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Implementation of the Global Compact on Refugees in Tanzania: A Synopsis

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Abstract:

On 10 December 2018, the United Nations adopted the Global Compact on Refugees (GCR), a soft law that draws its origin from the New York Declaration for Refugees and Migrants of 2016. The document inter alia is set to address the current and future global challenges facing refugee crisis worldwide. The present paper examines the tenability of this document in Tanzania. It explores the possibilities through which this compact can be implemented in the country. In so doing it explains the discourse of the compact as well as the intersection between the compact and the Comprehensive Refugee Response Framework (CRRF). While setting a situational background of protection of refugees in Tanzania, this paper finds out that, the implementation of the GCR in the country is faced by a number of challenges. These include the country's withdrawal from the CRRF, the non-binding nature of the GCR, GCR's incompatibility with Tanzania law, policy and practice, underfunding, GCR's emphasis on data, limited operation of civil societies and the western nature of the compact. The paper further finds that, the new regime under H.E new President Samia Suluhu Hassan may be a prospect towards effective implementation of the GCR in Tanzania. The paper lastly, gives out recommendations geared towards the implementation of the Compact in the country.

Key Words: *Comprehensive Refugee Response Framework, Global Compact on Refugees, Refugee Law, Tanzania Refugee Policy.*

1. Introduction

In the period around early 2010s, the protracted refugee situations in most host countries in the globe alarmed the international community to think of new

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model of refugee protection.¹ At this time, the number of forced displaced persons globally had been magnificently increasing. No wonder their count in the globe as of end of 2019 has reached a historic level of 79.5 million people.² Per the United Nations statistics as of the same period, the count of refugees in the world topped 26 million.³ Out of this number, 20.4 million were under mandate of the United Nations High Commissioner for Refugees (UNHCR) while 5.6 million are Palestine refugees under mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).⁴ The number of asylum seekers as of same period was 4.2 million.⁵ The protracted armed conflict of Syria single-handedly, by end of 2019 has forced 6.7 million civilians to flee.⁶

The refugee crisis foregoing above, was even made sticky by the fact that the 'burden' of hosting refugees was potentially left at the fate of host countries following the decline of donor support.⁷ The responsibility of refugees' protection across the world continued to be unequally and disproportionately distributed amongst countries.⁸ Countries that host refugees appeared disproportionately very few compared to countries that do not. By end of 2020, just ten countries majority of which are developing countries, hosted 60% of the world's refugee population.⁹ Turkey alone hosted 3.5 million refugees, a number which was more than any other State in the world.¹⁰ Again, almost eighty percent of the UNHCR's funding was from ten government donors alone and more than two-third of the

¹ See Milner E, 'Responding to Protracted Refugee Situations: Lessons from a Decade of Discussion', Refugee Studies Centre, Forced Migration Policy (Briefing No. 6, 2011)1.

² UNHCR, 'Global Trends: Forced Displacement in 2019', <https://www.unhcr.org/globaltrends2019> accessed 17 March 2021.

³ Milner (n 1).

⁴ Ibid.

⁵ Ibid.

⁶ Refugee International, 'The UN Global Compacts on Refugees and Migration' <https://www.refugeesinternational.org/global-compact> accessed 16 March 2021.

⁷ Mlauzi K and Small M 'Is the Global Compact on Refugees Fit for Africa's Purpose?' South African Institute of International Affairs, (2019): see also Karumba A 'Consequences of Severe Global Funding Shortages for Refugees and Migrants 'All Too Real' Warns UNHCR', United Nations News <https://news.un.org/en/story/2018/10/1022692> accessed 23 March 2021.

⁸ UNHCR, 'Expert Briefing: The Global Compact on Refugees', {Video}, YouTube, <https://m.youtube.com/watch?v=kbbJN2rA6XY&feature=youtu.be> accessed 16 March 2021.

⁹ UNHCR, 'Humanitarian Response for Burundian Refugee Influx in Tanzania: Protection of Refugee's Health through the Strengthening of Access to Water and Sanitation', <https://globalcompactrefugees.org/article/humanitarian-response-burundian-refugee-influx-tanzania> accessed 16 March 2021.

¹⁰ Ibid.

UNHCR's resettlement submissions was left at the shoulders of just five States.¹¹ To this end, the existed application and implementation of refugee legal and policy framework, especially on principles of burden sharing and international cooperation, proved to be inadequate in responding to the stated crisis.

Hence, the Global Compact on Refugees (GCR) came to redress the emerging issues relating to refugee protection and management globally as well as addressing future challenges. It is significant to note that, the GCR as embodied in the New York Declaration does not create new norms of refugees' protection and management rather it provides for new means and methods of implementing and applying already existing refugee principles as found in most conventional refugee treaties.¹² The GCR comes to improve and expand the application of various major principles of refugee protection such as international cooperation, burden sharing, non-refoulement and voluntary repatriation.¹³ Precisely put, the GCR links migration with development paying no heed to the long stood perception of migration as a matter of security concern.¹⁴

The GCR as a framework aims at (a) easing pressures on host countries (b) enhancing refugee self-reliance, (c) expanding access to third-country solutions and (d) support conditions in countries of origin for return in safety and dignity.¹⁵ *Inter alia*, the GCR proposes a paradigm shift in refugee protection and management; from global humanitarian aid to emphasis on refugee self-reliance and livelihoods.¹⁶ It is guided by principles of humanity, international solidarity as well as support to host countries and communities.¹⁷

The Global Compact on Refugees was imbedded in the New York Declaration for Refugees and Migrants which was unanimously adopted on 30 September 2016

¹¹ UNHCR, 'The Global Compact on Refugees: UNHCR Quick Guide', September, 2018.

¹² Randall H 'The Comprehensive Refugee Response Framework: A Commentary', *Journal of Refugee Studies* (Vol. 31, No. 2, 2018) 131-151.

¹³ Abebe TT, Abebe A and Sharpe, M 'Complementarity: The Global Compact on Refugees and 1969 OAU Refugee Convention', *Research Policy Briefs* <https://issafrica.org/research/policy-brief/complementarity-the-global-compact-on-refugees-and-1969-OAU-refugee-convention> accessed 17 March 2021.

¹⁴ Mlauzi and Small, (n 7) 4.

¹⁵ The Global Compact on Refugees (adopted 17 December 2018 UNGA Res A/RES/73/151) para 7. See also Carcioto S and Ferraro F 'Building Blocks and Challenges for the Implementation of the Global Compact on Refugees in Africa', *Journal on Migration and Human Security* (Vol. 8, No. 1, 2020),84.

¹⁶ Carcioto and Ferraro, (n 15).

¹⁷ The Global Compact on Refugees (n 15) para 5.

by the United Nations General Assembly.¹⁸ Within this Declaration, two documents are integral; the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM). The latter is set to enhance coordination and international cooperation towards regular and safe migration.¹⁹ The two compacts were both adopted on 10 December 2018. Although their implementation is set to be distinct, separate and independent, their complementarity is inescapable especially with regard to cross-cutting issues of relevance to both migrants and refugees.²⁰ Those issues are such as rescue at sea, trafficking and smuggling, data collection and analysis as well as promoting tolerance.²¹ Nonetheless, the GCM is not the subject of discussion in this paper.

2. The Intricacy of the GCR and the CRRF

Of central to the GCR, is the Comprehensive Refugee Response Framework (CRRF). The CRRF is perceived to be an integral part of the GCR. Even so, understanding the relationship between the CRRF and the GCR appears to be tricky. From the outset, The GCR has four parts; Part I is for introductory remarks, Part II is dedicated for the CRRF, Part III is for the Programme of Action, a part which is dedicated towards further comprehensive refugee responses and lastly Part IV is for Follow-up and Review. With this arrangement of the parts in the GCR, one may conclude that indeed the CRRF forms integral part of the GCR. This conclusion is further supported by the apparent wording of the GCR itself as under paragraph 10 it plainly states that the CRRF constitutes an integral part of the global compact.

However, a discourse dilemma may be evident when one reads the wording and drafting of the New York Declaration for Refugees and Migrants, 2016. In this Declaration, the CRRF is embedded as Annex I while the GCM is embedded as Annex II. There is no any Annex for the GCR. But, the last paragraph of Annex I which is for the CRRF, commits member states to work towards adoption of a

¹⁸ See UNGA Res 71/1.

¹⁹ The Global Compact for Safe, Orderly and Regular Migration (adopted 17 December 2018 UNGA Res A/RES/73/195) para 14.

²⁰ Thomas A and Yarnell M 'Ensuring that the Global Compacts on Refugees and Migration Deliver', *Refugee International*
<https://www.refugeesinternational.org/reports/2018/11/19/ensuring-that-the-global-compacts-on-refugees-and-migration-deliver> accessed 15 March 2021.

²¹ Thomas and Yarnell (n 20).

global compact on refugees based on the CRRF.²² This causes a dilemma in determining which one between the CRRF and the GCR is an integral of the other. The New York Declaration presupposes that, Annex I (CRRF) lays a foundation for the adoption of the GCR while the GCR itself as adopted in 2018 presupposes that the CRRF is an integral part of it.

Be how it may be, the object and purposes of the United Nations General Assembly are inclined to the position that the GCR comes to operationalize the CRRF. On other words, the GCR is a 'steering engine' of the CRRF as annexed in the New York Declaration for Refugees and Migrants. However, the GCR is more than the CRRF since it provides for further actions to be taken in achieving comprehensive responses towards refugee protection other than and in addition to what are suggested in the CRRF. What appears blatantly is a drafting slip-up of the New York Declaration which does not clearly show the intersection between the CRRF and the GCR.

It would be proper for the New York Declaration to clearly state the intersection between the GCR and the CRRF as it would achieve significant legal implications. It would help for instance to determine whether, a State can automatically be part of the CRRF by virtue of being part to the New York Declaration? Or putting it differently, can a State be presumed to be part of the CRRF without adopting the GCR? The firm answer to these questions would upbeat be given by the New York Declaration of 2016.

3. The GCR in Tanzania

By 28 February 2021, the total population of refugees in Tanzania numbered 237,008 while that of asylum seekers was 28,748.²³ Refugees and asylum seekers from Burundi are 186,746, DR Congo 78,571 and from other countries 439.²⁴ 224,966 refugees and asylum seekers are hosted in camps while the remaining portion is not in camps.²⁵ Some are in village and urban areas while others are living in settlements.²⁶ The major refugee camps currently are Nyarugusu and Nduta. Out of the total refugees and asylum seekers population of 265,756 these two camps hosted total number of 198,354 refugees and

²² See paragraph 19 of Annex I (Comprehensive Refugee Response Framework) to the New York Declaration for Refugees and Migrants, 2016.

²³ UNHCR, 'Tanzania Refugee Population Update' as of 28 February 2021, <https://www.ecoi.net/en/countries/united-republic-of-tanzania/maps/> accessed 12 March 2021.

²⁴ UNHCR (n 23).

²⁵ Ibid.

²⁶ Ibid.

asylum seekers.²⁷ Nyarugusu Camp hosts a total number 132,719 while Nduta hosts 65,635.²⁸

Refugee children as of 28 February 2021 constitute 55% of the total population of refugees and asylum seekers in the country while the ratio for male and female refugees and asylum seekers is 50:50.²⁹ Apart from Nyarugusu and Nduta Camps which host a large portion of refugees and asylum seekers, other places are Mtendeli camp, Kigoma villages, Katumba, Ulyankulu, Mishamo, Chogo and Dar es Salaam.³⁰ Since adoption of the tripartite agreement of March 2018 between Tanzania, Burundi and UNHCR of repatriating 2000 Burundian refugees every week, as of 28 February 2021, 113,453 refugees have returned back to Burundi.³¹

Tanzania participated in all consultative dialogues leading to the Global Compact on Refugees.³² The country has up to date continued to expressly declare her commitment towards participation, support and implementation of the GCR. During his visit in Tanzania in February 2019, UN High Commissioner for Refugees, Filippo Grandi praised the country for supporting the GCR and commended her role as a regional peacemaker.³³

The GCR in Tanzania traces its backdrop on 20 September 2016 during the Leaders' Summit in New York, one day after the adoption of the New York Declaration for Refugees and Migrants. On that day, 48 heads of government and state made various specific commitments. In particular, the government of Tanzania, made specific comments in five key areas: (a) continuing to receive asylum seekers, (b) to review the 2003 National Refugee Policy and the 1998 Refugees Act aligning them with international instruments and contemporary humanitarian challenges, (c) continuing the naturalization of the remaining cases of the 1972 Burundian caseload, (d) improving access to education and

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid, (Mtendeli Camp:26,612, Kigoma villages: 21,507, Katumba: 10,844, Ulyankulu: 4,907, Mishamo: 3,199, Chogo: 150 and Dar es Salaam: 183).

³¹ Ibid.

³² UNHCR, 'Tanzania Country Refugee Response Plan: The Integrated Response Plan for Refugees from Burundi and the Democratic Republic of the Congo', <https://reliefweb.int/report/united-republic-tanzania/tanzania-country-refugee-response-plan-intergrated-response-plan> accessed 17 December 2021.

³³ Fleming, M 'UNHCR Chief Calls for more International Support for Tanzania', <https://www.unhcr.org/news/latest/2019/2/5c5d6ed44/unhcr-chief-calls-international-support-tanzania.html> accessed 08 March 2021.

domestic labour market for refugees and (e) supporting the adoption of the Global Compact on Refugees.³⁴

The above five commitments coupled with the reputation that Tanzania had gained in refugees' protection, made Tanzania a strong candidate to become a CRRF roll-out State. No wonder, in June 2017, Tanzania was selected and voluntarily agreed to be one amongst few selected CRRF-roll-out (pilot) countries. This selection aimed at piloting the exemplary implementation of the CRRF towards its implementation globally.

A tragedy happened on 23 January 2018, when Tanzania vide a *Note Verbale* declared that, she was formally withdrawing her voluntary decision to be a CRRF pilot country.³⁵ This declaration came with other declarations which are (a) Stopping providing citizenship to Burundian refugees contrary to her early decision to naturalize Burundian refugees of 1972, (b) discouraging new asylum seekers and (c) to no longer take loans from the World Bank for financing refugees.³⁶ Bearing in mind that the CRRF is the key element of the GCR, the withdrawal as a pilot country, jeopardized the effective implementation of the GCR in Tanzania. However, the government stated clearly that, its withdrawal as a CRRF pilot country, did not mean that the country was pulling out from the GCR.³⁷ On other words, the government stated that, the fact that she withdrew from being a CRRF pilot country, it did not mean that the country stopped supporting the mission and implementation of not only the CRRF but also the GCR in general.

So far, there are some initiatives mainly at the auspice of UNHCR and civil societies that are being implemented in Tanzania that are in line with the spirit of the Global Compact on Refugees. For instance, Oxfam partnering with host communities, Norwegian Refugee Council, Tanzania government, the United Nations Populations Fund (UNFPA) and the United Nations Children's Fund

³⁴ See the UNHCR, 'Summary Overview Document: Leaders' Summit on Refugees' <https://www.unhcr.org/events/conferences/58526bb24/overview-leaders-summit-on-refugees.html> accessed 15 March 2021.

³⁵ Relief International, 'Tanzania-Comprehensive Refugee Response Framework Withdrawal' <https://reliefweb.int/report/united-republic-tanzania/tanzania-comprehensive-refugee-response-framework-withdrawal-eeas-dg> accessed 17 March 2021.

³⁶ Relief International (n 35).

³⁷ Felleson, M 'From Roll-Out-to Reverse: Understanding Tanzania's Withdrawal from the Comprehensive Refugee Response Framework (CRRF)' *Journal of Refugee Studies* (Vol. 0, No. 0, 2019) 13.

(UNICEF) are implementing a WASH project to Burundian refugees.³⁸ WASH stands for Water, Sanitation and Hygiene. This project is designed to ensure that Burundian refugees in Nyarugusu and Nduta refugee camps as well as those found in Kumuhasha village in Kigoma, have access to safe and clean water as well as food.³⁹ The project involves providing of training and awareness rising towards hygiene promotion.⁴⁰ The project meets two objectives of the GCR; objective 1 and 2 which are easing the pressure on host countries and enhancing refugee self-reliance respectively.

4. Situational Setting before the GCR

The refugee situation in Tanzania since the adoption of the New York Declaration for Refugees and Migrants in 2016 has been dynamic. However, this dynamism of the refugee situation in Tanzania is not fresh. Since its independence, the country has been experiencing not only dynamic but also unpredictable refugee policies and practices. This section albeit in brief, narrates the historical events of relevance to refugee protection and management in Tanzania from its pre-independence, post-independence and to the time of the adoption of the Global Compact on Refugees.

4.1 Open Door Policy

“The Tanzania government is convinced that her independence is incomplete before the whole of Africa becomes free. We shall neither give up nor lag behind in supporting the refugees...we cannot help those who run away to seek luxurious life-we will help those who want to free their countries” *Rashid Kawawa, 1968.*⁴¹

With the open door policy, the territories of Tanzania (previously Tanganyika) were open for refugees and asylum seekers albeit with indulgent restrictions. This policy existed from colonial time to roughly around 1990s. Receiving it from the British colonialists, the first President of Tanzania/Tanganyika, Julius K.

³⁸ UNHCR, ‘Humanitarian Response for Burundian Refugee Influx in Tanzania: Protection of Refugees’ Health through the Strengthening of Access to Water and Sanitation’ <https://globalcompactrefugees.org/article/humanitarian-response-burundian-refugees-influx-tanzania> accessed 10 March 2021.

³⁹ UNHCR (n 38).

⁴⁰ Ibid.

⁴¹ Rashid Kawawa was the then Vice President of Tanzania; he made this statement in the Tanzania Parliament in 1968. The statement demonstrates the then government’s attitude towards hospitality in receiving refugees from African countries. It is extracted from Kamanga KC ‘The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications’, *Journal of Refugee Studies* (Vol. 18, No. 1, 2005),103.

Nyerere continued to practice this policy throughout his leadership albeit every so often in contraventions of Tanzania's own laws.

While most literature demonstrates that Tanzania began hosting refugees in 1959⁴² there has been a forgotten or rather not well documented portion of refugees or rather asylum seekers who arrived in the territory of the current Tanzania in 1942 during the then Tanganyika under the British colonial masters. These were Polish citizens from Poland who landed in Tanganyika, Kenya and Uganda to seek refuge after armed violence distracted peace and security in Poland.⁴³ In 1941 Poland was invaded by the Soviet Union and Nazi-Germany armies. The two armies were in pursuit of the 1939 Non-Aggression Molotov-Ribbentrop Pact entered between the two powers to partition Poland.⁴⁴

The violence caused Polish citizens to flee their country through Russia and Iran to East Africa.⁴⁵ By end of 1944, there were 13,364 Polish in Tanganyika, Kenya and Uganda; Tanganyika alone hosting 6,331 of them.⁴⁶ The first group of 1400 Polish arrived in Tanganyika on 27 August 1942 via a Tanga Port to Dar es Salaam.⁴⁷ Another group of 4931 people came in October, 1942 and settled in the designated camps of Tengeru, Kondoa, Kidugala and Ifunda.⁴⁸ Apart from these four camps, there were other temporary camps designated in Kigoma, Dar es Salaam, Tosamaganga, Morogoro and Iringa.⁴⁹ The Polish remained in Tanganyika until 1952.⁵⁰ Majority of them being reluctant to return back to Poland, they were resettled to Europe, Australia and North-America.⁵¹ 151 Polish opted to remain in Tanganyika the last one being Mr. Edward Wojtowics who

⁴² Rwandan tutsi refugees arrived in Ngala district, Tanzania in 1959, fleeing violence in Rwanda, see Kate Mlauzi and Michelle Small, 2019, OP Cit, at p. 24.

⁴³ See Knoll TJ 'Memories of WWII Refugees Live on in Tanzania', <https://tjaredknoll.com/2013/11/29/memories-of-wwii-refugees-live-on-in-tanzania/> accessed 27 February 2021.

⁴⁴ Knoll (n 43).

⁴⁵ Ibid.

⁴⁶ EU, 'Polish Exiles during WWII-Poland in Tanzania' <https://www.gov.pl/web/tanzania-en/polish-exiles-during-world-war-ii> accessed 27 February 2021.

⁴⁷ EU (n 46).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Dahir AL 'The Little Known Story of the Polish Refugees who Fled to East Africa during WWII', QuartzAfrica <https://qz.com/africa/1620841/the-polish-refugees-in-tanzania-during-world-war-ii/> accessed 27 February 2021.

⁵¹ Dahir (n 50).

died in 2015 and was buried in Tengeru-Arusha, Tanzania.⁵² The wave of Polish refugees in Tanzania, was followed by the wave of Rwandan refugees mainly Hutus entering the territory of Tanganyika in 1959.

After Tanganyika gained its independence in 1961 with Julius K. Nyerere as the first Prime Minister then President, the open door policy continued to be practiced in the country.⁵³ With this policy, the receipt of mass influx of refugees from Burundi in 1972 was straightforward. Running from the Tutsi-Hutu armed conflict, about 160000 Burundians arrived in Tanzania in 1972 and were settled in the villages of Ulyankulu, Tabora region and in Katumba and Mishamo villages found in Rukwa region.⁵⁴ These refugees were allocated by the government five to ten hectares of land and by 1985 they have become agriculturally independent and were amongst key tax payers in their host districts.⁵⁵ So to say, the Burundian refugees of 1972 were substantially integrated into the local communities albeit restrictions on movements outside the settlements continued to exist.⁵⁶

It is argued that, the easy integration of these refugees in Tanzania was made simple due to the timing of their arrival. One year after their arrival in 1973, the government of Tanzania launched the so called village settlements (Ujamaa villages) and so the allocation of land to the Burundian refugees fell within the then political philosophy of the country.⁵⁷

In 1980, naturalization of about 36000 Rwandan refugees marked another humanitarian action that was taken by Julius K. Nyerere dedicated towards

⁵² See DW When the Polish were Refugees in Africa, <https://www.dw.com/en/when/the-polish-were-refugees-in-africa/a-49029649> accessed 26 February 2021.

⁵³ See Milner J, 'Two Steps Forward, One Step Back: Understanding the Shifting Politics of Refugee Policy in Tanzania' UNHCR-New Issues in Refugee Research, (Research Paper No. 255, 2013) 6.

⁵⁴ UNHCR, 'Evaluation of the Protracted Refugee Situation (PRS) for Burundians in Tanzania', (2010)19.

⁵⁵ UNHCR (n 54).

⁵⁶ Ibid.

⁵⁷ Rutinwa B 'Addressing Irregular Settlement in North Western Tanzania: A Legal and Protection Perspective', International Migration Management Project, (Working Paper No. 1, March 2010) 28; see also Milner J and Sundar, CS 'The Politics of Hosting in Tanzania: From Open Door to Unsustainability, Insecurity and Receding Receptivity', Journal of Refugee Studies (Vol. 16, No. 2, 2003) 70.

refugees' protection and resilience.⁵⁸ In 1993, another wave of Burundian asylum seekers about 340,000 knocked the doors of Tanzania territory and was prima facie admitted as refugees into the camps of Tanzania.⁵⁹ Majority of them were harboured in the Mtabila refugee camp in Kasulu district, Kigoma.⁶⁰ The exercise to repatriate them began in 2002 and by 2009 only 35000 remained in the Mtabila Camp.⁶¹ This camp was however officially closed in July, 2009 although it continued to operate to serve the remaining 35000 refugees who refused voluntary resettlement.⁶²

The open door policy in Tanzania was caused by a number of factors. There is however one factor which many literature have been missing. This factor was relevant before 1972. Before this period, immigration laws in Tanzania were not applicable to Africans. Hence, citizens of African countries, under the immigration laws of Tanzania were never treated as aliens or foreigners. This position was express in the Immigration Act No. 41 of 1963.⁶³ With this perspective in the law, reception of refugees from African countries into Tanzania was unadorned. This position was abandoned in 1972 after the new Immigration Act repealed the Immigration Act of 1963 officially making immigration laws apply to citizens of other African countries.⁶⁴

Further, the Refugees (Control) Act No. 2 of 1966 despite being coercive to refugees' treatment and entitlements nevertheless provided for group determination of refugee status (prima facie), doing away with bureaucracy of the procedure towards status determination.⁶⁵ Apart from this legal facet, other factors leading to open door policy included the Pan-Africanism philosophy of President Julius K. Nyerere.⁶⁶ It was this philosophy which made the President to take actions that are contrary to the Act of 1966 but dedicated towards humanitarian protection of refugees. For instance, the Act never provided anything regarding self-reliance of refugees and land allocation. However to the contrary, the President allocated land to Burundian refugees of 1972 and

⁵⁸ Milner J, 'Can Global Refugee Policy Leverage Durable Solutions? Lessons from Tanzania's Naturalization of Burundian Refugees', *Journal of Refugee Studies* (Vol. 27, No. 27, 2014) 557.

⁵⁹ UNHCR, 'Evaluation of the Protracted Refugee Situation (PRS) for Burundians in Tanzania' (2010) 21.

⁶⁰ UNHCR (n 59).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ The Immigration Act, No. 41 of 1963, s 2 (1) (b).

⁶⁴ See the Immigration Act, No. 8 of 1972, ss 2 and 31.

⁶⁵ See the Refugees (Control) Act, No. 2 of 1966, s 3(1)(a).

⁶⁶ Kamanga (n 41) 108.

furthered their resilience. Simply put, the Refugees (Control) Act of 1966, apart from its provision on group determination of refugee status, it was draconian and restrictive, providing more on refugee control and restrictions rather than rights and entitlements. Therefore, the open door policy was largely at the auspice of Nyerere's philosophy. Another factor for the open door policy was political sympathy in which refugees were perceived as both victims of persecutions and freedom fighters fleeing as a result of colonial liberations.⁶⁷ As an honour and recognition of his humanitarian philosophy, the UNHCR in 1983 awarded Julius K. Nyerere, a Nansen award.⁶⁸

4.2 Closed Door Policy

As earlier mentioned, the closed door policy began at around 1990's following the sequestration of Julius K. Nyerere as a President. The policy traces its background from the governments of presidents Ally Hassan Mwinyi (1985-1995) and Benjamin William Mkapa (1995-2005). President Mwinyi who believed in trade liberalization and privatization, gradually abandoned the Pan-Africanism and Ujamaa philosophies of Nyerere while boarding on the Economic Recovery Programme.⁶⁹ The same was trailed by President Mkapa. To keep pace with the country's anti-refugees policy, President Jakaya Mrisho Kikwete through a manifesto of Chama Cha Mapinduzi, his political party, pledged that Tanzania by 2010 should be refugee free.⁷⁰

During this period there were besides legal reforms of relevance to refugees. There was an enactment of the Refugees Act of 1998 followed by the adoption of the National Refugee Policy of 2003. Apart from adopting a closed door policy into the law, the refugee legal reforms in Tanzania were meant to achieve alignment with global and regional refugee law found in the Refugee Convention of 1951, the Refugee Protocol of 1967 and the OAU Convention of 1969.⁷¹ However it would appear that, the Refugees Act of 1998 was less restrictive than the 1966 Act as it contains some refugees' rights and entitlements.⁷² It is the National Refugees Policy of 2003 that is more restrictive and the closed door

⁶⁷ Ibid.

⁶⁸ See UNHCR, 'Report of the United Nations High Commissioner for Refugees', <https://www.refworld.org/docid/3ae68c350.html> accessed 22 March 2021; see also Churchill IK 'Rejecting 'Misfits': Canada and the Nansen Passports', *The International Migration Review*, (Vol. 28, No. 2, 1994) 281-306.

⁶⁹ UNHCR (n 59) 20.

⁷⁰ Milner (n 58) 558.

⁷¹ Kamanga (n 41)110.

⁷² Ibid,113.

policy can apparently be reflected from this document. With the closed door policy, individual status determination of refugees is adopted into the law complementing the group status determination that was in the repealed 1966 Act.⁷³

Further, with closed door policy, encampment policy is maintained and the right to work is allowed only for small income generating activities.⁷⁴ The local integration as a durable solution is discouraged and voluntary repatriation is explicitly praised as the most preferable durable solution.⁷⁵ The disagreement between the National Refugee Policy of 2003 and the 1998 Act has also been pointed by much literature as a source of inconsistent decisions by the government on refugee protection and management in Tanzania.⁷⁶ Most scholars also do defy the adoption of the 2003 Policy post the 1998 Act contrary to the conventional practice of having a Policy first to act as a guideline towards enactment of the Act.⁷⁷ Unfortunate enough, sources indicate that, government authorities responsible with refugee matters have been implementing the Policy than the Act.⁷⁸ Consequently, unsurprisingly, the right to work for refugees that is allowed in the Act upon getting a work permit Class E under the Non-Citizens (Employment Regulation) Act of 2015 is not implemented.⁷⁹ This is because the Work Permit Class E, as provided in the Act of 2015, is not issued in practice.⁸⁰ Up to the end of 2020, no Class E work permit was issued to any refugee in Tanzania.⁸¹

⁷³ The Refugees Act, No. 9 of 1998, s 9(1) introduces an individual status determination while section 4(1)(c) of the same Act maintains group determination of status that was once provided in section 3 (1)(a) of the repealed Refugees (Control) Act No. 2 of 1966.

⁷⁴ The Refugees Act, No. 9 of 1998, s 17(1) requires refugees to stay in their designated areas unless and until there is a permit by a Director of Refugees Services. The law does not provide grounds upon which the decision of the Director should base. Further, paragraph 17 of the National Refugee Policy of 2003 allows refugees to undertake only small income generating activities but within the camps.

⁷⁵ The Refugees Act No. 9 of 1998 does not mention local integration as one amongst durable solutions, it only mentions voluntary repatriation and resettlement. Although the National Refugees Policy of 2003 mentions local integration, under paragraph 14 it states expressly that, voluntary repatriation is considered as the preferred of all three solutions.

⁷⁶ Kamanga (n 41) 111.

⁷⁷ Ibid.

⁷⁸ See Chimanda L and Morris S 'Tanzania's National Legal Framework for Refugees: Law, Policy and Practice' Local Engagement Refugee Research Network (Working Paper No. 5, March 2020)19.

⁷⁹ The Non-Citizens (Employment Regulation) Act, No. 1 of 2015, s13(1)(e).

⁸⁰ Chimanda and Morris (n 78)18.

⁸¹ Ibid,17.

Frankly speaking, although the period starting from 1990s to date is characterized as a closed door policy era, there have been in some instances practices that contradict with this policy. A good example may be picked from the naturalization of Burundian refugees in 2010. In this year the government declared an opportunity for naturalization of about 220,000 Burundian refugees who entered the country in 1972.⁸² Majority of these refugees were settled in the Ulyankulu settlement. The opportunity was blissfully received by most of Burundians as up to June 2010, 162,156 applications for naturalization have been received and 98% have been accepted and approved.⁸³ This practice evidenced a profound stage of local integration to Burundian refugees. What factors led to this pronouncement bearing in mind the closed door policy of the country? It has been argued in most literature that, there was political motivation towards this decision and not humanitarian motivation.⁸⁴ The naturalization process was undertaken near the general election of 2010 hence it is sometimes attributed with the need for the ruling party to amplify its voters' tank.⁸⁵

4.3 The Fifth Government and Its Development Goals

In October, 2015, the fifth phase Tanzania government entered into power under the presidency of the late H.E President John Joseph Pombe Magufuli and H.E Vice President Samia Suluhu Hassan. This government was notable for its nationalist idea, putting the higher growth of the national economy at the frontline.⁸⁶ The government's policy inter alia was to promote economy through increasing revenue collection.⁸⁷ The goal was to reach middle-income country

⁸² See Kuch A 'Naturalization of Burundian Refugees in Tanzania', *Forced Migration Review* (Vol. 52, No. 5, 2016)63.

⁸³ Milner, (n 58) 556.

⁸⁴ See Kuch A 'Lessons from Tanzania's Historic Bid to Turn Refugees to Citizens', *The New Humanitarian*

<https://deeply.thenewhumanitarian.org/refugees/community/2018/02/22/lessons-from-tanzanias-historic-bid-to-turn-refugees-to-citizens> accessed 12 March 2021.

⁸⁵ Kuch (n 84).

⁸⁶ See Makubi S and Issa F 'Impact of the Fifth Phase Tanzanian Government Leadership in Promoting Integrity of Public Organizations-A Case of Tanzania Revenue Authority-Temeke Tax Region', *International Journal of Management Studies*, (Vol. 5, No. 4, 2018) 29; see also United Republic of Tanzania, 'National Five Year Development Plan 2016/17-2020/21: Nurturing Industrialization for Economic Transformation and Human Development', Ministry of Finance and Planning, (2016) 26.

⁸⁷ Ibid.

status by 2025.⁸⁸ Fortuitously, the country attained lower middle income status in 02 July 2020, five years before the envisaged time.⁸⁹

Despite affirmative progress in economic development, the country manifested a shrinking space of human rights and humanitarian space.⁹⁰ Particularly, as far as protection of refugees is concerned, there was a sequence of unpredictable and dynamic decisions by the government. A narration may be picked from the CRRF piloting project under the auspice of the UNHCR. Tanzania agreed to be a pilot country of the project in 2017 suddenly withdrawing from it in 2018.⁹¹

The withdrawal was accompanied with other pungent pronouncements on refugee protection and management. The country declared that she would no longer admit asylum seekers.⁹² The country also stopped the exercise that was ongoing, of providing Tanzanian citizenship to the 1972 case load of Burundian refugees.⁹³ Another bitter decision for Burundian refugees was made in March 2018 through a tripartite agreement amongst the governments of Tanzania and Burundi on one hand and the UNHCR on another hand. With this agreement, 2000 Burundian refugees were to be voluntarily returned to Burundi every week.⁹⁴ Reports indicated that, during this exercise, most refugees were not ready to go back to Burundi; they were forced through indirect means such as economic disincentives.⁹⁵ In 2019, another agreement was entered between Tanzania and Burundi to the effect that, all Burundian refugees were to return to their country of origin regardless of their voluntariness.⁹⁶ Admittedly, this exercise was prone to violation of the principle of refugees' protection namely, non-refoulement. The principle prohibits all measures taken to (involuntarily)

⁸⁸ See Anyimadu A 'Politics and Development in Tanzania: Shifting the Status Quo', Africa Programme Research Paper (March, 2016) 23.

⁸⁹ See Karashan B 'Tanzania Attains Lower Middle Income Status Five Years Early' The East African, Saturday (04 July 2020).

⁹⁰ Chimanda L, 'From A Host Country to No Access: Tanzania "Withdrawal" From the African Court', Zanzibar Yearbook of Law (Vol. No. 9, 2019, pp. 29-45) 39.

⁹¹ See Mlauzi and Small (n 7) 3.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Human Rights Watch, 'Tanzania: Burundian Refugees 'Disappeared', Tortured' <https://www/hrw.org/news/2020/11/30/tanzania-burundian-refugees-disappeared-tortured> accessed 19 March 2021.

⁹⁵ Human Rights Watch (n 94).

⁹⁶ Human Rights Watch, 'Tanzania: Asylum Seekers Coerced into Going Home: Hundreds of Burundians in Camp Targeted' <https://www/.hrw.org/news/2019/10/29/tanzania-asylum-seekers-coerced-going-home> accessed 19 March 2021.

return a refugee or an asylum seeker to his country of origin where he or she will be subjected to persecution, violence or human rights violation.⁹⁷

In summary, although the fifth phase government took over the closed door policy that has been in place since 1990s, it adopted more restrictive policy against refugees, especially the era post CRRF withdrawal.

5. Challenges in Implementing the GCR in Tanzania

The preceding section has drawn the background context of refugees' protection and management in Tanzania prior to the GCR. The section indicates that, refugee policy and Laws in Tanzania have been influenced by majorly political situation and philosophies rather than humanitarian needs. The current section presents the challenges that may hinder the implementation of the GCR in Tanzania. The challenges are explained here below:

5.1 Tanzania Pulling Out as a CRRF Pilot

It has already been indicated that, the CRRF is an integral part of the GCR hence its implementation substantially implements the GCR. After been selected to be a pilot country for the CRRF in June, 2017 it took just seven months for Tanzania to withdraw from the same on 23 January 2018. After the withdrawal, the government of Tanzania maintained that, its withdrawal as a pilot country does not mean that it withdrew from the GCR.⁹⁸ While this statement may appear heartening, nonetheless it signifies the political will of the government towards implementation of the GCR. A country which is dedicated to implementing the GCR would hardly decide to withdraw from the CRRF. Admittedly, the withdrawal from the CRRF piloting project is an obstacle to implementation of the GCR in Tanzania. No wonder to date there have been no any measures taken by the government of Tanzania towards implementing the GCR. There have been simply scattered initiatives by civil societies undertaken to accomplish the objectives of the GCR.⁹⁹

⁹⁷ See Articles 33 and II(3) of the UN Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) UNTS 189 and OAU Convention Governing Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 January 1974), respectively.

⁹⁸ Fellesson (n 37) 13.

⁹⁹ See UNHCR, 'Humanitarian Response for Burundian Refugee Influx in Tanzania: Protection of Refugees' Health through the Strengthening of Access to Water and Sanitation' <https://globalcompactrefugees.org/article/humanitarian-response-burundian-refugees-influx-tanzania> accessed 10 March 2021.

In countries where the CRRF piloting project is executed, there have been substantial improvements in protection and general humanitarian assistance to refugees. In Ethiopia for instance, since the adoption of the CRRF, the government has created up to 5,566 jobs for refugees by June, 2019.¹⁰⁰ In implementing the CRRF, Ethiopia has been collaborating with various international organizations including the European Union.¹⁰¹ In Chad, towards implementation of the CRRF, the Ministry of Education announced in June 2018 that 108 schools found in 19 refugee camps throughout the country had become authorized Chadian schools.¹⁰² This is a landmark measure as it has enabled refugee children to study together with Chadian students enhancing their integration with the local community. Prior to this there had been a national symposium about the CRRF introduced in September, 2018 by the government of Chad collaborating with donor countries and the United Nations.¹⁰³

Foregoing from the above, although Tanzania is still part to the New York Declaration for Refugees and Migrants and its resultant GCR, the withdrawal from the CRRF piloting project is an appalling sign to the political will of the government of Tanzania in implementing the Global Compact on Refugees.

5.2 Non-Binding Nature

The GCR results from the New York Declaration for Refugees and Migrants of 2016. The New York Declaration is a soft law hence not legally binding. Its violation will not have any legal effect than political implications.¹⁰⁴ Although it would appear significant to adopt the GCR as a soft law so as to facilitate its negotiations and adoption, the non-binding nature of the New York Declaration for Refugees and Migrants and its resultant GCR is a legal limitation.¹⁰⁵ However, the binding or non-binding nature of international instruments has had very lenient significance in implementation and compliance. Implementation of international law has in most instances been left at the auspice of government's political will. A number of countries globally have been falling short of

¹⁰⁰ Alemu AN and Freddie C 'The Comprehensive Refugee Response Framework Progress in Ethiopia', HPG Working Paper <https://bit.ly/2TO6Qwd> accessed 15 March 2021.

¹⁰¹ Alemu and Freddie (n 100).

¹⁰² Carcioto and Ferraro (n 15).

¹⁰³ Ibid.

¹⁰⁴ See Hoflinger T 'Non-Binding and Therefore Irrelevant? The Global Compact for Migration', *Journal of Global Policy Analysis* (Vol. 75, No. 4, 2020) 662-673; see also Hathaway JC 'The Global Cop-Out on Refugees', *International Journal of Refugee Law*, (Vol. 30, No. 4, 2018) 591-604.

¹⁰⁵ Adzande P 'Africa and the Global Compact on Refugees Inclusive Policy Responses to Forced Displacement', African Peace-building Network (Briefing Note Number 19 of 2018)13.

international standards adopted in legally binding instruments let alone soft laws. Therefore, whether the non-binding nature of the GCR is a challenge to its implementation in Tanzania will depend on the political will. The political will has nonetheless negatively been demonstrated by the government of Tanzania through its withdrawal from the CRRF piloting project.

5.3 Incompatibility with the Current Law, Policy and Practice

The implementation of the GCR calls for measures and actions majority of which are contradictory and inconsistent with the refugee law, policy and practice of Tanzania. Implementing the GCR in Tanzania inevitably calls for reforms in the country's refugee laws and policies. The inconsistencies may be picked from the following areas:

The GCR calls for States to take measures aimed at ensuring utilization of the skills of refugees in their labour markets.¹⁰⁶ The access to the labour market for refugees in Tanzania has been a challenge. This has been so despite the fact that Tanzania is a state party to the United Nations Convention Relating to the Status of a Refugee of 1951 which embodies in the right to work for refugees.¹⁰⁷ Although the Refugee Act of 1998 provides for possibility of formal employment for refugees upon grant of work permit¹⁰⁸, the National Refugees Policy of 2003 which is mostly applied by refugee authorities in the country limits the right to work for refugees to small income generating activities only.¹⁰⁹ The Non-Citizens (Employment Regulation) Act of 2015, introduces Work Permit Class E for refugees but no regulations have been put in place to operationalize it.¹¹⁰ No wonder to date, no refugee can be found in the formal employment sector of the country.¹¹¹

A significant number of urban refugees from the Democratic Republic of Congo and Burundi are found in Dar es Salaam. Some of them undertake businesses for livelihood.¹¹² Their situation has however currently being precarious due to

¹⁰⁶ See paragraph 2.2 of the Global Compact on Refugees, 2018 as well as paragraph 13(c) of the Comprehensive Refugee Response Framework.

¹⁰⁷ See article 17 (1) of the United Nations Convention relating to the Status of a Refugee, 1951. Tanzania acceded to this Convention in 1964.

¹⁰⁸ The Refugees Act, No. 9 of 1998, s 32(1).

¹⁰⁹ The National Refugee Policy of 2003, para 17.

¹¹⁰ See The Non-Citizens (Employment Regulation) Act, No. 1 of 2015, s 13(1)(e).

¹¹¹ See Chimanda and Morris (n 78)11.

¹¹² Chimanda L 'Protecting Female Migrant Workers in Tanzania: Critical Analysis of International Labour Migration' (LL.M Dissertation, University of Dar es Salaam 2020) 82.

continued harassment by Police Officers on allegations of illegal migration.¹¹³ The Ministry of Home Affairs (MHA) had been previously issuing permits for refugees to stay in urban areas. That permit was a Residence Permit Class A (Peasant Permit) valid for two years.¹¹⁴ However since 2014, the Government has stopped to provide leaving many urban refugees illegally staying. As a result most refugees live with fear ending up being harassed and abused by neighbours, landlords, and Police Officers.¹¹⁵

Utilizing the skills and potentials of refugees as required by the GCR again lacks legal back up in Tanzania due the encampment policy that is practiced and enacted in the Tanzania laws. Laws in Tanzania do not allow refugees to stay and move out of their camps unless and until there is a permit to that effect given by the Director of Refugees Services.¹¹⁶ The law does not state the grounds or conditions under which the permit may be given or denied by the Director. The permit decision is therefore left at the discretion of the Director hence prone to arbitrary rejections. This curtails refugees' right to work and makes the prospect of their skills utilization and employment almost impossible.

Again, the GCR calls for member states to apply durable solutions namely voluntary repatriation, resettlement, local solutions and complementary pathways for admission.¹¹⁷ This faces a cage in Tanzania as recently there have been evidences of involuntary repatriation especially for Burundian refugees under the so called tripartite agreement between the UNHCR, Tanzania and Burundi. Under the agreement, it was agreed in 2018 that 2000 Burundian refugees should be voluntarily returned back to Burundi after every week.¹¹⁸ Reports have however shown that, a significant number of Burundian refugees do not wish to go back to Burundi but are compelled by coercion executed by authorities in implementing the said agreement.¹¹⁹ Furthermore, as already pinpointed, local integration as a durable solution is discouraged while voluntary

¹¹³ Chimanda L (n 112).

¹¹⁴ International Rescue Committee, 'The Right to the City for Urban Displaced: A Review of the Barriers to Safe and Equal Access to the City for the Displaced Residents in Dar es Salaam' (January, 2017) 8.

¹¹⁵ International Rescue Committee (n 114).

¹¹⁶ The Refugees Act, No. 9 of 1998, ss 10(1), 17(5)(a) and 24(2).

¹¹⁷ The Global Compact on Refugees, 2018, paragraph 10 of the CRRF designated as Annex 1 of the New York Declaration of 2016.

¹¹⁸ Human Rights Watch (n 94).

¹¹⁹ Ibid.

repatriation is the most preferable durable solution under the laws of Tanzania.¹²⁰

Moreover, the GCR requires member states to make better conditions enabling smooth reception and admission of refugees and asylum seekers.¹²¹ This has remained illusory in Tanzania after the country declared in January 2018 that she would no longer admit new asylum seekers. Since 2017, restrictions on asylum access to the country for have increased. In 2017, prima facie recognition applied for asylum seekers from Burundi was stopped and hence, all Burundian asylum seekers entering Tanzania had to undergo individual refugee status determination.¹²² This was followed by a closure of all 19 border entry and reception points for Burundians and Congolese asylum seekers.¹²³ The closing exercise was undertaken between March 2017 and July 2018 and the border entries remain closed till today.¹²⁴

From the above it can be stated that, while Tanzania maintains that she in support of the implementation of the GCR, her legal and policy framework is not equipped to execute that commitment.

5.4 Underfunding

Effective implementation of the GCR requires resources and budgetary arrangements. On that basis, the GCR is accompanied with financial burdens and responsibilities. In that way, funding from donor countries and the United Nations is inescapable. In recognition of this, the GCR provides that international cooperation and burden sharing is necessary in implementing the comprehensive responses towards refugees' protection.¹²⁵ Tanzania since 2015 is facing an underfunding syndrome. Highly probable, even the withdrawal as a

¹²⁰ There is no mention of local integration as a durable solution under the Refugees Act No. 9 of 1998. Paragraph 14 of the National Refugees Policy of 2003 states that, voluntary repatriation is considered as the preferred of all three solutions.

¹²¹ The Global Compact on Refugees, 2018, paragraph 5 of the CRRF designated as Annex 1 of the New York Declaration of 2016.

¹²² UNHCR 'Tanzania Country Refugee Response Plan: The Integrated Response Plan for Refugees from Burundi and the Democratic Republic of the Congo' <https://reliefweb.int/report/ united-republic-tanzania/tanzania-country-refugee-response-plan-intergrated-response-plan> accessed 22 March 2021.

¹²³ UNHCR (n 122).

¹²⁴ Ibid.

¹²⁵ The Global Compact on Refugees, 2018, paragraph 1 of the CRRF designated as Annex 1 of the New York Declaration of 2016.

CRRF pilot country was inter alia caused by underfunding.¹²⁶ It may be valid to further argue that, even the shift of a refugee policy to a more restrictive one in the fifth phase Tanzania government has been caused by decline of donors.¹²⁷

Underfunding has negatively affected refugees in Tanzania. By November 2016, food rations for refugees in the country decreased to the extent refugees were receiving only 63% of the required daily consumption of 2100 Kilocalories.¹²⁸ By the end of 2018, funding rate for the DRC and Burundi inter-agency refugee response in the country stood at 30% only out of the required funding.¹²⁹ As a result, this has caused refugees and asylum seekers to live in unacceptable conditions, increase of risk of Sexual and Gender Based Violence (SGBV), inadequate emergency shelters and tenets as well as limited access to health facilities.¹³⁰ It is therefore intricate for Tanzania to implement the GCR without funding aids and support from donor countries, the United Nations and other actors.

5.5 Placing much Emphasis on Data

Under the GCR, in order for a country to be entitled to an effective cooperation from the international community, it must have a clear data and evidence based system of refugees' management. The GCR designates data and evidence as critical in improving socio-economic conditions for host communities and refugees and in addressing the impact of large refugee influx and protracted situations.¹³¹

Tanzania is one amongst host countries that are facing a setback of either having inaccurate or unavailable data for forced displaced persons.¹³² This may be a hindrance to implementing the GCR in the country. The emphasis on the requirement to collect "comparable, reliable and timely data" on refugees is an implementation challenge for many African States including Tanzania. Linking support and aid to data potentially results to data manipulation and deprivation

¹²⁶ Mlauzi and Small (n 7) 24.

¹²⁷ See Whitaker BE 'Funding the International Refugee Regime: Implications for Protection', *Global Governance* (Vol. 14, No. 2, 2008) 241-258.

¹²⁸ WFP, 'Funding Shortfalls in the Refugee Operation' <https://reliefweb.int/report/ united-republic-tanzania/funding-shortfalls-refugee-operation> accessed 20 March 2021.

¹²⁹ UNHCR 'Tanzania Country Refugee Response Plan', January 2019-Deember 2020.

¹³⁰ UNHCR (n 129).

¹³¹ The Global Compact on Refugees, 2018, para 3.3.

¹³² Erdilmen M and Sosthenes WA 'Opportunities and Challenges for Localization of Humanitarian Action in Tanzania', *Local Engagement Refugee Research Network* (Working Paper No. 8, May 2020) 15.

of resources to African States that host large numbers of refugees because they are unable to adequately or accurately account for them.¹³³

5.6 Limited Operation of Civil Societies

The GCR recognizes civil societies as important actors in refugees' protection and overall implementation of the comprehensive responses to refugees' management.¹³⁴ However, starting from 2015, the operational environment for civil societies in Tanzania has been shaky. There has been unpredictable amendment of laws that set hurdles to registration and operation of civil societies.¹³⁵ The laws further give enormous power to the registrar of NGOs to suspend any NGO as well as evaluating and investigating their operations.¹³⁶ The shrinking space of freedom of expression in the country barred civil societies of releasing information relating to refugees protection fearing of state sanctions.¹³⁷ This has been a challenge even to the implementation of localization of humanitarian actions project initiated during the World Humanitarian Summit in 2016.¹³⁸ This operational frosty environment for civil societies in Tanzania, poses a challenge towards implementation of the GCR.

5.7 Western Nature

There is a scholarly argument that, the GCR does not accommodate the African context of refugee protection and management.¹³⁹ It is western in nature embodying the context and situations of host countries in the west.¹⁴⁰ Even the processes leading to the New York Declaration for Refugees and Migrants, 2016 which resulted to the GCR, were sparked by refugees situations in Europe but not in Africa.

The 2015 migration crisis has upset the European Union system to the extent that no agreement on the matter was possible. In that spirit, it was decided to bring to the international level the dialogue to agree on a migration guideline:

¹³³ See Adzande P (n 105).

¹³⁴ The Global Compact on Refugees, 2018, paragraph 1 of the CRRF designated as Annex 1.

¹³⁵ See the Non-Governmental Organizations Act (Amendments) Regulations, 2018 read together with the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2019.

¹³⁶ Ibid; see also Kelly L, 'Legislation on Non-Governmental Organizations (NGOs) in Tanzania, Kenya, Uganda, Ethiopia, Rwanda and England and Wales', *Knowledge, Evidence and Learning for Development* (21 August 2019)11-12.

¹³⁷ For instance, before its amendment on 28 June 2019, the Statistics Act of 2015 made it a crime to publish the so called "falsified statistics" without approval of the government.

¹³⁸ See Erdilmen M and Sosthenes WA (n 132) 1.

¹³⁹ See Adzande P (n 105) 14.

¹⁴⁰ Ibid.

the UN Global Compact on Refugees through the UN New York Declaration for Refugees and Migrants, 2016.¹⁴¹ It is of no surprise the GCR links refugees support to host countries with data as most of European countries have a lucid system of data management for refugees. Whether the GCR accommodates African perspective remains questionable.

6. Prospects

The foregoing discussion reveals that the major factor that has been determinative of the refugee policy and practice in Tanzania is political will and philosophy of the regime in power.

The Nyerere regime that existed in the period between 1961 and 1985 was dominated by a Pan-Africanism cum socialism philosophy. It is this philosophy that led to the open door refugee policy in the country welcoming large group of refugees from African countries without stringent restrictions. The Mwinyi's regime of 1985 to 1995 and Mkapa's regime of 1995 to 2005 were dominated by trade liberalization and privatization. In these two regimes, the restrictive refugee policy namely closed door policy marked the decline of the open door refugee policy in the country. During the regime of Kikwete, from 2005 to 2015, although the closed door policy was still in existence, the naturalization of about 160,000 Burundian refugees was made possible in 2010 due to political reasons related with the general elections of 2010. During the Magufuli's regime of October 2015 to March 2021, his nationalist ideology geared by fast national economic growth lead to more restrictive refugee policy. The decline of funding flow from donors made the situation even worse.

It then goes without saying that, in Tanzania, there is a close connection between refugee policy and the government in power. Following the death of the fifth President of Tanzania, the late Dr. John Pombe Joseph Magufuli that occurred on 17 March 2021, Tanzania sworn in Samia Suluhu Hassan as her sixth President; a historic event putting into powers a first female President in the country.¹⁴² Since she came into power, H.E Samia Suluhu has brought some changes not only in the Cabinet but also in the economic policy of the country.

¹⁴¹ Badell D 'The EU, Migration and Contestation: the UN Global Compact for Migration, from Consensus to Dissensus' *Global Affairs* (2021) 10.

¹⁴² See the National, 'Tanzania Swears in Samia Suluhu Hassan as First Female President' <https://www.thenationnews.com/world/africa/tanzania-swears-in-samia-suluhu-hassan-as-first-female-president-1.1187242> accessed 24 March 2021.

For instance, unlike her predecessor, she does not believe in high and strict taxation of businessmen and investors as a source of government revenues.¹⁴³

The international community and civil societies can hence explore available opportunities under the new regime of H.E Samia Suluhu, through which the refugee policy and practice can be improved. The exploration can include the revival of the GCR and CRRF into the country's plans. The coming into power of the new President in Tanzania is therefore a prospect towards improvement of refugees' protection and consequently implementation of the GCR in Tanzania.

7. Conclusion and Recommendations

In this article it has been revealed that, the GCR and its integral CRRF are important international policy documents that if efficiently implemented worldwide, may lead to new refugee solutions towards current global refugee crisis. The article has also revealed that, the GCR though traces its development from the migration crisis in the European Union, it is still relevant in the African context and efforts should be taken to implement it in Africa. On the same pace, the paper finds that, the GCR is relevant to Tanzania though subject to challenges. Challenges against implementation of the GCR in Tanzania include the withdrawal from the CRRF, non-binding nature of the GCR, incompatibility with laws, policy and practice, underfunding, placing much emphasis on data, limited operation of civil societies and the western nature of the GCR. In addressing these challenges the following are recommended:

7.1 Support and Funding

It is recommended that, donor countries and the international community under the auspices of the United Nations should support and fund the United Republic of Tanzania in boosting up her capacity to receive, admit, host and protect refugees. The funds should be given as aids and not as loans subjecting the country to debts. This should be done in line with conventional principle of refugees' protection namely burden sharing and international cooperation. This paper has revealed that, the withdrawal from the CRRF was among other factors caused by underfunding; hence, funding could have rescued it.

7.2 Migration-Development Perspective

¹⁴³ See Owere P 'President Samia: Stop Frustrating Taxpayers, Expand Tax Base' The Citizen (01 April 2021) <https://www.thecitizen.co.tz/tanzania/news/president-samia-stop-frustrating-taxpayers-expand-tax-base-3345114> accessed 24 March 2021.

It is further recommended that, the government of Tanzania should refine its perspective towards refugees and migration in general. It should discourage the perspective of viewing migration as a matter of security concern. The perspective should be to view migration and refugees as development opportunities. Refugees and migrants are potential assets to the host country if appropriately utilized. One way of utilizing refugees is through opening up their access to the labour market, complementing the national human capital.

7.3 Increased Opportunities for Resettlement

This paper has found that, more than two-third of the UNHCR's resettlement submissions is at the shoulders of just five States. This makes the 'burden' of hosting refugees be to host countries. It is recommended that, the UNHCR and UN member states should strive towards opening doors for resettlement so as to support host countries especially those in protracted refugee situation.

7.4 Amendment and Review of Laws and Policies

As it has been shown in this paper, majority of the GCR objectives are inconsistent with the refugee laws and policy of Tanzania. Their amendments and reviews should be undertaken to ensure that the refugees' access to labour market is smooth, refugees' freedom of movement is protected and the country's readiness to receive and admit new asylum seekers is maintained. The country should further apply the durable solution of local integration dedicated towards utilizing and incorporating refugees into the development plan of the country.

7.5 Refugee Led Organizations

It is recommended that, refugees in camps and outside camps in Tanzania, should be given support and be availed conducive environment to form their own organizations so as to further their protection and management. This will lead to paradigm shift of refugee protection from humanitarian aid based approach to refugees by themselves and for themselves approach. This will meet the GCR objective of promoting refugees resilience in host countries. Refugee led organizations have been effective in the neighboring countries of Uganda and Kenya.¹⁴⁴

7.6 Cooperation with Civil Society

¹⁴⁴ See Betts A, Calabria EE and Pincock K 'Localising Public Health: Refugee Led Organisations as First and Last Responders in COVID-19', World Development, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7685637/> accessed 03 April 2021; see also Betts A, Calabria EE and Pincock K 'Refugee-led Social Protection: Reconceiving Refugee Assistance', Forced Migration Review, Refugee Studies Centre (Vol. 58, June 2018).

The government of Tanzania should cooperate with civil societies in humanitarian assistance to refugees. The GCR recognizes civil societies as important actors towards its implementation. The government should therefore smoothen the operational environment for civil societies in Tanzania doing away with legal barriers. Active participation of civil societies in refugees' protection may aid the localization of humanitarian actions in Tanzania.

7.7 Research and Training

The government of Tanzania and the international community should encourage more researches aiming at detecting more comprehensive solutions to current refugee crisis. Trainings to relevant authorities in refugee protection should also be encouraged so as to build capacity for actors responsible in the management of refugees. Research and training can also lead to improved refugee data and statistics management. This can consequently lead to effective implementation of the GCR in Tanzania.

7.8 Consultative Dialogues

Continued and frequent consultative dialogues should be in place between and amongst the government of Tanzania, UNHCR, civil societies and other actors on how best the implementation of the GCR can be of benefit to host country and refugees. The dialogues should also strive to seek possibilities of Tanzania reinstating her voluntary readiness to be a CRRF pilot. The new regime under H.E President Samia Suluhu should be used as an opportunity for improvement of the refugee policy and practice in the country.