



The Integration and Protection of Refugees for a Durable Solution in Tanzania¹

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Abstract: This paper examines the laws and policies to host refugees, promote their rights and integrate them in Tanzania. Individuals flee their countries of origin due to wars, persecution, violation of human rights, environmental disasters or climate change. Refugees receive protection in their host countries, and they cannot be forcibly repatriated to their countries of origin against their will. Tanzania has enacted laws and made policies to protect refugee rights on its territory. Since its independence, Tanzania has exhibited generosity in receiving refugees from its neighbouring states and southern African countries. Refugees live in specific areas with limited freedom of movement. Tanzania has naturalised some refugees from Rwanda, Somalia and Burundi to provide durable solutions to their plights. However, Tanzania has changed its policies towards refugees and has engaged in forcibly repatriating some refugees from Rwanda and Burundi. Tanzania must re-evaluate its current laws and policies on refugees to ensure that refugees and asylum seekers are adequately protected. Furthermore, refugees need to find a durable solution to their plights.

Keywords: refugees; asylum seekers; refugee rights; naturalization; forced repatriation

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1. Introduction

The problem of refugees is a global phenomenon and “it is not getting smaller” (Peter, 1997, p. 81). As a result, states have enacted statutes and adopted policies to accommodate refugees in their territories. Under international law, every state has a duty to protect its citizens, and failure to do so can lead some of its people to flee and seek asylum in other states (Peter, 1997, p. 84). The country of asylum often offers protection to refugees and asylum seekers and the United Nations High Commissioner for Refugees (UNHCR) intervenes to ensure that the rights of such refugees and asylum seekers are protected (Peter, 1997, p. 84; Goodwin-Gill, 1982, p. 292). For instance, Tanzania is one of the states that have warmly welcomed refugees in their territories.

South Africans sought asylum in Tanzania, which practically became their second home (Peter, 1997, pp. 85-86; Williams, 2015, pp. 223-238). In addition, Tanzania also received an influx of refugees fleeing from ethnic discrimination from Rwanda and Burundi (Peter, 1997, p. 86). Due to the generosity displayed towards refugees, the UNHCR awarded the Nansen Medal in 1983 to President Julius Nyerere in recognition of his service to refugees (Mendel, 1997, pp. 35-36; Chaulia, 2003, p. 147; Gasarasi, 1990, p. 108; Ongpin, 2008, p. 13; Hartling, 1983). The Nansen Award is presented to an individual or organisation exhibiting a distinguished tolerance and hospitality towards refugees (UNHCR, 2018). The greatest challenges for refugees and asylum seekers are to find asylum in the host country and obtain a durable solution to their problems. Tanzania enacted statutes and adopted policies to accommodate and manage refugees. This article analyses the statutory interventions to protect refugees, including the War Refugee (Control) and Expulsion Ordinance, Refugees (Control) Act, Refugees Act, naturalisation of Rwandan, Somali and Burundian refugees and forced repatriation of refugees in Tanzania. The naturalisation of refugees in Tanzania needs further improvements to achieve their durable solutions.

2. Statutory Interventions to Protect Refugees in Tanzania

2.1. War Refugee (Control) and Expulsion Ordinance, 1946 (chapter 40)

The War Refugee (Control) and Expulsion Ordinance 1946 was the first legislation dealing with refugees in Tanzania. This law was enacted in 1946 and administered by the colonial government until it was repealed in 1966 (Mahalu, 1988, p. 39). Tanzania enacted a new statute in 1966 to accommodate new refugee situations,

especially from neighbouring countries in the Great Lakes Region and southern Africa (Mahalu, 1988, p. 40). Tanzania welcomed many refugees from Rwanda, Burundi, South Africa, Zimbabwe and Mozambique.

2.2. Refugees (Control) Act, 1966

The Refugees (Control) Act did not entirely comply with the international refugee regime, but it aimed at making provisions for controlling and administering refugees in Tanzania (Refugees (Control) Act 2 of 1966; Mahulu, 1988, p. 40). Peter argues that the Refugees (Control) Act “has been characterised as the most comprehensive and detailed refugee legislation in Africa” (Peter, 1997, p. 86; Novel, 1982, p. 269). Section 3(1) gave the Minister of Home Affairs the power to declare, by order published in the Government Gazette, any class of persons who were, or prior to their entry into Tanzania, had been ordinarily resident outside Tanzania to be refugees for the purpose of the Act. This provision assisted in dealing with the mass influx of refugees where it was impossible to make individual determinations or assessments for asylum. The statute provided for reception areas and refugee settlements (section 4 of the Refugees (Control) Act 2 of 1966). Section 4(1) gave the Minister the power to declare any part of Tanzania an area for the reception or residence of any refugees or category of refugees. Furthermore, the competent authority had the power to establish in any reception area a refugee settlement for refugees or any category thereof and could appoint a settlement commandant to be in charge of such a settlement (section 4(2) of the Refugees (Control) Act 2 of 1966). All these measures ensured the control and management of refugees in Tanzania.

However, refugees experienced challenges regarding their properties brought to Tanzania (sections 6, 7 and 8 of the Refugees (Control) Act 2 of 1966). For instance, they had to surrender any arms or ammunitions in their possession to authorised officers (section 6(1) of the Refugees (Control) Act 2 of 1966). This provision was made for security reasons to prevent refugees from attacking their own countries or any other country. The detention and slaughter of animals that belonged to refugees were common practices (section 7(1) of the Refugees (Control) Act). Competent authorities could order that any animal imported into Tanzania by a refugee be kept in a specific area, slaughtered or otherwise disposed of. The competent authority had to compensate refugees for their animals sold and they could receive the proceeds of the sale minus the expenses (sections 7(2) & (3) of the Refugees (Control) Act). If the purchase price was not paid to the animal’s owner, it was deposited into a fund to benefit refugees. The competent authority or an authorised officer could possess

or detain vehicles belonging to refugees and use them to move refugees or any stores or equipments for their use (section 8 of the Refugees (Control) Act 2 of 1966). Therefore, the authorities did not respect the ownership of refugee properties.

The Minister, or any competent authority appointed by the Minister, could order any refugee to return to the territory from which he or she entered Tanzania. A court could also order the deportation of a refugee to the country from which he or she entered Tanzania. However, the Minister, the competent authority or the court could not make any order if they were of the opinion that such a refugee would be tried or punished for an offence of a political character or would likely be the subject of physical attack in the territory he or she came from (section 9(1), (2) & (3) of the Refugees (Control) Act 2 of 1966). This ensures that the Tanzanian government respects the principle of non-refoulement in refugee matters.

Refugees needed permits to remain in Tanzania. Every refugee who came to Tanzania had to apply for a permit to stay within seven days of his or her arrival. Authorised officers had to deal with applications to remain in the country and grant it to qualifying individuals with annexed terms and conditions that such a refugee had to respect. A refugee who failed to obtain a permit to stay in the country was subjected to immigration law and his or her presence became unlawful (section 11(1) & (3) of the Refugees (Control) Act 2 of 1966).

Refugees were required to reside in a reception area or refugee settlement. The competent authority could order any refugee under his or her jurisdiction to reside within a specific reception area or refugee settlement. Any refugee who did not comply with the order of the competent authority was guilty of an offence (section 11(1) & (5) of the Refugees (Control) Act 2 of 1966). The Minister or the competent authority could make rules or issue directives to control refugee settlements. These rules and directives included the organisation of such settlements, the reception and well-being of refugees, handling disciplinary offences and payments of fines, establishment of settlement lock-ups and custody of persons, the power of settlement commandants and the delegation of such powers. Freedom of movement for refugees was restricted as any refugee who left or attempted to leave a refugee settlement without permission, where he or she had been required to reside, committed a disciplinary offence (section 13(1) & (3) of the Refugees (Control) Act 2 of 1966). However, the entire Refugees (Control) Act was repealed by the Refugees Act 1998.

2.3. Refugees Act 9 of 1998

The Refugees Act 9 of 1998 provides and governs the treatment of refugees in Tanzania. It creates a committee responsible for considering all the applications for refugee status and recommending to the Minister the granting of refugee status and asylum or denial of such status. In addition, the committee considers applications for family reunification with recognised refugees and makes recommendations to the Minister. Furthermore, the committee considers refugee resettlement requests in Tanzania and makes recommendations to the Minister (section 7(a), (b) & (c) of the Refugees Act 9 of 1998). These provisions accommodate family unity and ensure family members stay together in one country.

Apart from the influx of refugees into Tanzania, a person lawfully staying in Tanzania can apply for refugee status before the expiry of his or her permit (section 9(2) of the Refugees Act 9 of 1998). An asylum seeker or a refugee needs a permit to remain or stay in Tanzania (section 12 of the Refugees Act 9 of 1998). The Refugees Act also contains provisions for the detention and slaughter of animals belonging to refugees as well as the possession of vehicles of asylum seekers or refugees (sections 13 & 14 of the Refugees Act 9 of 1998). Thus, the Refugees Act does not protect property rights for refugees and asylum seekers.

Refugees and asylum seekers are prohibited from staying outside a designated area for more than fourteen days unless the Director of Refugee Affairs allows them a long period to stay outside the designated area (section 17(5)(b) of the Refugees Act 9 of 1998). Thus, there is a restriction on freedom of movement for refugees and asylum seekers.

Section 2 of the Refugees Act contains restrictions on persons who want to enter a designated area or address asylum seekers or refugees in this area. Such persons need to acquire permission from “the Minister, the competent authority, the Director or the settlement office” (section 20(1) of the Refugees Act 9 of 1998).

Every refugee child and every refugee adult have the right to primary education and adult education, respectively, in accordance with Tanzanian education law. Every refugee is entitled to post-primary education, and there is a provision for refugees to enroll at colleges or universities to further their studies (section 31(1) & (3) of the Refugees Act 9 of 1998). Policies can be made to ensure the effective implementation of education for refugees.

Refugees can get work permits if they qualify for such. A refugee commits a criminal offence if he or she works or engages in any activity without such a permit (section

34(1) & (4) of the Refugees Act 9 of 1998). Refugees have the right to work, and requiring refugees to have a work permit to work constitutes an infringement of the right of refugees to seek employment. It is submitted that the provision requiring refugees to have a work permit should be repealed as they have the right to work or seek employment in the host country.

The Refugees Act promotes family reunions among refugees. This is a significant development in refugee law as many families can be separated during conflicts, leading to exile in other countries. A refugee who wishes to join or be joined by any member of his or her family outside or within Tanzania, respectively, can apply for a family reunion to the Minister of Home Affairs. A committee examines the application and recommends to the Minister whether or not family reunions should be allowed. Permission is necessary for family reunions to materialize, and failure to follow the correct procedure is a criminal offence (section 35(1) of the Refugees Act 9 of 1998). Family members include only husbands or wives lawfully married and their children under the age of 18 years and any dependent (section 35(4) of the Refugees Act 9 of 1998). These provisions maintain and promote family unit as provided in the African Charter on Human and Peoples Rights.

A refugee can apply for resettlement in another country outside Tanzania (section 36(1) of the Refugees Act 9 of 1998). The refugees who acquire resettlements in third countries obtain permanent residence permits and then citizenship from the host countries. The countries often offering resettlements to refugees include the United States of America, Canada, Australia, New Zealand, Sweden, Finland, Norway, Denmark, and the Netherlands (Randy et al., 2015, pp. 341, 344). These countries significantly impact finding durable solutions for refugees as conflicts or causes that led to asylum become protracted. Furthermore, refugees who reside outside Tanzania can apply to the Minister through the UNHCR or OAU (Refugee Bureau) for resettlement in Tanzania. Such a refugee is prohibited from entering Tanzania before his or her resettlement has been approved (section 36(2) of the Refugees Act 2 of 1998). The provision for resettlement in Tanzania covers burden-sharing as refugees recognised in other countries will be accommodated in Tanzania (Schuck, 1997, pp. 272-277).

3. Naturalisation of Refugees in Tanzania

Tanzania is one of the countries that host many refugees in Africa. This is due to its tolerance and hospitality towards refugees as well as among its citizens. Tanzania is

a relatively peaceful country where refugees feel safe. In addition, it has allocated considerable resources towards assisting refugees in different ways (Kamanga, 2005, pp. 101-102). As the situation of refugees became protracted, Tanzania opted for durable solutions by naturalising groups of refugees from some countries, namely Rwanda (Gasarasi, 1990, p. 88; Kibreab, 1989, p. 471), Somalia (Rutinwa, 2005, p. 59) and Burundi (Kuch, 2016, p. 468). These examples of best practices in finding durable solutions for refugees are discussed below.

3.1. Naturalisation of Rwandan Refugees in Tanzania

In the 1960s, many Rwandans fled their country and sought asylum in neighbouring states, including Tanzania (Gasarasi, 1990, p. 89; Meeren, 1996, p. 259). Tanzania, in turn, created three settlements for Rwandan refugees at three sites, namely Muyenzi, Kimuli and Mwese (Gasarasi, 1990, p. 89). The Kimuli settlement had about 3,000 Rwandan refugees who had been moved from the Kivu Province (Zaire) to Tanzania by the UNHCR in 1964. They had to be resettled in Tanzania as the Zairean government was hostile towards them, alleging that they supported the Mulele Movement against the government (Gasarasi, 1990, p. 92).

The Department of Refugee Affairs in the Ministry of Home Affairs proposed the collective naturalisation of Rwandan refugees rather than the formal procedure of individual applications (Gasarasi, 1990, p. 94). The President approved the mass naturalisation of Rwandan refugees in 1978 and issued a directive to implement this policy (Gasarasi, 1990, p. 98; Chol, 1992, p. 185). The acquisition of Tanzanian citizenship allowed ex-refugees and their descendants to fully function and participate in the new country's social, political, economic and cultural activities. The prospects to naturalise Rwandan refugees were good. The refugees sought integration, the state had the necessary political will, and the indigenous population did not oppose the policy to naturalise Rwandan refugees (Gasarasi, 1990, pp. 101-102). This policy of naturalising refugees is commendable as it brings a durable solution to protracted refugees.

3.2. Naturalisation of Somali Refugees in Tanzania

Although the Tanzanian government prefers repatriation as the most desirable and durable solution for refugees, it also offers local integration to certain categories of refugees. For instance, in 2003, approximately 3,000 Somali refugees of Bantu origin

living in the Chogo settlement in the Tanga Region had acquired permanent settlements and could apply for naturalisation (Rutinwa, 2005, p. 59; Manby, 2018, p. 66). The Tanzanian government reduced naturalisation fees from 800 US\$ to 50 US\$ to facilitate the process. The UNHCR assisted these Somali refugees in applying for naturalisation (Rutinwa, 2005, p. 59). This was another strategy to provide a durable solution to Somali refugees, as there were still insecurity and violations of human rights in their country of origin.

3.3. Naturalisation of Burundian Refugees in Tanzania

In 2007, the Tanzanian government, the Burundian government, and the UNHCR decided to find durable solutions for Burundian refugees who fled to Tanzania in 1972. Tanzania offered naturalisation to Burundian refugees who wanted to become Tanzanians (Kuch, 2016, p. 468). Tanzania wanted to naturalise 220,000 Burundian refugees it had hosted since 1972 (Milner, 2014, p. 553). 79 per cent of these refugees chose to acquire Tanzanian citizenship, and the remaining 21 per cent opted to return to Burundi (Kuch, 2016, p. 468; Fellesson, 2019, p. 2705). This was a strategy to end some of the protracted refugee situations.

Some characteristics of the Burundian refugee population contributed to the willingness of the Tanzanian government to consider naturalisation (Milner, 2014, p. 562). For instance, 82 per cent of these Burundian refugees were born and raised in Tanzania. They spoke Swahili and English and followed the Tanzanian School Curriculum (Milner, 2014, p. 562; Waters & Leblanc, 2005, p. 142). They had integrated economically, culturally and socially into the host communities; therefore, the Minister of Home Affairs observed and indicated that “these people have no other home other than Tanzania” (Milner, 2014, p. 562). Other factors that influenced Burundian refugees to acquire Tanzanian citizenship included the lack of sustainable peace in Burundi, access to land, better employment and livelihood opportunities. They perceived Tanzanian citizenship as a symbol of peace and they could plan for the future (Kuch, 2016, p. 481).

Finding durable solutions for refugees is the responsibility of the host country, the country of origin and the UNHCR. Refugees are not involved in making policies and decisions that affect them. It is submitted that refugees must be involved in making the decisions and policies that affect them in finding durable solutions, such as naturalisation and repatriation to their countries of origin. This will promote the refugee situation in finding durable solutions to their fate. Despite the Tanzanian

policies to accommodate and promote the rights of refugees in its territory, in certain situations, the Government of Tanzania had forcibly repatriated refugees.

4. Forced Repatriations of Refugees in Tanzania

In the mid-1990s, many refugees fled to Tanzania due to atrocities or conflicts in Burundi and genocide in Rwanda. The Tanzanian government responded by changing its open-door policy for refugees and closed its border with Burundi in March 1995 to prevent new arrivals (Milner, 2014, p. 558). In addition, Tanzania forcibly repatriated Rwandan refugees and asylum seekers from its territory in 1996 (Ongpin, 2008, p. 14; Whitaker, 2002, p. 334). It also adopted restrictive policies such as the 2003 National Refugee Policy, which emphasised the protection of national interest, limited economic opportunities for refugees, and identified voluntary repatriation as the only durable solution for refugees (Milner, 2014, p. 558; Makhema, 2019, p. 13). In 2005, the Tanzanian ruling party (CCM) election manifesto pledged to expel all refugees from Tanzania by 2010 (Milner, 2014, p. 558). Refugees and asylum seekers were regarded as “a threat to national security” (Kuch, 2016, p. 471) and needed to be closely monitored.

In 2008, the Tanzanian government closed all Burundian refugee camps (Ongpin, 2008, p. 14; L'Ecluse, 2010, p. 23). It communicated to the UNHCR that it would close Mtabila Camp, which hosts Burundian refugees. There was a tripartite agreement between the Tanzanian government, the UNHCR and the Burundian government to address the repatriation of Burundian refugees in Tanzania (Milner, 2016, p. 559). Thus, the agreement to repatriate refugees occurred without their involvement and participation.

5. Conclusion

This article discusses, assesses, and interrogates laws and best state practices for dealing with refugees in Tanzania. Since its independence in 1961, Tanzania has exhibited generosity in receiving refugees from neighbouring counties and Southern African states. It has welcomed and accommodated refugees from Rwanda, Burundi, the Democratic Republic of Congo (DRC), South Africa, Zimbabwe, Mozambique and Somalia. The refugees had to flee from these countries due to wars, persecutions, violation of human rights, and other events that disturbed the well-being of individuals. Tanzania has enacted statutes to control and administer refugees on its

own territory. Such statutes include the War Refugee (Control) and Expulsion Ordinance, 1946; Refugees Control Act 2 of 1966; and Refugees Act 9 of 1998. Refugees in Tanzania live in settlements or designated areas and have limited access to their right to freedom of movement and other human rights.

The best practices to find durable solutions for refugees in Tanzania include naturalising some refugees from Rwanda, Somalia, and Burundi who fled their countries at specific times. They acquired Tanzanian citizenship and have lived like any other citizen with full rights that are associated with citizenship. This is commendable as refugees find durable solutions for their plights and challenges related to asylum.

However, Tanzania has taken some steps back in receiving refugees and promoting their rights on its territory. In this regard, Tanzania has forcibly repatriated refugees from Rwanda and Burundi against their will. In some instances, it has closed its border with Burundi to avoid the influx of refugees coming to its jurisdiction. These are setbacks in how the hosting states should treat refugees and asylum seekers.

It is submitted that Tanzania should revisit its current policies and laws towards refugees and reincorporate its generosity to welcome refugees and promote their rights. Furthermore, the naturalisation of refugees should not only be applied to selected groups of refugees (Kanamugire, 2016, pp. 49-50; Hovil & Maple, 2022, pp. 242-244), but it should apply, accommodate, and benefit all refugees in Tanzania who are willing to be naturalised and obtain Tanzanian citizenship. There is a need to do further research on the naturalisation of refugees in Tanzania as a durable solution.

Furthermore, it submitted that Tanzania should also relax its policy for refugees to live in settlements and allow them to settle or live in cities or wherever they prefer to stay in the country. In this way, they can improve their lives and contribute to the economic development of Tanzania.

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