



UNIVERSITY OF NAIROBI

SPEECH MADE BY PROF. GEORGE A.O. MAGOHA, VICE-CHANCELLOR, UNIVERSITY OF NAIROBI DURING A FORUM ON ASYLUM SPACE IN KENYA: WHERE WE ARE AND WHERE WE ARE HEADING, AT THE UNIVERSITY OF NAIROBI'S MULTI-PURPOSE HALL 8-4-4 BUILDING ON WEDNESDAY JUNE 18, 2014

Chief Guest, UNCHR Country Representative, Mr. Raouf Mazou

UNHCR, Ms. Catherine Hamon Sharpe,

Executive Director, Kituo cha Sheria, Ms. Getrude Angote,

Executive Director, RCK, Ms. Agnes Heshima

Head of Protection at DRA, Mr. Geoffrey Wafula

Principal, CHSS

Director, IDIS

Members of Staff

Ladies and Gentlemen

I am pleased with the department of Refugee Affairs for choosing the University of Nairobi to host this important forum. I must comment the Institute of Diplomacy and International Studies for building links with such relevant organizations like the UNHCR, DRA, RCK and Kituo cha Sheria among others to discuss asylum space in Kenya: where we are and where we are heading.

The topic of discussion is very relevant to us as a university since our core responsibility is to conduct research, generate knowledge and create awareness with a view to inform policy. Issues of asylum seekers and refugees fall under this responsibility.

As you all know asylum seekers are people who are awaiting confirmation of their refugee status. It is a person seeking international protection but whose claim for refugee status has

not yet been determined. This is different from a refugee who is someone who has been recognized under the 1951 convention relating to the status of refugee to be a refugee.

The conception of asylum in international law involves two elements: a shelter which is more than a temporary refuge, and a degree of active protection: People, who live in fear of being tortured or killed by their government, often seek asylum as do people who are persecuted for their religious or political beliefs. On the part of authorities which have control over the territory of asylum, the law confers certain responsibilities: to admit a person to its territory; to allow the person to sojourn there; to refrain from expelling the person; to refrain from extraditing the person; and to refrain from prosecuting, punishing, or otherwise restricting the person's liberty.

Some of the international and regional instruments relating to asylum seekers and refugees include: 1951 Convention relating to the Status of Refugees; 1967 Optional Protocol relating to the Status of Refugees; Cartagena Declaration on Refugees, the OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa; Arab Charter on Human Rights (art. 28); Cairo Declaration on Human Rights in Islam (art. 12) and the European Convention on Human Rights (arts. 2, 3, and 5). Despite differences across, and sometimes within states, there are a number of commonalities between the asylum procedures of States who have national frameworks for granting refugee status.

Kenya is signatory to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol as well as to the 1969 OAU Convention Governing Specific Aspects of the Refugee

Problem in Africa and thus bears international legal obligations under these conventions. These international instruments have incorporated the broader definition of a refugee, recognizing them as individuals fleeing generalized violence and other breakdowns of public order. In addition, the Constitution of Kenya which binds all persons and state organs grants that the general rules of international law shall form part of the law of Kenya and that any treaty or convention ratified by Kenya shall form part of the Kenyan law.

The Refugees Act passed by Parliament in November 2006 allowed the Kenyan government to formally assume overall responsibility for the management of refugee matters through the creation of an institutional framework, including the administrative processes on refugee status determination. Moreover, the law was also to serve as a guide to all

stakeholders on how to deal with refugee matters in Kenya. The Act moreover establishes the Department of Refugee Affairs (DRA) which is headed by a Commissioner of Refugees and is charged with overall responsibility for all administration, coordination and management of refugee matters. As we are aware, the principle of non - refoulement prohibits the expulsion, extradition, deportation, return or otherwise removal of person in any manner whatsoever to a country or territory where he/she would face a real risk of persecution or serious harm. Unfortunately the observance of this principle in Kenya has not been easy because refugees have been seen as a threat to Kenya's national security.

As a country Kenya is concerned with the fact that the majority of asylum-seekers enter Kenya undetected, crossing the border by land. In fact a big number of these refugees do not report to the UNHCR offices in Nairobi to make an asylum

claim. This generates security concerns to the Kenyan authorities. However, these security concerns must now be viewed from the constitutional lens and in this regard there is nothing to justify the use of security operation to violate the rights of urban based asylum seekers. Section 11 of the Refugees Act 2006 provides that those who come to Kenya seeking protection as refugees must be allowed to do so regardless of whether or not their entry into Kenya was by legal or illegal means. However, once they are within the Kenyan territory, it is the responsibility of every asylum-seeker to report his/her presence to the Appointed Officer within 30 days.

The Kenyan government has legitimate security concerns with regard to those who seek to use refugee cover to traffic arms, conduct cross-border military activities, or evade prosecution for criminal acts they have committed previously in their own

country or elsewhere. Many refugees are themselves victims of armed violence, with residents of the refugee camps being especially vulnerable to attacks and violent crime.

The responsibilities of a government to ensure national security and to uphold its obligation to respect refugee rights are not contradictory. To the contrary, long-term security interests are best served through the implementation of mechanisms that uphold the rule of law. Ultimately, abusing the human rights of refugees and indiscriminately penalizing refugees without due process or individual accountability is neither an acceptable option under international law nor does it provide the most effective and sustainable domestic security policy.

Where national security is cited as a reason for imposing any restrictive measures on the enjoyment of fundamental rights, it is incumbent upon the State to demonstrate that in the

circumstances, such as the present case, a specific person's presence or activity in the urban areas is causing danger to the country and that his or her encampment would alleviate the menace. It is not enough to say, that the operation is inevitable due to recent grenade attacks in the urban areas and tarring a group of person known as refugees with a broad brush of criminality as a basis of a policy is inconsistent with the values that underlie an open and democratic society based on human dignity, equality and freedom. A real connection must be established between the affected persons and the danger to national security posed and how the indiscriminate removal of all the urban refugees would alleviate the insecurity threats in those areas.

The Kenyan government can take other, more just steps to address security such as increased police patrols and intelligence surveillance along the border or among

communities with high numbers of refugees, the relocation of the refugee camps and settlements with refugees further away from the borders with Somalia, Sudan, and Uganda, and the impartial investigation and prosecution of those individuals responsible for criminal activity, be they Kenyans or non-nationals. Each of these proposals is less restrictive than the indefinite confinement of thousands of people who have not historically jeopardized Kenya's safety, and would allow for a more sustainable and rights-respecting security policy over the long-term.

Refugee and immigrant communities can also pose considerable political risks for host governments. They are a political force for their country of residence, and the way they react to the politics of host country, and their political relationship with the country of origin, have become important factors in influencing relations between the sending and

receiving countries. Thus, in a globalizing world this need for asylum space is not just a Kenyan issue but a global one. However Kenya finds herself attracting more refugees from the region. It reflects well to our country. Academically our knowledge on refugees is partial but we need to appreciate that anyone can be refugees. Anyone can be displaced and lose aboard.

The potential criminality associated with refugees is unfortunate. Actually the percentage of criminals is probably very small and as a matter of fact other asylum seekers are forced to criminality due to situation they find themselves in. It is therefore important to study and research on the circumstances facing refugees both in their countries of aboard and residence. Efforts to evict them should be done diplomatically. There is a need for cooperation between

government and other stakeholders and awareness creation so that we do not criminalize every asylum seeker.

Thank you.