a new one in the forced migration community. Camps are usually located in remote areas relatively close to the border of the refugees’ country of origin and their

²⁷ UN Children’s Fund, at <http://www.unicef.org/about/who/index_introduction.html> accessed 17 November 2013.

²⁸ James Hathaway, *Refugee Solutions or Solutions to Refugeehood?*, *Refuge* (2007) 24: 3-10.

host state. Some forced migration researchers believe that refugee camps are an acceptable form of accommodation for large influxes of refugees.²⁹ In fact, making camps has more or less become an automatic response whenever conflicts results in large groups of people fleeing. Despite that, other researchers continue to believe that camps facilitate violations of human rights and should not be used, even in emergency situations. According to Barbara Harrell-Bond, a well-known forced migration scholar and anthropologist, “the most essential feature of a camp is the authoritarian character of their administration; they are like ‘total institutions’, places where, as in prisons or mental hospitals, everything is highly organized, where the inhabitants are depersonalized and where people become numbers without names.”³⁰

From the author’s experience, this observation is correct for the most part. Camps are institutions in which people barely have enough to survive. The daily struggles of refugees, which mainly revolve around their lack of access to resources, are often left unseen by the outside world. As will become evident in the arguments presented in this section, refugees are often discussed as people who need international assistance. One of the main concerns for most scholars of forced migration is whether refugees should or should not live in camps. However, because refugees are not a new phenomenon, and certainly not in Africa, the author intends to focus less on where refugees should live and look more into how they can access the resources they need to live in dignity, as it is provided to them in the 1951 Refugee Convention as well as in the African Convention. While this section presents the current beliefs surrounding refugees, a later section will discuss in depth the ways in which the right access to employment can be provided to improve the well-being of refugees on the African continent.

²⁹ Jeff Crisp and Karen Jacobsen, *Refugee Camps Reconsidered*, Forced Migration Review (1998), at <http://www.fmreview.org/FMRpdfs/FMR03/fmr307.pdf> accessed 1 May 2014.

³⁰ Barbara Harrell-Bond, *Are Refugee Camps Good for Children*, New Issues in Refugee Research (2000), at <http://www.refworld.org/pdfid/4ff581d42.pdf> accessed 1 May 2014.

A. Advantages of Refugee Camps in Host States

The people who favor camps tend to argue that this system of accommodating refugees allows the host states to maintain control of its resources and not be overburdened by the large numbers of refugees that they host. In the words of one writer, “host governments complain that refugees compete with locals for scarce resources such as land, jobs and environmental resources (e.g. water, rangeland or firewood), and overwhelm existing infrastructure such as schools, housing and health facilities. These concerns underpin the state’s rationale for keeping refugees in camps, where they can be assisted and managed by international refugee agencies.”³¹ In terms of international aid, refugee camps are supposedly good because “international assistance is concentrated and more easily accessible, and is usually seen as the only politically acceptable choice for governments when there are security problems in the region.”³² It seems as though the availability and distribution of assistance excuses the abuses of refugee rights that some researchers believe to come with the isolation of refugees.

One of the most expressed reasons that host governments when they are defending their actions in “warehousing” refugees is that they are providing security for the refugees as well as for the locals. “To warehouse refugees” is a term used mainly by USCRI to mean putting people in refugee camps where they live in similar conditions to objects in storage, with no ability to move freely. Host countries are afraid that if they integrate the refugees into local communities, the differences between the two groups will quickly cause tension that may cause instability. Moreover, the countries in which people seek refuge often argue that they are keeping them in refugee camps so that the local communities are protected from organized attacks by militias in

³¹ *Supra note 20.*

³² *Id.*, at 593.

the refugees' countries of origin. This was among the many reasons that were repeated to us as refugees. This is especially true in Africa, where most refugees come as a result of civil conflict.

To summarize this argument, author Karen Jacobson writes:

By containing combatants in their midst, camps are perceived by antagonistic forces, either in the country of origin or in the host country, as giving assistance and protection to their enemies, and are therefore targeted. Large numbers of combatants amongst the refugees can lead to camps becoming militarized, with accordingly increased likelihood of attack. In addition, the presence of combatants in camps undermines civilian authority and sources of law and order, and can lead to camps falling under the control of political or military elements. Refugees are then more likely to be deprived of their rights and otherwise subject to violence and intimidation.³³

In the majority of situations, refugees find themselves in countries that are not much better off economically than their home countries. As a result, host states are not able or willing to try to support refugees using their own resources. In 2011, Kenya was home to nearly half a million refugees in one camp alone, Dadaab Refugee Camp. Those numbers do not include thousands more in other camps and an additional estimated 80,000 refugees within the country's capital city of Nairobi. As far as the country is concerned, taking care of all of them would be impossible without the help of humanitarian organizations.

Across the border in Tanzania, the situation is not any better than that of its neighboring Kenya. Although Tanzania has worked closely with the United Nations Refugee Agency in recent years to repatriate the majority of refugees residing in the country, a large number still remains even after almost two decades since the last influx of Burundian and Congolese refugees arrived. The financial strain such an influx would have caused in Tanzania without the assistance of the international community would have been unthinkable for a country where the average citizen makes less than twenty dollars per month, according to a report published by the

³³ Karen Jacobson, *A "Safety-First" Approach to Physical Protection in Refugee Camps*, Care Academy, 2 (1999).

government.³⁴ It is with this in mind that some argue that hosting people in camps is the ideal solution.

Therefore, host countries rely on the international community to provide humanitarian aid, which often includes food, basic medical care and facilities, and clean water sources. Nationals of countries in which refugees reside more often than not have access to this assistance as well because they live near the camps. For instance, in Muyovozi and Mtabila camp, where the author lived and conducted research, local Tanzania people came to the clinics in the camp to seek medical attention. They would receive pain killers and vitamins just as any refugee who became ill would in the camp.

Finally, it is argued that camps can at certain times act as tools to encourage refugees to repatriate because host states have this “fear that if refugees are allowed to make lives for themselves, they will not go home again.”³⁵ Host states are afraid that making refugees comfortable will give them an incentive to stay for longer than they should or never repatriate at all. As a result, the hard conditions of life in camps are used as a way to show refugees that they should return to their countries and improve their lives there. This is considered refoulement and illegal based on the previously mentioned definition of non-refoulement. Additionally, a recent working paper found that “refugee policy in Africa is largely driven by convenience for humanitarian organisations and donor demands.”³⁶ While “host countries also have an interest in keeping refugees encamped, they fear that providing refugees with a larger degree of rights and

³⁴ Household Income, at <http://www.tanzania.go.tz/hbs/Final_Report_HBS_Ch09.pdf> accessed 10 November 2012.

³⁵ Tina Rosenberg, *Beyond Refugee Camps, A Better Way*, The Opinion Pages (2011), at <<http://opinionator.blogs.nytimes.com/2011/09/06/beyond-refugee-camps-a-better-way/>> accessed October 20, 2012.

³⁶ Svetlana Sytnik, *Rights Displaced: The Effects of Long-term Encampment on the Human Rights of Refugees*, Refugee Law Initiative (2012), at <<http://www.sas.ac.uk/sites/default/files/files/RLI/RLI%20Working%20Paper%20No%204.pdf>> accessed 20 November 2012.

freedoms would promote permanent settlement.”³⁷ Some of these arguments are valid, but there are other views that work more in favor of refugees.

B. Observations from Refugee Defenders

The other side of the debate has various arguments including security, respect for human rights, and resources brought to host countries by the presence of refugees. Often, it is argued that refugee camps make it easy for refugees to be targets of violence. As they live in isolated crowded camps, it is argued that perpetrators of violence can easily spot them. Some also report that refugees in camps are exposed to armed attacks.³⁸

Researchers and activists against refugee camps present the issue of violation of human rights. People in camps are denied the basic rights of a human being, such as freedom of movement, which is granted to refugees in article 26 of the 1951 Refugee Convention and in the International Covenant on Civil and Political Rights. They cannot leave the camps unless permitted to do so by host country authorities, and even in such cases, they have limited time to be outside of the camps. Without the freedom to move about in host societies, refugees are in situations where they cannot pursue their right to wage-earning employment as provided in article 17 or the right to self-employment from article 18.³⁹ Closing people in camps and providing them with the minimum services for survival leaves them no choice other than to be dependent and use international resources without doing anything to replace them.

Concerning the issue of resources, “restricting refugees to camps inhibits their utilization as productive economic actors, and their individual resources and skills will be less available to

³⁷ *Id.*

³⁸ UN High Commissioner for Refugees (UNHCR), *Note on Military and Armed Attacks on Refugee Camps and Settlements*, 1987, at <<http://www.refworld.org/docid/3ae68cce0.html>> accessed 7 May 2014.

³⁹ The United States Committee for Refugees and Immigrants explains how these rights are not respected by countries that use “warehousing” of refugees.

the host community.”⁴⁰ Refugees are often willing to participate in the economic activities of their host countries. When the option is given to them, they are willing to work hard to provide standard necessities to their families, even if they have to go far outside of the camps for work. People in the camp where my family and I lived did any jobs available in order to supplement rations provided by aid agencies. Items, such as soap, clothing, and kitchen ware, were purchased from salaries refugees were paid for farming, working as security guards, teachers to camp children, or even farmers for local Tanzanian citizens. The work they were able to do and the contribution they were able to make into the local economy was a significant benefit for surrounding communities. Most of earned income was funneled right back into the local economy, so much so that more and more Tanzanian vendors became small business owners and sold their items at the several weekly open markets that took place in the camp.

The flip side to the argument mentioned in the previous part of this paper about humanitarian aid works in favor of refugees. When host countries give refugees the freedom to live where they choose, much like it is done in Mozambique, people are able to enroll in school, acquire skills and work towards self-reliance while they still live in exile. If refugees continue to be perceived as nothing but a burden, nothing will be gained from their presence in their countries of refuge. Something that is clear in all refugee camp situations is how much the local community benefits from the presence of the refugees. The refugee system is set up so that international organizations respond immediately to any and all major influx of refugees to any host country. The solutions that are often taken include providing the refugees with basic needs. In most cases, these things are expanded and are also given to local citizens who are unable to access such services in their communities. Local people also benefit from doing business with the refugees both within and outside of the refugee camps.

⁴⁰ *Supra* note 3

One of the arguments in favor of refugees regarding the issue of refugee camps is that this system violates them twice.⁴¹ While they continue to be victims of the conflicts that made them flee their homes, they also become victims of the human rights violations that inherently come with the existence of camps. Lavinia Limón, the president of the United States Committee for Refugees and Immigrants, argues that any difficulty that could be caused by ending encampment would be a price worth paying because refugees would be free.⁴² In her view, which is shared by many in the refugee law field, allowing refugees to leave freely would not hinder the development or growth of the host states. One can argue that this perspective favorable to the respect of human rights is worth putting into effect. After all, the encampment method, which has been used for many decades now, has not proven to truly benefit host countries.

In contrast to the question of repatriation, refugee rights defenders have found that refugee camps do not necessarily encourage people to repatriate sooner than they would if they lived among the local community.⁴³ To the contrary, they will be more encouraged to go home if they have resources, such as some saved cash, to bring with them.⁴⁴ This is especially true for refugees who have built families while in exile. They do not believe that repatriation assistance will be enough if they no longer have land and homes where they came from.

⁴¹ *Supra* note 38.

⁴² *Supra* note 4.

⁴³ *Supra* note 36.

⁴⁴ *Id.*

IV. A Regional Assessment in the Treatment of Refugees

In conversations with resettled refugees, it is common to hear that people were not aware what a large-scale town or a city looked like before they arrived in their country of resettlement. This was most definitely the case for my family as well as for the people with whom I have met working with resettled refugees around the United States. This lack of experience with city life and the opportunities it might have to offer is due to the fact that many countries in Africa prefer the method of refugee camps when it comes to providing a home for refugees and many refugees come from rural areas in their countries. As previously mentioned, refugee camps provide very little in the way of life experiences. When refugees live in restrictive situations, they are often denied the opportunity to learn what exists beyond the walls of the camps.

In Tanzania, for example, Mtabila Refugee Camp, which was recently closed as people were asked to repatriate, was the only home the vast majority of its Burundian residents ever knew. Thousands of children were born in that camp and never left it until they were going to their country of resettlement or were being repatriated to Burundi. As a result of the practice of

refugee camps, the movements of refugees once they have settled in a host country are controlled. This prevents them from going to major cities in their countries of residence, which limits access to job opportunities. The lack of legal documentation, which will be elaborated below, also precludes refugees from being able to work near the living locations assigned to them.

A. Restriction to Refugee Camps and Its Effects on Refugee Employment

When studying the plight of refugees in Africa, the one thing that becomes clear is that the refugee movement is mostly reciprocal on the continent. People who are not forced to flee often go to countries that either have a history of producing refugees or currently have a number of refugees in another country. This phenomenon is not just in any particular part of the continent. Over the years, it has remained true for countries in all regions of the continent. For example, as of 2012, Chad is home to 288,700 refugees from Sudan.⁴⁵ At the same time, thousands of people from Chad continue to live in refugee camps in Cameroun after fleeing a civil war in 2008.⁴⁶ With this knowledge, it is easy to assume that countries would have become more accustomed to allowing refugees to settle and pursue a living like any other resident.

The reality of the matter is that refugee camps continue to be used to restrict refugees from getting to major cities or from attempting to integrate into local communities. When countries started using camps, it was believed that camps would be a transitional method to support those in need in emergency situations. Refugee camps were never intended to be a place where hundreds of thousands of people would live for decades. However, it has turned out that “nearly two-thirds of refugees in the world today – over six million people – are in protracted refugee

⁴⁵ *Supra* note 1.

⁴⁶ United States Committee for Refugees and Immigrants, *World Refugee Survey 2008 - Cameroon*, at <<http://www.refworld.org/docid/485f50c66c.html>> accessed 29 September 2013.

situations.”⁴⁷ Protracted situations are those where refugees have been in refugee camps more than five years “with no immediate prospect of finding a sustainable solution to their situation.”⁴⁸

According to the data available regarding refugee camps in Africa, many host countries on the continent have protracted situations which total to over three million people.⁴⁹ In 2001, researcher Jeff Crisp, who was working for the United Nations Refugee Agency at the time, reported the following numbers for Africa’s protracted situations:

- 400,000 Angolan refugees in Zambia and the Democratic Republic of Congo (DRC)
- 520,000 Burundi refugees in Tanzania
- 275,000 DRC refugees in Angola, Congo Brazzaville, Tanzania, and Zambia
- 325,000 Eritrean refugees in Sudan
- 210,000 Liberian refugees in Cote d’Ivoire, Ghana, Guinea and Sierra Leone
- 165,000 Sahrawi refugees in Algeria
- 150,000 Sierra Leonean refugees in Guinea and Liberia
- 300,000 Somali refugees in Djibouti, Ethiopia, Kenya and Yemen
- 450,000 Sudanese refugees in Central African Republic (CAR), Chad, DRC, Ethiopia, Kenya and Uganda

As of 2012, cessation clauses have entered into force for refugees from most of the countries above, including Angola, Liberia, Sierra Leone, Rwanda, Burundi, and several other countries.

This means that all people from these countries have ceased to have legal status as refugees, no matter where they find themselves – even in refugee camps. In the African context, the cessation clause allows countries to refuse to accept large influxes of people from countries who have enjoyed years of peace after conflict. This gives refugees a chance to seek job opportunities in their home countries upon return. However, the issue remains that while residing in host countries, individuals should continue to enjoy their right to seek gainful employment.

⁴⁷ Gil Loescher and James Milner, *Protracted Refugee Situations: Unlocking Crises of Protracted Displacement for Refugees and Internally Displaced Persons*, Forced Migration Review, No. 33, at <<http://www.prsproject.org/protracted-refugee-situations/>> accessed 1 May 2014.

⁴⁸ Lyn Snodgrass, David Mensah, Seeking Sustainable Solutions in Protracted Refugee Situations, *Africa Insight*, Vol 42, No. 1, June 2012, at <<http://www.ajol.info/index.php/ai/article/view/81178>> accessed 1 May 2014.

⁴⁹ Jeff Crisp, *No Solutions in Sight: the Problem of Protracted Refugee Situations in Africa*, The Center for Comparative Immigration Studies, No. 68, at <<http://ccis.ucsd.edu/wp-content/uploads/2012/07/wrkg68.pdf>> accessed 1 May 2014.

Since the restraint to refugee camps is the preferred method of hosting refugees, countries of refuge also insist on discouraging people from seeking opportunities even close to the camps. They fail to recognize the benefit of having additional human resources, who would, if given the chance, work hard to improve the communities in which they live. This is not only true for refugees who would seek professional employment and business. Those who were also farmers could help the local community maintain their farms for a small fee or for food from the harvest. In a few words, limiting people to a certain area of a country has not worked well for refugees or even for countries of refuge. This is what the next section intends to discuss, using some examples of areas in which particular African host states have made strides and aspects in which their efforts have been unsuccessful in helping local communities.

B. Current Regional Improvements and Setbacks

For refugees in Africa, the last few years have brought fear of being returned to their countries. This fear is based on the fact that many of the people living in camps have been there for years. For example, Dadaab refugee camp in Kenya is over 20 years old. The long stay, accompanied by economic hardship in host communities, leads governments to react negatively to refugees. In other words, refugee rights have become less of a concern for the member states involved in the movement of refugees around the continent. Most countries of refuge have grown tired and weary of what they see as the burden of taking care of hundreds of thousands of people who are added to their own citizens by the conflicts and disasters that do not seem to end. This sentiment has spread despite the fact that the majority of refugees are, for the most part, cared for by the international community through the United Nations Refugee Agency and other international organizations.

In human rights reports produced by governmental and non-governmental organizations alike, refugees are the least regarded when it comes to the protection of human rights. The 2012 United States State Department Human Rights Report, which addresses human rights violations in most countries around the world, provides a concrete summary of actions taken by host countries in regards to facilitating refugees' ability to seek employment. A look at a most of the African countries in this report shows that the common practice is to prohibit refugees from having the capability to look for jobs by designating where they live. Even in countries where the freedom of movement is provided, refugees still face difficulty finding work because they lack the legal documentation to prove that they can work in the countries in question.⁵⁰

One area in which nearly all countries in Africa have failed to make a step forward is in legal protection for refugee rights. According to refugee rights activist Barbara Harrell-Bond, most of the setbacks in the region are caused by a lack of legal aid for refugees.⁵¹ The international community barely funds legal services for refugees. Thus, even if their rights are being constantly abused, refugees are not able to understand or seek legal representation to resolve their problems. It is clear that this setback has impacted the ability for refugees to pursue work opportunities.

Another major impediment in the advancement of refugees in host states is the failure to recognize existing efforts made by refugees to become contributing members of their communities of refuge. From the South Africa to Egypt to Chad, refugees are not satisfied with being people who merely survive on international aid. They want to get involved in the local

⁵⁰ Bureau of Democracy, *Human Rights and Labor Country Reports on Human Rights Practices for 2012: Angola*, at: <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> accessed 1 May 2014.

⁵¹ *How can international protection of refugees be improved?*, Think Africa Press (2013), at <<http://thinkafricapress.com/legal/experts-weekly-world-refugee-day>> accessed 1 May 2014.

economy, which is why they often get in trouble with the law as they attempt to leave their designated areas without the legal authority to do so.

Despite the setbacks, many countries in Africa have also made progress in refugee protection. Even though very few countries have arrived to the ideal solution for refugees in their territories, nearly all African countries now have national policies that outline the guidelines for treatment of refugees. For example, the reports states that in Malawi,

the government allowed refugees to seek both employment and educational opportunities, although it restricted these activities outside the refugee camps. Refugees with professional degrees, especially those with medical training, were in previous years given work permits to pursue employment outside the camps. There remained some individuals, notably nurses and teachers, who were issued such permits in the past and remained employed based on them.⁵²

It is hard to tell when African countries will become fully committed to respecting the right to work for refugees. However, it is clear that efforts have been made.

⁵² *Supra* note 52, Malawi.

V. Country Cases: Kenya, Tanzania, and Mozambique

In eastern Africa, Kenya and Tanzania hold a reputation for having the highest number of refugees from the Great Lakes and the Horn regions of Africa. The vast majority of refugees in Kenya come from Somalia and the Sudan, while Tanzania is home to refugees mostly from its neighboring countries of Burundi, Rwanda, and the Democratic Republic of Congo.⁵³ Two countries, Kenya and Tanzania, host the three major refugee camps on the continent; Dadaab and Kakuma in Kenya and Nyarugusu in Tanzania. According to the UNHCR, the only remaining camp in Tanzania, Nyarugusu, hosts over 660,000 refugees, none of whom are allowed to work or move freely outside of the camp.⁵⁴ An additional estimated 50,000 refugees live in urban parts of the country, especially in the business capital of Dar-es-Salaam.

Reports from the same organization show that 630,000 refugees live in Kenya, and only 55,000 of them live in the city of Nairobi.⁵⁵ The two countries are also known for being the most restrictive when it comes to refugee movement within the country, as indicated by their low scores in the World Refugee Survey conducted by the United States Committee for Refugees and Immigrants in 2009.⁵⁶ This means that, in Kenya as it is in Tanzania, very few of the refugees have access to the outside world and are therefore closed off from any opportunities to access employment.

⁵³ UN High Commissioner for Refugees, *2013 UNHCR country operations profile – Kenya*, at: <<http://www.unhcr.org/pages/49e483a16.html>> accessed 1 May 2014.

⁵⁴ UN High Commissioner for Refugees, *2013 UNHCR country operations profile - United Republic of Tanzania*, at <<http://www.unhcr.org/pages/49e45c736.html>> accessed 1 May 2014.

⁵⁵ *Id.*

⁵⁶ *Supra* note 3.

The lack of human rights protection in Kenya and Tanzania is not unique to those refugees who live in camps. According to a report published in 2012 by the Oxford Monitor of Forced Migration, refugees and asylum seekers who reside in urban areas of these countries, especially in Nairobi and Dar-es-Salam, are not faring that much better than those who are in camps. This is mostly due to the fact that they are not legally recognized as refugees, which prevents them from being able to pursue opportunities that would improve their livelihood.⁵⁷ In order for host countries to reinforce their stance on restricting refugees to camps, where they believe they can be better controlled, refugees who want to live in urban areas are often mistreated by both government officials and by residents who are afraid increased numbers of refugees will threaten their access to resources.⁵⁸ As a result, the refugees who would otherwise do well among local citizens find themselves returning to refugee camps where they at least have recognized legal status. Stepping out of the refugee camp setting goes against host countries' legislations, which often results in their illegal status.

In the southern part of Africa, particularly in Mozambique, refugee situations are a little more hopeful. The political and economic situation in this part of Africa is often more stable than it is in the east and the horn of Africa. The main concern for refugees in the southern region of the continent is the xenophobia that accompanies a large influx of people into the countries. Even so, this has not proved to be a large concern for refugees in Mozambique because a lot of people there are familiar with the situation that people have to face when they became refugees.

⁵⁷ Christian Pangilinan, *Implementing a Revised Refugee Policy for Urban Refugees in Tanzania*. Oxford Monitor of Forced Migration (2012), Volume 2, Number 2, at <<http://oxmofm.com/wp-content/uploads/2012/11/Pangilinan-FINAL.pdf>> accessed 1 May 2014.

⁵⁸ *Id.*

A. Comparative Study of Refugee Legislations

Like most African countries, the above host countries have adopted refugee legislations that provide guidelines to be used in offices, courts and communities. The adopted legislations establish offices in which matters regarding refugee populations are to be resolved, as seen in Kenya and Tanzania. For the most part, however, these guiding laws are slight modifications of previous refugee laws that were “intended to control rather than to protect refugees.”⁵⁹ For instance, Kenya and Tanzania continue to operate on laws that do not allow refugees to live outside of refugee camps except for special circumstances. Such special circumstances may include serious medical emergencies, but there sometimes are cases of illness that are not granted this special permission to exit the camp. Mozambique, on the other hand, has no such restrictions. This is the case especially for students who want to obtain higher education in the country.⁶⁰ Students and professionals are also allowed to seek employment outside of the refugee camps.

There are three main reasons why I chose to focus on refugee legislations in Kenya, Mozambique and Tanzania. First, all of these three countries host significant numbers of refugees originating from various regions of Africa. The laws established in the selected countries affect the present and future of not only their citizens and refugee communities, but also that of the various countries of origins of the refugees in these contracting states. Once refugees repatriate, their education and employment experiences become valuable in the reintegration process in their home countries. Second, the selected countries have higher

⁵⁹ *Supra note 18*. P. 50.

⁶⁰ UN High Commissioner for Refugees Global Appeal 2011, at <<http://www.unhcr.org/gal1/index.html#/home>> accessed 7 May 2014.

education systems that are intended to welcome all students who qualify, in accordance with national education laws. This means that even refugees who have the financial means to do so should be able to obtain higher education credentials. The issue of access to financial resources is not addressed uniquely for refugees because it is one that members of the local communities also face. Finally, although all of the selected countries have legislations guiding the management of refugee populations, the three legislations differ significantly in terms of education. Kenya and Tanzania are much more restrictive while Mozambique is open in terms of educating refugees. This allows for an analysis for best practices when it comes to implementing national refugee laws in regards to the right to seek gainful employment.

1. The Refugee Act of 2006 in Kenya

As one of Africa's comparatively peaceful and stable countries, Kenya is a safe destination for thousands of African refugees. The majority of those seeking a safe haven in Kenya are from Somalia and Sudan, which continue to face severe instability. Most of the Sudanese and Somali refugees in Kenya live in Dadaab and Kakuma refugee camps, both of which are located in nearly uninhabitable remote areas of the country.⁶¹ Kakuma refugee camp alone hosts over 80,000 refugees since 1992.⁶² In addition, Kenya also hosts refugees from Burundi, Ethiopia, Rwanda, and the Democratic Republic of Congo, the majority of whom are living in urban areas of the country.

Refugee law in Kenya is contained primarily in the Refugee Act of 2006, which was adopted as a result of several years of intense advocacy and lobbying by the Refugee Consortium of Kenya (RCK) as well as other human rights groups. The RCK is a human rights organization

⁶¹ Eva Ayiera, *Bold Advocacy Finally Strengths Refugee Protection in Kenya*, *Forced Migration Review*, No. 28

⁶² *Kenya: JRS Gives Refugees Access to Higher Education*, at <<http://reliefweb.int/node/391719>> accessed 1 May 2014.

that was established in 1998 to advocates on behalf of refugees in Kenya. The Kenyan Refugee Act of 2006 repealed a previous legislation, which was believed to be more to restrict and control rather than to protect refugees. In other words, it was used to force refugees to stay in designated areas without any possibility of seeking business or work opportunities in cities and communities neighboring camps. Although the Refugee Act of 2006 still controls most aspects of refugee life, it has improved in terms of establishing and providing space in which refugee matters can be resolved. According to the Act, a Department of Refugee Affairs was established to take on the responsibility “for all administrative matters concerning refugees in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees.”⁶³ One of the duties of this office is to “manage refugee camps and other related facilities.”⁶⁴ They are to ensure that refugees do not leave ‘designated areas’ unless given permission to do so by government officials assigned to work in the refugee camps.

While the Refugee Act does an excellent job of laying out the rules for those in charge of refugees, it does not adequately address the need to give refugees their right to work. Section 16, Paragraph 4 mentions “Subject to this Act, every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.”⁶⁵ It is unclear whether this statement can be implemented considering the fact that this same Act requires refugees not to leave their designated areas unless provided passes. The Act grants Refugee Officers the authority to “issue movement passes to refugees wishing to travel outside the camps.”⁶⁶ However, it does not go into detail about what circumstances may allow refugees to obtain such passes.

⁶³ *Kenya Refugee Act of 2006*, Section 6, Para. 2

⁶⁴ *Id.*

⁶⁵ *Id.*, Section 16, Para. 4

⁶⁶ *Id.*, Section 17, f.

In practice, refugees in Kenya have been subjected to arrests as a result of being outside of refugee camps without documentation and increasing tension between refugees and Kenyans.⁶⁷ The Refugee Act does not give provisions on how many days the passes given to refugees to leave their designated areas can last and passes are typically only given when there is a serious medical emergency. This reality does not allow for refugees to seek employment opportunities.

2. The Refugee Act of 1998 in Tanzania

No asylum seeker or refugee shall be allowed to leave a designated area as directed under this section unless he has (5) (a) sought and obtained a permit from the Director or Settlement Officer as the case may be, and, subject to such terms and conditions as the Director or Settlement Officer may, prescribe in the permit (*No. 9, 5, a*).

(3) The Minister in consultation with the Minister responsible for education as regards secondary education and in consultation with the Minister responsible for higher education other than secondary education shall make rules prescribing- (a) fees; (b) categories of schools, colleges or Universities a refugee student can be enrolled and (c) prescribing any matter that may need to be regulated for purposes of better and effective implementation of this section.

Sections 16 through 21 of the Tanzania refugee Act of 1998 are dedicated to designated, restricted areas for refugees. Mtabila refugee camp is the designated location of focus for Tanzania in this section. This camp is located in the Northwestern region of the country and it was recently considered home to 38,050 refugees, according to an article published in August 2012 by the International Refugee Rights Initiative and Rema Ministries.⁶⁸ Refugee law in Tanzania makes it clear that refugee camps are the only acceptable spaces of residence for refugees. Section 17 discusses the setting up of offices established to administer refugee areas, much like the Department of Refugee Affairs in Kenya.

⁶⁷ Mathias Mbisu, *Kenya: Rising Xenophobia Affects Refugees in Nairobi*, Jesuit Refugee Services Report, at http://www.jrs.net/campaign_detail?TN=PROJECT-20130509023342 accessed 1 May 2014.

⁶⁸ International Refugee Rights Initiative and Rema Ministries, *An Urgent Briefing on the Situation of Burundian Refugees in Mtabila Camp in Tanzania*, at <http://reliefweb.int/sites/reliefweb.int/files/resources/Mtabila%2520FINAL.pdf> accessed 22 October 2012.

The Officers selected by the Minister of Interior must regulate the designated areas in accordance to the 1998 Refugee Act. That means that refugees have rights and can seek them much like any other non-citizen in the country even though they are restricted to refugee camps. This contrast of law on paper that differ greatly from implemented systems causes practical problems that will be discussed in a later section, where I will talk more about the debate about whether refugees are of benefit to their host country and how.

Section 31 of the Act discusses education for children as well as adult refugees. While the legislation insists that all refugees reside in camps, it also provides that “every refugee child shall be entitled to Primary Education in accordance with National Education Act 1978 and every refugee adult who desires to participate in adult education shall be entitled to do so in accordance with the Adult Education Act.”⁶⁹ In essence, education is open as long as refugees are educated with the means available to them within those areas in which they are allowed to live. This provision as well as the ability to seek higher education is an important benefit for refugees because it could benefit them in searching for employment.

In regards to employment, “any refugee who works or engages himself in any activity without permit, will be committing an offence under this Act, and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a period not exceeding three years or both fine and imprisonment.”⁷⁰ In other words, refugees are forbidden to take action to provide for themselves and their families. As it is the case in most other countries, those in Tanzania are expected to survive only on the humanitarian aid provided by organizations, unless one acquires a permit. However, there is not a sure way for refugees to get this permit to work because no matter what, they are legally required to live in refugee camps.

⁶⁹ *Tanzania Refugee Act*, Section 31, Para. 1

⁷⁰ *Id.*, Section 32, Para. 4

3. The Refugee Act of 1991 in Mozambique

The Refugee Act of 1991 in Mozambique is the legal legislation guiding the existence of all refugees in the country. The legislation states that “the refugee shall enjoy any rights not applicable to aliens in general which arise out of the United Nations Convention of 28 July 1951, the additional Protocol thereto of 31 January 1967 and the OAU Convention of 10 September 1969, subject to the reservations made by the Republic of Mozambique.”⁷¹ As it is expected of all countries that have ratified the above mentioned documents, Mozambique recognizes that refugees should be treated fairly and with respect in regards to their human rights as people who are in exile because they fled dangerous situations caused by no fault of their own in their home countries.

According to UNHCR, Mozambique’s total population of concern is over 13,000, which includes nearly 4,500 refugees. Despite the fact that Mozambique hosts a smaller number of asylum-seekers compared to Kenya and Tanzania, the international community recognizes that Mozambique is one of best countries in terms of accepting the responsibility of and promoting refugee rights. The United Nations Refugee Agency recently noted that “of the 7,700 refugees and asylum-seekers in Mozambique, 4,750 live in Maratane refugee camp in Nampula Province and the remainder in various urban centres. They come mostly from Burundi, the Democratic Republic of Congo, and Rwanda. Many passed through refugee camps in Malawi, Tanzania, and Zambia before arriving.”⁷² In cases where refugees have lived in other countries, they often choose to settle in Mozambique because it is where it offers refugees a venue to pursue their professional goals.

⁷¹ *Mozambique Refugee Act*, Article 5, Para 2

⁷² UN High Commissioner for Refugees, *2011 Regional Operations Profile – Southern Africa*.

Unlike Tanzania and Kenya, Mozambique maintains an open policy for refugees. Mozambique provides agricultural land and allows refugees the freedom to live, work, and integrate wherever they feel the most comfortable in the country, with the exception of Maputo.⁷³ Although it is unclear why Maputo is not considered open to refugees, it seems that this decision came as a result of the fact that assistance is not readily available for those who choose to live in the capital city. According to a recent publication, there is a number of urban asylum seekers and refugees residing in Maputo.⁷⁴ This is something that should be celebrated because it goes many steps beyond the norm on the African continent. The ability for refugees to have their own land to farm gives them a source of livelihood that is rare in such situations. In Article 12, the southern African host country even goes as far as allowing refugees to seek naturalization.⁷⁵ This is a provision that gives refugees in Mozambique hope for a better future, whether or not they choose to repatriate. It is also a provision that is not seen in many other national laws for refugees, especially not in Kenya and Tanzania.

In fact, refugees in Mozambique are allowed to study anywhere in the country as long as they have the funds to do so and meet all academic requirements of the schools in which they seek admission. In fact, I know several people who left the refugee camp in Tanzania to seek a better life in Mozambique. They have now completed university education and the majority of them have fulfilling employment in their field of study. Thus, it is clear that in Mozambique, refugees are able to seek employment and fulfill their wish to be self-reliant upon completion of educational programs. This openness has permitted complete integration in the host country and has also provided the majority of refugees in Mozambique the opportunity to gain and rely on

⁷³ *Id.*

⁷⁴ Dorota Antoniak, *Mozambique: A Refugee Sending Country Turned Host*, Fahamu Refugee Legal Aid Newsletter, at <<http://frlan.tumblr.com/post/30649640450/mozambique-a-refugee-sending-country-turned-host>> accessed 1 May 2014.

⁷⁵ *Supra note 74*, Article 12, Para. 2

their own skills and knowledge for personal growth and development. This allows for reduced levels dependency on humanitarian organizations who support refugees and reduces the burden on the host country.

B. Current National Improvements and Setbacks

“This is the only such programme here. I am very happy to participate in this programme. Life in a refugee camp is very difficult without access to further studies. Now that I study I know that I will be of use for my community in the future”, said Bol, a Sudanese refugee who came to Kakuma nine years ago and signed up for the diploma course.⁷⁶

In national refugee laws, especially in Kenya and Tanzania, there seems to be noticeable discrepancy between what is allowed for refugees in international and national law and what is expected of them in real life. Especially in regards to employment, it is inconsistent to provide refugees the right to work and require them to stay in refugee camps in the same legislation. From the experiences I have known, being restricted to refugee camps causes refugees to miss out on opportunities that would otherwise help them become self-sufficient and support their families. Without access to employment outside of camps, refugees are set to depend on international aid with no hope of ever relying on their own skills. The biggest setback for refugees in such cases is based on the nature of their restricted movement.

Although the provision of rights for refugees is still unsatisfying, the three countries that are studied in this section have all seen improvements in the last few years due to the advocacy work of various local and international organizations and refugees themselves. I have already mentioned the Refugee Act of 2006 in Kenya, which resulted in a working management system for refugee matters. One can argue that this Refugee Act has also opened room for dialogue about the needs of refugees residing in Kenya, especially those in refugee camps. As a result, various organizations have been able to move forward with plans to help refugees improve their

⁷⁶ *Supra* note 22.

chances of accessing training programs and employment. This will be discussed further in the next section.

For a few years now, Samasource has been working in Dadaab, Kenya to help refugees earn an income to help themselves and their families. Samasource is a not for profit organization that gives dignified work in the vastly advancing technology field to marginalized people around the world. The organization takes advantage of available technology, such as internet connection and mobile phones, to provide refugees a chance to make a living without leaving their designated areas. Although there are many more people than Samasource can provide work, this is a start in a country where refugees are expected to survive merely on what is provided to them by the international community.

Opportunities like this open doors for refugees that have been closed to them for as many years as they have lived outside of their countries, which in most cases can be up to two or more decades. Organizations like Samasource that work with refugees towards self-sufficiency not only help refugees but also give host countries a window to correct their restricted behavior when dealing with refugees. When host countries accept the opportunities presented by organizations who bring self-sufficiency services to refugees, the countries also earn a good name and are applauded by the international community. In most cases, this is one of the reasons why some countries are willing to improve their refugee situations.

A program like Samasource does not exist in Tanzania for refugees who live in refugee camps. However, in 2010, the country started a process of naturalizing refugees who have been in the country for many decades, many of whom arrived in 1972 after fleeing a civil war in Burundi. Over 120,000 Burundian refugees who were settled in Western Tanzania were given citizenship two years ago, allowing that many more people to gain skills and knowledge through

work training programs and have access to employment opportunities.⁷⁷ Tanzania became a regional as well as an international example when it chose to take this step. Although there is a history of African host countries allowing refugees to settle in their territories, the recent decision by Tanzania to give citizenship to such a large number of people stands out in recent memory. This move has shined light on Tanzania, despite its restrictive practices against refugees who live in designated areas.

For Tanzania, preventing people to access work in and outside of the refugee camp continues to be a setback. According to refugees living in Mtabila refugee camp, all primary schools in the camp have been closed since 2008, leaving thousands of teachers without jobs and without means to support their families. This is also the case for secondary education and most of the clinics in the camp. As a result, there is no access to any sort of employment to those refugees who are left in Mtabila refugee camp even though the country's legislation provides these rights in its agreement with international refugee law. Additionally, food supplies, which were usually provided by the United Nations Refugee Agency and other international organizations, have been greatly reduced for many years.⁷⁸ This caused great concern for the future of refugee families in Tanzania.

⁷⁷ UN News Centre, *UN agency lauds Tanzania's move to naturalize '1972 Burundian refugees*, at http://www.un.org/apps/news/story.asp?Cr=burundi&Cr1=&NewsID=34388#.U2m94kLD_IU accessed 7 May 2014.

⁷⁸ *Supra* note 54.

VI. Recommendations

From the various situations that have been discussed in this thesis, it is clear that holding people in restrictive refugee camps, where they find themselves living for several decades at times, is not a good solution for the refugees, the host countries, or for the international community.

People who would otherwise develop new skills or use the knowledge they have already acquired prior to becoming refugees to contribute to the economy of the host countries are left to be completely dependent on international humanitarian aid.

It is also quite contradictory for the host countries to become signatories of legal instruments, such as the African Convention, and to pass legislations that provide certain legal rights to refugees while also maintaining the violation of human rights that automatically comes with the existence of restricted refugee camps. It is with this knowledge that the following recommendations are made to encourage better treatment of refugees, especially concerning respecting their right to work.

A. Find a Solid Balance for Refugee Camps and the Local Community

The first recommendation is based on the argument that refugees are often a financial burden on their host countries. The aspect of refugee life that is often ignored when making such statements is that refugees are people who usually flee their countries leaving behind very successful lives as teachers, businessmen, chefs, and farmers to become new residents in communities they hardly know. Even the individuals who had no education or office job prior to their flight are usually experienced farmers. Such people should not be considered a burden to their community of residence. With the right balance between refugee camps and community integration, they can bring much more to their host countries than they take away. In a world where most host states seem to be hesitant to integrate refugees within their communities, it is worth considering creating unrestricted refugee communities close enough to their hosts so that they can develop a mutually beneficial relationship.

In order for this to happen, host countries should consider locating refugees in areas where they can access local resources in order to take advantage of the opportunities available in the community. In Tanzania for instance, it would have been valuable for everyone involved if refugees had been residing near a small town, such as Kigoma in Western Tanzania, where they could obtain vocational training based on the needs of the community. The easy access to local resources would also give those who have work experience the opportunity to seek employment near location of residence. With this solution, host countries would be able to maintain certain authority over where refugees live while at the same time allowing them to utilize their skills and experiences to contribute to their host communities.

Another benefit from this solution is that it would reduce the level of dependency refugees have on the international community. Those who make arguments for restrictive refugee camps seem to ignore the fact that donor countries must use funds to continue providing for the millions of displaced people around the world. Those funds could be used not only to help refugees, but to also support neighboring communities, at least in part. Refugees and citizens alike would benefit much more from their own hard work to earn a living and support their own families than from continuing to depend of insufficient assistance. In a sense, this would be the ideal situation for the international community as a whole, host countries included.

B. Provide Training Opportunities and Work Authorization

Almost everyone the author has known who has ever lived in a refugee camp would have liked to enjoy the satisfaction that comes with working hard to make one's dreams become reality. Unlike the commonly spread misinformation that refugees are lazy people who only want to benefit from humanitarian aid, the truth of refugee life is that refugees are among the most hard working, resilient, and patient people in the world. Anyone who has ever been to a refugee camp knows how innovative people there have to become to be able to stay alive. Host states ought to take advantage of the best that refugees have to offer by providing work permits to participate in local business and allowing those with work experience the opportunity to seek employment so that they are able to diversify the knowledge pool of their host communities. Refugees are capable of becoming productive members of society, if given the chance.

It is hard to imagine an African country that does not need skilled professionals to help improve the workforce. With the spirit of community that is currently spreading around the continent by forming regional groups, such as the East African Community, one would think that a skilled professional from the Democratic Republic of Congo would be beneficial to his or her

Tanzanian residence, for instance, while living there as a refugee. If this is ever going to be the case, there has to be new refugee specific legislations allowing skilled refugees to apply for and obtain employment authorization from their host governments. This can only happen if these work permits are not restricted to refugee camps.

Kenya is one of the few countries that has made a small step towards this solution, even though the requirements of obtaining such privileges is still very limiting for those who live in refugee camps. According to a report published in 2011, conventional refugees who live in urban areas, usually in Nairobi, are allowed to apply for business and permits as long as they are able to provide letters of recognition from UNHCR or the Department of Refugee Affairs. The country is also on its way to promoting higher education for refugees as it opens a new university in Dadaab refugee camp, which hosts about a half million people who most came from Somalia.

With this new door being opened for refugees, it is to be expected that those living near the university and are able to attend in the different fields of study will eventually work to contribute financially into their host communities. Since no one knows when refugees actually get to go back to their countries, it is wise to allow them to become integrated enough to become resources for those around them, where they are during their time in exile. Unfortunately, common practice remains that providing employment opportunities to refugees would be a burden to the host countries and their citizens.

From the experiences I know in refugee camps, working is one of the few things people wish they could have but know it is not accessible for as long as they are called refugees. One can see for instance that when refugees get the opportunity to go to a third country through resettlement, they are eager to work in any available position, as long as it provides them even

the smallest amount of pay to help take care of their families. It would be no different for those living in refugee camps.

C. Adapt Strategic Planning of Humanitarian Responses to Consider Protracted Situations and Refugee-Centered Solutions

As seen throughout this thesis, host countries and the international community have, for long time, used refugee camps to ease the provision of humanitarian assistance. When a conflict breaks out, many countries come together to try and find the best way to respond to the situation. In many cases, such conflicts result in influxes of refugees that flood into neighboring countries. The current strategy for responding to such situations is providing emergency assistance. As explained before, the response given to refugees only addresses short term concerns, rather than looking at what can be done to plan for the long-term well-being of refugees in which, preferably, the refugees themselves are involved.

In 2003, Shelly Dick wrote an article called *Changing the Equation: Refugees as Valuable Resources rather than Helpless Victims*. In this article, she writes:

given that many refugee situations become protracted, it would in many cases be more cost effective to plan reactive assistance programs with long-term development strategies in mind rather than indefinitely maintaining expensive relief programs originally intended for the short-term. In an ideal scenario it would seem advisable for UNHCR to plan an exit strategy for relief programs that is agreed upon by the host government and clearly articulated to all stakeholders, including refugees. Refugees would likely require relief assistance for the first months of their exile in order to get back on their feet. But long-term assistance programs should be designed with the goal of preparing refugees to become productive residents of the host country, contributing to rather than depleting and exhausting resources and services.⁷⁹

⁷⁹Shelly Dick, *Changing the Equation: Refugees as Valuable Resources Rather than Helpless Victims*, The Fletcher Journal of Human Security, Vol. 18 (2003), at <<http://fletcher.tufts.edu/Praxis/Archives/~media/Fletcher/Microsites/praxis/xviii/Dick.pdf>> accessed 1 May 2014.

Adapting the international community's response to refugee needs would require several necessary changes in the way assistance is provided. It would also require a change of mindset for all stake holders, including donor countries, humanitarian agencies, host countries, as well as refugees. Many refugee right supporters, including the author who is quoted above, strongly believe that a development approach to refugee aid would give them a window to become self-reliant while also benefiting the communities in which they live. Although this approach would require making changes in the mandate of the main refugee organization, UNHCR, the outcome would be significant and very much welcomed by refugees who strive want to live a life free of aid dependence.

The main concern with this recommendation is that host countries are not likely to be receptive to any form of refugee protection that dispels the norm of using restricted refugee camps as this is their means of controlling refugee movement. To address this, donor countries and the entire international community would be tasked with convincing countries of refugee that allowing refugees to seek employment and become self-sufficient would benefit their countries along with the refugees. While there are several ways to move toward resolving this concern, perhaps one of the most attractive to host countries is the idea that refugees who are satisfied with the direction their lives are taking are less likely to become a security concern in their communities.

Once host countries have come on board with the idea of creating a community of refugees who do not merely depend on international aid, there are several means to ensure that self-reliance is reached in practice. Programs that could facilitate the necessary changes include "vocational skills training, loan programs, livestock and poultry projects, adult education, care for vulnerable refugees, AIDS awareness programs, environmental protection programs, and

other community initiatives.”⁸⁰ All of these are programs in which local host country citizens could easily benefit.

More than anything else, refugees need to be included in the process of finding suitable solutions for their plight. It is not enough to continue using the existing ‘durable solutions’ because even with their existence, the number of refugees and forcibly displaced people continues to rise. If the international community is not able to find a solution to the problems that cause this predicament, a new system should be created that allows refugees to be more than mere recipients of aid.

D. Improve and Implement Regional Mechanisms for Refugee Protection

As I mentioned earlier in this thesis, refugee protection worldwide has been left to the United Nations Refugee Agency, UNHCR. Although many organizations are often involved in meeting the needs of refugee populations, the UNHCR implements rules and regulations based on the 1951 Refugee Convention. For instance, refugee camps in Kenya, Mozambique, as well as Tanzania, have always been run by the United Nations. Even though the African Union has a refugee Convention that was written specifically to meet the needs of African people, UNHCR uses both the United Nations Convention of 1951 and the African Convention when dealing with regional refugee situations.

This is cause for concern because the 1951 Refugee Convention is in many ways no longer effective for the refugee situations of today as it does “not address mass forced displacement and make[s] no mention of camps.”⁸¹ While the African Convention is far from perfect, it does cover refugee protection for those who flee their countries in large groups as a

⁸⁰ *Id.*

⁸¹ *Supra note 19.*

result of internal events that seriously and negatively affect public order. In seeking solutions to the plight of those who are forced to live in camps in Africa, the international communities must then focus on improving and implementing the legal instruments that do address the concerns of regional refugee problems. In this case, the African Convention alone should be the central guide in the world's efforts to find solutions for the problems that refugees in the region are facing. Although this will likely not resolve every single problem, it will at the very least address the issue of refugee who live in pending situations for decades in camps with no access to employment opportunities that could better their lives.

E. Build Spaces of Hope for Children to Learn and for Adults to Inspire the Future

Anyone who has ever been to a camp knows the standard scene: very small mud houses that are built a few feet from one another and are usually covered by UNHCR-marked plastic sheeting, school houses that are crammed with as many children as are able to fit in each classroom, dirt walking paths that lead to central ration distribution areas, hundreds of adults and children curiously watching as visitors walk through their camp. One thing that is common on many refugee camps is that what you see inside the camp is everything that the children who live there have seen in their entire lives. Refugee children hardly ever have a chance to explore the world beyond the very closely monitored borders between the camp and the local host communities. To make matters worse, it is often the case that refugee children in camps have never been to their own countries. In places where refugee situations are protracted, it may be the case that can lead to two or more generations of people who have never experienced life outside of a camp. As a result, any hope that the children may have for a better future is crushed by the situation in which they find themselves.

However, this does not have to be the case, whether someone is in a refugee camp or is living among the local community. Affording parents the right to work takes them towards self-sufficiency, but it also does something even more significant for the children. Being able to see their parents' hard work and ability to provide inspires the children to build a better future for themselves. In the short term, host countries will benefit from the parents' economic contribution as participating members. In the long term, the children will continue to strive to build an economically stable future. For many of the refugees I have known, this has been true for families. Those whose parents were afforded the opportunity to work hard in the camps have been more likely to also succeed in their own lives.

Additionally, the resources that are spent on children's education in camps would be much more significant if they were able to practice what they learn. There is usually a push for children to be educated, even though camps often do not have university level education. However, students have no space to take up apprenticeships or find part time work to practice what they study. This creates a cycle in which people continue to be dependent on aid, rather than support themselves. Giving refugees the freedom to access their right to work is a step forward for anyone who believes that every human deserves to live a dignified life.

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