

Repatriation as a Controversial Concept:
The Case of Somali Refugees in Kenya

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Abstract

Repatriation is currently considered the preferred durable solution for refugees; however, it is often a controversial concept that does not always serve refugees. Repatriation is promoted due to the political and self-interested motives of UNHCR, states of origin and host states. In addition to this, the standard of voluntary repatriation is frequently not upheld in practice, despite its importance for refugee protection. The case of Somali refugees in Kenya exemplifies this, as repatriation is being promoted even though the conditions in Somalia are not yet conducive for return. This paper shows that current repatriation efforts are the result of key stakeholders' motives (UNHCR, Governments of Kenya and Somalia) and refugees are returning prematurely due to multiple push factors in Kenya. Consequently, this is neither a voluntary return nor a durable solution for Somali refugees in Kenya and compromises their protection.

List of Abbreviations

DLI	Development through Local Integration
DRA	Department of Refugee Affairs
EU	European Union
GISR	Global Initiative on Somali Refugees
HDI	Human Development Index
HIPS	Heritage Institute for Policy Studies
HRFOR	Human Rights Field Operation in Rwanda
HRW	Human Rights Watch
IDP	Internally Displaced Person
IGO	International Governmental Organization
IOM	International Organization of Migration
MSF	Médecins Sans Frontières
NEP	North Eastern Province
NGO	Non-governmental Organization
PRS	Protracted Refugee Situation
RCK	Refugee Consortium of Kenya
RPF	Rwandan Patriotic Front
RSD	Refugee Status Determination
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency
WHO	World Health Organization
WFP	World Food Programme

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Introduction

The international refugee regime is operating at a challenging time as the absolute number of refugees worldwide has significantly increased as well as the incidences and length of protracted refugee situations (PRS)¹. At the end of 2014, 14.4 million refugees were under the mandate of the United Nations High Commissioner for Refugees (UNHCR, 2015a, p. 2)². Of this number, 6.4 million were in a protracted situation (UNHCR, 2015a, p. 8)³. Protracted refugee situations pose many hardships for refugees as they “find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile” (UNHCR, 2005, p. 150).

UNHCR has the mandate to ensure the international protection of refugees and to find durable solutions to their plight. The three durable solutions for refugees outlined by UNHCR are: Development through Local Integration (DLI), Resettlement, and the 4R's: repatriation, reintegration, rehabilitation, reconstruction (UNHCR, 2003). However, solutions are not easily achievable as they are largely dependent on the conditions in the countries of origin, affected by the policies of asylum and donor states, and the level of burden sharing.⁴

The preference for a particular durable solution shifted from resettlement to repatriation at the end of the Cold War. Repatriation, the process by which a refugee returns to their country of origin, continues to be the most preferred and promoted solution in the international refugee regime⁵. This is largely due to the self-interests of

¹ A PRS is understood in this paper as a situation when refugees are in exile for five or more years after being displaced and a durable solution is not imminently possible (UNHCR, Excom, 2009).

² This number excludes Palestinian refugees who are under the protection of the United Nations Relief and Works Agency (UNRWA).

³ This statistic uses the definition of a PRS as “a situation in which 25,000 or more refugees of the same nationality have been in exile for five years or longer in a given asylum country” (UNHCR, 2015a, p. 8).

⁴ Although the definition of burden sharing has changed over time, it generally refers to financial assistance and resettlement of refugees to a third country, from often low-income countries that disproportionately carry the burden of hosting refugees (Boswell, 2003).

⁵ This paper will use the definition of refugee regime outlined by Scalettaris (2007, p. 49), as “the institutions, legal instruments and norms composing the institutional framework which regulates the management of refugees.”

key stakeholders including: states of origin, host and donor states, and UNHCR. For UNHCR to promote repatriation, there are ‘essential preconditions’ that have to be met. These include: improved conditions in the country of origin in order for refugees to return in ‘safety and dignity’, ‘voluntariness’ of return, guarantee or sufficient assurances by the country of origin for the safety of returning refugees, access by the UNHCR to refugees and returnees, and, finally, a formal agreement between the involved parties (UNHCR, 1996, 3.1). Although the *voluntariness* of repatriation has been a key principle of refugee protection, in practice, involuntary repatriation occurred and was approved by UNHCR under certain circumstances in the 1990s (Long, 2013a; Chimni, 2004). This had negative implications for refugees as the principle of *non-refoulement* was compromised (Article 33 of the *1951 Refugee Convention* (UNHCR, 1951)).

A complex and protracted refugee situation is that of Somali refugees. The Somali Civil War began in the early 1990s and led to thousands of people fleeing to seek refuge in neighbouring countries. Although Kenya had been host to refugees for decades, the number of Somali refugees who sought protection in Kenya began to rise significantly at that time. This led to a number of changes in the Kenyan refugee regime and signalled the beginning of a more restrictive approach towards refugees.⁶ Somali refugees were primarily hosted in Dadaab Refugee Camp⁷, which began operation between 1991 and 1992, and is located only 100km from the Somali-Kenyan border in Garissa County, North Eastern Province (NEP), Kenya. In 2011, another large movement of refugees from Somalia occurred due to ongoing violence, drought and famine. As of August 31st, 2014, there were 339,606 registered Somali refugees in Dadaab Refugee Camp (IOM & UNHCR, 2014, p. 21) and by December 31st, 2013, there were approximately 32,401 registered Somali refugees in Nairobi and 53,816 Somali refugees in Kakuma Refugee Camp (UNHCR, 2014, January, 29, p. 1). However, unofficial estimates for urban refugees have been as high as 100,000 (Campbell, Crisp, & Kiragu, 2011, p. 7), with

⁶ It is important to note that Kenya has, in fact, been relatively generous given that Somalis are permitted into the country as refugees on a *prima facie* basis (Betts, 2013). Although most states in the region have signed or ratified the *OAU Refugee Convention*, which broadens the *1951 Refugee Convention*'s definition of a refugee, Kenya is one of the only states in Africa that has actually implemented it (Betts, 2013, p. 36). However, the quality of asylum has suffered.

⁷ Although usually referred to as Dadaab Refugee Camp, this refugee camp complex is comprised of multiple camps that surround UNHCR's sub-office in the town of Dadaab.

Somali refugees comprising approximately 58% of this number (Refugee Consortium of Kenya, 2012, p. 77).

In the case of Somali refugees in Kenya, the three durable solutions have been considered as not viable options for most refugees. Local integration was largely restricted when Kenya adopted a policy of confinement after the large influxes in the early 1990s and resettlement today is a “rare solution to refugee crises” (Bradley, 2013, p. 1), as it accounts for a very small percentage of the total number of refugees. According to the *UNHCR Global Report 2013*, only 1,356 refugees were resettled from Dadaab Refugee Camp that year (UNHCR, 2014c, p. 4). Moreover, until recently, repatriation was not considered as a possibility for most refugees due to the continued insecurity in Somalia. Consequently, the majority of Somali refugees have remained in a protracted situation, with some refugees living in the camps for more than twenty years. This, however, all changed when UNHCR and the governments of Kenya and Somalia signed a *Tripartite Agreement* on November 10th, 2013 (UNHCR, 2013d), even though UNHCR’s ‘essential preconditions’ for repatriation had not been satisfied.

The *Tripartite Agreement* serves as a legal framework and, hence, provides a means for the repatriation of Somali refugees living in Kenya. The conditions in Somalia, however, are not yet ready for large-scale returns (Heritage Institute for Policy Studies [HIPS], 2013; UNHCR, 2014, December 8). Although UNHCR has emphasized on numerous occasions that the returns would be voluntary, this is difficult to ensure in practice. There have been mixed reactions from donors, refugees and the international community as to the viability of promoting this as a durable solution since regions of Somalia remain insecure and under Al-Shabaab control. Moreover, the Federal Government of the Republic of Somalia was only established in 2012. Therefore, future political stability and the government’s ability to provide protection, particularly against Al-Shabaab, are questionable. Anab Nur, an analyst with the Heritage Institute for Policy Studies in Mogadishu, argues that the Somali government does not yet have the capacity to resettle a significant amount of people as it has not been able to effectively relocate the internally displaced persons (IDPs) currently in Somalia (IRIN, 2013, November 13). As

of August 2014, there were approximately 1.1 million IDPs in Somalia (UNHCR, 2014b, p. 1). Nur further proposes that returnees, if displaced after resettling in Somalia, would face the same challenges that current IDPs are (IRIN, 2013, November 13, para. 32). Furthermore, the devastating consequences from years of conflict are still apparent. In the context of human development, Somalia ranked among the lowest countries in the world on Human Development Index (HDI) (United Nations Development Programme [UNDP], 2012, p. 27). Health services are neither easily accessible nor sufficient for the population. Somalia has one of the highest maternal mortality rates in the world (UNDP, 2013, p. 27-28), and life expectancy at birth was only 50.7 years as of 2012 (UNDP, 2013, p. 171). These indicators paint a bleak picture of a country that has seen development halted as a result of recurring violence and a lack of governance.

In light of this, this research paper examines the case study of Somali refugees' repatriation from Kenya using the following research questions:

1. Why is repatriation currently being promoted, given that the essential preconditions for repatriation provided by the UNHCR have not yet been met?
 - What are the motivations of stakeholders and to what extent have they impacted the decision to currently pursue this as a durable solution?
2. How does this case fit within the broader trend of repatriation movements over the past decade?
 - How *voluntary* is this movement in practice thus far, and is there a danger that the required voluntary nature of this repatriation movement could be compromised?

As we posit in this paper, repatriation is a controversial concept as it often fails to serve refugees because they frequently return prematurely to less than ideal conditions. As Bradley (2013, p. 8) highlights, it is important to further research repatriation as it has not received a great deal of attention from researchers, despite a significant shift towards repatriation as the preferred solution (with a series of implications for refugees). The aim of this research paper, then, is to use the existing critical literature on repatriation to help explain the particular case study of Somali refugees in Kenya. Although the case study is not meant to be generalized to all discussions on refugees and repatriation, it serves as a

strong example of a case that the general literature on repatriation helps to better understand. This most notably includes the motives of key stakeholders for pursuing repatriation, and the trend towards involuntary repatriation, including the participation of UNHCR in movements that are not voluntary in nature.

There are two main sections of this paper. First, we rely on the existing literature to demonstrate that repatriation is generally pursued due to stakeholders' self-interested motives and that the standard of *voluntary* repatriation has been manipulated to justify involuntary returns. Second, we analyze the specific example of Somali refugees in Kenya and the recent promotion of repatriation by UNHCR and the Kenyan and Somali governments. As we show, although the *Tripartite Agreement* requires that repatriation is voluntary, in reality, this is a politically motivated, self-interested and a premature initiative that compromises refugee protection.

This research paper is a document analysis, using secondary sources (e.g., statistics from government databases, government and external stakeholder reports, NGO reports, scholarly publications, and grey material). A limitation is the scarce academic literature on the repatriation of Somali refugees in Kenya after the *Tripartite Agreement* was signed due to the contemporary nature of this case study. For this reason, this paper will draw on historical examples in order to situate this case within the broader trend of involuntary repatriation movements and exemplify the consequences of forced and premature repatriation in relation to the current situation under study.

1. Repatriation as a Controversial Concept in the Literature

Repatriation is promoted as the preferred durable solution for refugee situations by both states and UNHCR. However, this was not always the case. Resettlement was the predominant solution after World War II and until 1985, when there was a shift towards repatriation as the preferred solution (Chimni, 2004). This shift occurred after the Cold War, as Western countries began to promote repatriation when the number of asylum seekers arriving from the global South increased and there was no longer a labour shortage or the same political motives to resettle refugees (Chimni, 2004). In Africa,

which is the geographical focus of this paper, local integration and repatriation were most widely practiced on the continent. This also shifted in the late 1980s and the 1990s when many African host states no longer supported local integration and began to strongly favour repatriation (Rutinwa, 2002). Bradley (2013, p. 8) describes the focus on repatriation as “a definitive change in the structure of the international refugee system”, motivated by the interests of host and donor states, as well as states of origin (Harrell-Bond, 1989, p. 62). Scholars have been critical of this shift towards repatriation and subsequent impact on refugee protection (Long, 2013a; Chimni, 1993, 2004; Takahashi, 1997). Takahashi (1997) even cautions that repatriation has in fact taken priority over refugee protection.

Today, states in the global South, which are the primary hosts for refugees globally, largely continue to restrict local integration. This is unlikely to change without increased donor support and burden sharing (Bradley, 2013, p. 8). Moreover, “affluent countries lack the incentive and domestic support necessary to resuscitate large-scale resettlement programmes” (Bradley, 2013, p. 8).⁸ Consequently, repatriation is now considered crucial and the only realistic solution for the majority of refugees (Bradley, 2013, p. 1).

In the following lines, it is shown that repatriation is often not a consensual concept because it frequently does not serve refugees for two principal reasons. First, host states, UNHCR, and states of origin, promote repatriation as the best solution for refugees due to political and self-interested motives. Second, repatriation movements are not always voluntary, even though *non-refoulement* is a core principle of the *1951 Refugee Convention* (UNHCR, 1951). Consequently, other ‘durable’ solutions are not being found for refugees due to a strong focus on repatriation as the most preferred solution.

⁸ To qualify, there is now a new European Agenda on Migration under review by the European Commission in order to improve the management of migration in Europe. One recommendation that the Commission adopted is for member states to resettle 20,000 people from outside the European Union over two years (EU) as identified by UNHCR, with financial support from the European Union (European Commission, 2015, May 27).

1.1. Stakeholders' Motives

As Black and Koser (1999, p. 3) argue, repatriation has become a political issue and therefore the motivations of stakeholders need to be scrutinized, including host and home governments, the international community, and especially UNHCR. In particular, host states' motives will be derived from the African context, as it has greater relevance to the case study. In relation to UNHCR's contested and self-interested role in repatriation, it is important to recognize here that the organization is dealing with highly complex situations and its autonomy to act is often constrained by host states' policies and donor states' interests. Therefore, as we discuss further, even though the organization is supposed to remain non-political, as per the Statute of UNHCR (United Nations General Assembly, 1950), this is difficult as refugee situations are inherently political and the organization therefore finds itself "out of its depth and faced with security and political issues that it has neither the mandate nor the resources to deal with" (Loescher, 2001b, p. 28).

1.1.1. Host states in Africa

Host states in Africa became averse to local integration in the late 1980s, and even more so in the 1990s, when the number of refugees seeking asylum significantly increased (Rutinwa, 2002). The previous "open door policy" many African states had towards refugees ceased to exist and states began to strongly favour repatriation (Rutinwa, 2002 p. 12). Refugees seeking asylum from civil wars in the Horn of Africa and Great Lakes region were seen as a source of insecurity and in some cases, hosting refugees strained relations between the governments of host states and states of origin (Rutinwa, 2002). Moreover, poor host states in the global South, including those in Africa, often perceive refugees as an economic 'burden', constraining already limited resources (Betts, Loescher, & Milner, 2012). This causes resentment of refugees by the local population and refugees are often incorrectly blamed for economic hardships (Maluwa, 1995, p. 657). Furthermore, because the international community is not sharing the refugee burden equally and donor support for protracted refugee situations tends to decrease over time, host states are unwilling to find local solutions to these situations (UNHCR, 2006, p. 114). Currently, 86% of refugees are hosted in developing countries

(UNHCR, 2015a, p. 2). Thus, many host states feel as though they have an unfair burden (Milner, 2009a, p. 26; Crisp 2002), and are often resentful of this. As a result, host states generally support repatriation in order to relieve the burden of hosting refugees.

Although evidently not in the best interest of refugees, host states often prefer rapid repatriation, irrespective of the conditions in the state of origin (Rutinwa, 2002, p. 13; Stein, 1997, p. 6). Host states might pressure for premature and forced repatriation if their concerns surrounding hosting refugees are not resolved, which could negatively impact the institutions and peace building efforts in the state of origin (Milner, 2009a, p. 17). Milner (2009a, p. 26) further highlights that premature repatriation may be promoted when donor and host states have self-interests in doing so. This type of repatriation, however, is not a durable solution for protracted refugee situations as the factors that caused refugees to flee still exist and the preconditions for repatriation have not been met (Milner, 2009a, p. 26). Furthermore, many premature returns can also be attributed to a failure by the international community to protect and assist refugees (Stein, 1997, p. 13). Lastly, Long (2013a, p. 21) draws attention to the fact that states, rather than UNHCR, “are liable to take the most draconian measures in order to promote repatriation.”

In sum, as the literature highlights, host state pressure is largely responsible for premature and involuntary repatriation, which negatively impacts refugee protection.

1.1.2. UNHCR.

UNHCR considers repatriation as the preferred durable solution (UNHCR, Excom, 2009), and the one that is the most realistic for the largest number of refugees (UNHCR, 2013a, p. 17). The organization continues to promote the other two durable solutions, resettlement and local integration, even though they serve less refugees as durable solutions. However, UNHCR’s preference for repatriation can only be partially explained by this limited impact of local integration and resettlement. The literature is critical of UNHCR, as host and donor state pressures, as well as self-interests, have served as motives for UNHCR’s participation and promotion of repatriation. According to Takahashi (1997, p. 595), “UNHCR, in particular, has played a disappointing role,

giving undue emphasis to repatriation as *the* goal to be achieved.” Consequently, this has at times averted focus from UNHCR’s protection mandate.

UNHCR declared the 1990s as ‘the decade of voluntary repatriation’, and not only adopted repatriation as the primary solution but also began to initiate returns rather than previously just supporting them (Long, 2013a). Although UNHCR might assert that its more active role in promoting voluntary repatriation efforts was what refugees wanted, UNHCR’s success starting being based on showing how many refugees had repatriated (Betts & Loescher, 2011, p. 123; Long, 2013a, p. 5).

UNHCR is by nature a ‘state-centric’ organization as it is a branch of the United Nations (UN), an international governmental organization (IGO) that is made up of member states. Thus, throughout UNHCR’s history and until today, states have been the principal actors in the international refugee regime (Loescher, 2014, p. 217). UNHCR is not only impacted by states’ policies, but it is “totally dependent” on donor states to fund its operations (Loescher, 2001a, p. 34). As a result, donor states have significantly influenced the organization (Loescher, 2014, p. 219). UNHCR’s funding mechanism differs from that of the United Nations, as member states are not required to provide assistance to UNHCR. Therefore, there is no automatic allocation of funds for the organization, rendering it reliant on voluntary contributions (Krever, 2011). Consequently, without an autonomous and consistent source of funding, UNHCR is constrained in responding to refugee crises and fulfilling its mandate of refugee protection (Loescher, 2001b, p. 28). Furthermore, host governments, as sovereign states, determine the extent to which UNHCR can operate within their country. Consequently, UNHCR’s “[...] activities and evolution have been defined and, at times, constrained by the interests of states within the global refugee regime” (Loescher, 2014, p. 18).

Host and donor states’ interests have been a significant factor in the preference for repatriation over other durable solution. Repatriation is the preference of host states due to reasons previously outlined (see pp. 7-8 above), and for donor states, with one reason being that it is less expensive than care and maintenance programs (Hammond, 2014, p.

508; Crisp 2010). Moreover, because of host and donor state pressure, UNHCR has facilitated repatriation even when the conditions in countries of origin were not yet peaceful, and has been heavily criticized for this (Betts, Loescher, & Milner, 2012, p. 51; Takashi, 1997, p. 595). In some cases, UNCHR enforced involuntary repatriation programs in order to show its relevance to states (Loescher, 2001b, p. 28) and used "promotional and persuasive tactics" in order to expedite returns (Long, 2013a, p. 21), as observed in the return of Rwandans from Tanzania in 1996 (discussed further in section 1.2.2.).

Consequently, "UNHCR's concern to appear useful to donors in an increasingly competitive humanitarian marketplace – and in which other actors were not burdened by a mandate to protect as well as assist – played an evident part in the move to downgrade voluntariness as a corollary to repatriation" (Long, 2013a, p. 26). Additionally, because UNHCR is state-centric (a point that is discussed above), it has been hesitant to promote refugee representation in the repatriation process (Long, 2013a, p.18). According to some UNHCR staff, it is a challenge to ensure the principle of voluntariness when states have a political interest in the return of refugees and other solutions are not viable (Long, 2013a). Thus, premature returns to countries, which are not yet stable or where a regime continues to persecute individuals, are inevitable (Long, 2013a, p. 7).

Finally, UNHCR's attitude towards spontaneous returns has impacted the organization's decision to promote organized repatriation movements. A spontaneous return is when a refugee decides to return to their country of origin by their own volition, without UNHCR support, as opposed to an organized return that is facilitated and assisted by UNHCR (UNHCR, 1996). Long (2013a, p. 17) argues that UNHCR has an "ambiguous attitude to spontaneous returns", as this type of repatriation makes facilitating and monitoring more difficult for the agency. Spontaneous returns are more logistically complicated for UNHCR due to issues such as the control of the financial aspect of reintegration and verifying that refugees are "processed out" of the refugee system (Long, 2013a, p. 17). Therefore, when refugees begin to return spontaneously,

UNHCR has used this to justify facilitating repatriation, irrespective of the factors that caused refugees to return.

In conclusion, UNHCR has adopted and promoted repatriation above other durable solutions for refugees, largely due to host state pressure and in order to remain a key actor in the international refugee regime by appeasing donor states. Even though UNHCR is greatly constrained by states to act independently due to the structure of the organization's funding mechanism, to view UNHCR as a passive actor, controlled by states, would not be a truly accurate representation of the organization. UNHCR has shown agency and acted independently at different times throughout its history (Loescher, 2001a). With respect to durable solutions, UNHCR often exerts what pressure it can in order to find solutions for refugees. This is observed in the recent case of Syrian refugees, where UNHCR successfully pressed for states to increase their resettlement quotas.⁹ This exemplifies that UNHCR does have political weight, even if limited, to influence donor states. UNHCR should continue to exert what influence it can in order to encourage donor governments to share the responsibility of refugees more equally. This could ease the burden on host states in the global South and potentially be used as a leverage to negotiate with host states when they pressure for refugees to return.

1.1.3. State of origin.

According to Bradley (2014, p. 114), states of origin may encourage and use repatriation to enhance their perceived, if not actual, legitimacy, in post-conflict situations. States of origin view refugees as “highly politicized symbols” and their return is in essence, a public statement that there is no longer the fear of persecution (Hammond, 2014, p. 508). Bradley (2014, p. 113) argues that often times during the initial stages of a peace process, refugees are pushed to return even though conditions are not yet suitable, because repatriation is considered an important part of peace building.

⁹ As of May 2015, 87, 350 places were made available and 61,948 of these were pledged since 2013 (UNHCR, 2015, May 13). In Canada, for example, the Canadian government increased the number of Syrian refugees to be resettled from 1,300 places allocated in 2013, to an additional 10,000, announced in 2015 (UNHCR, 2015, May 13; Mas, 2015, January 7). This new commitment was in response to UNHCR's global appeal for the resettlement of 100,00 Syrian refugees (Mas, 2015, January 7), and occurred after a visit from UNHCR High Commissioner António Guterres in May of 2014, who urged Canada to increase its quota (UNHCR Canada, 2014).

Human rights advocates heavily criticized this as a violation of refugee protection, even when it was justified to prevent conflict (Whitaker, 2002, p. 13). However, it is important to note that the impact of repatriation on the peace process of the country of origin is inconclusive within the literature. Although it is argued that repatriation can contribute to peace building and development, if individuals gain skills while in the host country (Milner, 2009a, p. 27-28), it can also lead to conflict with locals over such things as property and access to resources (Bradley, 2013, p. 6). Moreover, refugees are often pressured to return to support a political party after a conflict has ended and "may be used as political pawns" (Hammond, 2014, p. 502).

An interesting example of a state of origin's motives for encouraging their citizens to return is the Rwandan government after the genocide in 1994. The Rwandan Patriotic Front (RPF) government strongly advocated that the country was safe for refugees to repatriate and viewed their return as necessary in order to rebuild the country and gain legitimacy as a new government (Whitaker, 2002, p. 8). The fact that refugees were not repatriating on their own, prior to being forced to do so, was seen as an embarrassment by the government (Whitaker, 2002, p. 8). Although obviously inaccurate, the government went so far as to assert that refugees who did not return were participants in the genocide and were avoiding being held accountable for their actions (Long, 2013a, p. 13).

1.2. Involuntary Repatriation

In the 1990s, the standard of voluntary repatriation diminished, both theoretically and in practice, with new concepts such as 'safe return'. In order to demonstrate how repatriation does not always serve refugees, this section will first outline why the principle of voluntary repatriation is important to uphold and second, outline the shift towards involuntary repatriation and the motives behind it. Two historical examples will be used to highlight this shift.

1.2.1. The standard of involuntary repatriation compromised.

The *voluntary* nature of repatriation is important to uphold, as refoulement to a country where there is a risk of persecution or danger would jeopardize refugee

protection. More precisely, although *voluntary* repatriation is not mentioned in the *1951 Refugee Convention* per se, the concept stems from the principle of *non-refoulement*, found in Article 33 of the *1951 Refugee Convention*, which stipulates that states must not “expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UNHCR, 1951). The voluntariness of return is an important factor in the sustainability of return (Long, 2013a, p. 38), however in practice, the term ‘voluntary’ is used in order to validate premature and politically advantageous returns (Long, 2013a, p. 1). Furthermore, if refugees are involuntarily returned to a country that is not yet secure, they are likely to become internally displaced (Rutinwa, 1996, p. 301) or to flee once again, as was the case in the involuntary return of the Rohingya to Myanmar (a point that is discussed later in section 1.2.2.).

The concept and the practical application of the *voluntariness* of repatriation have been widely debated by scholars. UNHCR’s handbook on voluntary repatriation (UNHCR, 1996, 2.3) outlines that, “As a general rule, UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees’ decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country.” However, the literature is often critical of the UNHCR’s participation in refugee movements. Although states play a key role in this process, UNHCR is the lead agency that has the responsibility to ensure refugee protection, assess the voluntariness of repatriation, and to promote it once the conditions allow for refugees to return in ‘safety and with dignity’. UNHCR acts as a facilitator in this process and works with other actors such as governments and NGOs (UNHCR, 1996, 1.6). However, “few issues have proved more controversial in practice for the organization than UNHCR’s involvement in repatriation operations” (Long 2013a, p. 1).

Once repatriation was accepted and promoted as a key durable solution, a trend towards the participation of UNHCR in involuntary repatriation movements occurred in the 1990s. UNHCR developed new terms to classify certain repatriation movements,

which in practice, constituted involuntary repatriation. The concept of ‘safe return’ was introduced in 1993, and ‘imposed return’ in 1996 (Chimni, 2004).

The notion of ‘safe return’ focused on the safety of return rather than the voluntariness of repatriation. This initially arose when it was being debated in the international refugee regime as to whether it was the voluntary nature or the safety of return that complied with the principle of *non-refoulement*, since the principle of voluntary repatriation was only stipulated in Statute of UNHCR and not in the *1951 Refugee Convention* (Long, 2013a). Therefore, it was argued that repatriation could be promoted if the conditions in the country of origin were deemed safe. UNHCR also worked at this time to reformulate the understanding of repatriation, so that greater importance could be placed on the safety of the return, based on UNHCR’s assessment, rather than on refugees’ decision to return home (Long, 2013a, Chimni, 1993, p. 454). This occurred at time of an “emerging *new paradigm* which emphasise[d quick]solutions” to refugeehood (Chimni, 1993, p. 454; Hathaway, 2007, p. 6), and thus was favored by both UNHCR and states as it balanced protecting refugees while also finding a solution (Long, 2013a, p. 25).

The notion of ‘imposed return’ signifies that refugees are forcibly returned to less than ideal conditions in their country of origin (Chimni, 2004, p. 63). UNHCR introduced imposed return when it acknowledged that involuntary repatriation was in fact occurring and that exceptions needed to be made to the standard of voluntary repatriation (Chimni, 2004). This was based on the idea that the standard of voluntary repatriation needed to be ‘contextualized’ (Chimni, 2004), when asylum was ‘unsustainable’ (Long, 2013a, p. 26), and refugees had no other solution than to repatriate when host countries were adamant on their return. UNHCR vindicated its participation in accepting involuntary return in some cases, as the organization was faced with “a limited number of options, none of which is fully consistent with the principles which the organization is mandated to uphold” (UNHCR, 1997, para. 80). However, rather than withdraw from an operation, it is argued that this would help safeguard UNHCR’s participation in returns, and thus relevance, as UNHCR did not have to ensure that returns were voluntary (Long, 2013a).

In sum, the exceptions made to the standard of voluntary repatriation illustrate that the voluntary nature of repatriation is not always given priority in practice.

1.2.2. Involuntary returns in the 1990s.

In the 1990s, UNHCR began to participate in involuntary repatriation movements. At times, UNHCR's interests were comparable to donor and host states' rather than those of refugees. Two prominent cases clearly exemplifying the use of UNHCR's notions of 'safe return' and 'imposed return'. The first was in 1994 with the return of the Rohingyas to Burma (now Myanmar) from Bangladesh and the second was the return of Rwandans from Tanzania in 1996 (Betts, Loescher, & Milner, 2012, p. 52). These two cases show how UNHCR disregarded the principle of voluntary repatriation in order to rapidly achieve a solution (Long, 2013a). Furthermore, Stein (1997) uses these cases as key examples to argue that the 'nature of return' directly impacts the reintegration process.

In the first case, approximately 250,000 Rohingya fled from Myanmar to Bangladesh between 1991 and 1992, due to a repressive regime (UNHCR, 2007, p. 8). However, from 1993 and 1997, approximately 236,000 refugees were repatriated to Myanmar (UNHCR, 2007, p. 12). Both Myanmar and Bangladesh have not acceded the *1951 Refugee Convention* or the *1967 Protocol* (UNHCR, 2011b). According to Médecins Sans Frontières (MSF), the Government of Bangladesh began to forcefully repatriate refugees shortly after their arrival, without UNHCR's participation or support (MSF, 2002, p. 5). Initially, the Government of Bangladesh prevented UNHCR from accessing refugees, however, UNHCR later signed a memorandum with Myanmar and Bangladesh in order to reinstate their presence in the camps "in exchange for its involvement in the 'promotion' of voluntary repatriation to 'safe' conditions in Myanmar" (Long, 2013a, p. 12). Although a controversial decision, this allowed UNHCR to have access, albeit limited, to refugees who had returned and in 1994, UNHCR began the repatriation process (MSF, 2002, p. 5).

However, even though UNHCR was working in Bangladesh during the involuntary repatriation in 1992 and 1993, Human Rights Watch (HRW) state that UNHCR was not able to prevent human rights abuses from occurring in the refugee camps (HRW, 1996, p. 3). In August 1994, UNHCR began mass registration and information sessions in anticipation of the repatriation movement and set the deadline for the return of 190,000 refugees by December that year (MSF, 2002, p. 5). UNHCR was criticized, as it did not inform Rohingya of their right to not return, nor provided sufficient or accurate information on the human rights situation in Myanmar (Loescher, 2001a). In a survey conducted by MSF in March 1995, 65% of refugees were not aware of their right to refuse repatriation and 63% did not want to repatriate (MSF, 2002, p. 5). In this movement, UNHCR's participation was "at best naïve, and at worst actively neglected UNHCR's protection mandate" due to self-interests and in order to gain access to Myanmar (Long, 2014, p. 11).

Rohingya were returned to a state where the cause of their flight had not been resolved and thus "the cycle of exodus" did not end after refugees were returned (HRW, 1996). The 'nature of return' of Rohingya to Myanmar resulted in continued persecution and consequently, refugees were forced to flee once again (Stein, 1997). Approximately 10,000 new asylum seekers fled to Bangladesh by the end of May 1996, and at the same time, UNHCR was completing the repatriation operation of refugees who had fled as the result of the Burmese military in 1992 and 1993 (HRW, 1996, p. 2). Until today, Rohingya in Burma face human rights abuses including discrimination, unjustified arrests, torture, and death while in custody (Brinham, 2012). Moreover, from June 2012 to June 2014, UNHCR estimates that more than 86,000 people fled Myanmar, the majority being Rohingya (UNHCR, 2014, June 10, para. 2). In 2015, thousands of Rohingya continued to flee Myanmar by boat as the result of ongoing persecution. Indonesia, Malaysia and Thailand turned away boats carrying Rohingya, which garnered international attention. In turn, these countries announced they would no longer push back these boats on the condition that they were resettled or repatriated within a year (Tran, 2015, May 21). Therefore it is apparent that repatriation was not a durable solution for Rohingya refugees, who until today, continue to flee in search of refuge.

The second case of the return of Rwandan refugees from Tanzania in 1996 also raised questions as to UNHCR's participation in the involuntary return of refugees. UNHCR and the Government of Tanzania released a statement on December 5th, 1996, that Rwandan refugees were expected to return home by the end of the month (Whitaker, 2002). UNHCR encouraged refugees to prepare to return and advocated that Rwanda was now safe (Long, 2013a, p. 14). The Tanzanian government invoked the cessation clause after Rwanda initiated a military attack in Zaire (now Democratic Republic of Congo), as the Rwandan government wanted the camps closed because it perceived them as a security threat and for refugees to return home (Whitaker, 2002, p. 7). The cessation clause states that a refugee "can no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;" (UNHCR, 1951, Article 1C). This applies to situations when refugee protection is no longer required as the circumstances have changed, defined as "fundamental changes in the country [of origin], which can be assumed to remove the basis of the fear of persecution" (UNHCR, 1992, para. 135). However, Hathaway (2007, p. 5) argues that "the criteria for lawful cessation of refugee status could not possibly have been met in the circumstances: fair trials were only beginning in Rwanda, disappearances and deliberate killings were continuing there, and there was no reason whatever to believe that Rwanda could meet the basic needs of returning refugees."

A variety of factors, including insufficient funding from donor states, contributed to the decision to return Rwandan refugees (Whitaker, 2002; Chiusiwa, 1999). Both the United States and the United Kingdom governments wanted to close the refugee camps in the Great Lakes region, as did the Rwandan government in order to influence its citizens to return (Long, 2013a). Whitaker (2002, p. 2) argues that the return of Rwandan refugees from Tanzania is part of the shift towards decreasing standards of protection and increasingly restrictive refugee policies.

UNHCR participated in the return of Rwandan refugees as the organization argued that conditions in country of asylum were unsustainable and safety was prioritized over voluntariness (Long, 2013a, p. 14). High Commissioner Ogata explained,

When refugee outflows and prolonged stay in asylum countries risk spreading conflict to neighboring states, policies aimed at early repatriation can be considered as serving prevention. ...[This is] what motivated... UNHCR's policy of encouraging repatriation from Zaire and Tanzania to Rwanda, even though human rights concerns in Rwanda never disappeared" (as cited in Whitaker, 2002, p. 13).

UNHCR's participation in the return proved to be very controversial and received criticism from NGOs and human rights organizations. The Rwandan government assured that the country was safe for return and promised the Tanzanian government that refugees would not be killed upon returning home (Whitaker, 2002, p. 7). However, the country was neither secure for returnees nor prepared for mass returns. The return of Rwandans occurred at a tremulous time and is argued to have contributed to further guerrilla activity (Stein, 1997). Moreover, after a visit to Rwanda by Amnesty International in November 1996, the organization raised caution on the number of ongoing human rights abuses including arbitrary arrests, overcrowding in detention centers, and "disappearances" (Amnesty International, 1997, p. 1). Findings by the Human Rights Field Operation in Rwanda (HRFOR) discovered returnees faced a series of human rights abuses and were mistreated in detention centers and during interrogations (United Nations, 1997, January 8).

The return of both Rwandan and Rohingya refugees highlights two of the most obvious examples of UNHCR's participation in involuntary repatriation movements in the 1990s. As previously outlined, it is important to respect the voluntary nature of return, as there are negative implications for refugees' protection when they are forced to return.

In conclusion, as outlined in the literature, repatriation is a controversial concept. It is politicized and stakeholders have their particular motives to encourage the implementation of this solution. Often due to these self-interested motives, involuntary repatriation occurs in practice and is justified by UNHCR through concepts such as 'safe

return' and 'imposed return' Consequently, in those cases, refugees' interests take second priority. Scholars such as Bradley (2013), Long (2011) and Loescher (2001a) have drawn attention to the negative repercussions of repatriation as the more promoted solution. For example, one of the main drawbacks is that resettlement and local integration are not seen as viable options for the majority of refugees and consequently not explored as possible solutions (Bradley, 2013; Long, 2011, p. 38; Loescher, 2001a, p. 48). As a result, refugees must then wait until there is peace in their country of origin for a solution to be achieved, assuming that the voluntary nature of return is observed. Moreover, as the international community has been adamant on repatriation as the preferred solution, it has led to some controversial returns that did not respect the principle of voluntary repatriation. This will be exemplified using the case study of Somali refugees in Kenya, where stakeholder's motives to promote repatriation, alongside additional push factors, could lead to further premature and thus, involuntary returns.

2. Case Study: The Repatriation of Somali Refugees in Kenya

The current proposal to repatriate Somali refugees living in Kenya is controversial and will be demonstrated by first showing how the motives of the *Tripartite Agreement* signatories (UNHCR, Kenya and Somali) are self-interested and politically motivated. Subsequently, the current situation in Kenya will be assessed, including the factors behind Somali refugees' 'spontaneous' returns that result in premature returns. It will then be shown that repatriation at this time is not generally serving refugees, as their protection is seriously compromised.

2.1. Stakeholders' Motives

Motives commonly observed for the repatriation of refugees by host states, states of origin and UNHCR (as outlined in section 1.1) are also found in those of the *Tripartite Agreement* signatories. It becomes clear that these motives have taken priority over refugees' best interest in the decision to promote repatriation as a durable solution at this time.

2.1.1. Kenyan Government.

The Government of Kenya has been the driving force behind pressuring for the repatriation of Somali refugees. The Kenyan government has propagated the idea of Somali refugees as a ‘burden’ and a ‘security threat’ in order to justify their actions in the name of national security. However, this has not occurred in a vacuum, as there are historical factors, which have also played a role in Kenya’s increasingly restrictive refugee policies leading up to, and following, the signing of *Tripartite Agreement*.

Kenya’s refugee policies have changed considerably, from a relatively laissez-faire approach, to that of increasing restrictions and containment. From 1963 to 1989, there were relatively few refugees in the country, with only up to 15,000 at any given point (Kagwanja, 2002, p. 94). The Kenyan government had an open asylum policy and refugees could move and settle freely within the country, and they had the right to work (Freudenthaler, 2012; Milner, 2009b). The government also did not have an established national refugee policy or a legal framework in place prior to 2006, although an Eligibility Committee, which included representatives of the Ministry of Home Affairs, the Immigration Department and observers from UNHCR, conducted refugee status determination (RSD) interviews on an individual basis (HRW, 2002; Wagacha & Guiney, 2008). An initial shift in Kenyan policy towards refugees was sparked by a severe increase of asylum seekers from neighbouring countries. This included approximately 300,000 Somalis who fled to Kenya from 1991 to 1993 (Kumar, 2002, p. 163), after the fall of the Siad Barre regime and ensuing civil war. The Government of Kenya adopted a general encampment policy and justified this approach due to the magnitude of refugees seeking asylum in Kenya, but, as we discuss further, other factors were at play (Milner, 2009b, p. 90). The Kenyan government and its citizens started developing negative views of refugees, which led to increasing xenophobia (Loescher & Milner, 2005a, p. 154; Campbell, 2005, p. 5). While the leadership of refugee assistance was assumed by international agencies and NGOs (Kagwanja, 2002), the Government of Kenya began to retake control of refugee management with the *Refugee Act 2006* (Government of Kenya, 2006), that also created a Department of Refugee Affairs (DRA). Although in theory this act implements the *1951 Refugee Convention*, the *1967 Protocol*, and the *1969 OAU*

Convention, this did not translate in practice (Pavanello, Elhawary, & Pantuliano, 2010, p. 15). The Government of Kenya took a more restrictive approach to refugee management than UNHCR had, by implementing a relocation directive in December 2012, which ended all urban refugee operations and ordered refugees to relocate to the designated camps (UNHCR, 2014, January 29).

Kenya is the most significant proponent of the return of Somali refugees and therefore, greater attention is paid to Kenya's motives for its recent and aggressive pursuit of the repatriation of Somali refugees. This is best understood through outlining the factors behind the increasingly restrictive refugee regime, particularly since the 1990s. These factors include: the burden as host to a significant number of refugees, national security concerns, and relations between the Kenyan government and Somalis in North Eastern Province.

2.1.1.1. Factors behind Kenya's restrictive approach.

Generally, refugees are perceived as a burden to where they reside in a host country as well as to the state. Kenya is no exception here and the burden as host to a significant number of refugees has been used by the Kenyan government to justify its restrictive policies towards refugees (Milner, 2009b). Prior to the large influxes of Somali refugees in the 1990s, refugees were generally not perceived as a major security threat (Crisp, 2000), and were mainly seen as contributing to the economy (Veney, 2007; Milner, 2009b). However, after the number of refugees significantly increased in the 1990s, the state began to see refugees as not its responsibility (Milner, 2009b), and hostility towards refugees began to grow as they were viewed as constraining the country's resources as well as being considered less skilled and poorer than refugees in previous decades (Kagwanja, 2002, p. 92). Furthermore, because protracted refugee situations receive less attention from actors in the international refugee regime, donor support for Somali refugees in Kenya also decreased after the initial refugee emergency in the early 1990s (Milner, 2009b, p. 92; UNHCR, 2006, p. 114).

Furthermore, Kenya's internal crises have exasperated the view of refugees as a burden. The influxes of the 1990s coincided with ethnic-based conflict within Kenya that resulted in almost half a million internally displaced Kenyans (Kagwanja, 2002, p. 94). Kenya's economic situation at the time further compounded the situation. Moreover, post election violence in 2007 led to inter-ethnic conflicts that left thousands of people displaced (HIPS, 2013, p. 10), some of who are still displaced. The country also experienced a drought in September 2009, which left millions of Kenyans reliant on emergency food aid (Burns, 2010, p. 11). Burns (2010, p. 11) states "it is difficult for Kenyans to want to help their neighbours when they seem unable to help themselves." Consequently, when Kenya is in a time of crisis, it contributes to a negative view of Somali refugees as a liability. This negative perception of refugees made Kenyan refugee policies "increasingly popular with the voting public" (Loescher & Milner, 2005a, p. 154), and consequently, the government of Kenya did not receive significant opposition from its citizens when implementing restrictive policies for refugees.

Although the Government of Kenya has framed Somali refugees as a burden, the presence of refugees in Dadaab has brought benefits to the North Eastern Province, which has long been considered an impoverished region in Kenya. The presence of NGOs and UNHCR has contributed to improved infrastructure and social services (Pérouse de Montclos & Kagwanja, 2000, p. 206). Thus, while hosting such a large population of refugees does put pressure on limited resources, it is also argued that the benefits to the region are greater than the costs, which include increased employment opportunities, commerce, social and health services, and new boreholes (UNHCR, EPAU 2001, p. 20).

A second factor that has been driving the Kenyan government's increasingly restrictive refugee regime and the current repatriation efforts is the perception of Somali refugees as a national security threat. Milner (2009b) highlights that historical factors have contributed to this perception. The Government of Kenya has historically had a "conflictual" relationship with the North Eastern Province (formerly Northern Frontier District) in Kenya, where there has been a significant population of ethnic-Somalis (Milner, 2009b, p. 101). This stems back to the 'scramble for Africa' where colonial

powers drew borders and divided the Somali people into five parts, with one such part being North Eastern Province, Kenya. This led to the *shifita* wars between 1963 and 1967, whereby ethnic Somalis in North Eastern Province began guerrilla warfare in order to separate from Kenya (Milner, 2009b, p. 102). Although the *shifita* wars ended with the signing of an agreement in 1967, in the 1980s, the Kenyan government continued to carry out operations in North Eastern Province to remove any remaining *shifita* 'elements'. "All Somalis were portrayed as a threat, and their repression was justified on grounds of nation security" (Milner, 2009b, p. 104). This sowed the mistrust of Somalis and Somali-Kenyans, and contributed to Kenya's restrictive approach towards Somali refugees.

Recently, the perception of Somalis in Kenya as a security threat became particularly heightened after multiple attacks in Kenya by Al-Shabaab. These attacks occurred more frequently after Kenya sent troops into Somalia in 2011 as part of "Operation Linda Nchi", and served as a turning point in the government's recent and increasingly restrictive approach. Consequently, as per the government's directive in December 2012, refugee registration and other refugee operations in urban areas were halted and refugees were expected to relocate to the designated refugee camps (UNHCR, 2014, January 29). The Government of Kenya justified its calls for Somali refugees to repatriate to 'safe areas' in Somalia in 2012, prior to the signing of the *Tripartite Agreement*, due to these security concerns as well as the unsustainable burden on Kenya (IRIN, 2012, August 16; HIPS, 2013). Politicians and, at times, the media, linked Somali refugees to the terrorist group Al-Shabaab, thus portraying Somali refugees as a major security threat. "Operation Usalama Watch", an anti-terrorist security operation that began in March 2014, resulted in the arrest and detention of Kenyan citizens of Somali ethnicity, the transfer of refugees from urban areas to refugee camps, and the deportation of Somalis to Somalia. Amnesty International (2014b, p. 14) concludes that it appears to be "a pretext for the blanket targeting of the Somali community." The government used national security concerns to justify these actions, as "Kenya's is in a position where it would rather assert its national security than honour humanitarianism because it is convinced it can no longer do both" (Burns, 2010, p. 6).

Recently, the Government of Kenya announced that Dadaab Refugee Camp would be closed within three months, after an attack by Al-Shabaab at Garissa University in April 2015 (UNHCR, 2015, April 14). According to the government, failure to do so would result in the government relocating refugees themselves (Allison, 2015, April 14, para. 4). However, this was not the first time that Kenyan government officials have called for Dadaab Refugee Camp to be closed and for Somali refugees to repatriate. It did so in 1996 and again in 2012. Although they were not implemented, it led to UNHCR closing two refugee camps including Utange Refugee Camp, located near the coastal city of Mombasa, in 1996 (Kirui & Mwaruvie, 2012, p. 166). These ‘threats’ are evidently used as leverage by the Kenyan government to further negotiate the containment and return of Somali refugees, thus furthering its political agenda.

Due to Kenya’s strategic importance in the region, the Kenyan government has been subjected to additional pressures by the international community to fight terrorism (Burns, 2010). This however, does not justify the government’s disregard for refugees’ rights. The rhetoric of Somali refugees as a security threat is more the perception of Somali refugees as a threat rather than evidence based claims that refugees are the cause of insecurity (Milner, 2009b, p. 96). In fact, Somali refugees in Kenya have little to do with the recent terrorist attacks and Somalis have become a scapegoat by politicians (HIPS, 2013, p. 25; Amnesty International, 2014b). This was observed in response to the Kenyan government’s relocation directive in 2012, whereby Justice David Majanja ruled, the first time it was challenged in court, that the state had not shown how refugees in urban areas were the primary source of insecurity (Ndonga, 2013, para. 2-3). Furthermore, the issue of Somali refugees as a security threat in Kenya became a top issue during elections (Amnesty International, 2014a) and was used by politicians to benefit their own campaigns (HIPS, 2013, p. 3; RCK, 2003, p. 17). According to a high-level panel during a meeting of the High Commissioners Global Initiative on Somali Refugees (GISR), the rhetoric linking refugees to terrorism is “often unwarranted” (UNHCR, 2013b).

In conclusion, the government's perception of refugees as a security threat and as an economic burden are key driving forces behind promoting the repatriation of Somali refugees. Even with a lack of evidence, Somali refugees are now considered a 'problem' rather than, first and foremost, as individuals in need of protection. This case exemplifies how a host state's pressure for the repatriation of refugees is due to their own political motives, even though the conditions in the country of origin are not yet conducive.

2.1.2. UNHCR.

UNHCR's preconditions for a repatriation movement to occur (UNHCR, 1996) have not yet been met in the case of Somali refugees. Despite this fact, UNHCR signed the *Tripartite Agreement* during a particularly challenging year for the organization. According to the organization, it signed the agreement in order to provide support for spontaneous returns of Somali refugees that were already taking place. It was also in response to the repeated calls for refugees to return and the camps to be closed by the Kenyan government. Lastly, UNHCR went forward with the agreement, as the other two durable solutions were not considered realistic options.

UNHCR's position for signing the *Tripartite Agreement* was that it was a necessary starting point to assist 'spontaneous' returns, eventually leading to organized returns when the conditions would be suitable to do so (UNHCR, 2013, November 24). UNHCR estimates that there were between 30,000 and 80,000 spontaneous returns to Somalia between January and November of 2013 (UNHCR, 2013, November 24, para. 5). However, scholars have already been critical of UNHCR's use of spontaneous returns as justification to promote repatriation in previous cases, essentially because these returns were used to promote an organized repatriation movement even though the situation in the country of origin had not changed enough to warrant this (see pp. 10-11 above).

In Kenya, UNHCR is in a precarious position as it has to manage its own mandate of refugee protection while simultaneously keeping good relations with the host country. Due to calls by Kenyan government officials for the return of Somali refugees and closure of Dadaab Refugee Camp, the organization is compelled to respond in some

capacity. Therefore, it could be deduced that the organization signed the *Tripartite Agreement* in 2013 to calm the calls for mass repatriation efforts the previous year. Moreover, by ensuring that the voluntary nature of return is stipulated in the agreement, UNHCR is trying to uphold its protection mandate, even if only on paper thus far.

UNHCR's motivations however, can only be partially attributed to the significant pressure exerted by the Government of Kenya on the organization. In fact, this could be an opportune time for UNHCR, which is largely dependent on states for funding, to demonstrate to donors its ability to find a solution to one of the most contemporary protracted refugees situations (Betts & Loescher, 2011, p. 123). Securing funding at this time is particularly important as UNHCR is facing concurring international refugees crises and subsequent resource constraints. The *Tripartite Agreement* was signed during an unprecedented year for the number of displaced people globally. In 2013, there was a total of 51.2 million people forcibly displaced, the highest recorded level, with 16.7 million of this number as refugees and approximately 10.7 million people who were newly displaced as a result of conflict or persecution (UNHCR, 2014a, p. 2). Large-scale displacements were the result of ongoing conflict, most notably in Syria (UNHCR, 2014a, p. 5). The High Commissioner for Refugees, António Guterres, noted in his opening remarks at the Executive Committee's annual meeting in 2013, the difficulty in ensuring that funding for the Syrian refugee crisis did not negatively impact other refugee situations (UNHCR, 2013, October 1). Moreover, he stated "UNHCR and its partners are doing everything possible to respond, but we are stretched to the limits by this combination of an emergency unparalleled in the recent past, and the persistence of other crises around the world" (UNHCR, 2013, October 1, para. 6). This further reaffirmed the importance of international burden sharing as funding in multiple regions, and particularly in Africa, had fallen (UNHCR, 2013, October 1). In the past, UNHCR has ended its mandate and promoted the repatriation of certain groups due to the "need to reduce long-term care expenditures in an era of shrinking budgets, financial insecurity, and increased political pressure from states" (Hathaway, 2005, p. 197). As previously highlighted, funding availability played a role in UNHCR's decision to return Rwandan refugees from Tanzania in 1996 (Whitaker, 2002). Therefore, this could have also served

in this specific case as a factor in UNHCR's decision to promote repatriation of Somali refugees.

Finally, an additional motive is the perception by UNHCR of limited alternative solutions for this protracted situation. Due to the events that unfolded on September 11th, 2001, and subsequent "war on terror", there was greater scrutiny of refugees as a security threat (Betts, Loescher, & Milner, 2012, p. 2). This served as an impetus to limit resettlement programs by the global North and validation to restrict refugees to camps and isolated areas within host countries in the global South. As previously outlined, the Kenyan government justified its restrictive approach to Somali refugees, as it perceived them as a national security threat (see section 2.1 above). This was also the case internationally, as states restricted their resettlement quotas for Somali refugees. According to a progress report on resettlement from a Standing Committee meeting of the Executive Committee, there is "also a lack of State receptiveness towards resettling certain refugee populations identified in need of resettlement, particularly refugees from Somalia" (UNHCR, 2014d, p. 8). In 2013, only 1,356 refugees were resettled from Dadaab Refugee Camp (UNHCR, 2014c, p. 4), which is very few considering the population of approximately 339,606 registered Somali refugees in Dadaab Refugee Camp (IOM & UNHCR, 2014, p. 21), 32,401 registered Somali refugees in Nairobi and 53,816 Somali refugees in Kakuma Refugee Camp (UNHCR, 2014, January, 29, p. 1). Therefore, host state pressure, resource constraints, and the importance placed on finding a solution for this protracted situation have served as motives for UNHCR to promote repatriation at this time.

As history has shown, host and donor state pressure has influenced UNHCR's participation in repatriation movements, including the acceptance of premature and involuntary returns (Chimni, 2004; Long, 2013a). In this case, the primary motive for stakeholders has evidently not been what is in refugees' best interests. UNHCR faces pressure to be an active participant in the repatriation process and although UNHCR has justified signing the *Tripartite Agreement* in response to ongoing spontaneous returns, it is expected that there is a risk of compromising refugee protection.

2.1.3. Somali Government.

The Somali Government signed the *Tripartite Agreement*, despite the fragility of peace and stability within the country. It is apparent from the data that the conditions in Somalia were not yet ideal, nor was the Somali government equipped to resettle a large number of returnees. It was only in 2012 that President Hassan Sheikh was elected into power and a federal government began to operate out of Mogadishu. The government has committed to not only reconciliation and peace, but also creating stable and sustainable development. A constitution is being finalized prior to elections that are set to take place in 2016. However, it is cautioned that the country's security situation is still volatile during this precarious transition period (African Union, 2014). The Somali government's political motivations impacted the decision to sign the agreement in order to show that after over two decades of conflict and civil war, there is now relative stability in the country (IRIN, 2013, November 13). The return of refugees to a state of origin "can be a major vote of confidence for a new government in particular" (Hammond, 2014, p. 508).

Moreover, the Government of Somali is also motivated by the possibility for donor funding if refugees return. In 2012, preceding the *Tripartite Agreement*, the Presidents of Kenya and Somalia issued a joint communiqué stating their commitment to work together, in conjunction with the international community, to set in place the return of Somalis to "rebuild their lives and participate in the development of their motherland" (Abdi, 2012, December 21). Furthermore, after the Government of Kenya's public statement in April 2015 for the closure of Dadaab Refugee Camp and the repatriation of all Somali refugees, the Somali government committed to attending a meeting organized by the Government of Kenya and with UNHCR. In regards to this meeting, the Somali Prime Minister Omar Ali Sharmarke was quoted as saying, "We want to address the refugee issue in the tripartite agreement and agree on how fast it can be done and what role the donor community can play" (DPPS, 2015, April 20, para. 5). As the Somali government has previously acknowledged that it does not yet have the capacity to absorb such a significant number of people, the question of donor funding could serve as an

additional motive in the government's willingness to discuss the return of Somali refugees.

In sum, the Government of Somalia's decision to sign the *Tripartite Agreement* and consider the return of its citizens was arguably motivated to show its legitimacy in a post-conflict situation, a motivation commonly observed in the literature, and as a means to attract donor funding.

2.2. Spontaneous Returns- A Push from Kenya

As previously outlined, repatriation is a controversial concept due to stakeholders' motives and because it is often involuntary (see sections 1.1 and 1.2). In the case of Somali refugees in Kenya, it has already been shown that stakeholders' motives are self-interested and political (see section 2.1). Therefore, this section seeks to give an overview of what has transpired since the *Tripartite Agreement* was signed, and demonstrate that multiple push factors influence refugees' decision to return, resulting in premature returns that compromise refugee protection.

UNHCR has not yet initiated the organized repatriation of Somali refugees: it recognizes that the conditions in Somalia are not yet conducive for large-scale repatriation and it has publicly stressed that it is refugees' decision whether or not to return (UNHCR, 2014, December 8, para. 6). However, such 'voluntary returns' are incredibly difficult to accomplish in reality, given the circumstances and aggressive actions by the Government of Kenya. Of note, a six-month pilot project began in December 2014, which targeted 10,000 Somalis refugees in Kenya, and commenced with an initial 400 refugees from three areas within Somali who were supported by UNHCR to repatriate (UNHCR, 2014, December 8, para. 5). As of April 2015, 2048 Somali refugees had received support from UNHCR to return (UNHCR, 2015b, para. 2). However, no further information has been made public on the progress of the pilot project or on refugees who have returned through it.

Prior to the pilot project and *Tripartite Agreement*, Somali refugees began returning to Somalia on their own.¹⁰ These spontaneous returns served as justification for UNHCR to sign the *Tripartite Agreement* (see pp. 24-25). However, an Amnesty International report based on three missions to Kenya and Somali from April to November 2013, states that the majority of cases of spontaneous return to Somalia did not fulfill the standards to be considered voluntary (Amnesty International, 2014a, pp. 7-8, 11). It is important to understand that these ‘spontaneous returns’ take place despite an unsafe environment at home because the conditions in the host country have become deplorable (Ighodaro, 2006; Koser, 1997). Consequently, the concern is that these returns will be used to justify large –scale, organized repatriation movements that would be premature¹¹. When repatriation is premature, it is push factors, whether it be threats or attacks by the host country, that cause refugees to return rather than pull factors, such as peace and stability in the home country (Stein, 1997, p. 4).

Currently, there are multiple ‘push factors’ in Kenya that could influence a Somali refugee’s decision to return. This compromises the voluntary nature of return, which is an important standard to uphold for a variety of reasons (see pp. 12-13). First, refugees may choose to return, as they no longer feel safe in Kenya. Refugees living in Nairobi face discrimination and harassment (Pavanello, Elhawary, Pantuliano, 2010), and there is increasing insecurity in the camps (HIPS, 2013, p. 9). The Kenyan government’s counter-terrorism operations have only furthered this as they have primarily targeted Somalis (UNHCR, 2014, April 17, para. 1). In one case, UNHCR was able to prevent the deportation of ten registered refugees, however in another instance, eighty-two people were deported to Mogadishu including at least one refugee (UNHCR, 2014, April 17, para. 1). According to the International Organization of Migration (IOM) and UNHCR’s joint return intention survey conducted in 2014 within Dadaab Refugee Camp, only 2.6% of refugees living in Dadaab intended to return to Somalia within two years following the survey and 97.4 % of refugees did not plan to return (IOM & UNHCR, 2014, p. 9).

¹⁰ Approximately 30,000 to 80,000 spontaneous returns occurred from January to November of 2013 (UNHCR, 2013, November 24, para 2).

¹¹ Premature repatriation is “a result of the lack of asylum” and occurs when neither the state of origin nor refugees are prepared for the return (Stein, 1997).

Insecurity in Somalia was the primary factor for refugees not intending to return (IOM & UNHCR, 2014, p. 10). Of those who did plan on returning within six months of the survey, 687 households were motivated primarily by the opportunity to restart their lives in Somali and potential work opportunities, whereas 604 households were motivated by the unstable security in Dadaab camps and the pressure to leave (IOM & UNHCR, 2014, p. 10). Therefore, based on the data, many of the returns would be considered premature and not fully voluntary, as it is push factors within the host state that primarily influenced the decision to return.

Second, living conditions for Somali refugees in Kenya have worsened, which has a consequential impact on refugees' decision to return. The camp's conditions are poor and overcrowded, housing four times more refugees than what they were originally designed for (UNHCR, 2011a). The government's directive in December 2012 to relocate all Somali refugees to the already overpopulated Dadaab Refugee Camp, in effect, can influence refugees' decision to repatriate and could have served as a push-factor for Somali refugees who have already returned to Somalia (Amnesty International, 2014a, p. 8). While for many years "refugees in Dadaab receive[d] minimal material provisions to keep them alive, housed and in basic health" (Hyndman 2011, p. 11), in the months of November and December 2013, food rations were cut by twenty percent due to funding shortages (UN News Centre, 2013, October 31, para. 2). This led to a decrease of kilocalories from 2,100 to 1680 kilocalories per day and below the World Health Organization's minimum standard (UN News Centre, 2013, October 31, para. 8). Another announcement by the World Food Programme (WFP) in November 2014 stated that until January 2015, bimonthly food rations would be halved (UNHCR, 2014, November 21, para. 4). There was fear among Somalis living in Kenya that the cuts were connected to the *Tripartite Agreement*. However, according to Raouf Mazou, a UNHCR representative in Kenya, the decreased food rations were due to funding constraints and were in no way linked to the repatriation movement (UNHCR, 2014, November 21, para. 2). Clearly, a decrease in already basic provisions directly impacts the quality of life of Somali refugees in the Dadaab camp, compounding the already harsh conditions and thus serving as a push factor for return.

Third, since the *Tripartite Agreement* was signed, media releases from UNHCR and Kenyan officials have sent mixed messages with respect to a possible repatriation schedule (IRIN, 2012, August 16; IRIN, 2013, November 13; UNHCR, 2013, November 26). It appears as though the Government of Kenya had no intention to fully uphold the stipulations of the agreement, most notably the voluntary nature of return. Although these statements by high-level Kenyan government officials were dismissed by UNHCR, who continued to reiterate that repatriation would be voluntary, the Kenyan government's recent announcement in April 2015 to close Dadaab Refugee within three months is reason for concern. Although the government has since "softened" its stance on this short time frame (IRIN, 2015, April 30), this inevitably has an impact on Somali refugees' decision to return as it places further pressure on refugees and creates greater uncertainty of their imminent futures in Kenya.

As this case study shows, repatriation is being promoted due to the political and self-interested motives of UNHCR and the Governments of Kenya and Somalia. Multiple push factors influence refugees' decisions to return and have contributed to spontaneous returns, which are not voluntary and compromise refugees' protection. Consequently, this does not serve as a truly durable solution for Somali refugees in Kenya at this time.

Conclusion

Repatriation is evidently a controversial concept that too often does not serve refugees when they return prematurely and to problematic conditions. The general literature on repatriation allows for a better understanding of the case of Somali refugees in Kenya. Therefore this particular case is not meant to be generalized to all debates on repatriation, but rather serve as a strong example of a case that the general literature on repatriation helps to better explain. As the literature shows, repatriation is often pursued due to the motives of key stakeholders, and the standard of voluntary repatriation has been altered to justify involuntary repatriation and UNHCRs participation in these movements. Therefore this particular case study, supported by the literature, reveals that the repatriation of Somali refugees in Kenya is a politically motivated, self-interested and a

premature initiative that compromises refugee protection. Refugees are likely to continue returning to Somali unless the push factors are adequately addressed. Refugees who repatriate would most likely leave Somalia again due to lingering insecurity in Somalia (Mutambo, 2013, November 17). Consequently, “The fundamental right of individuals to protection is effectively denied and the foundations are laid for further flight and instability in the region” (Amnesty International, 2014a, p. 9).

Despite the Kenyan government’s directive for all Somali refugees to repatriate, the future of Somali refugees in Kenya is not set in stone. The international community could assist in preventing the premature return of Somali refugees by playing a more significant role through increased refugee assistance and resettlement opportunities, re-exploring possibilities of local integration, and raising awareness to decrease xenophobic sentiments towards Somali refugees (RCK, 2012, p. 92). Burns (2010, p. 6) highlights that Kenya has continued to host refugees in order to “remain in good standing with the international community.” Consequently, greater support for security against Al-Shabaab and pressure by UNHCR and the international community on Kenya to uphold international refugee laws and treaties, as well as continuing to publically condemn the Government of Kenya’s directive for the repatriation of all Somali refugees (HIPS, 2013, p. 27), could also help avert their premature and forced repatriation.

Furthermore, it is apparent that traditional solutions, as they stand now, do not serve as true durable solutions for the majority of refugees and are insufficient for the many complex situations that now exist. Therefore, not only should we re-examine the way repatriation and traditional solutions are being approached but also explore alternative or complementary solutions and, as Abdi puts it (2005, p. 12), “freeing refugees from “imaginary” solutions for their plight should be at the top of the agenda of refuge-assisting organizations.” Long (2013b, 2014) proposes a fourth durable solution to compliment the three traditional solutions, based on the idea of refugees once again accessing migration networks. When refugees were categorized as migrants in the 1920s and 1930s, they were able to move around and access the migration channels of economic migrants, however, at the cost of the specific protection needs of a refugee.

Although refugee protection was significantly enhanced with the *1951 Refugee Convention*, refugees' movement then became generally restricted and refugees had to rely on humanitarian assistance rather than be economically self-sufficient (Long, 2013b). Currently, aside from resettlement, there are no other migration channels for refugees who could benefit economically from moving (Long, 2013b, p. 19). Therefore, this proposed solution does not suggest that refugees should be considered as regular migrants, but rather by being "assisted to join existing migration processes," they could be both economically self-sufficient and receive national protection. This remains a conceptual idea and how this process would be carried out in practice has not been fully expanded upon. Nevertheless, if Somali refugees in Kenya were connected to economic migration channels rather than be dependent on the traditional solutions, which have not served the vast majority of Somali refugees, they would then have the potential to move to a third country for economic opportunities while also receiving protection from that country's government.

As is apparent, refugee situations today are incredibly complex and the way durable solutions are being implemented is not always serving refugees' best interests. Due to a strong focus on repatriation as the more preferred durable solution, refugee protection and the standard of voluntary repatriation have generally been compromised. Therefore, it is imperative that alternative solutions for refugees are explored, in conjunction with improved approaches towards traditional solutions, as it would be an injustice for refugees to remain in a protracted situation as many Somalis have for over twenty years. In response to the numerous refugee crises, it is now more essential than ever for the international community and all stakeholders to have a concerted effort in responding to these refugee situations adequately.

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