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THE PLIGHT OF TANZANIAN PERSONS WITH ALBINISM: A CASE FOR INTERNATIONAL REFUGEE AND ASYLUM PROCEDURE REFORM

INTRODUCTION

Since 2007,¹ Tanzanian nationals with albinism (Persons with Albinism or PWAs)² have been hunted and killed for their body parts.³ The dismembered body parts are then sold on a black market erected by iniquitous witchdoctors who utilize them in “magical” concoctions.⁴ This disturbing practice is spurred by a widespread but mistaken belief that a PWA’s body parts possess magical powers.⁵ Unsurprisingly, this mistaken belief, coupled with the violence it generates, has spawned mass fear in the lives of PWAs.⁶ Gripped by fear, many PWAs have been unable to maintain normal lives.⁷ More than 10,000

¹ ANDREI ENGSTRAND-NEACSU & ALEX WYNTER, THROUGH ALBINO EYES: THE PLIGHT OF ALBINO PEOPLE IN AFRICA’S GREAT LAKES REGION AND A RED CROSS RESPONSE 6 (2009), <http://www.ifrc.org/Global/Publications/general/177800-Albinos-Report-EN.pdf>; TERJE OESTIGAARD, RELIGION AT WORK IN GLOBALISED TRADITIONS: RAINMAKING, WITCHCRAFT AND CHRISTIANITY IN TANZANIA 184–86 (2014) (explaining that PWAs have traditionally been stigmatized and discriminated against in Tanzanian society, but “the killing of albinos is a recent phenomenon” which is most likely attributable to the recent fetishizing of PWAs); Susie Bucaro, *A Black Market for Magical Bones: The Current Plight of East African Albinos*, 15 PUB. INT. L. REP. 131 (2010).

² Human Rights Council, Rep. on its Twenty-Fourth Session, U.N. Doc. A/HRC/24/57, at 3, n. 1 (2013) (stating that “the term ‘persons with albinism’ refers to the person before it mentions the condition and is preferred to the term ‘albino’, which is often used in a derogatory way”); see also Stacy Larson, *Magic, Mutilation, and Murder: A Case for Granting Asylum to Tanzanian Nationals with Albinism*, 2 PACE INT’L L. REV. ONLINE COMPANION 1, 2 (2011).

³ OESTIGAARD, *supra* note 1, at 184–85 (“From 2007 to 2009 . . . a total of 59 albinos were killed (6 in 2007, 37 in 2008, and 16 in 2009) and 9 were mutilated.”); Bucaro, *supra* note 1, at 131.

⁴ Bucaro, *supra* note 1, at 131; John Alan Cohan, *The Problem of Witchcraft Violence in Africa*, 44 SUFFOLK U. L. REV. 803, 834 (2011); Associated Press, *Albinos in Africa Fear for Lives after Killings*, NBC NEWS (Nov. 28, 2009), http://www.nbcnews.com/id/34182250#.WBGAYsJ_FI.

⁵ Associated Press, *supra* note 4.

⁶ See Cohan, *supra* note 4, at 805; see, e.g., ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6.

⁷ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 5–6 (stating that, “[t]housands of albinos are no longer able to move around for fear of the hunters. . . . In effect, their lives are on hold.”); Methusela M. Masanja et al., *Albinism: Awareness, Attitudes and Level of Albinos’ Predicament in Sukumaland, Tanzania*, 3 ASIAN J. APPLIED SCI. & ENGINEERING 15 (2014).

individuals⁸ have been displaced from their homes because of their fear.⁹ Despite all this, governmental efforts aimed at restoring an orderly and safe state for PWAs have been commendable but still unsuccessful in combating the persecution of PWAs.¹⁰ Thus, in an attempt to escape impending persecution, some PWAs have sought safety in other countries.¹¹

Few PWAs have sought asylum abroad, however.¹² Several obstacles complicate PWAs' ability to seek asylum. First, seeking asylum in other countries may not be a viable option for a large population of Tanzanian PWAs because they "are unaware of the asylum [and refugee status] process, they lack the resources to leave Tanzania, or . . . they are uncertain about leaving their families and familiar surroundings."¹³ Many Tanzanians live below the World Bank poverty line,¹⁴ and education and job opportunities for PWAs are limited,¹⁵ meaning many PWAs presumably lack the necessary resources to leave their homes.¹⁶ Indeed, the inability to remove themselves from Tanzania creates one of the greatest obstacles for PWAs in obtaining refugee status or filing for

⁸ Bucaro, *supra* note 1, at 131. This estimate is based upon the number of PWAs and their families who have fled their homes; currently, an estimated 8,000 Tanzanian residents are registered with the Tanzanian Albinism Society; however, the population of PWAs is likely much greater because there is a large population of unregistered PWAs in Tanzania. ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 8–9; Lynzy Billing, *A New Start for Tanzania's Hunted Children*, METRO (Oct. 10, 2016), <http://metro.co.uk/2016/10/10/a-new-start-for-tanzanias-hunted-children-6170066/>.

⁹ Bucaro, *supra* note 1, at 131.

¹⁰ Bucaro, *supra* note 1, at 135; Larson, *supra* note 2, at 6.

¹¹ Bucaro, *supra* note 1, at 137 (discussing some difficulties PWAs have faced when they sought asylum in the United States and Europe). See, e.g., Anh Do, *Facing Threats, Albino Sisters Granted Asylum to Attend School in Southern California*, L.A. TIMES (Aug. 26, 2016), <http://www.latimes.com/local/lanow/la-me-albino-sisters-adv-snap-story.html>; Jason Dzubow, *Asylum for Albinos*, ASYLUMIST (Apr. 13, 2011), <http://www.asylumist.com/2011/04/13/asylum-for-albinos/>.

¹² Bucaro, *supra* note 1, at 137; Do, *supra* note 11.

¹³ Larson, *supra* note 2, at 3.

¹⁴ *Tanzania Country Profile*, BBC (Aug. 10, 2016), <http://www.bbc.com/news/world-africa-14095776>; *MDG Goal 1: Eradicate Extreme Poverty and Hunger—Other MDGs*, WORLD HEALTH ORG., http://www.who.int/profiles_information/index.php/Tanzania:MDG_Goal_1:_Eradicate_extreme_poverty_and_hunger_-_Other_MDGs/pt ("It is estimated that one third of Tanzanians live below the basic needs poverty line, and well below the international poverty line."); see International Fund for Agricultural Development (IFAD), *Rural Poverty in the United Republic of Tanzania*, RURAL POVERTY PORTAL, <http://www.ruralpovertyportal.org/country/home/tags/tanzania> (last visited Oct. 31, 2017).

¹⁵ In addition to opportunities being limited to PWAs for the same reasons they want to flee, albinism as a medical condition places a limit on education and career opportunities; their lack of skin pigmentation and their poor eyesight contribute to their lack of career opportunities. Bucaro, *supra* note 1, at 132.

¹⁶ Cf. Markus Sperl, *Fortress Europe and the Iraqi 'Intruders': Iraqi Asylum-Seekers and the EU, 2003–2007* 3–4 (UNHCR Policy Development and Evaluation Service, Research Paper No. 144, 2007), <http://www.unhcr.org/470c9be92.pdf> (stating that Iraqis who migrated to Europe after 2003 either had substantial financial resources or received assistance from family members in industrialized countries; those without financial resources were left unable to seek refuge in other countries).

asylum because, under the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol), a person must not be present in his or her home country when filing for either asylum or refugee status.¹⁷ This requirement renders it nearly impossible for persecuted individuals such as Tanzanian PWAs—who may be unable to escape their home country—to seek help.

Second, the United Nations High Commissioner for Refugees (UNHCR) provides protections for internally displaced persons (IDPs) and stateless individuals, as these persons would not be considered “refugees” under the 1951 Convention.¹⁸ However, the UNHCR fails to protect Tanzanian PWAs because its protections do not recognize the immediacy of the problem that PWAs face, nor do its protections extend to PWAs that are vulnerable to ritual attacks.¹⁹ Article 14 of the 1948 Universal Declaration of Human Rights (UDHR) notably recognizes that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”²⁰ This right is meaningless, however, if the process makes its exercise virtually impossible.

This Comment will analyze the necessity for reformation of international asylum and refugee procedures²¹ by presenting a case study of the plight of

¹⁷ *Asylum & the Rights of Refugees*, INT’L JUST. RESOURCE CTR., <http://www.ijrcenter.org/refugee-law/> (last visited Oct. 31, 2017).

¹⁸ See generally GLOBAL PROTECTION CLUSTER, HANDBOOK FOR THE INTERNALLY DISPLACED PERSONS (2010).

¹⁹ *Id.* at 10 (listing twelve national responsibilities that should be taken by governments of states with IDPs). However, the listed national responsibilities would fail to stop the ritual murders of PWAs because the responsibilities do not account for the reasoning behind the ritual murders of PWAs. Witchcraft is a practice and belief that cannot immediately evaporate from the fabric of Tanzanian culture. Larson, *supra* note 2, at 11. Therefore, to ensure the immediate protection of PWAs, PWAs must be placed in a safer place. *Id.* at 7.

²⁰ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²¹ It is noteworthy that the landscape of U.S. refugee policy has been in substantial flux since the inauguration of President Donald J. Trump. See OFFICE OF THE PRESS SECRETARY, EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES (2017) (the executive order, in sum, “brings in a suspension of the U.S. Refugee Admissions [Program] for 120 days; [indefinitely bans] Syrian refugees, and anyone arriving from seven Muslim-majority countries—Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen—[face a ninety-day] visa suspension . . . ; the order also introduces a cap of 50,000 refugees to be accepted in 2017, against a limit of 110,000 set by former President Barack Obama; [it gives priority] to religious minorities facing persecution in their countries, and exceptions could be made on a case by case basis.” *Trump’s Executive Order: Who Does Travel Ban Effect?*, BBC (Feb. 10, 2017), <http://www.bbc.com/news/world-us-canada-38781302>). Whether the recommendations that this Comment ultimately proffers are realistic or even likely in the United States is therefore unclear, at least in the short term. Nevertheless, it is productive to engage in normative discussions regarding refugee policy, as such discussions will help to shape refugee policy in the future. Further, this Comment’s recommendations remain both relevant and realistic with respect to other international countries, particularly those (e.g., Canada and Turkey) that have signaled a willingness to accept additional refugees in the wake of the United States’ policy shifts. Azadeh Ansari et al.,

persons with albinism in Tanzania who struggle to access these procedures, thereby demonstrating how arduous asylum and refugee procedures under the 1951 Convention actually inhibit, rather than advance, the right of persons to seek asylum from persecution. Part I will explore the state of affairs in Tanzania regarding the crisis of albino hunting and analyze both the futile Tanzanian governmental response and the international community's response to the crisis. Part II will analyze current international law surrounding asylum and refugee procedures under the 1951 Convention and will examine UNHCR policies concerning the protections of internally displaced persons. Part II will then explore how both the 1951 Convention and the UNHCR are ineffective in assisting the vast majority of Tanzanian PWAs seeking asylum or refugee status. Finally, Part III will propose a method to reform the procedures in the 1951 Convention to the benefit of individual states and persecuted individuals. First, it will propose the development of global Protected Entry Procedures²² where individuals may complete asylum and refugee applications in diplomatic or consular representations in his or her home state. Second, by using the models of Protected Entry Procedures practiced in Spain and France, it will demonstrate how these procedures can function in the international community.

I. THE STATE OF AFFAIRS IN TANZANIA

A. *Historical Discrimination Culminating in the Eventual Slaughter of PWAs*

Albinism is a genetically inherited condition characterized by hypopigmentation in the skin, hair, and eyes, due to a reduced or complete lack of melanin pigment production.²³ Because of the lack of skin pigmentation, PWAs are more susceptible to serious medical issues such as skin cancer, extreme sensitivity to sunlight, and visual impairment.²⁴ The incidence of albinism varies between countries.²⁵ For example, in the United States, about one in every 20,000 Americans are afflicted.²⁶ By contrast, about one in every 3,000 Tanzanians have the condition—one of the highest albinism rates in the

World Leaders React to Trump's Travel Ban, CNN POLITICS (Jan. 30, 2017), <http://www.cnn.com/2017/01/30/politics/trump-travel-ban-world-reaction/>.

²² See GREGOR NOLL & JESSICA FAGERLUND, SAFE AVENUES TO ASYLUM? THE ACTUAL AND POTENTIAL ROLE OF EU DIPLOMATIC REPRESENTATIONS IN PROCESSING ASYLUM REQUESTS 3 (2002), <http://www.unhcr.org/3cd000a52.pdf> (discussing the meaning of Protected Entry Procedures).

²³ Esther Hong et al., *Albinism in Africa as a Public Health Issue*, 6 BMC PUB. HEALTH 212, 212 (2006); Larson, *supra* note 2, at 2.

²⁴ Bucaro, *supra* note 1, at 132; Hong, *supra* note 23, at 212.

²⁵ Jeffery Gettleman, *Albinos, Long Shunned, Face Threat in Tanzania*, N.Y. TIMES (June 8, 2008), <http://www.nytimes.com/2008/06/08/world/-africa/08albino.html?emc=eta1>.

²⁶ *Id.*

world.²⁷ Currently, an estimated 12,000 Tanzanian residents are registered with the Tanzania Albinism Society;²⁸ however, the population of PWAs is likely much greater because many people prefer to stay hidden rather than register.²⁹ Hiding is a pervasive and unsurprising response because PWAs have historically been ostracized—and even killed—as a result of their condition.³⁰

Two main reasons account for the ostracism of and discrimination against PWAs: (1) PWAs have, or are more susceptible to having, physical disabilities; and (2) wide-spread ignorance surrounding the causes of the condition itself.³¹ First, ostracism historically occurred because of the physical effects and disabilities that accompany albinism.³² For example, decreased visual acuity—sometimes leading to blindness—and extreme sensitivity to the sun are major phenomena among PWAs.³³ Because of Tanzania’s climate, these disabilities can quickly become crippling if not properly treated.³⁴ Blindness and an inability to be in the sun for prolonged periods of time massively limit the educational and career opportunities of PWAs, thereby leading to discrimination and segregation within the community.³⁵

Second, discrimination occurs due to a general lack of knowledge surrounding albinism, which results in PWAs falling victim to egregious acts of violence.³⁶ A large population of Tanzanians have negative views of PWAs.³⁷ Rather than look to scientific or biomedical explanations of albinism, the

²⁷ *Id.*; Bucaro, *supra* note 1, at 133; Finding Dulcinea Staff, *Persecuted Tanzanian Albinos Given Cell Phones for Protection*, FINDING DULCINEA (Jan. 29, 2009), <http://www.findingdulcinea.com/news/international/2009/jan/Persecuted-Tanzanian-Albinos-Given-Cell-Phones-for-Protection.html>.

²⁸ The Tanzania Albinism Society is a national non-profit organization which was established in 1978 by a group of PWAs. *Tanzania Albinism Society*, BETTERPLACE.ORG, <https://www.betterplace.org/en/organisations/10856-tanzania-albinism-society> (last visited Oct. 31, 2017).

²⁹ Lynzy Billing, *A New Start for Tanzania’s Hunted Children*, METRO (Oct. 10, 2016, 12:10 PM), <http://metro.co.uk/2016/10/10/a-new-start-for-tanzanias-hunted-children-6170066/>; see also ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 8–9 (noting that the registration process is completely optional and left in the discretion of PWAs, and in many cases, PWAs prefer to remain as inconspicuous as they possibly can); Bucaro, *supra* note 1, at 133 (“Currently, there are an estimated 17,000 people living with albinism in Tanzania.”).

³⁰ Bucaro, *supra* note 1, at 132.

³¹ See *id.*; Gettleman, *supra* note 25.

³² Bucaro, *supra* note 1, at 132.

³³ *Id.*; ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 8; Hong, *supra* note 23, at 212.

³⁴ Bucaro, *supra* note 1, at 132 (explaining that less affluent PWAs may not be able to afford things like glasses, which would then inhibit their ability to learn in school, thereby causing them to drop out. Persons who drop out of school are forced into doing field work which then becomes more crippling for PWAs because of the extreme sun exposure, thus frequently leading to cases of skin cancer).

³⁵ *Id.* at 132–33.

³⁶ *Id.* at 132; Masanja, *supra* note 7, at 18; Associated Press, *supra* note 4.

³⁷ Masanja, *supra* note 7, at 15.

Tanzanian community, like many other African communities, understands the condition through supernatural explanations such as magic and witchcraft.³⁸ Magic and witchcraft are deeply rooted in Tanzanian culture and are part of Tanzanians' daily lives.³⁹ The ignorance surrounding albinism is best demonstrated by wide-spread beliefs that PWAs possess magical bones and bring good or bad luck, that PWAs are the ghosts of Europeans, or that a child is afflicted with albinism when its mother has had extramarital relations with a white man.⁴⁰ However, it is primarily the belief that PWAs possess magical qualities that has driven the hunting and eventual ritual slaying of PWAs.⁴¹ Witchcraft hysteria has risen since 2007, leading to exponential murders of PWAs for magical, luck-wielding, and get-rich-quick concoctions.⁴²

B. The Tanzanian Government's Response

Because ritual murders of PWAs are related to witchcraft, a practice deeply rooted in Tanzanian society, the belief in magic and witchcraft itself must be challenged to halt the callous slaying of PWAs.⁴³ Dealing with the challenges of eliminating magic and witchcraft through legal means alone is inadequate because of witchcraft's historical presence in African culture.⁴⁴ According to one leading scholar, "witchcraft beliefs are too strong to be driven out by legal methods and [instead should be driven out] by introducing a scientific view of the world through mass education."⁴⁵ However, the Tanzanian government has not prioritized education as an approach to driving out witchcraft; instead, the government has attempted to quell the killings of PWAs through legal means alone.⁴⁶

In October 2008, Jakaya Kikwete, then-President of Tanzania, publicly condemned ritual killings of PWAs, stating that the killings were based on a "stupid belief."⁴⁷ Not only was publicly condemning the ritual murders an improvement over previous governmental inaction, but condemning the underlying *beliefs* that triggered the murders was symbolically significant.

³⁸ *Id.* at 17–18.

³⁹ Simeon Mesaki, *Witchcraft and the Law in Tanzania*, 1(8) INT'L J. SOC. & ANTHROPOL. 132 (2009).

⁴⁰ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Bucaro, *supra* note 1, at 132; Masanja, *supra* note 7, at 15.

⁴¹ *See generally* Bucaro, *supra* note 1.

⁴² *Id.*; Mesaki, *supra* note 39, at 132–33.

⁴³ Masanja, *supra* note 7, at 15.

⁴⁴ Mesaki, *supra* note 39, at 132.

⁴⁵ *Id.*

⁴⁶ *See* Bucaro, *supra* note 1, at 134–35; Larson, *supra* note 2, at 6–10.

⁴⁷ Bucaro, *supra* note 1, at 134.

Likewise, Tanzania's current president, John Magufuli, has signaled that he will intensify efforts to end the ritual killings of PWAs.⁴⁸ In 2015, he announced: "I am going to ensure this inhuman act is ended once and for all, all people must live freely, I assure you that I will fight this heinous act to the end."⁴⁹ This public condemnation of ritual killings is significant because it serves to educate the Tanzanian population as to the seriousness of such crimes as well as the fallacies of witchcraft beliefs.

After President Kikwete's 2008 public condemnation of ritual killings, the Tanzanian government declared it a capital offense to kill PWAs.⁵⁰ Many Tanzanians have since been accused of and incarcerated for murdering, or participating in the murders of, PWAs.⁵¹ Tanzanian courts have even sentenced some individuals to death because of their participation in the murders of PWAs.⁵² Meanwhile, law enforcement efforts to protect PWAs have increased.⁵³ Local police officers have gathered lists of known PWAs to keep track of their safety and have sometimes protected PWAs who have clustered together in front of police stations.⁵⁴ Police officers have even tried to ensure the safety of children with albinism by escorting them to school.⁵⁵ In another effort to keep children with albinism safe, the government has proactively placed them in special children's homes.⁵⁶ Furthermore, the government has pursued a campaign to end the killings by providing PWAs with cell phones, so that they can more easily contact the local authorities if there is an attack.⁵⁷ In 2009, about 350 cell phones, donated by local businessmen, were distributed to the families of PWAs.⁵⁸ The majority of these cell phones were distributed to families in Dar

⁴⁸ Christopher Majaliwa & Nelly Mtema, *Tanzania: War Against Albino Killers to Intensify- Magufuli*, ALL AFRICA (Sept. 25, 2015), <http://allafrica.com/stories/201509250148.html>.

⁴⁹ *Id.*

⁵⁰ Bucaro, *supra* note 1, at 134.

⁵¹ *Id.* at 134–35; Larson, *supra* note 2, at 6.

⁵² Bucaro, *supra* note 1, at 135; Larson, *supra* note 2, at 6.

⁵³ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Larson, *supra* note 2, at 6.

⁵⁴ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Larson, *supra* note 2, at 6.

⁵⁵ Larson, *supra* note 2, at 6.

⁵⁶ Associated Press, *U.N. Condemns Abuse of Tanzania's Albino Children*, SOUTH CHINA MORNING POST (Aug. 26, 2014), <http://www.scmp.com/news/world/article/1580880/un-condemns-abuse-tanzanias-albino-children>.

⁵⁷ Larson, *supra* note 2, at 6; Finding Dulcinea Staff, *supra* note 27.

⁵⁸ Finding Dulcinea Staff, *supra* note 27; *see also* Larson, *supra* note 2, at 6–7 (stating that "only 200 cell phones [were] distributed to PWAs.").

es Salaam, Tanzania's capital, but a fraction of them were also distributed to families in other regions.⁵⁹

The Tanzanian government, moreover, has attempted to tackle the problem of albino hunting by enacting changes at the legislative and executive levels.⁶⁰ For example, in 2008, to show solidarity with the albino community, Tanzania's then-President Jakaya Kikwete appointed Al-Shaymaa Kwegyir, a PWA, to a seat in Parliament.⁶¹ Additionally, in 2009, the government amended the Witchcraft Act,⁶² a relic of colonial law, which exemplifies the deep-seated roots of witchcraft in Tanzanian culture.⁶³ The Act was enacted by the colonial government in 1928 to outlaw the practice of witchcraft and to provide punishment for those who practiced it.⁶⁴ The recent amendments to the Witchcraft Act are designed to reiterate that, "Tanzania does not believe in witchcraft and that anyone found guilty of witchcraft will be punished in accordance with the law."⁶⁵

Furthermore, in 2010, then-President Kikwete signed the Persons with Disabilities Act (PDA).⁶⁶ Under the PDA, PWAs are classified as disabled persons, and as such, they are entitled to the benefits that the PDA ensures.⁶⁷ The PDA articulates that its purpose is "to make provisions for the health care, social support, accessibility, rehabilitation, education and vocational training, communication, employment or work protection and promotion of basic rights for the persons with disabilities and to provide for related matters."⁶⁸ The recognition of albinism as a legitimate disability is a major stride in the direction

⁵⁹ Finding Dulcinea Staff, *supra* note 27.

⁶⁰ Larson, *supra* note 2, at 7.

⁶¹ *Id.*; ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 8.

⁶² Larson, *supra* note 2, at 7; The Witchcraft Act (1928), *available at* <http://mtega.com/wp-content/uploads/2014/09/Witchcraft-Act-Cap18-as-amended-2009.pdf>.

⁶³ Mesaki, *supra* note 39, at 133 (explaining that witchcraft laws in Tanzania "remained true to the gist of the English [witchcraft] law of 1735.").

⁶⁴ *Id.* at 137.

⁶⁵ Larson, *supra* note 2, at 8.

⁶⁶ Persons with Disabilities Act of Tanzania, Act No. 9/2010 (2010), *available at* http://www.ccbtr.or.tz/uploads/media/Persons_with_Disabilities_Act_2010_01.pdf; Larson, *supra* note 2, at 8.

⁶⁷ *See generally* VERONICA MARCON, ALBINISM IN TANZANIA: A HUMAN RIGHTS ISSUE. AN EXPERIENCE OF MONITORING THE "WHITE BLACKS" (2013/2014), http://www.academia.edu/9140081/Albinism_in_Tanzania_a_Human_Rights_Issue_An_Experience_of_Monitoring_the_White_Blacks.

⁶⁸ Persons with Disabilities Act of Tanzania, *supra* note 66.

of understanding albinism as a medical condition rather than a supernatural phenomenon.

C. Inadequacies of the Tanzanian Government's Response

Although the government has taken meaningful steps to combat violence against PWAs by implementing the aforementioned policies, these policies are ultimately inadequate to protect the lives of PWAs who face immediate danger. While it is true, for example, that the public condemnation of ritual killings of PWAs and witchcraft is in the interest of PWAs, more must be done to educate the public about the causes of albinism and the reasons why witchcraft is problematic. Moreover, President Magufuli's vow to end the killings has been unsuccessful thus far.⁶⁹ For instance, in September 2016, an albino community leader barely escaped an attack by machete-wielding bandits.⁷⁰ After tending to his serious wounds, he announced that the government must do more to protect PWAs because they still live in fear.⁷¹

Additionally, although Tanzania has declared killing PWAs a capital crime, and although many have been arrested in relation to crimes against PWAs, very few people have actually been prosecuted for their crimes.⁷² While some have been sentenced to death for their involvement in ritual murders, their punishments have yet to be carried out.⁷³ Unfortunately, punishment for crimes against PWAs frequently involves protracted and delayed litigation.⁷⁴ Although increased police efforts are objectively helpful to PWAs, and while these efforts

⁶⁹ See *Albino Community Afraid After Leader is Attacked*, THE CITIZEN (Sept. 23, 2016), <http://www.thecitizen.co.tz/News/Albino-community-afraid-after-leader-is-attacked/1840340-3391956-format-xhtml-9trsfdf/index.html>; *Reported Attacks of Persons with Albinism—Most Recent Attacks Included*, UNDER THE SAME SUN (Sept. 27, 2016), http://www.underthesamesun.com/sites/default/files/Attacks%20ofP%20PWA%20-%20extended%20version_0.pdf (reporting that there have been seventy-six killings in 2016 alone, and a total of 169 reports of attacks on PWAs).

⁷⁰ *Albino Community Afraid After Leader is Attacked*, *supra* note 69; *Reported Attacks of Persons with Albinism—Most Recent Attacks Included*, *supra* note 69.

⁷¹ *Albino Community Afraid After Leader is Attacked*, *supra* note 69.

⁷² Bucaro, *supra* note 1, at 134–35 (between 2008 and 2010, “more than 170 people have been arrested for albino killings in Tanzania, but very few have been prosecuted. . . . [I]n September 2009, four men were sentenced to death for murdering an albino boy Two months later, the Tanzanian courts sentenced four additional men to death by hanging for their participation in killing albinos. None of those convicted have actually been executed.”); Larson, *supra* note 2, at 9–10.

⁷³ *Id.* at 6; Bucaro, *supra* note 1, at 135; Cohan, *supra* note 4, at 804.

⁷⁴ Bucaro, *supra* note 1, at 135 (stating, “[t]he Tanzanian courts cite a lack of funds for litigation as the reason for the delay [in prosecution].”); Cohan, *supra* note 4, at 804; Larson, *supra* note 2, at 9–10 (stating, “where there has not been a lack [of prosecution], there has been a halt; trials for some accused PWA killers were put on hold in 2009 because the courts ran out of money.”).

are proactive, they are likely unsustainable.⁷⁵ The Tanzanian police force is not large enough to protect all PWAs, especially those in rural areas.⁷⁶ Because many PWAs have been displaced or have not registered with the Tanzanian Albinism Society, there is no systemic method for local police officers to locate many PWAs.⁷⁷

Likewise, the placement of children with albinism in special homes, a seemingly noble strategy to protect such children, is highly problematic. In 2014, the United Nations Office of the High Commissioner for Human Rights (OHCHR) condemned the manner by which the Tanzanian government has chosen to protect children with albinism.⁷⁸ Shortly after the spike in ritual murders in 2009, the Tanzanian government began placing children in special homes or centers to keep them safe.⁷⁹ However, children in these “safe” special homes and centers have been subjected to horrific conditions.⁸⁰ Children are sometimes forcibly taken from their homes, for example, and many have lost contact with their families.⁸¹ In many cases, children also face sexual abuse.⁸² Moreover, children’s centers frequently suffer from overcrowding and sanitation issues.⁸³ In short, separating children from their homes and families—subjecting them to abuse—is simply not an acceptable method to keep them safe.

The government’s cell phone policy has also proven ineffective in stopping the ritual killings of PWAs.⁸⁴ To begin with, the number of distributable cell phones donated is incredibly low compared to the number of PWAs who need easy access to police officers.⁸⁵ As Professor Stacy Larson writes, “[p]roviding only .001% of the PWA population with a cell phone is unacceptable. Further, one might question the cell phone reception in a rural area, as well as police response time, even if every PWA had access to a cell phone with a direct line

⁷⁵ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Larson, *supra* note 2, at 6.

⁷⁶ Larson, *supra* note 2, at 6.

⁷⁷ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6 (“It is impossible even to estimate the number of albinos who have been displaced.”).

⁷⁸ Associated Press, *supra* note 56; Constance Johnson, *Tanzania; United Nations: Protection Needed for Albinos*, LIBR. OF CONGRESS (Sept. 8, 2014), <https://www.loc.gov/law/foreign-news/article/tanzania-untied-nations-protection-needed-for-albinos/>.

⁷⁹ Associated Press, *supra* note 56; Johnson, *supra* note 78.

⁸⁰ Associated Press, *supra* note 56; Taylor Gillan, *More Protection Needed for Tanzanian Albinos*, JURIST (Aug. 26, 2014), <http://www.jurist.org/paperchase/2014/08/more-protection-needed-for-tanzania-albinos-un-rights-office.php>; Johnson, *supra* note 78.

⁸¹ Associated Press, *supra* note 56; Gillan, *supra* note 80; Johnson, *supra* note 78.

⁸² Associated Press, *supra* note 56; Gillan, *supra* note 80; Johnson, *supra* note 78.

⁸³ Associated Press, *supra* note 56; Gillan, *supra* note 80; Johnson, *supra* note 78.

⁸⁴ Finding Dulcinea Staff, *supra* note 27; Larson, *supra* note 2, at 6–7.

⁸⁵ Larson, *supra* note 2, at 6–7.

to the police.”⁸⁶ Making matters worse, the majority of these cell phones are distributed to families in Dar es Salaam, and only a small fraction of them are distributed to families in other regions.⁸⁷ Overall, the distribution of cell phones to the families of PWAs is ineffective in combatting ritual killings because it cannot possibly help the vast majority of PWAs.⁸⁸

Finally, efforts by the Tanzanian government to tackle the issue at the legislative and executive levels are commendable but insufficient to provide immediate protection for PWAs. Most commendable was the appointment of a PWA to Parliament in 2008.⁸⁹ Not only did this measure demonstrate governmental solidarity with the albino community, but it served to advance equal social opportunities for PWAs.⁹⁰ Still, although a meaningful symbolic gesture, this seems unlikely to prevent violence against PWAs. Recent amendments to the Witchcraft Act likewise do nothing to protect PWAs. The Witchcraft Act, as amended, is designed to “provide for the punishment of witchcraft and of certain acts connected therewith.”⁹¹ Stating this as the Act’s purpose, however, actually serves to symbolically legitimize witchcraft.⁹² Rather than amend an act rooted in outdated colonial law, a better response by the Tanzanian government would be to repeal the Act in its entirety.⁹³ Moreover, recognizing PWAs as disabled persons under the PDA is an excellent attempt at promoting social equality; it is questionable, however, whether the PDA actually mitigates the gruesome ritual slaughter of PWAs.⁹⁴ According to one scholar:

[The PDA] is not going to do enough to protect the lives and limbs of PWAs, as its focus is primarily on social protections, including access to education, employment, and public accommodations. Section 6 of the PDA states that: “The Government shall (b) prohibit all forms of discrimination on the basis of disability and *guarantee [] persons with disabilities equal and effective legal protection against discrimination*

⁸⁶ *Id.* at 7.

⁸⁷ Finding Dulcinea Staff, *supra* note 27.

⁸⁸ *Supra* Part I.B. (The cell phone policy was helpful to the families in Dar es Salaam who received cell phones. However, few cell phones were distributed elsewhere in Tanzania; moreover, only .001% of the PWAs population was provided with cell phones, making the policy mostly ineffective). Finding Dulcinea Staff, *supra* note 27; *see also* Larson, *supra* note 2, at 6–7.

⁸⁹ Kelly Allen, *The Human Rights Case of Persons with Albinism in Uganda*, 1 UNDERGRADUATE J. GLOBAL CITIZENSHIP 1, 9 (2011).

⁹⁰ *See* Judith Schühle, *Medicine Murder of People with Albinism in Tanzania – How Casino Capitalism Creates Rumorscapes and Occult Economies* 27 (Ctr. for Area Stud., Working Paper No. 2, 2013), http://www.fu-berlin.de/sites/cas/medienordner/CAS-WP/cas_wp_no_2-13.pdf

⁹¹ The Witchcraft Act (1928), *supra* note 62.

⁹² Mesaki, *supra* note 39, at 137.

⁹³ *Id.* at 138.

⁹⁴ Larson, *supra* note 2, at 8–9.

on all grounds (c) for purposes of promoting equality and elimination of all forms of discrimination, [and] take all appropriate measures to ensure that reasonable changes are provided to persons with disabilities”⁹⁵

Because the purpose of the PDA is to promote the basic rights of disabled persons (including PWAs),⁹⁶ it does nothing to help with the immediate eradication of dangerous witchcraft beliefs. So, although the PDA is an admirable effort to end discrimination against PWAs—an effort that may become successful in the future⁹⁷—the focus should be on saving PWAs from the immediate threat of ritual killings.⁹⁸

D. Inadequacies of the International Community’s Response

Efforts by the international community to solve the problem have likewise been ineffective. In 2013, the United Nations issued a report recognizing the issue of ritual killings and urging countries facing the problem to “adopt specific measures to protect and preserve the rights to life, and security of persons with albinism, as well as their right not to be subject to torture and ill-treatment, and ensure their access to adequate health care, employment, education and justice.”⁹⁹ The United Nations has also specifically addressed the treatment of albino children in Tanzania, condemning Tanzania’s method of protecting children with albinism by segregating them from the larger community as not in the best interest of the children.¹⁰⁰ Aside from recognizing these issues, however, the United Nations has done nothing to assist with the situation.

In the past, the United Nations has recognized the view long championed by the human rights movement: “[T]he idea that events taking place within a country are a legitimate subject of international concern.”¹⁰¹ When a governing body within a country denies adequate assistance to groups of people who face human rights violations, “the international community should find ways to become involved.”¹⁰² The United Nations has implemented this idea on

⁹⁵ *Id.* at 8–9 (quoting the PDA § 6).

⁹⁶ Persons with Disabilities Act of Tanzania, *supra* note 66.

⁹⁷ Larson, *supra* note 2, at 8–9.

⁹⁸ *Id.*

⁹⁹ Persons with Albinism, Rep. of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/24/57 (Sept. 12, 2013).

¹⁰⁰ Associated Press, *supra* note 56.

¹⁰¹ Roberta Cohen, *New Challenges for Refugee Policy: Internally Displaced Persons*, BROOKINGS (Apr. 1, 1999), <https://www.brookings.edu/on-the-record/new-challenges-for-refugee-policy-internally-displaced-persons/>.

¹⁰² *Id.*

numerous occasions. For example, “in 1989 and 1990, in the Sudan, the UN used hard diplomatic bargaining to persuade the government and the rebel forces to accept Operation Lifeline Sudan for displaced populations.”¹⁰³ Likewise, in Rwanda and Somalia, the Security Council authorized the use of force to aide internally displaced persons “and other affected populations.”¹⁰⁴ These actions illustrate that the United Nations is capable of being proactive in situations of human rights violations.

In sum, although the Tanzanian government has attempted to implement policies to combat the ritual killings of PWAs, these policies have so far been largely ineffective. Because the motivation for the killings spawns from widespread and deep-rooted beliefs in witchcraft, the dangers faced by PWAs cannot be readily eliminated; therefore, thousands of Tanzanian PWAs remain in danger. Accordingly, because domestic solutions are largely ineffective, the international community must take action to offer protection for PWAs. However, under the current international definition of “refugee,” the vast majority of Tanzanian PWAs cannot receive refugee protection from the international community because they have no means of leaving Tanzania. Part II will discuss this dilemma, and Part III will present an international solution to the problem.

II. CURRENT INTERNATIONAL POLICY SURROUNDING ASYLUM AND REFUGEE PROCEDURES.

A. *Asylum and Refugee Procedures Under the 1951 Convention*

The 1951 Convention is the current controlling international refugee legal framework.¹⁰⁵ The 1951 Convention defines “refugee” as any person who,

[a]s a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Asylum & the Rights of Refugees, supra* note 17.

country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁰⁶

A prerequisite to receiving refugee status, or filing for asylum, is qualifying as a refugee under this definition.¹⁰⁷ Inherent in this definition is that a refugee is a person who is not physically present in his or her home country. It, therefore, does not account for persons who fear persecution but who are unable to leave their home country.¹⁰⁸ In fact, the 1951 Convention makes no mention of persons who have been internally displaced within their home country.¹⁰⁹ The rationale behind this aspect of the refugee definition is rooted in customary international law.¹¹⁰ It derives from the international norm that individual nations are responsible for the protection of persons who reside within their country, and that no other nation should interfere with that sovereign power.¹¹¹ The international community should only become involved when a person is without the protection of any nation.¹¹² Only when persons are without the protection of any state will they become eligible for refugee protections under the 1951 Convention.¹¹³ Accordingly, all persons within a country are the responsibility of that country and not the responsibility of the international community.¹¹⁴

In addition to requiring physical presence outside one's home country, the 1951 Convention also requires that a person be attempting to escape persecution to qualify as a "refugee." The definition does not, however, provide that a person must be escaping *governmental* persecution.¹¹⁵ The absence of such a requirement is important when analyzing whether Tanzanian PWAs qualify as refugees, because Tanzanian PWAs are escaping social persecution by non-governmental actors, and the Tanzanian government has not been able to stop that persecution. Thus, under the 1951 Convention, Tanzanian PWAs *would* be considered refugees if they were able to leave Tanzania. However, because many PWAs are unable to leave Tanzania, they do not qualify as refugees and therefore cannot be afforded any more protections than what the Tanzanian government has already offered. The 1951 Convention is the "centerpiece of

¹⁰⁶ Convention Relating to the Status of Refugees, art. 1(A)(2), Jul. 28, 1951, 189 U.N.T.S. 150 [hereinafter Convention of 1951]; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

¹⁰⁷ See generally Protocol Relating to the Status of Refugees, *supra* note 106.

¹⁰⁸ *Asylum & the Rights of Refugees*, *supra* note 17.

¹⁰⁹ Convention of 1951, *supra* note 106, art. 1(A)(2).

¹¹⁰ See generally D.W. Greig, *The Protection of Refugees and Customary International Law*, 8 AUSTL. Y.B. INT'L L. 108 (1978-1980).

¹¹¹ Convention of 1951, *supra* note 106, art. 1(A)(2); Cohen, *supra* note 101.

¹¹² Convention of 1951, *supra* note 106, art. 1(A)(2).

¹¹³ *Id.*; Cohen, *supra* note 101.

¹¹⁴ Cohen, *supra* note 101.

¹¹⁵ Convention of 1951, *supra* note 106, art. 1(A)(2).

international refugee protection today,”¹¹⁶ yet it fails to provide any protections for persons who find themselves in the position that Tanzanian PWAs are in—essentially refugees in their own country.¹¹⁷

The 2005 World Summit Outcome Resolution issued by the United Nations also provides protections for refugees.¹¹⁸ This additional document states that there is a responsibility to protect populations from four specific crimes: (1) genocide, (2) war crimes, (3) ethnic cleansing, and (4) crimes against humanity.¹¹⁹ Both individual states and the international community hold this responsibility.¹²⁰ The responsibility to protect must find a balance between respecting important principles of international law (i.e. state sovereignty) and adhering to principles of international humanitarian law.¹²¹ The responsibility to protect is based on the premise that each sovereign state holds the primary responsibility to protect its own people, but if that individual state is unwilling or unable to carry out its responsibility, the responsibility rests with the international community.¹²² In some cases, the responsibility to protect may rest

¹¹⁶ *Id.*

¹¹⁷ Bucaro, *supra* note 1, at 131–32.

¹¹⁸ G.A. Res. 60/1, 2005 World Summit Outcome (Oct. 24, 2005).

¹¹⁹ *Id.* (“Genocide is defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) as ‘any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.’”) Office of the UN Special Advisor on the Prevention of Genocide (OSAPG), *Analysis Framework*, UN, http://www.un.org/en/preventgenocide/adviser/pdf/osapg_analysis_framework.pdf (last visited Oct. 31, 2017). *Nuremberg Trial Proceedings Vol. 1: Charter of the International Military Tribunal, Article 6*, AVALON PROJECT, <http://avalon.law.yale.edu/imt/imtconst.asp#art6> (last visited Oct. 31, 2017) (Article 6 of the Charter of the International Military Tribunal defines war crimes as, “violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity,” and defines crimes against humanity as, “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”). A U.N. report defines ethnic cleansing as, “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.” Final Report of the Comm’n of Experts Established Pursuant to U.N. Sec. Council Resolution 780 (1992), U.N. Doc. S/1994/674, Annex at 3, 33 (May 27, 1994).

¹²⁰ G.A. Res. 60/1, at ¶¶ 138–39.

¹²¹ *Id.*; Hitoshi Nasu, *Operationalizing the ‘Responsibility to Protect’ and Conflict Prevention: Dilemmas of Civilian Protection in Armed Conflict*, 14(2) J. CONFLICT SECURITY L. 209 (2009).

¹²² G.A. Res. 60/1, *supra* note 118, at ¶¶ 138–39; Nasu, *supra* note 121, at 215 (explaining that regardless of whether individuals are outside their home countries, the responsibility to protect will rest with the

with the international community before a sovereign is found unwilling or unable to protect populations within its borders.¹²³ The populations offered protections under the 2005 World Summit Outcome include refugees who have fled from the four above noted crimes.¹²⁴ Refugees who have fled for other reasons, however, do not fall within the ambit of the responsibility to protect.¹²⁵ Thus, the responsibility to protect only applies to a small category of global refugees and a small category of persons generally.¹²⁶ Much like the 1951 Convention, the 2005 World Summit Outcome and its concept of an international responsibility to protect is inapplicable to the plight of PWAs in Tanzania.

B. Policies Concerning the Protections of Internally Displaced Persons

The United Nations is acutely aware that the 1951 Convention does not provide protections for those persons who are internally displaced within their home countries because they are targets for persecution by non-state actors.¹²⁷ Thus, the UNHCR, with the help of other international organizations, has formulated methods to protect internally displaced persons (“IDPs”). One leading organization is the Global Protection Cluster Working Group. In 2010, with the help of over thirty international organizations, the Global Protection Cluster created the *Handbook for the Protection of Internally Displaced Persons* (the Handbook).¹²⁸ The Handbook, along with a U.N. report called “The Guiding Principles on Internal Displacement” (Guiding Principles),¹²⁹ are used as guidelines by the UNHCR to provide protections to IDPs and stateless individuals.¹³⁰ According to the Guiding Principles, the definition of IDP is:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as

international community if the sovereign state is unable or unwilling to protect the individuals from the four listed categories of crimes).

¹²³ Nasu, *supra* note 121, at 215 (“[T]he international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations from mass atrocities, even before the state is found unable or unwilling to discharge its own responsibility.”).

¹²⁴ E. Tendayi Achiume, *Syria, Cost-Sharing, and the Responsibility to Protect Refugees*, 100 MINN. L. REV. 687, 717 (2015).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Asylum & the Rights of Refugees*, *supra* note 17.

¹²⁸ GLOBAL PROTECTION CLUSTER, *supra* note 18, at 2.

¹²⁹ Francis M. Deng (Rep. of the Secretary-General), *Addendum: Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add (Feb. 11, 1998).

¹³⁰ *Asylum & the Rights of Refugees*, *supra* note 17; G.A. Res. 60/1, *supra* note 118, at ¶ 132 (“[The United Nations] recognize[s] the Guiding Principles on Internal Displacement as an important international framework

a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.¹³¹

This definition is similar to that of a refugee.¹³² For example, both IDPs and refugees are people who have fled or have been forcibly displaced from their homes to escape human rights violations, violent situations, ethnic strife, or persecution.¹³³ Per the Guiding Principles' definition, Tanzanian PWAs can be considered IDPs because thousands have been displaced from their homes to escape situations of generalized violence and violations of human rights.¹³⁴ Unlike refugees, however, IDPs have not left their native countries and are offered different sorts of protections. Nevertheless, considering Tanzanian PWAs as IDPs under the Guiding Principles' definition is problematic because, although many PWAs have been displaced because of their fear of persecution, many other PWAs have remained in their homes.

If PWAs are considered IDPs, they would remain in a hopeless position in terms of securing international protection. The international community has the responsibility to protect refugees because refugees are individuals who no longer have the protection of their native country and because they are vulnerable.¹³⁵ IDPs, however, are still under the protection of their native countries.¹³⁶ The Handbook states that “[p]rimary responsibility for protecting IDPs and all persons within their own country rests with the national authorities of the country. National responsibility . . . is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty.”¹³⁷ The Handbook further states that even when IDPs' governments fail to protect them, the international community still cannot replace this national responsibility; rather, the international community must reinforce national responsibility by “encourag[ing] States and other authorities to meet their protection obligations.”¹³⁸ Since the international community cannot replace national

for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons.”).

¹³¹ Deng, *supra* note 129; GLOBAL PROTECTION CLUSTER, *supra* note 18, at 8.

¹³² Cohen, *supra* note 101.

¹³³ *Id.*

¹³⁴ Deng, *supra* note 129; Bucaro, *supra* note 1, at 131.

¹³⁵ *Protection*, UNHCR: THE UN REFUGEE AGENCY, <http://www.unhcr.org/en-us/protection.html> (last visited Oct. 31, 2017).

¹³⁶ GLOBAL PROTECTION CLUSTER, *supra* note 18, at 8.

¹³⁷ *Id.* at 9.

¹³⁸ *Id.* at 9–10.

responsibility, aiding PWAs in Tanzania is the sole responsibility of the Tanzanian government. Consequently, Tanzanian PWAs are in a virtually hopeless situation because the Tanzanian government has proven inadequate in dealing with the ritual killings of PWAs.

C. International Protections Offered to Refugees and IDPs are Ineffective in Assisting Tanzanian PWAs

There remains a “protection gap” between the 1951 Convention and the Handbook that leaves Tanzanian PWAs helpless in dealing with ritual murders.¹³⁹ This gap exists where the home country cannot adequately protect its people, but where the international community cannot effectively help because the home country has the ultimate duty of protecting its IDPs. PWAs are trapped in this abhorrent condition. The Tanzanian government has taken all possible legal action and has adopted U.N. recommendations about how to resolve the situation, but it still cannot help PWAs in need. At the same time, Tanzanian PWAs cannot receive assistance from the international community in the form of refugee or asylum status in another country because they are largely incapable of leaving Tanzania, and the international community has no responsibility to protect them because they are not a population that has fallen victim to genocide, war crimes, ethnic cleansing, or crimes against humanity.¹⁴⁰

Moreover, as discussed *supra*, it is unclear whether Tanzanian PWAs qualify as IDPs under the Guiding Principles.¹⁴¹ Accordingly, Tanzanian PWAs are afforded no protections under international law.¹⁴² While many Tanzanian PWAs have been displaced from their homes because of the threat of ritual murder, many others remain in their homes. Under the Guiding Principles’ definition of IDPs, there must be an involuntary departure from a habitual place of dwelling.¹⁴³ This requirement is rooted in the outdated notion that IDPs are displaced due to on-going wars or natural disasters.¹⁴⁴ Clearly, PWAs do not fall into this category of persons because they are not attempting to escape any such situation. Additionally, one of the main goals of assisting IDPs is to help them resettle in another part of their home country or to assist them in returning to

¹³⁹ *See id.* at 1.

¹⁴⁰ G.A. Res. 60/1, *supra* note 118, at ¶¶ 138–39; Nasu, *supra* note 121.

¹⁴¹ Regina Paulose, *Turning the Tide: Preventing Violence Against PWA*, A CONTRARIO: INT’L CRIM. L. (Feb. 28, 2014), <https://acontrarioicl.com/2014/02/28/albinism/>.

¹⁴² *See id.*

¹⁴³ GLOBAL PROTECTION CLUSTER, *supra* note 18, at 8.

¹⁴⁴ Deng, *supra* note 129, at 2.

their own homes.¹⁴⁵ Resettlement is not the most helpful solution to PWAs in Tanzania because the reason for their initial displacement has not been resolved.¹⁴⁶

Furthermore, there is no mandate that international organizations assist displaced persons who remain within the borders of their home country;¹⁴⁷ thus, there are no guaranteed protections afforded to those PWAs displaced in their homes.¹⁴⁸ The ad hoc nature of the help offered to IDPs makes it difficult for PWAs in Tanzania to receive help because international organizations can simply choose not to assist.¹⁴⁹ Additionally, those PWAs who have not been displaced from their homes can resign from the hope of receiving international support under the current laws protecting refugees and the current procedures protecting displaced persons; their hope rests in the hands of the Tanzanian government and other regional bodies.¹⁵⁰

In sum, current laws surrounding refugees are inadequate in providing protections to PWAs living in Tanzania because those laws protect only those who are outside their home country. Thus, under current laws, PWAs seeking refugee or asylum protection are required to leave Tanzania, and, as discussed previously,¹⁵¹ fleeing is not an option for many PWAs. Moreover, the international responsibility to protect, recognized by the United Nations, is not applicable to PWAs facing the threat of ritual murder because the responsibility is only triggered when a narrow set of crimes is committed against a population.¹⁵² Finally, the protections offered to IDPs are most likely inapplicable to PWAs in Tanzania because it is unclear whether PWAs, as a

¹⁴⁵ *Id.* at 1.

¹⁴⁶ The reason for PWAs initial displacement was their fear of being persecuted because of their medical condition, and until there is a solution to the problematic ritual killings, reintegrating PWAs back to their respective villages would be illogical. Bucaro, *supra* note 1, at 131–32; *see also* Larson, *supra* note 2, at 11.

¹⁴⁷ *See* Deng, *supra* note 129, at 1.

¹⁴⁸ Cohen, *supra* note 101 (“Because [IDPs] have not crossed the border, they have no assured source of protection and assistance . . . [N]o organization has a global mandate to protect and assist the internally displaced.”).

¹⁴⁹ *Id.* (“The system [to protect and assist the internally displaced] is ad hoc: organizations basically pick and choose the situations in which they will become involved on the basis of mandates, resources or other considerations. Thus, UNHCR deems about 5 million [IDPs] out of a total of 20 to 25 million to be of concern to the organization. And only 1 million of these are in Africa.”).

¹⁵⁰ *Id.* (suggesting that persons within the borders of their home country are the responsibility of that country, and international intervention is only offered to those who have been displaced from their homes).

¹⁵¹ *Supra* INTRODUCTION.

¹⁵² Achiume, *supra* note 124, at 716–17 (“The 2005 World Summit Outcome Document circumscribes RtoP to populations at risk from genocide, crimes against humanity, war crimes, and ethnic cleansing.”).

group, are considered IDPs.¹⁵³ Furthermore, those PWAs who have been displaced were not displaced for the reasons traditionally recognized as needing protection under the Guiding Principles.¹⁵⁴ Therefore, to better assist PWAs in Tanzania and others in similarly helpless predicaments, refugee and asylum procedures should be reformed globally.

III. PROPOSAL FOR REFUGEE AND ASYLUM LAW REFORM

The following discussion will suggest a method to reform the procedures in the 1951 Convention to benefit both states and persecuted individuals. First, it will propose the development of global Protected Entry Procedures.¹⁵⁵ Second, it will use the models of Protected Entry Procedures practiced in Spain and France to demonstrate how these procedures can function in the international community. Third, and finally, it will discuss the way in which such procedures would be most effectively implemented.

A. *Protected Entry Procedures*

In-country filing of asylum applications enables people who are in refugee-like situations within their countries of origin—PWAs in Tanzania, for example—to be processed within those origin countries and then *safely* resettled abroad.¹⁵⁶ In-country processing is a Protected Entry Procedure.¹⁵⁷ Protected Entry Procedures are: “arrangements in which a person in need of protection may approach a host state outside that state’s territory. Protected Entry Procedures may be applied outside the country of origin, within a third state . . . [and] within the country of origin.”¹⁵⁸ Such procedures have been utilized by

¹⁵³ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6 (suggesting that although many PWAs have been displaced from their homes, there are many others who have *not* been displaced from their homes); GLOBAL PROTECTION CLUSTER, *supra* note 18, at 8.

¹⁵⁴ Deng, *supra* note 129 (suggesting that to be considered an IDP, there must be an involuntary departure from one’s home; this requirement is rooted in the outdated idea that IDPs are displaced due to on-going wars or natural disasters).

¹⁵⁵ See NOLL & FAGERLUND, *supra* note 22, at 3 (discussing the meaning of Protected Entry Procedures).

¹⁵⁶ Dr. Claire Higgins, *In-country Processing and Other Protected Entry Procedures*, KALDOR CTR. FOR INT’L REFUGEE L. (Aug. 1, 2016), <http://www.kaldorcentre.unsw.edu.au/publication/in-country-processing-and-other-protected-entry-procedures> (explaining that in-country processing allows individuals to be processed within their country of origin and further guarantees that individuals will have safe passage to a country of resettlement, whereas diplomatic asylum does not make such a guarantee).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*; see also NOLL & FAGERLUND, *supra* note 22, at 3; GREGOR NOLL, STUDY ON THE FEASIBILITY OF PROCESSING ASYLUM CLAIMS OUTSIDE THE EU AGAINST THE BACKGROUND OF THE COMMON EUROPEAN ASYLUM SYSTEM AND THE GOAL OF A COMMON ASYLUM PROCEDURE 3 (2002), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/asylumstudy_dchr_2002_en_en.pdf; Gregor Noll, *Seeking*

Switzerland¹⁵⁹ and six Member States of the European Union—the United Kingdom, Austria, Denmark, France, the Netherlands, and Spain¹⁶⁰—“with notable divergence among their practices.”¹⁶¹ Austria, Denmark, and the Netherlands, however, abolished formal Protected Entry Procedures in 2002 and 2003 “due to the adoption of increasingly restrictionist political agendas.”¹⁶² Likewise, Switzerland abolished its “Embassy Procedure”¹⁶³ in 2012.¹⁶⁴ Although some states maintain their practice of Protected Entry Procedures, the practice is unfortunately not widely accepted on a global scale.¹⁶⁵ Indeed, to assist those persons who have fallen into the protection gap between national and international protection, an immediate reformation of refugee and asylum law would require the *international* acceptance and implementation of Protected Entry Procedures.

Unlike what traditional resettlement law allows, Protected Entry Procedures would allow extraterritorial asylum claims to be filed at any of the host state’s embassies or consulates.¹⁶⁶ Furthermore, the Procedures differ from traditional asylum and refugee laws in the sense that Protected Entry Procedures allow the individual to secure safe physical transfer and guaranteed legal protection from the host state,¹⁶⁷ whereas, under normal asylum procedures, refugees are not guaranteed a safe passage to nor protection by the host state. In fact, offering a safe and legal alternative to illegal immigration is the main goal of Protected

Asylum at Embassies: A Right to Entry under International Law, 17 INT’L J. REFUGEE L. 542, 543 (2005) [hereinafter Noll, *Seeking Asylum at Embassies*].

¹⁵⁹ *Asylum Procedure*, SWISS REFUGEE COUNCIL, <https://www.refugeecouncil.ch/asylum-law/asylum-procedure.html> (last visited Oct. 31, 2017).

¹⁶⁰ NOLL & FAGERLUND, *supra* note 22, at 3–4.

¹⁶¹ *Id.*

¹⁶² Noll, *Seeking Asylum at Embassies*, *supra* note 155, at 542.

¹⁶³ “Embassy Procedure” allowed asylum and refugee applications to be filed in Swiss Embassies. *See Non-Treatment of Asylum Applications of Iraqi Refugees: FOM Acted Unlawfully*, HUMANRIGHTS (Jan. 25, 2012), <http://www.humanrights.ch/en/switzerland/internal-affairs/asylum/implementation/treatment-asylum-applications-iraqi-refugees-fom-acted-unlawfully> [hereinafter HUMANRIGHTS].

¹⁶⁴ Switzerland once practiced Protected Entry Procedures but abolished the practice in 2012. *Asylum Procedure*, *supra* note 159; *see also* HUMANRIGHTS, *supra* note 163 (suggesting that Switzerland abolished its “Embassy Procedure” after authorities at its diplomatic and consular representations in Egypt and Syria neglected to treat thousands of asylum applications; rather than hire more staff to process the applications, the entire Embassy Procedure was abolished).

¹⁶⁵ Noll, *Seeking Asylum at Embassies*, *supra* note 158, at 542.

¹⁶⁶ NOLL & FAGERLUND, *supra* note 22, at 3; NOLL, *supra* note 158, at 3; Noll, *Seeking Asylum at Embassies*, *supra* note 158, at 543.

¹⁶⁷ NOLL & FAGERLUND, *supra* note 22, at 3 (“What distinguishes Protected Entry Procedures from traditional resettlement is precisely the fact that the individual is directly engaging the potential host state in a procedure aiming at the securing of physical transfer and legal protection.”).

Entry Procedures.¹⁶⁸ Curtailing illegal immigration is a challenge many states face today; thus, Protected Entry Procedures may be a solution from which both states and individuals can benefit.¹⁶⁹

Protected Entry Procedures are further distinguishable from traditional resettlement law because the prohibition of *refoulement*¹⁷⁰ does not apply to Protected Entry Procedures.¹⁷¹ Specifically, a person who completes an asylum application and demands an entry visa¹⁷² in a diplomatic or consular representation may not invoke the right to travel to that potential host state on non-*refoulement* grounds.¹⁷³ Moreover, these procedures strive to complement rather than replace existing resettlement laws.¹⁷⁴ For example, persons may file for asylum through traditional resettlement law, but where persons are unable to flee from persecution and journey to another state in search of asylum, they may file a claim for asylum at an embassy through Protected Entry Procedures.

To demonstrate why Protected Entry Procedures ought to be accepted internationally, it is imperative to understand how the procedures work in practice. This understanding emerges from, first, understanding the factors that states must consider when constructing their own Protected Entry Procedures and then by looking at how the procedures are utilized today. Finally, upon understanding the procedures, an ideal model of Protected Entry Procedures can be fashioned by analyzing how they have been practiced by various states.¹⁷⁵ An ideal model of Protected Entry Procedures can be a solution to assisting persons who fall into the protection gap between international protections and sovereign protections.

Initially, when constructing Protected Entry Procedures, states must pay close attention to five factors.¹⁷⁶ First, states must decide whether the Protected

¹⁶⁸ *Id.* (“A primary goal of Protected Entry Procedures would be to offer *legal alternatives for migration* to *bona fide* protection seekers.”).

¹⁶⁹ *Id.*; Achiume, *supra* note 124, at 757.

¹⁷⁰ “*Refoulement* means the expulsion of persons who have the right to be [recognized] as refugees. The principle of non-*refoulement* has first been laid out in 1954 in the UN-Convention relating to the Status of Refugees” *Refoulement*, UNESCO, <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/refoulement/> (last visited Oct. 31, 2017).

¹⁷¹ Noll, *Seeking Asylum at Embassies*, *supra* note 158, at 556.

¹⁷² An entry visa is a visa that authorizes the protection seeker to travel to the prospective host-country to await his or her asylum application decision; “[t]he purpose of an entry visa is solely to avert the imminent risk, and to allow the conduct of a proper determination procedure in a safe place—that is, the state of destination.” *Id.* at 565.

¹⁷³ *Id.* at 556.

¹⁷⁴ NOLL & FAGERLUND, *supra* note 22, at 3.

¹⁷⁵ *Id.* at 113–14.

¹⁷⁶ *Id.* at 3.

Entry Procedures should be formal or informal.¹⁷⁷ Formal procedures are more law-based and predictable, whereas informal procedures are policy-based and less predictable.¹⁷⁸ Second, states must consider the definition of who will benefit from the procedures.¹⁷⁹ They should decide, for example, whether the procedures are used to protect only “narrowly defined vulnerable groups,” or only protect persons with close connections to the state, or if the procedures will protect a more broadly defined group of individuals.¹⁸⁰ Third, states must determine whether the Protected Entry Procedures can be utilized by both the home country of the protection seeker and third party countries.¹⁸¹ Fourth, states must establish whether the applicant ought to await a decision on his or her asylum application in the country where his or her application was filed, or whether an entry visa will be granted to the applicant after a preliminary assessment so he or she may enter the host country immediately.¹⁸² Fifth and finally, states must resolve whether the diplomatic representation will provide protections to individuals who file asylum applications.¹⁸³

Since 1984, Spain has had a working model of Protected Entry Procedures that takes into consideration the above five factors.¹⁸⁴ First, Spain has formal and predictable Protective Entry Procedures; the procedures are similar to its territorial asylum procedures in terms of their definition of persons who are

¹⁷⁷ *Id.*

¹⁷⁸ For example, the Danish model of Protected Entry Procedures is exceedingly formalized and law-based, therefore leaving little room for flexibility when it comes to granting asylum to protection seekers. *Id.* at 34–40 (stating that prior to 2002, an application for asylum could have been filed by a protection seeker at Danish diplomatic or consular representations in any country that is not the protection seeker’s country of origin, and only if the protection seeker falls under the definition of refugee set out by the 1951 Convention and has a close connection to Denmark, will he or she be granted asylum; if the protection seeker does not meet the definition of refugee and has no close connection to Denmark, the asylum application would be outright rejected by the diplomatic or consular representation).

¹⁷⁹ *Id.* at 3.

¹⁸⁰ *Id.*

¹⁸¹ For example, prior to 2012, Switzerland accepted applications filed at any of its diplomatic or consular representations, which is unlike the model of Protected Entry Procedures practiced by Denmark prior to 2002 because Denmark only accepted applications not filed at diplomatic or consular representations outside of the protection seeker’s home state. *Id.* at 34–40, 62.

¹⁸² Under the former Swiss model, an asylum applicant “may be transferred to Switzerland before her application has been decided upon if she is in a risk situation.” *Id.* at 62. Once in the physical territory of the host country, the principle of non-refoulement applies; however, if at the end of the asylum application process the ultimate decision is that a person does not qualify for asylum, he or she may be sent back to his or her home country, and non-refoulement is not grounds to stay in the host country. Noll, *Seeking Asylum at Embassies*, *supra* note 158, at 556.

¹⁸³ *Id.* at 3.

¹⁸⁴ *Id.* at 55–62; see also *Refugee Law and Policy: Spain*, LIBR. OF CONGRESS, https://www.loc.gov/law/help/refugee-law/spain.php?loclr=bloglaw#_ftnref24 (last visited Oct. 31, 2017).

likely to be granted asylum.¹⁸⁵ Second, persons benefiting from the Protected Entry Procedures are either persons who wish to be reunited with family members in Spain or persons not within the territory of their home country and are attempting to escape persecution.¹⁸⁶ Therefore, regarding the third factor, asylum applications are only accepted in diplomatic or consular representations in an applicant's home country if the applicant is seeking asylum for the purposes of reuniting with his or her family.¹⁸⁷ Otherwise, under the Protected Entry Procedures, an asylum application can be filed in a diplomatic or consular representation if it is filed in a safe third country.¹⁸⁸ Fourth, persons applying for asylum in Spanish embassies are not ordinarily allowed to travel to Spain whilst their applications are being processed; however, under extraordinary circumstances—such as a threat to life and limb—persons are granted authorization to travel to Spain.¹⁸⁹ Finally, if a person is in need of immediate protection, the Spanish consular representation does not offer protection to that individual,¹⁹⁰ but, as previously stated, if the asylum seeker is in immediate peril, she may be granted authorization to travel to Spain to await her application process.¹⁹¹ Moreover, if one's asylum request is denied, he or she is able to appeal the decision, much like what the ordinary Spanish territorial asylum system allows.¹⁹² Historically, the Protected Entry Procedures of Spain have mainly been utilized by diplomatic and consular representations in Cuba, Peru, Iraq, Iran, and Vietnam, and have been successfully practiced since 1984.¹⁹³

Likewise, France currently has a model of Protected Entry Procedures; however, it differs slightly from the Spanish model.¹⁹⁴ First, unlike the Spanish Protected Entry Procedures, the French procedures are seemingly informal, thus awarding French agents much discretion in granting asylum.¹⁹⁵ In fact, French law is devoid of any provisions regulating extraterritorial processing of asylum applications; however, the processing of such applications has been practiced

¹⁸⁵ NOLL & FAGERLUND, *supra* note 22, at 60.

¹⁸⁶ *Id.* at 55–62.

¹⁸⁷ *Id.* at 58 (stating that only when a person files an application to be reunited with family members can the application be processed in the home country; process in the home country is mostly unheard of—thus Spain is considered a country that only processes extraterritorial applications in third countries).

¹⁸⁸ *Id.*; *Refugee Law and Policy: Spain*, *supra* note 184.

¹⁸⁹ NOLL & FAGERLUND, *supra* note 22, at 58.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 55.

¹⁹³ *Id.* at 59.

¹⁹⁴ *Id.* at 42–47; *see also Refugee Law and Policy: France*, LIBR. OF CONGRESS, <https://www.loc.gov/law/help/refugee-law/france.php?loclr=bloglaw> (last visited Oct. 31, 2017).

¹⁹⁵ NOLL & FAGERLUND, *supra* note 22, at 43–45.

nonetheless.¹⁹⁶ Moreover, there is little transparency within the French model of Protected Entry Procedures, thereby causing applicants to be deterred from applying through the French system because they believe it may be hopeless.¹⁹⁷ In light of this, “the UNHCR Branch Office in Paris has requested the French authorities to be more generous in issuing ‘asylum visas’, as it might be a way of preventing [unauthorized] entry and trafficking in human beings.”¹⁹⁸

Also differing from the Spanish model, with regard to the second and third factors, the French model allows for protection seekers to file applications in any diplomatic or consular representation, whether the representation is in the home country or in a third country.¹⁹⁹ Thus, the Protected Entry Procedures are accessible and beneficial to a broad range of persons.²⁰⁰ Moreover, persons applying for an asylum visa do not have to demonstrate that they are in need of immediate protection.²⁰¹ In fact, asylum visas can be sought out for multiple reasons, including educational and professional reasons.²⁰² When considering the fourth and fifth factors, France again differs from Spain. France’s Protected Entry Procedures are broken down into two distinct procedures: the “asylum visa” procedure and the “refugee status request.”²⁰³ The asylum visa can be filed in a diplomatic or consular representation abroad and, if granted, a person may travel to and stay in France, as well as work or study in France.²⁰⁴ However, the applicant does not have the right to refugee status until he or she files a refugee status request once in France.²⁰⁵ Much like the Spanish model, French embassies do not protect applicants who face immediate peril, but the applicant may be transferred to France to safely await the asylum decision.²⁰⁶

Finally, both the Spanish and French Protected Entry Procedure models, although imperfect, accomplish the goal of offering protections to persons who otherwise would not have such protection under traditional territorial refugee and asylum policies. Moreover, Spain and France accomplish this goal whilst remaining consistent with international law. Customary international law and

¹⁹⁶ *Id.* at 42; *Refugee Law and Policy: France*, *supra* note 194 (“It is worth noting that there is no statutory foundation for visas for the purpose of asylum, but rather they are the product of executive instructions to France’s consular stations.”).

¹⁹⁷ NOLL & FAGERLUND, *supra* note 22, at 43–45.

¹⁹⁸ *Id.* at 45.

¹⁹⁹ *Id.* at 43–45; *Refugee Law and Policy: France*, *supra* note 194.

²⁰⁰ NOLL & FAGERLUND, *supra* note 22, at 43–45.

²⁰¹ *Id.* at 45.

²⁰² *Id.*

²⁰³ *Id.* at 43.

²⁰⁴ *Id.* at 45.

²⁰⁵ *Id.* at 43, 45.

²⁰⁶ *Id.* at 43.

treaty provisions have accepted the notion that extraterritorial exercise of jurisdiction by a state is recognized in “cases involving the activities of its diplomatic or consular agents abroad.”²⁰⁷ Thus, the extraterritorial processing of asylum applications under Protected Entry Procedures is compatible with principles of international law. Because Protected Entry Procedures are consistent with international law, beneficial to states looking to curtail illegal immigration, and necessary to protect populations that would otherwise remain vulnerable, the global community ought to establish versions of these procedures in its refugee and asylum laws.

B. The Ideal Model of Protected Entry Procedures Most Suited to Assist Tanzanian PWAs and Similarly Situated Persons

The ideal model of Protected Entry Procedures that should be adopted by the global community would closely resemble a combination of the models practiced in Spain and France. Much like the Spanish model, Protected Entry Procedures must be law-based, formal, and predictable to be considered a valuable tool that can be internationally accepted.²⁰⁸ Uniform procedures allow for transparency in the process, therefore not deterring applicants from utilizing the procedures.²⁰⁹ The persons benefitting from the procedures should be left to the discretion of the state implementing the procedures; however, the minimum standard of persons to benefit from the procedures should be persons who satisfy the refugee definition under the 1951 Convention.²¹⁰ PWAs in Tanzania fit the definition of refugees set out by the 1951 Convention apart from the fact that they are still in their home country. They are essentially refugees in their own country. Thus, having the standard of beneficiaries set to persons who fulfill the refugee definition (sans the territorial factor) is imperative to helping Tanzanian PWAs.

Both the Spanish and the French models recognize that persons who qualify as refugees within the purview of the 1951 Convention definition are eligible to be granted asylum under the Protected Entry Procedures. Much like the French model of Protected Entry Procedures, protection seekers must be able to file their applications in any embassy regardless of whether that embassy is in the

²⁰⁷ Noll, *Seeking Asylum at Embassies*, *supra* note 158, at 566.

²⁰⁸ NOLL & FAGERLUND, *supra* note 22, at 4 (“To be a credible alternative to illegal migration and the territorial seeking of protection, Protected Entry Procedures must be [utilized] widely and function in a predictable and uniform manner.”).

²⁰⁹ The lack of transparency in the French model deters applicants from filing applications in French diplomatic and consular representations. *Id.* at 45.

²¹⁰ *Id.* at 4.

applicant's native country or in a third country.²¹¹ Allowing applicants this option renders protection more accessible to groups of people who are wholly unable to leave their country to file for refugee status or asylum status.²¹² For PWAs, this factor is most important. Because of the inability of most PWAs to flee Tanzania, they are unable to receive international assistance and are trapped by their fear of persecution. However, were they able to seek international protection from within their home country, their plight would undoubtedly be different. Receiving international assistance from within their home country would indeed close the protection gap they have currently fallen victim to.

Lastly, like both the Spanish and French models recognize, the option to authorize applicants to travel to the prospective host country to await their application decisions is invaluable to applicants in immediate danger. Even if the embassy itself does not offer protection to applicants, states must adopt the procedure of allowing applicants to await their application decision in a safe environment.²¹³ This factor is likewise paramount to the plight of PWAs in Tanzania. For those PWAs who face imminent life-threatening danger, being able to leave the country through international assistance is a vital factor.

C. The Most Effective Way to Globally Implement Protected Entry Procedures

Protected Entry Procedures will most effectively assist PWAs and persons similarly situated if they are widely used and function uniformly throughout the international community.²¹⁴ To accomplish such uniformity and wide usage, countries should not simply adopt Protected Entry Procedures on a unilateral basis; instead, it would be most effective for them to adopt the procedures multilaterally.²¹⁵ Multilateral treaties implement mutual expectations, rules, and commitments between the participating parties.²¹⁶ Participating parties do not

²¹¹ *Id.* at 45.

²¹² *Id.*

²¹³ *See id.* at 43.

²¹⁴ *Id.* at 4.

²¹⁵ RAMESH THAKUR, THE UNITED NATIONS IN GLOBAL GOVERNANCE: REBALANCING ORGANIZED MULTILATERALISM FOR CURRENT AND FUTURE CHALLENGES 1 (2003), http://www.un.org/en/ga/president/65/initiatives/GlobalGovernance/Thakur_GA_Thematic_Debate_on_UN_in_GG.pdf ("Multilateralism refers to collective, cooperative action by states—when necessary, in concert with nonstate actors—to deal with common problems and challenges when these are best managed collaboratively at the international level. Areas such as maintaining international peace and security, economic development and international trade, human rights, functional and technical cooperation, and the protection of the environment and sustainability of resources require joint action to reduce costs and bring order and regularity to international relations. Such problems cannot be addressed unilaterally with optimum effectiveness.").

²¹⁶ Chien Peng Chung, *Chinese Approaches to Institutionalizing Regional Multilateralism* 2 (Ctr. for Asian Pac. Stud., Working Paper No. 161, 2005).

necessarily need to share similar values; rather, they must share common policy purposes.²¹⁷ Illegal migration is an issue that many sovereign states have a common interest in, and these states may be inclined to support a policy that decreases the risk of illegal access across their borders.²¹⁸ A multilateral treaty proffering the implementation of Protected Entry Procedures can help curtail illegal immigration; thus, sovereign states may be incentivized to support such a treaty because the treaty conforms with their common policy purpose.²¹⁹

Indeed, in a 2011 Resolution, the United Nations recognized that the most advantageous method to managing global challenges is by promulgating multilateral approaches to such challenges.²²⁰ The United Nations, moreover, stated that it reaffirms the “central role of the United Nations in ongoing efforts to find common solutions to such challenges.”²²¹ Thus, the promulgation of an international treaty by the United Nations between member states may be an avenue of approaching the global implementation of Protected Entry Procedures. In fact, the UNHCR has demonstrated its support of in-country processing of asylum applications when it stated, “[in-country processing may] be feasible where the feared harm emanates from non-State agents and there is no State complicity, but the State is unable to provide the necessary protection in any part of the country.”²²²

Regional and cross-regional multilateral treaties, however, may be another avenue to introducing Protected Entry Procedures globally if it is deemed unfeasible to achieve a multilateral treaty among all U.N. member states.²²³ Certain global challenges may be difficult to tackle on a full multilateral international scale; thus, these challenges may be better handled on a regional

²¹⁷ *Id.*

²¹⁸ See generally *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration*, COM (2001) 672 final (Nov. 15, 2001), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0672> (stating that member states of the EU are concerned with combatting illegal immigration); NOLL & FAGERLUND, *supra* note 22, at 3.

²¹⁹ NOLL & FAGERLUND, *supra* note 22, at 4.

²²⁰ G.A. Res. 65/94, ¶ 1 (Jan. 28, 2011).

²²¹ *Id.*

²²² UN High Comm’r for Refugees, *Communication from the European Commission on a Common Policy on Illegal Immigration COM (2001) 672 Final: UNCHR’s Observations* ¶ 18 (2002), <http://www.unhcr.org/en-us/protection/operations/436623702/communication-european-commission-common-policy-illegal-immigration-com2001.html>.

²²³ Harris Mylonas & Emirhan Yorulmazlar, *Regional Multilateralism: The Next Paradigm in Global Affairs*, CNN: GLOBAL PUBLIC SQUARE (Jan. 14, 2012), <http://globalpublicsquare.blogs.cnn.com/2012/01/14/regional-multilateralism-should-be-the-next-paradigm-in-global-affairs/> (pointing out that regional and cross-regional multilateralism is the answer to many contemporary issues when global multilateralism cannot function).

and cross-regional multilateral scale.²²⁴ Regional multilateral treaties are those that are promulgated between multiple countries within the same geographic region, and cross-regional multilateral treaties are treaties between two or more geographic regions.²²⁵ Protected Entry Procedures can be promulgated through regional multilateral treaties and cross-regional treaties as a means of achieving wide usage and uniform functionality.

In sum, the protection gap between sovereign protections and international protections has left groups like Tanzanian PWAs vulnerable and in need of aid; thus, the development of global Protected Entry Procedures is necessary to assist those groups of individuals. The international community should follow the models of Protected Entry Procedures utilized in Spain and France by promulgating multilateral treaties (regional and cross-regional treaties included) to help vulnerable populations while serving their sovereign interests of curtailing illegal immigration.

CONCLUSION

Because of the widespread, but mistaken, belief in Tanzania that PWAs possess magical body parts,²²⁶ PWAs have been hunted and killed so that their body parts could be used in magical concoctions. This belief in witchcraft and the supernatural, coupled with the violence it spawns, has brought social fear to the lives of PWAs.²²⁷ Engrossed by fear, many PWAs have been displaced from their homes and have been unable to maintain normal lives.²²⁸ Tanzanian governmental efforts aimed at restoring an orderly and safe state for PWAs have been unsuccessful in protecting PWAs.²²⁹ Thus, in an attempt to escape impending persecution, some PWAs have sought safety in other countries;²³⁰ for a majority of PWAs in Tanzania, however, leaving the country is not an option.²³¹ Because many Tanzanians live below the World Bank poverty line²³² and have limited education and career opportunities,²³³ it can be presumed that many PWAs lack resources to leave their homes. Not being able to remove

²²⁴ *Id.*

²²⁵ *See id.*

²²⁶ Associated Press, *supra* note 4.

²²⁷ *See* ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Cohan, *supra* note 4, at 805.

²²⁸ ENGSTRAND-NEACSU & WYNTER, *supra* note 1, at 6; Bucaro, *supra* note 1, at 131; Methusela M. Masanja et al., *supra* note 7, at 15.

²²⁹ Bucaro, *supra* note 1, at 131–32.

²³⁰ Bucaro, *supra* note 1, at 132, 137; Dzubow, *supra* note 11; *see* Do, *supra* note 11.

²³¹ Larson, *supra* note 2, at 3.

²³² BBC, *supra* note 14; International Fund for Agricultural Development (IFAD), *supra* note 14.

²³³ Bucaro, *supra* note 1, at 132.

themselves from Tanzania creates the greatest obstacle for PWAs in obtaining refugee status or filing for asylum because, under the 1951 Convention and its 1967 Optional Protocol relating to the Status of Refugees, a person may not be in his or her home country when filing for either asylum or refugee status.²³⁴

This aspect of obtaining refugee status or filing for asylum makes it nearly impossible for persecuted groups of people who have not been able to leave their native country to seek assistance from the international community. Although the UNHCR's protections were meant to supplement the 1951 Convention, in terms of aiding those persons who have essentially become refugees in their own countries, it still leaves Tanzanian PWAs vulnerable to ritual attacks.²³⁵ Thus, the international community needs to address this egregious situation by helping persecuted groups such as PWAs. Individual countries have the freedom and discretion to control how their asylum and refugee procedures are designed. Therefore, they should provide a way to assist PWAs and similarly situated persons by implementing Protected Entry Procedures using international treaties. The right of persons to "seek and to enjoy in other countries asylum from persecution"²³⁶ guaranteed by Article 14 of the 1948 UDHR should be honored by the international community by allowing all persecuted persons access to international help.

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²³⁴ *Asylum & the Rights of Refugees*, *supra* note 17.

²³⁵ GLOBAL PROTECTION CLUSTER, *supra* note 18, at 10 (listing twelve national responsibilities that should be taken by governments of states with IDPs; however, these steps still would not stop the ritual murders of PWAs because it does not account for the reasoning behind the ritual murders being witchcraft). Witchcraft is a practice and belief that cannot immediately evaporate from the fabric of Tanzanian culture; therefore, to ensure the immediate protection of PWAs, PWAs must be placed in a safer place. *Id.*

²³⁶ G.A. Res. 217 (III) A, *supra* note 20.

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