

# **TOWARD PROMOTING PROTECTION: REFUGEE PROTECTION AND LOCAL INTEGRATION IN SUB-SAHARAN AFRICA**

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The ongoing refugee crises across the globe, especially in the case of large influxes and movements in Europe and Africa, remain an unsolved problem. This is particularly evident in Africa. It has been observed that in 2015 the African continent alone had more than 6 million refugees. Therefore this article examines the increasing obstacles in protecting refugees in Sub-Saharan Africa. The key question is how can the protection of refugees be guaranteed, especially during a mass influx in Sub-Saharan Africa? The paper discusses local integration with analytical reference to the Sub-Saharan African context. It argues that the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa endorses the minimum normative standards of protection provided in the 1951 Refugee Convention. It further observes that facilitating the development of refugees and their host communities through effective local integration remains a durable solution. It concludes that local integration is possibly the only option for most refugees in Sub-Saharan Africa as possibilities for voluntary repatriation and third country resettlement become eroded in situations of protracted conflicts.

**Keywords:** Durable Solution, Local integration, Refugee Protection, Sub-Saharan Africa, UNHCR

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## INTRODUCTION

‘We are facing the biggest refugee and displacement crisis of our time’  
(Ban Ki Moon, 2016).

Sub-Saharan Africa hosts more than 6.2 million (29 percent) of the world’s refugee population and is the least capable of caring for them. The top five refugee destinations in Sub-Saharan Africa are Ethiopia (736,100), Kenya (551,532), Chad (452,897), Uganda (385,513) and Cameroon (264,126) – together, these countries host more than 2.5 million refugees (UNHCR, 2016). The continued increment in numbers can be attributed to the ongoing armed conflicts in Burundi, Central African Republic, Nigeria, Somalia and South Sudan as well as Yemen. States in Sub-Saharan Africa are therefore preoccupied by the surging numbers of refugees and other forced migrants.

Conversely, these mass influxes coupled with national security concerns often lead to the closure of borders to persons in flight, the denial of asylum, the detention of refugees as well as *refoulement* (Kumin, 2001: 7). In situations like this, refugees become convenient scapegoats for all forms of national problems and thus fuel xenophobia and other acts of hostility. Also, most Sub-Saharan African states have no clear response to the challenges of forced migration influx. Instead, the frustration of both citizens and governments related to the prolonged nature of the refugee presence increases. It has therefore been argued that the current international refugee protection system is insufficient to address the prevailing protection challenges (Kelley and Durieux, 2004: 6). Kumin (2001) opines that the UNHCR has admitted that the universal refugee protection system will increasingly become fragmented and weak. It has been further argued that many governments also use national security and public interest to justify their repressive refugee laws (Lazarus and Goold, 2007: 1). Lazarus and Goold (2007: 1) assert that ‘the attainment of security and the protection of human rights are not necessarily antithetical, either as a matter of fact or principle’.

This notwithstanding, the international community and other humanitarian organisations have made considerable efforts to provide durable protection and assistance to displaced persons, including refugees in Africa and elsewhere. It has been argued that based on Helton’s understanding of the statist nature of the 1951 Convention, ‘protection means *legal* protection’ (Helton, 2003). Yet, these efforts have so far not yielded significant solutions regarding durable protection. Goodwin-Gill (2008) argues that humanitarian assistance should not have priority over legal protection because without legal protection, other efforts

will be judged a failure. It has been further claimed that the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol as well as the 1969 Organization of African Unity (OAU) Convention governing the specific aspects of refugee problems in Africa are not able to adequately address the scale and the intricacy of refugee protection needs in Sub-Saharan Africa (d'Orsi, 2016). Regional, sub-regional and national institutions, laws, policies and practices concerned with refugees are also the focus of disapproval. Yet the critical spotlight on the current refugee protection regime is not new or a reflection of recent realities (Kelley and Durieux, 2000: 6). Therefore, it is timely and necessary to examine the refugee protection challenges in the Sub-Saharan African context.

This article examines the increasing obstacles in protecting refugees in Sub-Saharan Africa with emphasis on local integration. It provides timely insight and policy direction in the field of international refugee protection in the Sub-Saharan African region. This article makes analytical references to how some selected African countries have responded to those challenges with particular focus on efforts to strengthen the national refugee protection system as well as expanding the availability of durable solutions. The introduction is followed by a descriptive discussion of the foundations of legal protection of refugees in Sub-Saharan Africa, while the third section engages with the legal protection of refugees as practiced in Sub-Saharan Africa. Section four explores how local integration of refugees is practice in Sub-Saharan Africa, leading to a conclusion.

## THE FOUNDATIONS OF LEGAL PROTECTION OF REFUGEES IN SUB-SAHARAN AFRICA

Shortly after the UN was formed, the international community introduced conventions and policies to offer adequate protection to refugees (The Inter-Agency Standing Committee, 1999: 4; UNHCR, 2010: 2). Protecting the rights of refugees can be traced to the Universal Declaration of Human Rights (Universal Declaration) and has since been the subject of study by many scholars and policy makers. D'Orsi (2012) observes that the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention remain the key international human rights instruments for protecting the rights of refugee in Sub-Saharan Africa. Lomo (2000) argues that these instruments guarantee the rights of all refugees including *inter alia* the right to housing, work and education, access the courts, freedom of movement within the territory and the right of refugees to be issued identity and travel documents in order to live decent lives.

‘We did not protect them, it was our responsibility.’

*(Prince Albert II of Monaco, 2015)*

As posited by Lomo (2000) as well as Prince Albert II (2015), states are obliged to protect these rights since they are applicable to all situations. Protection forms part of an integral approach to fulfilling the basic needs of refugees as well as in obtaining full respect for the rights of refugees under international human rights law (United Nations Relief and Works Agency, 2007: 9). António Guterres (2015), the former UN High Commissioner for Refugees emphasises that

‘preserving humanitarian space, granting asylum, strengthening legal and institutional frameworks and achieving durable solutions with a holistic perspective of refugees’ human rights and humanitarian protection combined underscores the critical importance of international organisations, governments and the civil society’.

From the above, it becomes obvious that protecting the human rights of refugees is the basic obligation of the state (Jastram & Achiron, 2001). Jastram and Achiron outline two conditions that states must meet to effectively protect the rights of urban refugees. The first is adopting domestic refugee legislation and policies that comply with international standards to provide a basis for the protection of refugees. The second is incorporating international human rights laws into domestic legislations, specifically in critical areas where the 1951 Refugee Convention and the 1969 OAU Refugee Convention are silent (Jastram and Achiron, 2001). Meeting these criteria would require states to institute an expert body to examine asylum applications to guarantee the availability of procedural safeguards at the various levels and to speed up the process. The UNHCR Executive Committee therefore encourages states to promote initiatives that offer durable solutions to ensure that local standards conform to the international normative standards for protection that are also responsive to particular national circumstances (UNHCR Executive Committee, 1997).

For the rights of refugees to be effectively protected, states must thus comply with international human rights standards and norms. Sub-Saharan African states that are state parties to the relevant conventions are obliged to incorporate human rights norms and associated international standards and good practice in its policies and programmes in line with the stated purpose of the UN under the UN Charter (Article 1 of the 1945 United Nations Charter). There must also be a national body of experts to ensure compliance and speedy processing of refugee status applications to facilitate local integration. Conversely, Fábos and Kibreab (2007: 3) argue that

‘the experiences of refugees in cities such as Kampala, Cairo, Johannesburg and Khartoum in particular are characterised by a high level of vulnerability due to arbitrary and schizophrenic international protection laws and policies embodied by the nation-state system’.

Goodwin-Gill (2014) contends that national protection policies must be derived from the principles explicit or implicit in the existing law as developed and interpreted in practice as well as from the principles of fundamental human rights acknowledged by the international community. This he contends has become necessary because ‘it appears that protection had lost ground to the politics of solutions and to the even more uncertain politics of migration’ (Goodwin-Gill, 2014: 651). In a different study, Goodwin-Gill (2008) argues that the conception of the refugee as unprotected individual should be divorced from the politics of the moment and located in a space where the refugee can be recognised as a person with dignity, worth and basic human rights. Al Khataibeh and Al-Labady (2014) elaborate that the prime goal of refugee protection is focused on ensuring that refugees are provided with decent conditions and a safe haven in the host country. The protection of refugees is therefore ‘manifestly not just about their admission in a technical, immigration sense to a particular country although that may be the best way to protect their rights’ (Goodwin-Gill, 2014: 655).

Writing on the protection of urban refugees in Dar es Salaam, Sommers (1999) identified, profiled and categorised refugees residing in non-camped settings into four different groups including:

‘(1) those who have officially registered as refugees and have permission to reside in the cities; (2) those who have officially registered as refugees but lack legal rights to live in the cities; (3) those who have migrated to the cities to seek asylum at the UNHCR office; and lastly (4) those claiming to be refugees but who do not have any institutional recognition or protection’.

From this, he argues that it is a matter of preference that makes many refugees move to the cities and opines that even though refugees are victims, they do not aim to remain victimised. Thus, most refugees try to make the best of life during their forced exile instead of waiting passively for several years to be repatriated to their countries of origin. He further emphasises that due to the often hostile attitudes of most African governments towards self-reliant refugees, refugees who move to urban areas are vulnerable and susceptible to abuse and their aspirations, rights and socialization or integration should be considered in laws, development policies and plans.

## THE LEGAL PROTECTION OF REFUGEES IN PRACTICE IN SUB-SAHARAN AFRICA

A survey conducted by Asylum Access (2011) revealed that most refugees in non-camped settings in Africa lack legal status due to the fear of being apprehended and sent to the camps. The survey also disclosed that a lack of legal status causes other protection challenges such as exploitation by law enforcement officers as well as inadequate access to support services. Although some national refugee laws in Sub-Saharan Africa provide refugees with the choice of self-settlement, the governments have required the majority of them to go to camps. The process takes place through making self-settlement difficult for those who opt to reside outside settlement camps (Norris, 2013: 19). Meanwhile, some government officials have adopted what may be termed as the *de facto* approach of accepting refugees. Kagan (2007: 11) describes *de facto* refugees as those who lack recognition for protection and assistance. He posits that *de facto* urban refugee policy permits refugees to reside in the cities but denies them rights and assistance available to recognised refugees.

Pangilinan (2012) highlights the legal and theoretical rationale for the measures that most Sub-Saharan African governments adopt to reduce their refugee populations. The measures include forced repatriation or rejection through closure of their borders. Pangilinan argues that a government's willingness to adopt alternatives other than encampment demonstrates its openness to accept refugees upon meeting set requirements (Pangilinan, 2012). However, these requirements are cumbersome and difficult to satisfy by refugees. The eligibility requirements include demonstrable self-sufficiency, a place to live and employment (Bernstein and Okello, 2007). He concludes by highlighting a major challenge faced by refugees which is even if they are willing to forego humanitarian protection and assistance, most of them still prefer to be regarded and treated as refugees rather than ordinary migrants, particularly if doing this permits them to undertake status determination and qualify for resettlement or repatriation assistance.

The 1948 Universal Declaration of Human Rights, the bedrock of contemporary international human rights law, fails to provide detailed guidance on the scope of the right or the type of protection that asylum seekers and refugees qualify for (Goodwin-Gill, 2008). The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), which are signed by almost all Sub-Saharan African states guarantee the rights of refugees to just and favourable conditions of work, to adequate standards of living (adequate food, and housing), as well as to

intellectual property (ICCPR 1966, and ICESCR, 1966). It is argued that asylum seekers whose applications are still pending can invoke the Covenants' protection to effectively avoid the lower forms of protection as provided in the 1951 Convention (Asylum Access, 2015). As such, Article 2(3) of the ICESCR has a significant impact on such vulnerable groups of non-nationals in accessing these core rights as well as enjoying economic self-reliance. The practical implication of these provisions is that the Global South countries which often struggle to meet higher protection norms should improve their standards to measure-up to the various international human rights instruments to which they are party.

Since its adoption, the 1951 Refugee Convention has remained the core human rights instrument that protects refugees under international law. Central to the provisions in this Convention is access to work and social security (IRA, 1949). This implies that the 1951 Convention focuses on the fundamental aspects of the lives of refugees, such as the need to be sheltered and to be self-reliant as it entitles refugees to a range of civil and socioeconomic rights. This obliges states to adopt measures to ensure that refugees are provided with conditions in the host country. It therefore recognises 'the risk of economic marginalization and exploitation by refugees and enfranchises refugees within the social welfare system of the host state' (Hathaway, 2005: 96). Article 35(1) obliges the UNHCR 'to facilitate its duty of supervising the application of the provisions in the Convention'. Article 35(1) of the 1951 Convention further charged the UNHCR to 'supervise international conventions providing for the protection of refugees'. Therefore, the international protection of refugees becomes the UNHCR's core function. According to Turk (2001: 135), 'this protection includes not only of rights enumerated in the 1951 Convention and the 1967 Protocol but also of the refugees' human rights in general'.

At the regional level, article 12(3) of the African Charter on Human and Peoples' Rights (the African Charter) affirms that 'every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions. There are challenges in enforcing this provision. Okoth-Obbo (2001: 79) contends that this provision 'in accordance with the laws of those countries and international conventions' raises a potential debate on the specificity of the quantum and quality of the rights and obligations guaranteed. For instance, the 2006 Refugees Act of Uganda grants the Government the discretion to accept or reject the refugee application of asylum-seekers (Buwa, 2007: 1).

Similarly, article 23(1) of the African Charter on the Rights and Welfare of the Child (ACRWC) provides for state parties



‘to take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the Charter and other international human rights and humanitarian instruments to which the State is a Party’.

This provision contextualises the UN Convention on the Rights of the Child (CRC) provision on refugee children in Africa and reinforces the special place of the child in the African context. It further ensures that the special needs of refugee children are duly recognised, promoted and guaranteed at the regional level. Additionally, article 23(3) provides that ‘where no parents, legal guardians or close relatives of the refugee child can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.’

The 1969 OAU Convention also deals with the specific protection needs of refugees in Africa. Article 2(1) obliges ‘member states to use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality’. Despite the relevance of this provision in protecting refugees, oppressive states can exploit the excesses by adopting repressive laws to the contrary, because states are allowed to apply their national legislations instead of the international refugee laws. For instance, the 2014 Refugee Amendment Act of Kenya makes encampment compulsory for all refugees (Garlick et al., 2015: 270). Onyango (1986) has observed that article 21(1) is one of the most significant contributions to refugee jurisprudence in general. Rwelamira (1989: 557) posits that, ‘although the legal purposes of the Convention are essentially limited, it is a landmark event for refugee law and policy’. Despite the critical role that international and regional human rights law plays in protecting refugees, their application in Sub-Saharan Africa is beset with several challenges (Lomo, 2000).

Slaughter and Burke-White (2006: 327) recognise the danger inherent in the interaction between international and domestic law where domestic politicians can manipulate international instruments to serve their own motives. Killander and Adjolohoun (2010: 1) assert that this should not hinder the protection that international human rights law offers because of the common law provision that ‘wherever possible the words of a statute will be interpreted so as to be consistent with a treaty obligation’. It can therefore be observed that protecting refugees is beset with several challenges, paramount among them being the



politics of protection (Goodwin-Gill, 2008). However, it can be argued that in the African context, the 1969 OAU Convention has through its provisions strengthened the legal framework for refugee protection.

## THE LOCAL INTEGRATION OF REFUGEES AS PRACTICED IN SUB-SAHARAN AFRICA

Local integration is one of the three durable solutions alongside resettlement and repatriation as a means of ending exile through enabling refugees to become full members of the host community (Fielden, 2008: 1). Hovil (2014: 2) and d'Orsi (2016: 280) argue that it is the best and most viable among the three solutions. Hovil (2014: 2) explains local integration as whereby refugees become full members of the host community in their first country of asylum. It involves refugees receiving the citizenship of the country of refuge or asylum. Initially, it had been regarded to be almost exclusively rural integration (Anand, 1993: 64). Even though local integration has always been named among the three durable solutions, it has not been factually used in cases of mass-influx (Fielden, 2008: 1). In this context, it almost becomes a non-solution. The concept of local integration is underpinned by the assumption that refugees will remain in the country of asylum or refuge permanently and therefore find a sustainable solution to their predicament in that country. Local integration involves economic, socio-political and legal processes which are related to, but also different from self-reliance as well as local resettlement (Dryden-Petersen and Hovil, 2004).

The UNHCR (2005) defines 'self-reliance' as the social and economic ability of an individual, a household or a community to meet the essential needs such as water, food, shelter, protection, education and health in a sustainable manner with dignity. Self-reliance therefore involves developing and strengthening the livelihoods of refugees in order to reduce their vulnerability and long-term reliance on humanitarian or external assistance. Dryden-Petersen and Hovil (2004) observe that self-reliance does not presuppose that refugees will find a durable solution in their new country of refuge but should be seen as part of a continuum which gradually leads to local integration. The generally accepted definition of local integration by the UNHCR (2002) is:

'the end product of a multi-faceted and ongoing process of which self-reliance is but one part. Integration requires preparedness on the part of the refugee to adapt to the host society without having to forego their own identity. From the host society, it requires communities that are welcoming and responsive to refugees and public institutions that are able to meet the needs of a diverse population.'

Local integration is therefore not distinguishable from the core solution enshrined in the 1951 Refugee Convention which basically comprised of the respect for the rights of refugees (Hathaway, 2005: 978). It has been further explained by the UNHCR (2002) that local integration is mainly a legal process whereby refugees are granted a progressively broader range of rights and privileges by the host country that are generally equivalent to that of those enjoyed by the citizens. For instance, in Uganda, the 1995 constitution that promotes and protects basic human rights and freedoms is silent on the rights of refugees. However, the Bill of Rights provides for civil and political rights as well as social, economic and cultural rights for all persons and in some cases, ‘everyone’ (Article 21[1]). For instance, article 21[1] provides that;

‘All persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.’

Mulumba and Olema (2009: 28) contend that the phrase ‘all persons’ includes refugees too. This therefore guarantees the rights of refugees to equity and freedom from discrimination. Nevertheless, it has been observed that in practice, refugees have been denied certain rights and privileges provided in the bill of rights (Mulumba and Olema, 2009: 28).

In addition, refugees who chose to self-integrate (to become self-reliant) are denied protection and humanitarian assistance by the government (article 44 of the 2006 Refugee Act). The constitution further provides that a refugee should reside in Uganda for at least 20 years before he or she can apply for citizenship. This makes the acquisition of citizenship by refugees very difficult. However, it gives refugees the right to be issued with ID cards, to own property, to transfer assets, to education. It further encourages refugees to be self-reliant by guaranteeing them the right to engage in agriculture, industry and commerce in accordance with applicable laws. In practice, Buwa (2007) argues that refugees do not fully enjoy these rights due to institutional and implementation challenges such as the lack of logistics and inadequate staff.

The 2006 Refugee Act provides a comprehensive framework for protecting refugees as well as domesticates the 1951 UN convention and the 1969 OAU convention. It also incorporates international human rights laws and normative standards. It upholds the definition of refugee by the 1951 UN convention and the 1969 OAU convention. However, article 3(2) grants the government the discretion to grant or deny the application for refugee status. This deviates from the international refugee norms that it attempts to defend. The act calls

for the opening of an office for the Commissioner for Refugees as well as other procedural issues related to the administration of refugees. The office of the Commissioner, as earlier argued by Jastram and Achiron (2001) is to ensure compliance and the rapid processing of refugee status application and to ensure the speedy integration of refugees by working closely with the UNHCR. The office is in charge of all administrative matters relating to refugees in Uganda. It liaises with the UNHCR and other organizations in the preparation of programmes to facilitate the settlement and integration of refugees. The establishment of this office is very progressive and strengthens the institutional framework for the protection and integration of refugees. It can generally be observed that the 2006 Refugee Act of Uganda was greatly influenced by international human rights laws, especially the 1951 and 1969 conventions. It can therefore be argued that the protection mechanism in Uganda is focused on ensuring that refugees are provided with the essential conditions to integrate into the host community and to live dignified lives (Al Khataibeh and Al-Labady, 2014).

On local integration, article 34 of the 1951 Refugee Convention contains two different obligations. It generally obliges state parties to facilitate the integration and naturalisation of refugees. It also specifically ‘obliges state parties to make a concerted effort to expedite the naturalisation process of refugees and minimise the cost’ (Grahl-Madsen, 1997: 247). The UNHCR (2002) opines that the international community has consistently rejected the concept that refugees should totally forsake their culture and identity and embrace that of the host community. It has also been argued that assimilation as used in the 1951 Convention can be generally interpreted as integration into the social and economic fibre of the host country (Da Cost, 2006). Broadly, naturalisation has been regarded as a form of integration (d’Orsi, 2016: 283) and has also been strongly recommended by the UNHCR (Solomons, 2001). However, the route to naturalization is ostensibly not accessible to most refugees in Sub-Saharan Africa. For instance, the Kenyan Constitution of 2010 provides that only refugees who ‘have been legally residing in Kenya for an uninterrupted period of seven years and satisfy other requirements prescribed in the applicable laws may be naturalized’ (Constitution of Kenya, 2010: section 5, 6). The laws which govern Kenyan citizenship also include additional requirements such as the ability to speak a local language and the ability to offer concrete support to the country’s development. However, in practice, Kenya does not seem to grant citizenship to refugees (Garlick et al., 2015: 220).

In addition, the Refugees Protection Act of (2007) of Sierra Leone provides that the local integration of refugees shall be facilitated by the relevant state institutions, the UNHCR and other non-governmental organisations. In South

Africa, the naturalisation procedure is complicated and cumbersome. Dass et al. (2014) argue that the bureaucratic nature of the naturalisation process in South Africa accounts for why few refugees are naturalised in that country. For instance, section 27(c) of the Refugee Act of 1998 requires refugees to apply for the appropriate documentation that certifies that he or she will remain a refugee forever as a first step in the integration process. Therefore, d'Orsi (2016: 284) contends that the local integration of refugees in Sub-Saharan Africa is a major step that paves the way for refugees to naturalise because it facilitates the process for possible naturalisation. Grahl-Madsen (1997: 245) asserts that the nexus that exists between naturalisation and integration is critically important, especially in the case of refugees who do not have effective nationality as well as live in an uncertain or irregular situation that is not regarded as a durable solution.

In Kenya, the situation is not much different. Kenya has signed a number of international human rights and refugee law treaties including the 1951 Convention, its 1967 Protocol and the 1969 OAU Convention. However, the Refugees Act of 2006 functions as 'the national legal charter governing refugee issues' (Pavanello et al., 2010: 15). Section 7 of the Act set up the Department of Refugee Affairs (DRA), which is mandated to receive and process applications for refugee status. In theory, asylum seekers and refugees have the right to appeal any decisions of the DRA. There is also an Appeal Board presided by a competent legal professional. The Board is supposed to operate autonomously in the exercise of its tasks. The establishment of this expert body satisfies international best practices as proffered by Jastram and Achiron (2001). Nevertheless, the government has yet to set up this board (Garlick et al., 2015: 2). Due to this, the DRA and the UNHCR have 'refrained from rejecting asylum claims till an appeal process is established' (Garlick et al., 2015: 28). Garlick et al. (2015: 113) contend that this situation prolongs the refugee status determination process. This violates the Act which obliges the DRA to determine refugee status application within ninety days.

Moreover, recent terrorist activities in Kenya have prompted the government to introduce radical changes to its Refugees Act. Central to the changes is a compulsory encampment policy. Previously refugees were permitted to live in cities and towns (Refugee Consortium of Kenya, 2012: 77). The new changes require 'all refugees in the cities and towns to relocate to the designated refugee camps' (Garlick et al., 2015: 270). However, a Kenyan High Court at Nairobi in 2013 held that the policy directive violates the constitutional right of movement as well as the principle of non-refoulement enshrined in the Refugee Act of 2006 (*Kituo Cha Sheria and 8 others v Government of Kenya*, 2015). In 2014, the government completed key amendments to the Refugees Act of 2006. The

amended Act seeks to make the encampment policy permanent. Section 46 of the Amendment Act provides that ‘every person who has applied for recognition of his status as a refugee and every member of his family shall remain in the designated refugee camp until the processing of their status is concluded’.

In terms of local integration in Kenya, refugees are in theory permitted to engage in any type of self-employment without obtaining official permission. Nevertheless, they need to obtain a work permit before they can take up paid employment (Garlick et al., 2015: 10). Despite the fact that refugees can in theory work, the practice is allegedly considerably different. The Refugee Consortium of Kenya (2012: 81) observed that the government does not grant work permits to refugees with the exception of “a few isolated cases”. Therefore, refugees are compelled to pursue employment in the informal sector (Refugee Consortium of Kenya, 2012: 81). However, the newly introduced rigid encampment policy is increasingly making it difficult since it restricts the movement of refugees within the country. Despite the attempt to incorporate human rights standards and norms into the domestic refugee law as argued by Jastram and Achiron (2001), it can be observed that due to the government’s reaction to terrorist activities and the amendments to the Act, refugee protection and local integration efforts are greatly undermined.

Supplementary to the substantive provisions in the 1951 Refugee Convention, the UNHCR Statute (1950) provides that the agency plays a pivotal role in the protection of refugees through assisting governments and non-governmental organisations in the integration of refugees within the host communities. Paragraph 2(c) of the UNHCR Statute (1950) further implores governments to facilitate the integration of refugees especially through promoting their naturalisation. For instance, in 2011 the UNHCR assisted and sustained the integration of Burundian refugees who fled to Tanzania in 1972 by providing financial aid to naturalised refugees as well as cooperating with the government of Tanzania to enable the refugees to have access to services as well as to obtain certificates of citizenship (UNHCR, 2011).

More specifically, in the Sub-Saharan African context, the 1969 OAU Refugees Convention endorses the minimum normative standards of protection provided in the 1951 Refugee Convention. It also obliges state parties to use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of refugees as well as to provide temporary residence to refugees who have not received the right to live in any country (Goodwill-Gill & McAdam, 2007). Also, Jacobsen (2001: 19) identifies three main features of effective integration of refugees in Africa as:

‘a) the socio-cultural change that refugees experience that enable them to preserve their identity as well as to adapt emotionally to the new environment; b) the tension between the host community and refugees is not worse than with the local population itself; c) the refugees do not experience more discrimination than exists between groups who initially settled with the host population’.

## CONCLUSION AND WAY FORWARD

From the theoretical developments discussed, particularly from the point of view of the legal protection of refugees in Sub-Saharan Africa and the integration of refugees in practice, it becomes obvious that the situation of refugee protection in Sub-Saharan Africa requires urgent attention. Thus, there is the need to shed more light on the protection gaps and recommended solutions that could be more useful in enhancing the protection of refugees on the continent. For instance, one of the gaps is clearly the fact that many African states are adopting laws and policies to protect refugees, meanwhile, these policies and legislations are often inconsistent with their obligations under international human rights law and even sometimes their own domestic legislations. From this perspective, one of the durable solutions recommended for refugee protection in the Sub-Saharan context is to ensure the effective integration of refugees into the host community and country through guaranteeing local integration in domestic refugee laws in African countries.

Integration has many implementation challenges such as discrimination and xenophobia. Nevertheless, when effectively implemented, it will not only promote the protection of refugees but also enable them to become self-reliant as well as to preserve their cultural identity. In conclusion, it must be noted that facilitating the development of refugees and their host communities through effective local integration remains an effective durable solution. Indeed, it is possibly the only option for most refugees in Sub-Saharan Africa as possibilities for voluntary repatriation and third country resettlement become eroded in situations of protracted conflict. As discussed in this article, however, local integration need to be recognised as a positive step in securing sustainable stability for both refugees and the host countries and communities.

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