

Legal and Administrative Challenges in Addressing Mixed Migratory Flows in Tanzania

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Abstract

The study explores the major challenges facing mixed migratory flows, it analyses the route source of migrants and the causes for flee, which is facilitated by different factors. The study is based on data collected through review of available literature including journal, articles, reports, papers, textbooks and thesis. The researcher visited Different institutional libraries and intensively used online resources in undertaking this study. Findings shows that, challenges facing the country (Tanzania) includes; lack of policy on mixed migratory flow, uncoordinated legislations dealing with groups forming mixed migratory flows, the geographical nature of the country makes it hard for immigration officer to manage irregular migrants (border management), lack of finance and technical resources and lack of political will from the source countries where irregular migrants originates. The study realized that migration management is not simple task considering that each country has its own legal regime. Therefore, it is recommended that mixed migratory flow can longer be managed by national law of each state due to complexities accompanied by this type of migratory movement. The solution is to have a universal coordinated legal mechanism.

Keywords: Legal and Administrative Challenges, Mixed Migratory Flows, Tanzania

1. Introduction

One of the global challenging issues today is the new face of migration which is becoming more and more complex and causing great suffering, human rights violations, exploitation and thousands of deaths among migrants.¹ The situation becomes more challenging and complicated as migrants are increasingly mixed as different types of migrants, are clandestinely travelling together and using the same channels.

Because of mixed nature of migration flow the question of migration management and protection of migrants is no longer an easy task taking into consideration the disparities in migration legal regimes.² Tanzania being part of the global has been increasingly affected by mixed migratory flows arriving in Tanzania mainly from the horn of Africa with a proportion departing partly to southern African countries.³ In Tanzania, this phenomenon has two geographical strands. The first is persons from the Horn of Africa who enter irregularly through the regions on the north east border namely Musoma, Kilimajaro, Arusha and Tanga. While a few of them settle in Tanzania, the majority seek to use the country as a transit corridor to the southern borders with Mozambique, Malawi and Zambia en route to South Africa and beyond.⁴

Countries like Tanzania are starting to realize that their immigration laws are not adequate to deal with the phenomenon of “mixed migration whereby refugees, asylum-seekers, economic migrants and even victims of human trafficking may be using the same routes, means of transport and smuggling networks to reach a shared destination, but are driven by different motives and have different claims to protection and humanitarian assistance.”⁵ So far, Tanzania has no policy addressing mixed migratory population and the available legislations

¹ Migrants face these difficulties before, during and after arrival in countries of destination. Also these could include forced labor, physical, emotional and sexual abuse, detention, denial of wages and forced return. See UNHCR, “Regional Conferences on Refugee Protection and International Migration in Central America, Western Africa, Eastern Africa and Asia: Selected Conference Materials,” Division of International Protection, June 2011 at page 7. Available at <<http://www.unhcr.org/refworld/pdfid/4e0d6be02.pdf>> (accessed on 27 may 2014).

² See Elmadmad, K., “Mixed Flows and the Protection of Migrants with Special Reference to Sub-Saharan Migrants”, ISPI Working Paper, Paper No. 26 of 2008 at page 2. Available at <http://www.ispionline.it/documents/wp_26_2008.pdf> (accessed on 27 may 2014). Also see The Parliamentary Assembly of the Council of Europe, Resolution No. 1637, “Europe’s Boat People: Mixed Migration Flows by Sea into Southern Europe” in Parliamentary Assembly, Adopted Texts, Standing Committee, 28 November 2008 at page 17. Available at <<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1637.htm>> (accessed on 29 may 2014)

³ Overview on south-south migration and development in Tanzania trends and research needs available at <http://www.acpmigration-obs.org/sites/default/files/Tanzania-CtryOverview-15022013.pdf>

⁴ Report on the situation of irregular migration in Tanzania prepared by: the Ministerial task force on irregular migration Dar es salaam, April 2008

⁵ <http://www.irinnews.org/report/93844/analysis-mixed-responses-to-mixed-migration-in-africa>

are only for specific groups which do not capture other type of migrants.¹

This study therefore explores the legal and administrative challenges in addressing mixed migratory flows in Tanzania, by identifying the regulatory as well as institutional framework governing Mixed Migration flows. The study is based on data collected through review of available literature including; journal articles, textbooks and other published and unpublished works.

2. The Phenomenon of Mixed Migratory Flows

Mixed migration is combination of mixed migration motivations and mixed practices and flows of migrants and asylum seekers who travel together or on the same routes for the same or similar destinations.² Although opposed to migratory population movements that consist entirely of one category of migrants.³ This term incorporates all different forms of migratory movements like irregular migration, asylum seekers, labour migrants, smuggling and trafficking.⁴

Mixed migratory flows involve persons who flee their home place and countries are mixed and complex depending on different factors of migration. For example, those who flee a country where there is conflicts, persecution, discrimination and human rights abuse may also be trying to escape dire economic circumstances and look for employment possibilities and social well-being elsewhere.⁵

This does not matter whether the movement is voluntary or forced. Boswell and Crisp argue:

The factors triggering migration usually comprise a complex mix of political, social and economic conditions, as well as individual psychological factors, and in many cases it makes little sense to ask if movement is voluntary or coerced.⁶

Therefore, mixed migration flows, as Wallner says, can never be explained in a mono-casual way since there are always more objectives and partly subjective experienced factors put together as reasons for migration.⁷ So, we can never specify the exact set of factors which impels migration flows for a given person instead we can, in general, only set forth a few which seem of special importance and note the general average reaction of a given group.⁸

The complexities of the mixed migratory flows were also discussed during the Regional Conference on Refugee Protection and International Migration held in Dar es Salaam in 2010, inter alia, noted:

The International migratory movements...have become more complex in recent years and are increasingly mixed in character. These movements include women, men and children leaving their own country and seeking to take up residence in another country for a variety of reasons and at times using the same modes of transport; employing the services of the same people smugglers and are exposed to the same risks and abuses.⁹

The irregular nature of and the multiplicity of factors driving such movements, and the differentiated needs and profiles of the persons involved are the principal characteristics of mixed migration flows. Such classification however, shall not be relied to derogate the inherent principle that all human beings are entitled to the protection of their human rights, regardless of their status.¹⁰

3. International Legal Instruments and Institutional Framework

There is no international or domestic legal framework for dealing with mixed migration in a holistic manner. As a result, separate legal instruments are usually applied to different forms of migration.¹¹ In other words, there is no global coordinated mechanism or commonly agreed framework to guide policy making on migration in

¹ Refugee Act 1998, Immigration Act and The Anti-Trafficked in Persons Act 2008

² Read the MMTF Report, *Op cit*, page 33.

³ *Op cit*, page 63.

⁴ See the Report by Mixed Migration Task Force (MMTF), "Mixed Migration through Somalia and Across the Gulf of Aden", June 2010, at page 31. Also see Boutruche, S. *Et al.*, *Raising Young Refugees' Voices in Europe and Beyond: A Seminar Report*, 2008, at page 27; Irastorza, N., *Born entrepreneurs?: Immigrants Self-Employment in Spain*, 2010, at page 132.

⁵ See Van Hear, N (*Et al*), *Loc cit*.

⁶ Boswell, C & Crisp, J., "Poverty, International Migration and Asylum", Policy Brief No.8, UNU World Institute for Development Economic Research, Helsinki, Finland, 2004 at page 9. Available at <<http://archive.unu.edu/update/downloads/43wider1.pdf>> (accessed on 16 February 2012).

⁷ Wallner, M., (*Et al*) *Migration Happens: Reasons, Effects and Opportunities of Migration*, 2006, at page 10.

⁸ See Lewis, G.J., *Human Migration*, 1982, at page 99.

⁹ UNHCR, "Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lake Region to Southern Africa," Concept Note, Dar es Salaam, Tanzania, 6-7 September 2010, page 1. Available at <<http://www.unhcr.org/refworld/pdfid/4e0d6be02.pdf>> (accessed 24 April 2014).

¹⁰ See IOM, International Dialogue on Migration, Discussion Note No. MC/INF/294, "Challenges of Irregular Migration: Addressing Mixed Migration Flows", 96th Session, 7 November 2008, at page 2. Also see the discussion on preceding part of this paper.

¹¹ Crush, J & Tevera, D., *Zimbabwe's Exodus: Crisis, Migration and Survival*, 2010, page 381

general and ‘mixed migration’ in specific. Piper comments that the international regulatory framework to protect migrants is poorly developed, fragmented, and scattered.¹

3.1.1 Instruments on Refugees and Asylum Seekers

Refugee law is the law that applies to forced migrants crossing international borders in search of asylum.² Refugee and asylum seekers are major group forming part of mixed migratory flows. Population movements are now interlinked; refugees are travelling alongside migrants to reach a safe place because they often have no other way to flee than to use the same clandestine channels as the other migrants.³ The refugee movement started earlier from the First World War although their status was not legally realized as there was no specific law providing for their protection until 1951 when the Convention Relating to the Status of Refugee came into force and Protocol 1967 on the Status of Refugee.⁴

These International mechanisms for the management of refugees were initially attempted in the years following the First World War. However, it was not until after the Second World War that a greater commitment to the ideas of a liberal institutional framework was accepted.⁵ The Convention Relating to the Status of Refugees⁶ and its 1967 Protocol⁷ form the basis of international law relating to refugees.⁸ Therefore, mixed migratory flows are the result of the first and Second World War because they generated unmanaged number of refugees who were moving in a mixed form with other migrants.

3.1.2 Instruments on Labour Migrants

In mixed migratory flow, labour migrants are the second large group from the forced migration (refugee and asylum seekers). Labour migration falls under voluntary migration (economic migrants). There two international legal instruments providing for the protection of labour migrants these includes; instruments enacted by the International Labour Organisation (ILO) and The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).⁹

These instruments guarantee different rights for migrant workers and the members of their families, such as the right to equality of treatment and wages, the right to family reunification, the right to education and freedom of movements and the right to transfer money to their countries of origin.¹⁰

The same convention under article 3(1) provides ‘each member for which this convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration’.¹¹

Furthermore, The UN 1990 migrants’ Convention protects also undocumented migrants. While it does not encourage their presence, it ensures that they have access to basic human rights. With this UN convention providing for protection of labour migrants and members of their families regardless of their migratory status it is an indication that rights of mixed migrants are realized.

3.1.3 Instruments on Human Smuggling and Trafficking in Persons

Trafficking in persons and smuggling of migrants are global problems that transcend national borders. Victims of trafficking and smuggled migrants are subjected to various forms of exploitation against their free will.¹²

¹ Piper, N., ‘Gender and Migration’, Background Paper for Global Commission on International Migration (GCIM), 2005, page 36, available at <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP10.pdf> (accessed on 30 May 2014); also read Jolly, S & Reeves., Gender and Migration: Overview Report, Bridge, Institute of Development studies, 2005, page 31, available at <<http://www.bridge.ids.ac.uk/reports/CEP-Mig-OR.pdf>> (accessed on 30 May 2014).

² See Khadija Elmadmad, mixed flows and the protection of migrants with special reference to sub-saharan migrants

³ Ibid

⁴ Convention relating to the status of refugees

⁵ See Bhugra, D., (et al) *Mental Health of Refugees and Asylum Seekers*, 2010, page 87-88.

⁶ 189 U.N.T.S 2545, entered into force on April 22, 1954 (hereinafter “the 1951 Convention”).

⁷ 606 U.N.T.S 8791, entered into force on October 4, 1967 (hereinafter “the 1967 Protocol”).

⁸ Bhugra, D., (et al) *Loc cit*. Also see McKay, S., (ed.) *Refugees, Recent Migrants and Employment: Challenging Barriers and Exploring Pathways*, 2009, page 54; Feller, E., “The 1951 Convention: Five Decades of Refugee Protection”, 3 *Refugee Survey Quarterly*, 20, 2001, at 1. This Convention is sometimes known as “the Magna Carta of international refugee law”, see UNHCR, “50 Anniversary: The Wall Behind which Refugees can Shelter, the 1951 Geneva Convention”, *Refugee Magazine*, Vol.2, Issue 123 of 2001.

⁹ The ICRMW was adopted by the UN General Assembly (Resolution 45/158) on 18 December 1990 and entered into force on 1 July 2003.

¹⁰ Article 25(3) provides that; States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

¹¹ Ibid

¹² Jorge-Birol, A.P., “Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies”, *HUMSEC Journal*, Issue 2, 2008, p. 164.

Before the year 2000, when the optional Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children¹ and the Protocol against the Smuggling of Migrants by Land, Sea and Air² were adopted, the line demarcating smuggling from human trafficking became much blurred.

These Protocols were adopted to supplement the UN Convention against Transnational Organized Crime³ which is the main international instrument in the fight against transnational organized crime. The Convention commits states to introduce a range of measures, including the creation of domestic criminal offenses to counter the problem; the adoption of new frameworks for mutual legal assistance; extradition; law enforcement cooperation; technical assistance and training.⁴ Under the trafficking Protocol, trafficking in persons is defined to mean:

“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁵

This is the first global legally binding instrument with an agreed definition on trafficking in persons.

The intention behind this definition, among others, is to protect and assist the victims of trafficking in persons with full respect for their human rights. Smuggling is defined under the smuggling Protocol to mean:

“...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”⁶

The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

Despite these distinctive definitions, smuggling and trafficking are not mutually exclusive since, on the one hand, many victims of human trafficking begin their journey by consenting to be smuggled from one State to another. On the other hand, smuggled migrants may later be deceived or coerced into exploitive situations and thus become victims of human trafficking.⁷

Illegal immigrants, women, children, refugees and IDPs are most vulnerable to this clandestine business of trafficking and smuggling.⁸ This is due to the economic and social challenges they face either in their home countries, on-transit or in countries of destination. It is worth noting again that all human rights-based instruments also protect victims of trafficking and smuggled migrants as they apply to all human beings.

Human Smuggling and Trafficking in person being the group in mixed migratory flows and having the international instruments providing for protection and prevention of trafficking and smuggling it makes safer for persons involved in mixed movement. Therefore the instruments are very important to the study as states are required to cooperate in fighting exploitation of smuggled migrants.

The international framework is supplemented by a number of regional agreements aimed at combating trafficking in persons. These include, among others, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings,⁹ The Arab Charter on Human Rights,¹⁰ the 1969 American Convention on Human Rights,¹¹ and the 1981 African Charter on Human and Peoples' Rights.¹² As it may be observed from the above

¹ Adopted by the United Nations General Assembly resolution 55/25 in Palermo Italy in 2000, entered into force on 25 December 2003 (hereinafter the Trafficking Protocol).

² Adopted by the United Nations General Assembly resolution 55/25 in Palermo Italy in 2000, entered into force on 28 January 2004 (hereinafter the Smuggling Protocol).

³ Adopted by U.N. General Assembly resolution 55/25 of 15 November 2000, entered into force on 29 September 2003.

⁴ See Gallagher, A.T., *The International Law of Human Trafficking*, 2010, page 70; and Winterdyk, J., (*et al*),

⁵ See Article 3 (a) of the trafficking Protocol.

⁶ See Article 3(a) of the smuggling Protocol.

⁷ See *Toolkit to Combat Trafficking in Persons*, United Nations Office on Drugs and Crimes, Global Programme against Trafficking in Human Beings, p. Xiv.

⁸ Goodman, J.L., “What We Know about Human Trafficking: Research and Resources” in Goodman, J.L & Leidholdt, D.A., *Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims*, 2011 page 7. Also see Matthew, J & Hansen, R., (eds.) *Immigration and Asylum: From 1900 to the Present*, 2005, page 117.

⁹ *Council of Europe Treaty Series* - No. 197, Warsaw, 16.V.2005, available at <http://www.coe.int/T/E/human_rights/trafficking/PDF_conv_197_trafficking_e.pdf>.

¹⁰ The 2004 Revised Arab Charter on Human Rights of the League of Arab States (read Art. 10).

¹¹ Signed at the Inter-American Specialized Conference on Human Rights, San Josi, Costa Rica, 22 November 1969 (read Article 6).

¹² Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October

analysis, the normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights standards agreed among nations. To achieve this goal, states and other stakeholders must address migration issues in a more consistent and coherent manner.¹

3.2 International Institutions

Mixed Migration Flows have attracted the interest of and raised concern among governments, regional organizations, international community, and other agencies like the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), the Red Cross and Red Crescent Societies (IFRC), The United Nations Institute for Training and Research (UNITAR) as well as Non-governmental Organizations (NGOs).² This is due to the vulnerability of migrants in mixed flows,³ and the impact of these flows in relation to security and development.

3.2.1 *The Office of the United Nations High Commissioner for Refugees*⁴

This agency is mandated to provide international protection and humanitarian assistance to refugees and asylum seekers.⁵ Refugees flow together with other migrants hence could not always be strictly separated. Due to this tendency of mixed flows UNHCR has become directly involved in the issues of international migration and development.

To address the problem the United Nations High Commissioner for Refugees has enacted a document entitled Refugee Protection and Mixed Migration a 10 point Plan of Action.⁶ This document includes 10 important points relating to; Cooperation among key partners, Data collection and analysis, Protection-sensitive-entry system, Reception arrangements, Mechanisms for profiling and referral, Differentiated processes and procedures, Solutions for refugees, Addressing secondary movements, Return arrangements for non refugees and alternative migration options and finally Information strategy.⁷ The High Commissioner unveiled this 10 plan action and explained that the 10-point plan sets out key areas in which comprehensive action is required to address the issues of mixed and irregular migratory movements in a coherent and practical way in countries of origin, transit and destination.⁸

3.2.2 *International Organization for Migration (IOM)*⁹

This is an intergovernmental organization providing physical and material assistance to migrants - refugees, labour migrants and victims of trafficking and smuggled persons (among others).¹⁰ In addressing the challenges posed by mixed migration flows, IOM focuses on the development of comprehensive approaches to migration management. The five main areas of IOM's interventions on mixed migratory flows are direct assistance to migrants, technical assistance to states on policy development and legislation, training of government officials and other stakeholders, dissemination of information to migrants and host communities, and support to and

1986 (read Article 5). Also The 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which commands States parties to take appropriate and effective measures to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk (read Art. 4, para. 2 (g)).

¹ DESA, "Compendium of Recommendations on International Migration and Development: The United Nations Development Agenda and the Global Commission on International Migration Compared", United Nations, New York, 2006, page 87.

² See IOM Document MC/INF/297, "Irregular Migration and Mixed Flows: IOM's Approach" 98th Session, 19 October 2009, at page 2. Available at <<http://www.iom.int/>> (accessed on 18 February 2012).

³ Migrants in mixed migration flows are exposed to smugglers, labour exploitation, mistreatment by official authorities, and discrimination from employers and the society at large, among others. See The International Council on Human Rights, Report on "Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence", Geneva, Switzerland, 2010 at page 1. Available at <http://www.ichrp.org/files/reports/56/122_report_en.pdf> (accessed on 17 February 2012).

⁴ It was established by the General assembly Resolution 428(V) of 14 December 1950. See UNHCR Statute available at <<http://www.unhcr.org/3b66c39e1.html>> (accessed 27 May 2014).

⁵ See Article 1 of the UNHCR Statute.

⁶ UNHCR, Refugee Protection and Mixed Migration: 10-Point Plan of Action, Revision 1, January 2007, available at <<http://www.unhcr.org/4742a30b4.html>> (accessed 28 May 2014). Also see Brahim, J.P., "Access to Asylum and Status Determination and Mixed Migratory Movements", IMMP Training Workshop for Refugee Law Lecturers in Tanzania, University of Dar es Salaam, 22-27 august 2011, page 8.

⁷ See the text of this UNHCR Plan of Action in its web site: <http://www.unhcr.org>.

⁸ *ibid*

⁹ The Organization was established in December 1951 and began its operation in early 1952 as an Intergovernmental Committee for European Migration. Its constitution was adopted on 19 October 1953 and came into force on 30 November 1954. It was renamed the International Organization for Migration in 14 November 1989 Through the amendment of its constitution. Visit <<http://www.iom.int/jahia/jsp/index.jsp>> (accessed 26 May 2014).

¹⁰ See Article 1 of the IOM Constitution available at <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_booklet.pdf> (accessed 26 May 2014).

participation in cooperation initiatives governing mobility issues.¹

Its involvement includes the transportation of migrants and the preparations for their safe travel, providing migration assistance in emergency situations both for evacuation, when required, and for voluntary return, when circumstances permit. IOM also carries out programmes to support the voluntary returns of other migrants, including rejected asylum-seekers and irregular migrants.²

3.2.3 *The United Nations Human Rights Council.*³

This council is responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them.⁴ Thus, the council is the body best suited to deal with human rights issues in relation to international migration. In relation to mixed migratory flows, the United Nations human rights council has a duty to oversee any human rights violations against persons who flee their country for fear of persecution and economic difficulties. This institution is very important because mixed migratory flows involve different people with different needs therefore observance of human rights has to be guaranteed.

3.2.4 *The United Nations Office on Drugs and Crime.*⁵

This is the only UN entity focusing on the criminal justice element of transnational organized crimes. The office protects and assists victims of trafficking and smuggled migrants. This is another group of migrants who are most vulnerable and exposed to hardship and exploitation in mixed flows. Its work to combat human trafficking and the smuggling of migrants is underpinned by the United Nations Convention on Transnational Organized Crimes⁶ and its protocols on trafficking in persons and migrant smuggling.⁷

3.2.5 *The International Federation of Red Cross and Red Crescent Societies (IFRC)*⁸

Operating under its fundamental principles of humanity and voluntary service, IFRC endeavors in its international and national capacity to prevent and alleviate human suffering whenever it may be found. After its 30th international conference in November 2007, IFRC embarked on a strategic initiative in humanitarian assistance and protection for migrants, irrespective of their legal status, with a view to adopting a global policy on migration for its national societies. In July 2008, it established a new office of the Special Representative for Migration.⁹

¹ See IOM Post of 3 September 2010 (on Africa & Middle East) titled "IOM Joins UN High Commissioner for Refugees and Government of Tanzania to Host Regional Conference on Mixed Movements and Irregular Migration", available at <<http://www.iom.int/jahia/Jahia/media/pressbriefingnotes/pbnAF/cache/offonce/lang/en?entryId=28246>> (accessed 29 May 2014).

² See the Secretary General Report to the General Assembly, Op cit, pages 10-11. More details on IOM activities are available at <<http://www.iom.int/jahia/Jahia/activities/lang/en>> (accessed 29 May 2014).

³ This is an intergovernmental body within the UN system and the successor to the UN Commission on Human Rights. It was established by the General Assembly Resolution A/RES/60/251 on 15 March 2006. See the Wikipedia, the Free Encyclopaedia, "United Nations Human Rights Council", available at <http://en.wikipedia.org/wiki/United_Nations_Human_Rights_Council> (accessed 29 May 2014).

⁴ See the basic information on the council at <<http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>> (accessed 28 May 2014).

⁵ This body was established in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention. For further information on this office visit <<http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>> (accessed 28 May 2014).

⁶ The Convention was adopted by the General assembly Resolution 55/25 of 15 November 2000 and entered into force on 29 September 2003.

⁷ The Convention was adopted by the General assembly Resolution 55/25 of 15 November 2000 and entered into force on 29 September 2003.

⁸ The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 in Paris in the Aftermath of World War I. An international medical conference initiated by Davison resulted in the birth of the League of Red Cross Societies, which was renamed in October 1983 to the League of Red Cross and Red Crescent Societies, and then in November 1991 to become the International Federation of Red Cross and Red Crescent Societies. See the historical perspectives of the IFRC at <<http://www.ifrc.org/en/who-we-are/history/>> (accessed 27 May 2014).

⁹ Cholewinski, R., "Irregular Migration and Mixed Flows" in IOM, *Background Paper WMR 2010*, page 8. Available at http://publications.iom.int/bookstore/free/WMR2010_irregular_migration_and_mixed_flows.pdf (accessed 29 May 2014).

3.2.6 The United Nations Institute for Training and Research (UNITAR)

This institute is responsible of executing the International Migration Policy Programme (IMP).¹ It supports the global intergovernmental process of dialogue and the sharing of ideas and practices on international migration and development. The IMP seeks to strengthen the migration management capacity of governments and to foster regional and international cooperation towards orderly migration and protection of migrants.² In relation to mixed migratory flow UNITAR through its programmes like international migration policy it coordinates governments on how to manage this type of migration and how the information should be shared.

4. Mixed Migratory Flow at Regional and Sub Regional

Like in the international level mixed migratory flow at regional level is uncoordinated. The available instruments provides for the rights of one group in isolation of the other, which means migrants in a mixed movement still faces challenges. There are instruments such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa³ and the Cartagena Declaration⁴ which adopted an extended definition of the refugee, taking into account of the peculiarities of forced migration circumstances in respective regions.⁵ The OAU Convention is, to date, the only legally binding regional refugee treaty. Also some aspects which relates to migratory movement are provided under the African charter on human and people's rights which provides that "Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international convention" and the same article prohibits the mass expulsion of non-nationals.⁶

In support of the mentioned instruments the Organization for African Unity Council of Ministers adopted Decision CM/Dec 614 (LXXIV) during the 74th Ordinary Session in Lusaka, Zambia in July 2001 to formulate a Strategic Framework for a Policy on Migration in Africa.

The migration policy framework provides a comprehensive and integrated policy guideline on the following 9 key thematic issues a) Labor migration, b) Border Management, c) Irregular Migration, d) Forced Displacement, e) Human Rights of Migrants, f) Internal Migration, g) Migration Data, h) Migration and Development, and i) Inter-State co-operation and partnerships. It also highlights other social ramifications of migration including migration and health, environment, gender, conflict.

The policy framework serves to provide the necessary guidelines and principals to assist governments and their RECs in the formulation of their own national and regional migration policies as well as, their implementation in accordance with their own priorities and resources. The policy framework is therefore a comprehensive and integrated reference document and hence non-binding in nature, scope and content.

The South African Development Community (SADC) protocol on the facilitation of movement of persons, from the preamble of the protocol it recognizes free movement of persons for the fostering of development by visa free entry, residence and establishment in the territories of member states.⁷ Therefore under this protocol migration is encouraged and member states in the region are argued to put laws and policies which facilitates free movement of persons.

The issue of mixed migratory flow and labour mobility in the East African Community (EAC) is not yet well managed as each state still applies its own national law to manage labour migration.⁸ The labour movement within the community is only managed for skilled persons as it is provided under the EAC Common Market Protocol and the EAC Common Market (free movement of workers) Regulation and leaving the informal sector which attracts more labour in the community. Having the provisions subjecting the migrants to immigration laws of each country together with the employment laws and policy which in most cases protects the local labour markets and the restrictive nature of immigration laws and the procedural requirements is what makes people to move in irregular situation.

¹ This is an inter-agency programme co-sponsored by, among others, the International Labour Organization (ILO); International Organization for Migration (IOM); United Nations Population Fund (UNFPA); United Nations Institute for Training and Research (UNITAR); and the Office of the UN High Commissioner for Refugees (UNHCR). See <http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=6> (accessed on 29 February 2012).

² See UNITAR, "Report from the International Migration Policy Programme", page 65, available at <http://www.un.org/esa/population/meetings/thirdcooord2004/P08_UNITAR.pdf> (accessed on 29 February 2012).

³ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45.

⁴ The Declaration was adopted by the representatives of Central-American Countries on 22nd November 1984. The problem with this document is that Declarations fall short of legal enforcement (non-binding instrument) unlike the Convention.

⁵ See Hurwitz, A.G., Op cit, page 15; McNamara, D & Goodwin-Gill, G., "UNHCR and International Refugee Protection", RSP Working Paper No.2, June 1999 page 7.

⁶ See its Article 12(3),(5)

⁷ The Protocol on the Facilitation of Movement of Persons, 2005 (As provided in the preamble)

⁸ Regulation 5 provides a citizen of a partner state who seeks to enter ...as a worker, shall do so at the entry or exit... in accordance with the national laws of the partner state and shall comply with the established immigration procedures.

5. Mixed Migratory Flows in Tanzania

Tanzania is experiencing the growing number of migrants from different parts of the continent especially those from the great lakes regions which has experienced the persisting political and social conflicts and find the only country to seek protection being Tanzania.¹

Like any other country Tanzania is experiencing the new challenges posed by the mixed migratory flows. This is due to the fact that Immigration laws are not adequate to deal with the phenomenon of “mixed migration whereby refugees, asylum-seekers, economic migrants and even victims of human trafficking may be using the same routes, means of transport and smuggling networks to reach a shared destination, but are driven by different motives and have different claims to protection and humanitarian assistance.”²

There is no specific law or policies addressing mixed migratory flows rather cross sectional legislations which provides for specific status of migrants. These include the Immigration Act, The Refugee Act, and the Anti-Trafficking in Persons Act, Tanzania Investment Act, and The Mining Act, 1998. In one way or the other these law have sections on migrants but the most regulating law is the Immigration Act because it provides for procedures of entry, stay, departure and expulsion of immigrants when in violation of Immigration Act.

5.1.1 Immigration Act³

Despite being the principal laws, the Immigration Act does not adequately deal with the phenomenon of “mixed migration” whereby refugees, asylum-seekers, economic migrants and even victims of human trafficking are using the same routes, means of transport and smuggling networks to reach place of destination. Being the main law regulating immigration and emigration in Tanzania, the Act provides for the entry procedures, stay, expulsion if need be by reasons of non compliance with the procedures.

The law provides that any person unlawful enters or is present within Tanzania is guilty of an offence.⁴ The same prohibits any person to engage in any economic activities without permit.⁵ This position of the law affects some of the groups in mixed migratory flows irrespective of their immigration status.⁶ In addition, less restrictive measures have also been pursued, including programmes for the regularization of migrants in irregular situations and the creation of more regular migration channel, especially for nationals from countries that generate irregular migration to the destination country concerned.⁷

Therefore migrants in a mixed migration has been denied their right to protection and sometimes detained in prison without determining their status. Immigration officers when faced with migrants in a mixed movement the first step is to detain them in custody and later sort each case by considering the causes of movement. The activity is becoming difficulty this is because of absence of comprehensive legislation and proper policy on mixed migratory flows.

5.1.2 Refugees Act⁸

Refugee protection is a central aspect of international, regional, and national efforts to protect persons fleeing persecution.⁹ Tanzania has a long tradition of hospitality towards refugees and has developed legal frameworks governing aspects of refugee protection. Nevertheless, the large numbers of refugees displaced by conflict and other factors, pose serious challenges to States.¹⁰

To curb the situation the government decided to come up with the Refugee Act as the principal legislation governing refugee matters in Tanzania.¹¹ The Act is more comprehensive than the Refugee Control Act, 1966 which preceded it. The latter was criticized for short of a ‘refugee’ definition, provisions on ‘refugee entitlements’, as well as preoccupation with control and coercion.¹² The Refugee Act includes a broad definition

¹ This is due to its historical trend of peace, security and sense of brotherhood as it used to be a place of refuge for African leaders at the time of independence

² Analysis: Mixed responses to mixed migration in Africa available at <http://www.irinnews.org/report/93844/analysis-mixed-responses-to-mixed-migration-in-africa>

³ N0 7 of 1995

⁴ Section 31 (i) therefore the Immigration Act criminalizes illegal entry in the territory

⁵ Section 16 (1,2) no person shall engage in paid employment under an employer resident in Tanzania except under a permit ... (2) no person shall for gain or reward engage in any prescribed trade, business, profession or other occupation except in accordance with the terms ...

⁶ The Refugee Act 1998 Section 9(1,2)...no person claiming to be a refugee within the meaning of section 4 shall merely for reasons of his illegal entry be declared a prohibited migrant, detained or penalized...

⁷ Ryszard Cholewinski ‘irregular migration and mixed flows’ background paper World migration report 2010

⁸ 1998

⁹ From the preamble of the 1951 convention paragraph 3,5 and article 1(2) requires states to extend protection to refugee by means of instruments and state powers

¹⁰ Such as economic development, security, environmental and social services

¹¹ Act No. of 1998

¹² L'ecluse, W., "Refugee Politics in Tanzania: Receding Receptivity and New Approaches to Asylum", LL.M Dissertation, Gent University, 2010, available at < http://lib.ugent.be/fulltxt/RUG01/001/491/185/RUG01-001491185_2011_0001_AC.pdf> (accessed 25 May 2012). Also see Kamanga, K., “The (Tanzania) Refugee Act of 1998:

of a refugee¹ that accords to the provisions of international instruments like procedures for the granting of asylum, degree of protection from non-refoulement and other several refugee rights.² Mean while new challenges have emerged such as mixed a migratory movement which is not covered under the Act therefore difficulty to determine their status.

In mixed migratory flows the rights of refugee and other asylum seekers affected because neither the Refugee Act nor any other law covers the new phenomenon of mixed migration as result it becomes difficult for refugee to get protection when in mixed migratory flows. Therefore their rights to protection and non refoulement as provided under the Act³ and under Convention 1951 and under the protocol 1967 not easily to implement due to challenges posed by this type of movement.

5.1.3 *The Anti Trafficking in Persons Act*⁴

Mixed migratory flows have been facilitated by different forms one being trafficking in persons where persons are moved from one country to another in an irregular means but with the purpose of economic exploitation. The issue of trafficking in person does not only affect foreign migrants but also we have experienced internal trafficking of girls and boys from rural to urban areas for the purpose of domestic labour, commercial agriculture, fishing and mining industries and child prostitution.⁵

In 2008, Tanzania enacted the Anti-Trafficking in Persons Act⁶ as one way of mitigating the problem. The law prohibits all forms of trafficking, including, but not limited to, transporting or receiving any person for the purposes of slavery, sexual exploitation, forced labour, pornography, and debt bondage. A person committing any crime outlined within the Act is liable to be fined, imprisoned, or both. The maximum fine is 150 million Tanzania shillings, and the maximum prison sentence is 20 years. Also Tanzania ratified the Trafficking Protocol on 24 May 2006.

Victims of trafficking being one of the group in a mixed migration flows and protected under part VII of this Act that provides that trafficked person shall neither be the subject of persecution trafficking in persons ...and requiring that on the removal of illegal immigrants, a trafficked person who is in country unlawfully may remain in the United Republic throughout the period of a legal investigation...⁷ However, the impact of this legislation has been affected by administrative hurdles especially limited resources like cost for returning them to their home country, running rehabilitation programmes and lack of support from the send states.

5.2 Groups not covered by the law

5.2.1 *Smuggled Persons*

Despite being one of the groups in mixed migratory movement it has not be addressed and taken with its own weight as the case for refugee and trafficked persons who have specific legislation providing for their protection. For smuggled person it very difficult to determine their fate, there is neither legislation nor any ratified international instrument. Smuggling in person has been dealt under the criminal procedure code and the penal code provides for the punishment.

Failure to have the law on smuggling and the policy thereof has made treatment of smuggled person continue to be difficult and also contribute to the overcrowding of prisons with wrongful detained forced migrants. This is Due to the fact that there is many smuggled person from the horn of Africa and great lakes regions who use Tanzania as transit and end up being caught and detained in prison waiting for judgments and other diplomatic arrangement for their repatriation.

5.2.2 *Labour Migrants*

Presently, Tanzania has no comprehensive policy or legislation on labour migration. The present National Employment Policy 2008 address only two aspects of labour and development namely striking balance between facilitating the employment of foreign workers by investors and protection of local labour market and facilitating and coordinating of Tanzanians abroad and the return of skilled Tanzanians to fill skills gap. The policy document is silent on other aspects of a labour migration policy specifically on the protection of the rights of

¹ as any person whom owing to fear from persecution for reasons of race, religion, membership of a particular social group or political opinion outside his country of nationality or habitual residence unable or un willing to avail himself to the protection

² See Rutinwa, B., "Refugee Protection Policy and Practice in Tanzania: A Gap Analysis", International Migration Management Programme, Final Report, March 2005, page 6-7.

³ Section 9 (1 and 3)

⁴ 2008

⁵ National migration and development policy for Tanzania zero draft, prepared by Prof. Boneventure Rutinwa national technical facilitator, April 2014 at page 16

⁶ Act, No.6 of 2008.

⁷ Section 34 (1) ,(2)

labour migrants and members of their families.¹

The laws providing for labour migration in Tanzania are uncoordinated and tend to contradict each other depending on what they seek to achieve.² They are restrictive because they seek to protect the internal labour market by imposing restrictive requirements and procedures to labour migrants.³ For example; Immigration Act prohibits non-nationals once they are in the country to engage in any paid employment under an employer resident in Tanzania except under a permit issued in accordance with the provisions of the Act.⁴ It also prohibits foreigners to engage, for gain or reward, in any prescribed trade, business profession, or other occupation except in accordance with terms of an appropriate permit issued to them.⁵

Likewise, the Investment Act provides for limited number of foreigner labour migrant to be employed.⁶ However the application of these sections of the law has been targeting migrants in the formal sector while in real practice the large numbers of migrants are found engaging themselves in informal sectors as a results irregular migrant⁷

Therefore, the absence of harmonized and coordinated legal framework on mixed migratory flows brings a challenge to the enforcement machinery. As every group is addressed by separate legislation which is difficult for the responsible officer to determine the rights of each migrants as the status may change during the movement. For example, a person may start a journey as irregular migrant and later the status change to a refugee or find himself in the hands of smugglers a group which is not yet protected under the law.

5.3 Institutions dealing with migratory flow in Tanzania

The important institution dealing with migration regime in Tanzania is the Ministry for Home Affairs, under which fall the Department of Refugee Services, Department of Immigration Services, Department of Prison Services, and the Department of Police Force.

The Directorate of Refugee Services is the principal institution responsible for refugee matters. It is headed by the Director of Refugee Services and tasked to, designate camps and settlements for refugees, determine the need for refugee status and asylum, provide legal and physical protection for refugees and asylum seekers, coordinate and supervise refugees assistance programmes and facilitate repatriation of refugees, among others.⁸ The Director of the Refugee Services is answerable to the minister of Home Affairs who bears ultimate responsibility in refugee matters.

The functions of the Department of Immigration Services in relation to migrants and refugees is to facilitate entry, exit and stay of all immigrants and/or emigrants, conduct patrols and apprehend the undesirables for expulsion or other possible legal measures, issue citizenship and other immigration documents to immigrants, among others, and other functions as provided for under the Immigration Act.⁹ The department of immigration service has been dealing with migration control through conducting patrols, building border posts and conducting search in hotels and guest houses. Today the issue is not migration control rather migration management where immigration officers are required to cooperate with migrants, states of origin and other private persons dealing with receiving and hosting of foreigners.¹⁰ However, the department is facing challenges of resources, funds, technology and the problem of porous borders makes it difficult for proper management.

The Police Force is responsible of supervising all matters relating to safety and security in the country. In collaboration with immigration officers and the army especially in some areas along the borders, police officers carry out patrols, arrest and charge irregular immigrants and do other miscellaneous activities. The Prison Service is responsible (in relation to the subject matter) of detention and rehabilitation of those imprisoned migrants who have been charged of contravening immigration and anti-trafficking and smuggling laws before being sent back to their countries of origin.¹¹

¹ National migration and development policy for Tanzania zero draft, prepared by Prof. Boneventure Rutinwa national technical facilitator, April 2014

² Masabo, J, the Protection of the Rights of Migrants Workers in Tanzania, Theses Presented for the Degree of Doctor of Philosophy. University of Cape Town, August, 2012

³ Section 20(1) requires the immigrant who has been offered employment in Tanzania to satisfy the director that he possesses the qualification or skills necessary for that employment ... will be benefit to Tanzania

⁴ Section 16(1).

⁵ Section 16(2).

⁶ The section provides for immigration quota of 5 employees

⁷ These includes people from Kenya, Somalia, Ethiopia, Sudan, Congo, India, Pakistan, and china

⁸ See the main functions of the department at the Ministry of Home Affairs (MHA) website,

<http://www.moha.go.tz/index.php?option=com_content&view=article&id=46&Itemid=14> (accessed 25 May 2014), also see Section 5 of the Refugee Act, Act No. 9 of 1998.

⁹ Act No. 7 of 1995 part II. Also see the MHA website, *Ibid*.

¹⁰ These people may be hotels owners, transporters, tour guide, and other stakeholders.

¹¹ See the Government of Tanzania, Report of the Ministerial Task Force On the Situation of Irregular Migration in Tanzania, Dar es Salaam, April 2008.

There are also other institutional bodies which in one way or the other engage themselves in migration/refugee issues. These include the Regional Authorities, the District Authorities,¹ the Court; civil society's.² Likewise, the higher learning institution like the University of Dar es salaam (UDSM) has been key players in offering expatriate and consultancy in immigration development projects and programmes.³

Therefore, there is no single institution at international level and local level. Instead, various institutions and departments are involved in management of mixed migration flows. Despite the functions of the institutions mentioned the migration control/ management remains the functions of state organs because the legal framework in place, places it under the control of state security which means private persons or institutions have not been able to take effective part in immigration sector.

6.0 Legal and administrative Challenges

Having seen the concept of mixed migratory flow, the causes for mixed movement and the legal and institutions in place for addressing mixed migratory flows both at national and international level it suffices to look on the legal and administrative challenges facing mixed migratory flow in Tanzania.

Tanzania has been highly affected by mixed migratory flows from the neighbouring countries such as Rwanda, Burundi, Congo DRC, Somalia, Ethiopia, and Sudan. The movement has been from the horn of Africa and great lakes regions countries. Mixed migratory flow being taken as a new phenomenon it has not been captured in the law and policies which deals with immigration.⁴

The country has a policy on refugee, but there are neither policies nor legislations on human smuggling, labour migration and internally displaced persons which all together form group of mixed migratory flows. Moreover there is no regulation on Refugee and Ant Trafficking in Persons despite having the legislation on the same and being a signatory to the United Nations convention against transnational organized crime and the protocol thereof.⁵ But lacking its regulations makes it difficult to implement hence administratively pose challenges.

The absence of policy on mixed migratory flows makes it difficult for administrators to set projects and programmes which may promote and provides the way forward to problems associated with MMFs. Therefore the government has to take a positive response on preparation of policies on mixed migratory flows as these people move with different motives and reasons therefore deserves different protection.

There are uncoordinated legislations on mixed migratory flow, for example The Immigration Act, The Refugee Act, The Ant Trafficking in Persons Act, but no legislation on human smuggling, labour migration and internally displaced persons. Here, the problem comes when immigration officers are faced with irregular migrants in a mixed movement and the question being which law to apply and for those groups lacking legal protection what should be their status.

Therefore, one of the most significant challenges is to ensure that those people who have a claim to refugee status are given the opportunity to seek asylum and are able to benefit from the protection that this status affords, including protection against refoulement.⁶ Also the return of persons not in need of international protection poses significant challenges for States, both at a policy and operational level. Coordinating and financing returns can be difficult and the safety and dignity of those returned is not always maintained.⁷

The only option is applying Immigration Act which criminalizes an irregular entry and ends the migrants in detentions. Also these uncoordinated legislations lead to uncoordinated institutions as every institution performs its functions according to what the law provides.⁸ Likewise the administration of migrants of whatever status is the responsibility of the state authority which makes it difficult to manage as immigration

¹ Immigration control states at village and ward level as the law requires any person who enters lawfully or otherwise to present himself or report to the nearest authorized officer which includes the village executive office and justice of peace. (Refugee hosting areas fall within the jurisdiction of Local Government – RCs, DCs, Village authorities etc.)

² See page 191 of the Legal and Human Rights Centre (LHRC) Report 2013. The centre has been also advocating for rights of migrants in Tanzania and calling upon the government to observe human rights regardless of irregular presence of the immigrants good example is Operation kimbunga

³ The university has been offering expatriate in the area of refugee and it operates the centre for studies for forced migration where researches on mixed migratory flow has been done in support of government programmes

⁴ Tanzania has no policy addressing mixed migratory population and the available legislations are only for specific groups such as Refugee Act 1998, Immigration Act and The Ant-Trafficked in Persons Act 2008

⁵ 2000

⁶ States party to the 1951 Convention and the 1967 Protocol undertake to accord certain standards of treatment to refugees including among others, the right not to be returned to territories where their lives or freedom are likely to face persecution or torture (*non refoulement*), see Articles 33 and 3(1) of the Refugee Convention and 1967 Protocol respectively. Also see Rutinwa, B., *Legal Responsibilities of States in Refugee Situations under Public International Law*, 2011, page 138-150.

⁷ UNHCR, "Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa".

⁸ These institutions include immigration, police, prison and department of refugee services

department is shortage of human resources.

Therefore a need to involve private institutions in some aspect of immigration especially for those not more connected with state security.

Arguably, the restrictive policies (model) of combating irregular migration by methods of detention and deportation of migrants are in most cases not effective.¹ Some of those travelling in mixed migratory movements may also encounter human rights violations including discrimination, family separation, sexual violence, extortion and xenophobia as well as psychological trauma once they have arrived in their country of destination and during the operation to expel them back.²

The geographical nature of the country makes difficult for immigration officers to manage the entry point as not all mixed migrants uses the authorized immigration entry points. This has been facilitated by the porous borders which give away for irregular entry especially for those forced migrants. It is not possible to have an officer at every point around the border but possible to recruit more human resource and to extend the service up to ward and village levels.

Tanzania is faced ineffective border management which is the key element in any national migration system. The problem of Border management systems as they are coming under increasing pressure from large flows of persons, including irregular and “mixed flows,” moving across regions and national borders. A key challenge is therefore to establish a balance allowing States to meet their humanitarian obligations to refugees and others eligible for protection while concurrently addressing the need to manage borders effectively.

States lack the capacity, including the financial and technical resources, required to exercise the protective responsibilities that they have assumed.³ Migrants in a mixed movement as human being deserves food, water and shelter, legal advice and counseling, and information about their options, including return and the submission of asylum claims, as well as access to health care and other social services.⁴ All these are taken as economic burden to the country of destination and therefore a challenge to countries of less economic power like Tanzania.

The lack of political will is singled out to be one of the factors that hamper the effectiveness of mixed migratory management. This is due to the fact that countries of origin are not ready to accept that their nationals are fleeing because of fear of persecution or economic difficulties. Also difficult for them to incur return costs in case the government decides to expel or after migrants have served their sentences.⁵

As a result our prisons are flooded of irregular migrants from different parts of the global and a burden to the government as they need food and shelter.

Finally, mixed movements may also have more direct and dramatic implications for state security. Irregular migration and asylum seekers are often impulsively associated with various criminal activities such as drug trafficking, theft, armed aggressions, or even terrorist acts against the receiving country.⁶

7. Conclusion

This study has attempted to show the problems of mixed migratory flows, the causes and the established legal and institutions at different levels. Also the challenges posed by this new trend of migration especially where there is no global or regional harmonized legal mechanisms to deal with the problem. Mixed migratory flow can longer be managed by national law of each state due to complexities accompanied by this type of migratory movement. The solution is to have a universal coordinated legal mechanism.

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¹ See Zanfrini, L & Kluth, W., *Policies on Irregular Migrants: Italy and Germany*, 2008, page 17;

² See de Haas, H., “Trans-Saharan Migration to North Africa and the EU: Historical Roots and Current Trends”, University of Oxford, November 2006, available at <<http://www.migrationinformation.org/Feature/display.cfm?id=484>> (accessed 30May 2014). Also see Rutinwa, B., “Addressing Irregular Settlement in North Western Tanzania: A Legal and Protection Perspective”; *Report of the Ministerial Task Force On the Situation of Irregular Migration in Tanzania*

³ The Government of Tanzania, Report of the Ministerial Task Force,

⁴ *ibid*

⁵ Example Somalia, Ethiopia, Sudan, Rwanda and Burundi

⁶ Ciprut, J.V., (ed.) *Of Fears and Foes: Security and Insecurity in an Evolving Global Political Economy*, 2000, page 148.

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