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REFUGEE STATUS DETERMINATION AND REFUGEE RIGHTS IN TANZANIA

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1.0 Introduction

Tanzania gained its independence from British colonial rule on 9 December 1961. Since her independence, Tanzania has been an independent territory having a common law legal system similar to the British one, which has been undergoing modifications from time to time to suit local circumstances.

In addition, Tanzania is a dualist state, meaning that all international instruments to which Tanzania accedes must necessarily be ratified¹ by the parliament to form part of the domestic legal system.

Under the Constitution of the United Republic of Tanzania of 1977 (hereinafter, the Constitution), the rule of law concept is clearly reflected in the principle of separation of powers.² Whereas, the fundamental principles reflected in this concept are the supremacy of parliament, independence of the judiciary and observance of human rights by the executive. These are the bases that form the three pillars of the state, i.e., the executive, the legislature and the judiciary. In practice, however, the executive is *de facto* more powerful as compared to the rest, which, more often than not, makes the executive override the powers of the legislature and the judiciary.

Nevertheless, the judiciary enjoys enormous powers that are guaranteed by the Constitution. And, in practice, the judiciary has been at the forefront of defending the fundamental rights and freedoms enshrined in the Bill of Rights, as part of guaranteeing the right to access to justice. The right of access to justice is a fundamental right, which is also part and parcel of the rule of law.

2.0 International legal framework relevant to refugees

In 1950 the United Nations General Assembly,³ initiated discussions on refugee matters as a result of the rampancy of refugees in Europe, due to the far reaching impact of the Second World War. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the basic international instruments upon which regional and domestic legislation has been built.

The 1951 Convention states that Contracting States shall apply the provisions of the Convention to refugees without discrimination as to race, religion or country of origin. Further that States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to

¹ Article 63(3)(e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

² Article 4(1) of the Constitution. Ibid

³ As per the General Assembly Resolution No. 428, annex 5 UN GAOR Supp. (No.20) at 46, UN Doc. A/1775(1950).

the right to choose their place of residence and to move freely within its territory subject to regulations applicable to aliens generally.⁴

Specifically, Article 26 of the 1951 Convention states:

Each contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.⁵

Under the 1951 Convention too, the country of asylum must apply the provisions of the Convention to refugees on its soil without discrimination as to race, religion or country of origin, even in times of emergency. In this regard, contracting states,⁶ should accord to refugees access to courts on the same basis as nationals. The said treatment must include legal assistance and exemption from *cautio judicatum solvi*.⁷

Physical security, meaning both protection from *refoulement*⁸ and safety from violence in the country of asylum is a priority.

More generally, the country of asylum should make sure there are adequate arrangements in place to protect refugees from criminal violence, particularly that motivated by racism or xenophobia, including torture, inhuman or degrading treatment by officials.

On the other hand, refugees must abide by the laws of the country of asylum.⁹ When they come into conflict with the law, refugees must be treated according to the due processes of the law, being given adequate opportunity to raise their defense. By so doing, the refugee's right to access to justice is enhanced, without which, their international protection, as expected from the country of asylum, by the international community, is very much impaired.

Exceptions to the principle of *non-refoulement*, both under treaty (as per article 33(2) of the 1951 Convention) and customary law, are applicable as a last resort only if a refugee constitutes a threat to the national security of the country where he/she is living or, having been finally and fairly convicted of a particularly serious crime, poses a risk to the national security of the country in which he/she

⁴ Articles 3, 4, 21, 22, 23, 24, 26, 33 and 34.

⁵ Article 26 of the 1951 Convention.

⁶ Article 16 of the 1951 Convention.

⁷ Plaintiff's security for court costs. In this regard, the Convention states that the refugees should be exempted from paying security for costs.

⁸ Article 33 of the 1951 Convention.

⁹ Article 12 of the 1951 Convention.

resides or, after having been convicted of a particularly serious crime, poses a danger to the community.

As a member of the international community, Tanzania has also ratified a number of international instruments, which provide for human rights. These instruments include: ICCPR, ICESCR, CAT, CEDAW, CRC, CERD, Migrant Workers' Convention and ICPD (Disabilities). Based on the fact that the UDHR is a persuasive document with no binding force, the above stated instruments were couched with intent to make all articles stipulated under the UDHR have legal force. Covering human beings in general, these instruments address refugees because they are human beings. At the regional level, Tanzania is a signatory to the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa.

3.0 Domestic refugee legal and policy framework

3.1 The refugee situation in Tanzania

Tanzania has been hosting tens of thousands of refugees for more than four decades. The majority of refugees are from Burundi and DRC. Since independence in 1962, Burundians have fled their country repeatedly to find safe sanctuary in Tanzania. Congolese fled DRC (the former Zaire) as a result of Banyamulenge invasion determined to overthrow President Mobutu, which invasion paved way to civil war for a number of years now. In the last decade, since the outbreak of the civil war, which began in 1993 and killed an estimated 200,000 people, around 300,000 Burundians have fled to Tanzania, leaving behind their homes, farms and lands.¹⁰

According to records from UNHCR (Tanzania country office), currently Tanzania is hosting 131,351 refugees in aggregate from Burundi, DRC and Somalia, encamped in Kigoma (Mutabila and Nyarugusu camps), Tanga (Chogo Settlement), Rukwa (Katumba and Mishamo Settlements) and Tabora (Ulyankulu Settlement). However, the Mtabila refugee camp in Kasulu was officially closed in June 2009, although refugee operations are still on the ground since almost 37,000 refugees are still there and no voluntary repatriation has been recorded since January 2010.

Tanzania strongly believes that human rights (civil, political, economic, social and cultural rights) are universal and belong to all human beings, including refugees. As such, in Tanzania, refugees enjoy certain human rights specifically linked to their particularly vulnerable status, including the right to seek asylum,

¹⁰ Nkonya, C. The Residence and Movement of Refugees in Tanzania, paper presented at the Workshop on International Protection of Refugees and Access to Justice in Tanzania, held on 6-8 June 2007, Orion Tabora Hotel, Tabora, Tanzania.

freedom from forcible return, freedom of movement, right to nationality and to receive protection and assistance in securing their basic economic, social and cultural rights.

3.2 The Tanzania refuge policy framework

Tanzania's first policy document, a government directive on refugee matters, was adopted in September 2003, almost five years after the enactment of the Refugee Act of 1998. However, prior to developing the said policy, Tanzania had hosted refugees for a number of years. The first experience of refugees in Tanzania was in 1972 when a number of Burundian refugees crossed the border and settled in Mishamo and Katumba in Rukwa region and Ulyankulu in Tabora. The second group of refugees came in 1989 when a number of Rwandese crossed boarder and settled in Ngara villages. Treating these refugees was not a problem at all, as they were allocated areas of settlement and carried on their own lives, their issues being administered mostly on verbal¹¹ directives.

However, with the great and overwhelming¹² number of refugees into Tanzania in 1990s, the Government found it difficult to continue addressing refugee matters verbally without a reliable directional document.

Thus based on the foregoing and other causative factors like the open door policy, Tanzania developed the current National Refugee Policy of 2003. The policy was developed putting into consideration the following: refugee admission procedures, refugee rights, treatment and state obligation. Further the policy had to consider the history of Tanzania in protecting refugees, national security, public interest and the political climate.

According to Dr Kamanga's¹³ general overview, the policy document can be addressed from three dimensions: one part advocating for proactive global intervention aimed at addressing root causes of displacement in countries of origin and voluntary repatriation staged as the most effective solution; secondly being containment strategy within the country of origin, which mainly advocates for creation of safe zones within source countries and that refugees be kept in camps while in Tanzania; and lastly, the policy proposes for commitment to

¹¹ Dr. Khoti Kamanga, Trying to Understand the Tanzania National Refugee Policy of 2003, International Refugee Law News, a Publication of the ABA International Refugee Law Subcommittee , Vol. 2, Issue 2, Summer 2009.

¹² On 1 October 1993 the assassination of the Burundian President Ndadaye led to the influx of Burundian refugees in Kanembwe and Lukole; the 1994 genocide in Rwanda leading to the influx of Rwandan refugees in Karagwe, Biharamulo and Ngara; and the political instability in DRC which also triggered an exodus of refugees into Tanzania.

¹³ Dr. Khoti Kamanga, supra note 11.

Tanzania from international community in the form of development assistance for refugee hosting areas, support for law enforcement agencies and rehabilitation of downgraded infrastructure.

Although developing the law was identified as the ultimate goal of the National Refugee Policy, the new Refugee Act was enacted in 1998 and the policy in 2003, almost five years later.

3.3 The Tanzania Refugee Act and refugee status determination

3.3.1 The National Eligibility Committee

Tanzania is a signatory to the 1951 Convention and to the 1967 Protocol. Furthermore, Tanzania is mindful of Article 26 of the Vienna Convention on the Law of Treaties which provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith (*pacta sunt servanda*). Article 27 of the same instrument provides that a party to a treaty may not invoke a provision of its internal/domestic law as justification for its failure to perform a treaty based obligation. This is to say, each state party is obliged to give effect to its international obligations through effective domestic legislation, subject to her right to enter reservations which do not defeat the core obligation promulgated by the instrument.

In 1998 Tanzania enacted the Refugee Act principally repealing the Refugee Control Act of 1966. In this respect, section 9(3) of the Tanzania Refugee Act expressly states that no person claiming to be a refugee within the meaning of section 4¹⁴ (defining a refugee) shall merely for reasons of his illegal entry be declared a prohibited immigrant, detained or penalised in any other way, unless one fails to comply with the procedure provided under section 9(1).

¹⁴ 4(1) Subject to the provisions of subsections (3) and (4) of this section and for the purposes of this Act a refugee is any person who-

- (a) is outside the country of his nationality or if he has no nationality, the country of his former habitual residence, because he has or had a well founded fear of persecution by reason of his race, religion, nationality membership of a particular social group or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence;
- (b) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality;
- (c) belongs to a group of persons which by notice in the Government Gazette has been declared to be refugees for he has or had a well founded fear of persecution by reason of his race, the reasons set out in paragraphs (a) and (b) above.

This is to Tanzania recognizes every asylum seeker at the point of entry in terms of Article 33 of the 1951 Convention, which in the main provides for *non-refoulement* of asylum seekers. Furthermore, Tanzania recognises that, while in Tanzania, refugees are entitled to equal treatment before the law as other Tanzanians and aliens in general. It also recognises the need to determine one's refugee status before an individual can be recognised as such.

Section 6 of the Tanzania Refugee Act establishes the National Eligibility Committee (NEC), the membership of which consists of the Director and no less than seven other members appointed by the Minister from the following departments in consultation with their respective Ministers:

- (i) The Director of Public Prosecutions, who shall be the Chairman;
- (ii) The President's Office;
- (iii) The Prime Minister's Office;
- (iv) The Chief Minister's office;
- (v) The Ministry of Foreign Affairs and International Co-operation;
- (vi) The Inspector-General of Police; and
- (vii) The Director of Immigration Services.

It is important to note that an officer from UNHCR's¹⁵ Representative in Tanzania and any other members co-opted¹⁶ by the Minister are invited to attend the meetings of the committee as observers, and the office of the Director provides the Secretariat of the Committee.

The functions¹⁷ of the NEC include considering all applications for refugee status and recommending to the Minister the grant or denial of refugee status; considering and making recommendations to the Minister on applications for family re-unification with recognised refugees in Tanzania; considering and making recommendations to the Minister on requests from refugees for resettlement in Tanzania; to advise the Minister or the Director on any matter referred to it by either of them or both.

However the NEC cannot always afford to sit regularly, as provided under the law. In this regard the Act empowers¹⁸ the Minister to create an *ad hoc* Committee which can be convened in the locality to consider the refugee status

¹⁵ Section 6(2) of the Tanzania Refugee Act, 1998.

¹⁶ See section 6(3) of the Tanzania Refugee Act, 1998.

¹⁷ Section 6(5) of the Tanzania Refugee Act, 1998.

¹⁸ Section 8(1) of the Tanzania Refugee Act, 1998.

of any group of persons claiming to be refugees and make recommendations to the Minister accordingly.

The *ad hoc* committee is locally convened in the sense that it will sit in the area where the asylum seekers are and shall be composed of government officers found in the locality including:

- (a) Member of Parliament;
- (b) Director;
- (c) Regional Administrative Secretary;
- (d) Regional Security Officer;
- (e) Regional Police Commander;
- (f) Regional Immigration Officer;
- (g) The State Attorney in charge of the area where asylum is sought.

It must be noted also that the Act provides for the invitation to the *ad hoc* committee, with an observer status, the UNHCR representative in Tanzania or in his absence any other UNHCR official designated by the Representative in Tanzania.

The duties carried out by the *ad hoc* Committee are on temporary basis. In this regard, the Minister¹⁹ has a duty to specify the group of persons whose status the *ad hoc* Committee shall consider and a time frame within which the Committee shall accomplish its work.

3.3.2 Refugee status determination

3.3.2.1 Immediate reporting to authorised officers upon entry

According to section 9(1) of the Act, any person entering or who is within Tanzania, whether lawfully or otherwise, and who wishes to remain in Tanzania as a refugee within the meaning of section 4, shall immediately and not later than seven days after entry, unless he can show reasonable cause for delay, present himself or report to the nearest authorised officer, village executive officer or a justice of peace and apply for recognition as a refugee.

The law also prohibits detaining, declaring as a prohibited immigrant or in any way penalising a person who has illegally entered the country but claims to be a refugee in terms of the definition of a refugee contained in section 4 of the Act. However, if the said person claiming to be a refugee fails to comply with the requirement as set out under section 9(1), he is guilty of an offence.

3.3.2.2 Filling appropriate application forms

¹⁹ Section 8(5) of the Tanzania Refugee Act, 1998.

Upon declaring himself to be a refugee, an authorized officer shall instruct the person to apply for recognition of his refugee status by filling in a prescribed application form. The form shall then be registered by the authorised officer within the local area of ones point of entry into Tanzania and in addition to the application form, the applicant shall be entitled to make any statement and submit evidence in support of the claim/application.

After submission of one's application for refugee status, the law instructs the authorised officer to interview the applicant and reduce the interview to writing. The transcript must be read to the applicant who may make corrections before it is signed by both the interviewing officer and the applicant. If the applicant does not wish to sign the transcript the reasons for declining shall be indicated. The application process moves to the second phase whereupon the authorised officer, as soon as possible, transmits the application forms, any statements and transcripts or evidence in support thereof to the Director.

3.3.2.3 Transmission of the application to the NEC

Upon receipt of the application, the Director submits the same to the NEC. The Minister is also obliged to ensure that the Committee convenes and considers the application within a period of 60 days from the time of making application. But the period can be extended for reasonable cause.

The office of the Director shall inform the UNHCR Representative in Tanzania of the presence in Tanzania of any person claiming to be a refugee and such person shall be informed of his right to contact the UNHCR office in Tanzania.

The NEC may take any appropriate measure to verify the claim, including making further investigation and collection of additional documentary evidence, if any, summoning the applicant for further interview and may make recommendations to the Minister in terms of section 9 (6) of the Act.

3.3.2.4 Submission of the Application to the Minister and the final verdict

Based on the NEC's recommendation, the Minister is vested with the power to decide on the recommendations and cause the applicant and the UNHCR Representative in Tanzania to be informed of the decision through the Director. The aggrieved applicant may apply for review²⁰ to the Minister, whose decision shall then be final.

After the final decision of the Minister, an applicant is deemed an illegal immigrant, to be dealt with in accordance to the Immigration Act, unless granted

²⁰ Section 9(7) of the Tanzania Refugee Act, 1998.

mandate status²¹ by UNHCR, following which the applicant will be resettled by UNHCR to another country within a specified period.

3.3.2.5 Asylum applications to NEC for the 2009/2010 period

According to the data obtained from the Refugees Department of the Ministry of Home Affairs, the NEC conducted two sessions (98th and 99th) during 2009 and 2010. The 98th NEC session was conducted in Chogo Settlements, from 9–13 November 2009, where 57 applicants appeared before the NEC and 56 applicants were granted refugee status. The 99th session convened in Nyarugusu from the 23 November to 3 December 2009, where 380 applicants appeared before the NEC and only nine applicants were granted refugee status. A total of 437 asylum applications were made to the NEC and 372 applications were denied refugee status for the year 2009/2010. In addition, according to UNHCR's records a total of 117 individuals have applied for asylum from January 2010 until end of June 2010 and the applications are waiting for the NEC session.

UNHCR attended the sessions as an observer, and according to its opinion, the rejection rate was well-founded in relation to the nature of claims advanced. Most of the claims were not grounded on fear of persecution but on fear of economic hardships in the country of origin. Some had transited through more than one country before coming to Tanzania without showing reasonable cause for failure to seek asylum in those countries. Others had voluntarily repatriated from Tanzania, but again fled to Tanzania after facing economic difficulties as returnees in the country of origin.

3.4 The rights and obligations of refugees in Tanzania

According to the 1951 Convention, the country of asylum must apply its provisions to refugees on its soil without discrimination as to race, religion or country of origin, even in times of emergency. Physical security, meaning both protection from *refoulement* and safety from violence in the country of asylum is a priority. More generally, the country of asylum should make sure adequate arrangements are in place to protect refugees from criminal violence, particularly that motivated by racism or xenophobia, including torture, inhuman or degrading treatment by officials. On the other hand, refugees must abide by the laws of the country of refuge. When they come into conflict with the law, refugees must be treated according to the due processes of the law, being given adequate opportunity to raise their defense.

Tanzania being a state party to the relevant instruments stated above, upholds the above stated position in the sense that generally refugee rights are guaranteed under the Bill of Rights enshrined in the Constitution, as for other

²¹ Section 9(9) of the Tanzania Refugee Act, 1998.

Tanzanians or general aliens and under the Tanzania Refugee Act in particular with some modifications.

In this regard while the right to education,²² work,²³ voluntary repatriation²⁴ and family re-union²⁵ and resettlement²⁶ are provided under the Refugee Act, the right to access to justice is provided under the Constitution and is well observed. In Tanzania, the right to movement is guaranteed under article 17 of the Constitution. The constitution further states the circumstances under which such liberty to movement can be curtailed, including when a person is fulfilling a court order, or required to comply with certain obligation under the law or for the purpose of protecting public interest.

Prof. Chris Maina Peter holds the same position. According to Prof. Maina a human being exists as far as he/she has right to liberty which, of course, takes into consideration the existence of others in the society. He states:

Liberty denotes the fullness of individual existence. It is the freedom from restraint and it goes hand in hand with the power to do what one desires without restriction or influence from without. This freedom is only subject to the law which takes into account the rights and freedoms of others in the society.²⁷

Thus, as per the Constitution of the United Republic of Tanzania and as hammered by prominent academics in the field, the right to liberty of movement and residence is guaranteed by the Constitution and can only be abrogated pursuant to the fulfillment of the law which is not inconsistent with the Constitution or with other relevant international law. This is the standard of law which Tanzania applies to its nationals which under international legal obligations, Tanzania must also apply to the refugees and aliens.²⁸ It is therefore the position we expect to be expressly stated in the Refugee Law of Tanzania.²⁹

However, the right to movement as provided under the Act has some restrictions. According to section 17 of the Act, refugees are supposed to reside in an area designated by the Minister to be a refugee camp under section 16 of the Act. Refugee movements outside the refugee camp must be regulated by a

²² Section 31 of the Tanzania Refugee Act, 1998.

²³ Section 32 of the Tanzania Refugee Act, 1998.

²⁴ Section 34 of the Tanzania Refugee Act, 1998.

²⁵ Section 35 of the Tanzania Refugee Act, 1998.

²⁶ Section 26 of the Tanzania Refugee Act, 1998.

²⁷ Chris Maina Peter, *Human Rights in Tanzania, Selected Cases and Materials*, Rudigar Koppe Verlag . Koln, 1997

²⁸ See article 26 of the 1951 Convention.

²⁹ Act No. 1998 and its Refugee Reception and Residence Area (Declaration) Order, GN No. 5 of 1996.

permit³⁰ to that effect, sought by the refugee and granted by the Director or Settlement Officer.

3.5 Availability of information concerning refugee law and practices in Tanzania

To realise the above stated rights, Tanzania has established a specific department of refugee affairs within the Ministry of Home Affairs to cater for refugee issues, including dissemination of relevant information on refugee matters. Eg the designation of land for establishing refugee camps, refugee life while in and outside the camps, camp leadership (settlement officer) under the government etc.

In addition, the government has created a friendly environment for international and domestic agencies to come at the aid of refugees. These include UNHCR, IRC, WFP, UNICEF, CONCERN, the Norwegian Peoples' Aid (NPA) and Red Cross, World Vision. The local agencies dealing with refugee matters in the area include REDESO, TCRC, TWESA, Radio Kwizera and the National Organization for Legal Assistance (nola), to mention but a few.

3.6 The National Organization for Legal Assistance (nola) and the Legal Aid Project for Refugees in North Western Tanzania

In 2005, Bonaventure Rutinwa conducted a research on identifying gaps in protection capacity in Tanzania, which found that refugees' access to justice in Tanzania faced many impediments:

While refugees and asylum seekers in Tanzania are entitled to equal treatment under the law, there are practical impediments to the enjoyment of this right. The distance from the camps and shortage of magistrates cause inordinate delays in hearing of cases involving refugees. Additionally there are far more legal cases than the few protection officers available can effectively follow and as such few refugees receive legal aid. Many do not have access to adequate interpretation. There are significant constraints which can leave refugees without effective remedies in law and vulnerable to criminal convictions without due process.³¹

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- ³⁰ 17 (5) (a) No asylum seeker or refugee shall be allowed to leave a designated area as directed under this section unless he has 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 a Settlement Officer may prescribe in the permit.
- (b) No asylum seeker or refugee may be allowed to be out of a designated area for more than fourteen days unless the Director has allowed in the permit a longer period upon which an asylum seeker or refugee may stay outside the designated area.

³¹ B Rutinwa, *Identifying Gaps in Protection Capacity in Tanzania* (March, 2005), a consultancy report prepared in the context of the Strengthening Protection Capacity project funded the European Union and the governments of Denmark, the Netherlands and the United Kingdom. The study aimed at devising tools and

Among the recommendations made by Rutinwa was for assistance to be provided to local organisations with the capacity to provide legal aid services to refugees in their area. It is in this regard that nola was contracted to provide legal aid services to refugees. Nola is a non-profit, non-governmental, autonomous and voluntary public law organisation. It was registered as an NGO under the Companies Ordinance, Cap. 212 of the Revised Laws of Tanganyika, on 31 January 2003. Nola's vision is justice for the needy and vulnerable groups.

Since July 2006, nola has been working as a UNHCR implementing partner under a tripartite agreement with Ministry of Home Affairs. Under the agreement, nola provides legal aid services to refugees and members of the refugee host community. The legal aid services include legal advice, counseling, preparation of administrative documents and court pleadings, research, training, strategic litigation, prison visits and when necessary nola provides court representation.

4.0 Challenges

Challenges in respect of refugee status determination have been registered on three folds. On one part UNHCR has its own concerns, refugees have challenges of their own and the NEC faces its own challenges to discharge its functions. The following are the challenges in a nut shell.

4.1 Irregular intervals for NEC sessions

According to UNHCR, the NEC sessions are not held at regular intervals. This leads to a backlog of applications for refugee status.

4.2 The language barrier to asylum applicants

The language used in the NEC sessions and or proceedings is Kiswahili, while the majority of applicants do not speak Kiswahili. Most of the time UNHCR has been facilitating the interpretation services but this consumes time and can delay the process as the interpreter is secured.

4.3 Negative attitude to refugee camps

Most of refugees, especially those from urban areas, find it difficult to reside in refugee camps.

4.4 Composition of NEC

The NEC is constituted by members from security organs. It is difficult to secure their attendance, which delays the sessions.

approaches to strengthen the capacity of four states (Kenya, Tanzania, Benin and Burkina Faso) to receive and protect refugees.

4.5 Financial support to NEC

The NEC sessions require funds from the government before they can convene. The government funds are disbursed based on availability and priorities. This may lead to irregular sessions and a backlog of undetermined asylum applications.

4.6 NEC discharging its advisory function to the Minister

Despite the fact that NEC interviews applicants, makes findings and makes informed recommendations, it remains only an advisory body to the Minister.

4.7 Intertwined ministerial functions in addressing refugee issues

Refugee issues in Tanzania are addressed by intertwined ministerial functions. In discharging these intertwined ministerial functions Rutinwa³² found disparities between the orders/directives from the Minister and other government implementing bodies on the ground in implementing government decisions in relation to refugees.

4.8 The law preceding policy factor

As stated above, normally the policy is prepared first and the law then implements it. In Tanzania, the situation is the opposite. It is difficult under these circumstances to establish whether the law and policy are moving on the same direction and on the right note.

5.0 Conclusion

Generally Tanzania has done wonders in hosting refugees for almost four decades. The absence of a relevant policy in place posed implementational challenges but refugees have been protected as per the expectations and to the satisfaction of the international community. The movement from the Refugee Control Act of 1966 to the Refugee Act of 1998 is a big achievement. The identified shortcomings or challenges, for instance on issues of refugee movements, status determination and refugee camps, need be addressed.

³² *ibid.*