LEGAL PROTECTION OF REFUGEES WITH PARTICULAR FOCUS ON WOMEN AND CHILDREN. A STUDY OF THE KAKUMA REFUGEE CAMP IN KENYA.

LLM THESIS 2005
UNIVERSITY OF NAIROBI
FACULTY OF LAW

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DECLARATION

I hereby certify that this is my original work and has not been submitted and is currently not being submitted in any other university for a degree award.

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This thesis has been submitted for examination with my approval

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DEDICATION AND ACKNOWLEDGEMENT

This work is dedicated to Isaac, Sandra and Shawn for their patience and understanding during my many hours of study and research.

The incisive advise, supervision and assistance by Mr. Kenneth Mutuma is deeply appreciated. Mr. Mutuma availed himself for advise even while on travel abroad and for this I shall remain forever grateful.
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ABSTRACT
The study investigated the level of protection extended to refugee women and children at the Kakuma settlement camp in Kenya. The main objective was to establish whether there are any mechanisms put in place to protect women and children at the Kakuma refugee camp. It was recognized that women and children refugees face many problems and are more vulnerable while in camps. It was therefore necessary to establish whether the legal provisions and systems currently in place are adequate to offer them efficient and effective protection.

The study was guided by the following research questions:
1. What are some of the major problems affecting refugees particularly women and children at the kakuma refugee camp?
2. What measures are being taken to protect this disadvantaged group of refugees from dangers within the camps?
3. What role is UNHCR and the Kenyan government playing in ensuring protection of the women and children refugees?
4. What should be done to ensure adequate security of refugee women and children at the kakuma camp?
The study was premised on the hypotheses that the existing refugee law does not offer adequate protection to refugees particularly women and children.

The findings revealed that women and children refugees suffer enormously from the point of determination of their refugee status, through their stay in the country of refuge and finally at the stage where durable solutions are sought.

The findings further revealed that the level of protection at the camp is very low. There is no specified legal mechanism put in place to protect women and children. The refugees are even more vulnerable at the camp as cases of abduction and physical attacks are common.

In conclusion, the study made recommendations to the effect that a legal framework should be set up at the Kakuma refugee camp. The framework should specifically be focused on protecting women and children as a special group at risk. It should be empowered legally to handle sensitive issues affecting women ranging from rape, physical abuse and abduction among others and offer them assistance to seek redress.
1.0 CHAPTER ONE: INTRODUCTION

1.1 INTRODUCTION TO STUDY
This study is aimed at discussing the legal protection of women and children refugees in Kenya with particular reference to Kakuma refugee camp in Kenya. I considered the problems faced by the women and children refugees at the camp and asked myself whether the legal provisions and systems currently in place are adequate to offer them efficient and effective protection. The problems faced by women affect children directly as the lifestyles of the two are directly interlinked. When hostilities break out, children are severely affected and for some at a very tender age when they are entirely dependent on their mothers. The study therefore concentrated on the problems of women and only covered those of children in as far as they relate to those of women. I compared the situation prevailing at Kakuma Refugee camp with situations prevailing elsewhere and asked myself whether there are any lessons to learn from experiences of other regions.

The study’s objective is to provide suggestions on tangible solutions to the problems of refugee women and children at Kakuma refugee camp in the north-western part of Kenya which could be replicated in other areas of the country in order to better the lives of these disadvantaged groups.
The problem of refugees can be traced back to World War II which disrupted the existing peace resulting in the displacement of people. Since then, large movements of people have continued to occur as a result of wars and conflicts in various countries of the world. There are currently approximately fifty million refugees in the world out of which Kenya hosts approximately 220,000. Majority of those who have fled their countries as a result of social instability arising out of these wars and conflicts are women and children.

It was not until 1951 that the Geneva convention relating to the status of refugees was established as a universal legal instrument to regulate the management of refugee affairs. During deliberations leading to the creation of this instrument, Africa was barely considered either as a subject or as an object and the main concern of those involved centred on Europe. Even the United Nations Protocol of 1967 which removed the Eurocentric character of these instruments impinged on Africa only by coincidence. This was due to it’s generality rather than any deliberate attention to Africa and it’s problems of refugees.

Refugees are found in every region of the globe although the distribution is uneven. The problem falls disproportionately on some countries, many of whom are ill equipped in terms of resources to shoulder the burden. Further more, there are transitory populations who are at present recognized as refugees crossing boarders with little
or no access to protection or humanitarian assistance. The area of concern is that more than half of the total number of refugees are women and children. Although women constitute such a large number of the refugee population, governments and relevant organizations around the world are not adequately equipped to supply them with the support and protection they so desperately need in order to cope well with their status. Women and children are in most cases victims of circumstances yet they end up suffering enormously both emotionally, physically and psychologically.

Women refugees in particular are not only abused by the calamity from which they seek to escape but they may also be abused by fellow male refugees and sometimes even by service providers in the host countries. Forbes noted in 1991 that rape and sexual assault are the most common abuses that the women face¹. Health care needs and psychological illnesses are not effectively dealt with. The refugee camps are set in locations and ways that result in women and their children lacking adequate access to food, proper shelter and other necessities of life, yet the authorities do not consider it a pertinent issue to be addressed.

1:2.1 The Kenyan situation

Kenya has been a host to refugees from neighboring countries due to its prevailing peace and stability. There are two major refugee camps in the country which are located in the most inhospitable desert areas of the country. The camps are notorious for their extreme weather conditions, lack of vegetation and scorpion infestation among other problems. One of the camps is Dadaab, which comprises of three other sub-camps namely IFO, Dagahaley and Hagadera. The camps are situated in the country's remote north-eastern zone, near the Somali boarder. The camps were set up in 1991 and they accommodate approximately 110,000 refugees majority of whom are from Somalia. The other camp is the Kakuma refugee camp which is established on the north-western part of the country, bordering Sudan. This camp was established in 1992 to receive refugees fleeing insecurity, mainly in the southern Sudan. Kakuma has continued to expand and is now one of the largest refugee camps in the world. Currently it accommodates refugees from different countries with Sudanese comprising approximately 71% of the total population. Other refugees are from countries such as Uganda, Somali, Rwanda, Burundi, Democratic Republic of Congo, Ethiopia, Angola and Eritrea. The total population at the camp is estimated at 86,000 refugees and the number continues to grow steadily. Due to the rapid growth, the camp has now been sub divided into three sections namely Kakuma I, II and III\(^2\).

\(^2\)International Rescue Committee (2003:p6)
This study is limited to the Kakuma refugee camp. This is because the camp accommodates refugees from different countries across Africa and will therefore form a standard representation.

The government of Kenya, in collaboration with the UNHCR constructed the Kakuma refugee camp after the arrival of “lost boys of Sudan”. This was mainly due to the fact that the Kenyan policy on refugees is regulated under its immigration laws which requires refugees to live in camps as it classifies those who live elsewhere as illegal immigrants. Under this law, refugees are not allowed to work. The refugees therefore depend on food rations and other assistance mainly from various agencies such as World Vision, World Food Programme, International Red Cross and the Lutheran food federation.

A large majority of the population in Kakuma are women and children who fled from their countries of origin due to insecurity caused by civil wars. Some of their husbands and fathers remained at home fighting while others were killed or simply went missing. These women face a myriad of problems ranging from rape which is committed both in the camps and outside by the local Turkana men who attack them while they search for firewood to lack of access to good health care. They also lack access to adequate water, proper shelter and quality education for their children. Some of the women were wounded in their home countries and they still continue to nurse the wounds as they have been unable to access proper medication.

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3 UNHCR (1995:66)
4 International Rescue Committee (2003:72)
There is a lot of insecurity in the Kakuma camp which emanates from animosity among the refugees due to traditional clan differences. Some refugees seek to revenge on others as they bring prejudices and conflicts plaguing their home countries to the refugee camps. For instance, Sudanese of Arab origin, or those who are known to be Anti-SPLA are usually attacked and even killed. Similarly, the refugees from Rwanda who are of the Tutsi origin have suffered harassment and stoning at the camp\(^5\). The refugees also encounter a lot of hostility from the locals due to the scramble for limited resources.

The backdrop of all this insecurity goes back to women and children who end up suffering the most because of their vulnerability. As much as effort is being made to address the problems of refugees, programmes put in place are mainly gender neutral. Very little has been done to enhance a law that protects women and children specifically. Everything is handled in a generalized manner which in the end marginalizes women and children even further. While at the camp, women and children have to endure poor living standards that are hazardous to their health and exposure to attacks from men who are armed with all sorts of weapons both within and outside the camps. What is worrying is that the issue of these women and children is not being given adequate attention by those concerned probably because the existing law is itself inadequate to offer sufficient redress.

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\(^5\) International Rescue Committee, (2003:p86)
This study therefore aims at establishing how the problems facing women refugees and their children are being addressed if at all and the measures that have been put in place in order to protect women and children at the Kakuma refugee camp. The study will particularly seek to address the loopholes in the Law relating to refugees and come up with suggestions on possible improvement.

1.3 PROBLEM STATEMENT

When there is no peace in any country, civilians who include women and children are often the first victims of the conflicts. Fleeing one’s home or taking refuge in a displaced persons’ camp does not guarantee protection from physical attacks yet the international instruments governing the refugees’ situations do not at all cover this. Wolper states that rape has been deployed as an official policy of war in a genocidal campaign for political control\(^6\). It is usually rape under control, which is used as a weapon of war and revenge. It is rape as a massacre, rape to kill and to traumatize the victims to the point that they wish they were dead. It is an instrument used by the enemy to make a woman leave her home and never want to return. It is broadly an instrument used to shatter families and communities and to destroy people. This was evident in Somali, where the opponents attacked villages and raped women as a revenge weapon\(^7\). The women had nowhere to seek justice because the justice system in that country is clan-based and mainly Islamic which gives no provision for women rights. Instead the act of rape is blamed on the victim which


\(^7\) UNHCR 2000 p82
makes it difficult for women to own up and therefore choose to suffer in silence.

In Sudan, women are used as war tools in the raids between the Northern and Southern Sudan. The North which is predominantly Arab, raids the South and abducts women who are raped and taken into slavery. In Rwanda rape was also used as a war weapon during the 1994 genocide. The animosity between the Hutus and Tutsi's led to women being raped in the presence of their husbands and children and many of them were killed thereafter.

Although women constitute majority of the world’s refugee and displaced population, relevant organizations still fail to realize that more needs to be done to meet their needs. They fail to acknowledge the fact that because of their gender, refugee women have special needs which should be met in a special way. The UNHCR, which solely deals with affairs of refugees makes no specific mention of women in its procedures handbook. Most of the issues covered manifest a bias towards male refugees or typical gender neutrality, which is evidence of bias inherent in refugee law. UNHCR therefore still has a lot to do when it comes to issues affecting refugee women.8

In the camps where refugees are taken, most of the programmes and services offered are developed, implemented and administered by men. This is mainly the case at the Kakuma refugee camp where men do all

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the jobs including food distribution. They frequently overlook the special nutritional needs of women and their children and in some instances, sexual favors are demanded in exchange for food, relief assistance and documentation\textsuperscript{9}. Even officials from relief agencies have been reported to take advantage of the vulnerability of the women and girls whereby they demand for sexual favors in exchange for refugee status and relief services. This therefore supports the idea that women require special legal framework that will protect them from exploitation and biased treatment.

In addition to the myriad problems suffered by refugee women which range from poor living conditions, insecurity, breakdown of traditional family patterns to lack of health care especially poor access to contraceptives, anti and post natal care, the girls become particularly vulnerable as they are forced to abandon their education in favor of early marriages, yet there are no proper laws put in place to protect them from such situations. A classic case is one of a 16 year old Sudanese girl at Kakuma camp who was forced into early marriage by an uncle. When she declined the proposal and opted to continue with her schooling, her mother was beaten and maimed by the uncle who wanted the girl killed. Fortunately, she managed to escape. All the mother got was to be taken to the 'protection care centre' within the camp but no action was taken against the uncle to deter him from such action in future or even to offer compensation to the victim. This therefore demonstrates that the women and children require special

and proper legal mechanisms that can protect them from violent and inhuman acts even from their own kin with whom they should ordinarily feel safe.

Children do not escape the agony and suffering caused by war. Most of them become displaced as they lose their families during the fight and flight. What hurts most is the hard reality that most children are captured by rebels and are forced to fight as child soldiers. At such a tender age, they are exposed to gruesome incidences of killings, drug abuse and rape. Some are even forced to kill their own family members and relatives. These actions impact badly on their developmental growth and psychological wellbeing. There are those children who are used as porters to carry guns for soldiers and young girls are taken into captivity as sex slaves. All these actions deny the children the opportunity to grow up in a guided and balanced manner and therefore affects their future as adults.

The East African Journal of peace and Humanitarian rights noted that the 1951 Refugee Convention and the 1967 Protocol are not only gender insensitive, but are also prejudiced against women. This is because these Conventions are based on a narrow reading of Human Rights to cover civil and political rights only. That the convention defines persecutions as “to cause to suffer” referring to refugees who run from home countries to avoid being persecuted politically while it ignores the suffering that may arise from deprivation of social, economic and cultural rights both in home countries and in those

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where the refuge is sought is evidence of inadequacy of protection offered under the instruments. Women often find it more difficult than men to meet the criteria for persecution in order to gain refugee status according to the Convention. This is due to the fact that they are in the first instance excluded from participating in the public life in which such grounds of persecutions arise.

Women find it very difficult to qualify for refugee status as it is politically oriented. Therefore, the consequences of persecution, or fear of persecution of women refugees is not given sufficient weight in the course of status determination. Women’s gender related fear may also be very difficult to determine especially if there is gender insensitive interviewing. For instance, women who are victims of military rape attacks may find it difficult to show that they are victims of persecution, rather than random violence, hence may find it difficult to obtain refugee status. Also those who have experienced sexual violence and torture from rebels may find it difficult to narrate the ordeal to a male interviewer due to cultural stigmatization of rape.

A woman who has been victimized because of the activities of her male relative may find it very difficult to prove that she’s under fear of persecution. Similarly, a woman who is forced to flee her country of origin because of accusations of “transgressing social mores” is not reflected in the universal refugee definition. For instance, a woman who is frog matched in the streets for wearing lipstick beneath the veil

\footnote{Gorlick B (2000) Human rights and refugee rights; enhancing protection through international human rights law. P7}
is persecuted, but may find it hard to get credibility. Also lapidating of women accused of adultery and the killing of girls who have lost virginity are just but a few examples which have been documented\textsuperscript{12}. This is evidence that a part from problems arising out of political activities, women face other social-cultural and economic problems which need special attention because of their gender. They require protection which should start from special consideration for refugee status.

Even institutions charged with the responsibility of administration of refugees like UNHCR have in some instances been accused of insensitivity to women issues. Their credibility determination procedures are usually gender-insensitive. This ranges from lack of adequate and qualified interpreters, to insensitive interview skills like instances when women have to encounter male interviewers\textsuperscript{13}.

Article 16 of the international refugee law stipulates that a refugee shall have free access to courts of law. Therefore, a clear legal framework should be put in place to enable the women and children seek redress when faced with such challenges. It is necessary to create provisions to protect women from harm in the sphere of their economic, social and cultural rights. It has become clear that refugee and displaced women and girls are no longer by-products of war but specific objects of war. They become especially vulnerable when

\textsuperscript{13} Barbara Harell Bond et al: (2005) Rights in Exile. P82
seeking asylum across the border as they are frequently attacked and raped by military forces, border guards and traveling bandits

Asylum seekers are most vulnerable upon arrival in a country of asylum because of their undetermined legal status and lack of support network. The process of admission involves numerous actors who range from the border police and military officers to local government officials as well as UNHCR and other NGO workers.

When refugees seek asylum, they are required to go through a vetting procedure by the UNHCR before they qualify as refugees. Policies and regulations concerning refugees differ from one country to the other. Most countries, Kenya included require that refugees live in camps in specific regions for easier monitoring. These camps are usually located in very remote and hardship areas far from urban centers with poor infrastructure. By the time the women refugees reach the camps, they have gone through intensely traumatic experiences such as loss of their children and husbands and torture. The physical facilities in these refugee camps increase the protection problems. The camps are often overcrowded with poor shelter, lack of water, adequate food and medication. The standards of living are usually below human expectation and capacity.

The act of keeping refugees in camps by most countries including Kenya is a complete violation of both human rights and the 1951 convention guidelines on refugee law. Article 24 of the Convention
stipulates that a refugee has a right to freedom of movement and states are required to accord the refugees the right to move freely within their territories. (UNHCR 1979). Therefore refugees are placed in camps illegally and this is what is perceived as violation of human rights by host countries who restrict refugees to camps. A study carried out by Harrell revealed that Kenya, which is a party to the 1951 Convention and 1967 Protocol as well as the 1969 OAU Convention, has not implemented in total the provisions of these international treaties. Certain provisions of the immigration act (amended 1972) cap 172, the Aliens Restrictions Act 1972 cap 173 and the Citizenship Act 1963 (cap 170) adversely affect the freedom of refugees. The laws aim at ensuring public order and control, without distinguishing between the different categories of non-citizens. These legal instruments make no special mention of women refugees.

Although refugees share common human needs and problems arising from their refugee experience, their individual situations and requirements should be taken into account in policy formulation and social programmes. Emphasis should be placed on provision of special services for vulnerable groups such as women, children and even the elderly.

This study was based on Kakuma refugee camp in Kenya and sought to establish mechanisms which have been put in place to protect the rights of women and children living in the camp. The study also

sought to establish the various problems encountered by this group and suggest possible ways of mitigating them.

1.4 GENERAL OBJECTIVE
The main objective of the study was to assess the existing protection mechanisms for women and children at the Kakuma refugee camp in Kenya.

Specific objectives
To be able to achieve the broad objectives, the study focused on the following specific objectives:

1. To establish whether there are any mechanisms put in place to protect women and children at the Kakuma refugee camp.
2. To establish issues hindering the protection of these women and children refugees at the camp.
3. To examine the issues which expose these women and children to vulnerable situations in the camp?
4. To suggest possible ways of addressing problems concerning protection of women and children at the Kakuma refugee camp.

1.5 HYPOTHESES
This study was premised on the hypotheses that the existing refugee law does not offer adequate protection to refugees particularly women and children.
1.6 RESEARCH QUESTIONS
The study sought to answer the following research questions:
1. What are the hurdles that women and children face while seeking refugee status?
2. What are some of the major problems affecting refugees particularly women and children at the Kakuma refugee camp in Kenya?
3. What measures are being taken to protect this disadvantaged group of refugees from dangers within the camps?
4. What role is UNHCR and the Kenyan government playing in ensuring protection of the women and children refugees?
5. What should be done to ensure adequate security of refugee women and children at the Kakuma camp?
6. What should be taken into consideration when seeking durable solutions for women and children refugees?

1.7 JUSTIFICATION
There is insufficient documentation on protection mechanisms extended to women and children at the Kakuma refugee camp hence the need to carry out this study. It is believed that out of this study, new knowledge will be generated which will bring new insight in the area, particularly the plight of women and children refugees. It is hoped that the findings will help policy makers in designing and implementing policies that will be sensitive to the needs of women and children both at the time of determination of refugee status and in the
refugee camps and possibly come up with laws that will protect them from harmful and vulnerable situations.

1:8 STUDY LIMITATIONS
The study is based on the Kakuma refugee camp in Kenya which harbors refugees from different countries across Africa thus making it a suitable site because the population has a good representation for sampling. However, there is need for other studies to be carried out in other camps and regions to establish whether there are special problems faced by women and children in those camps that are not evident at Kakuma camp. This study did not cover the other areas due to financial and time limitations.

1:9 OPERATIONAL DEFINITION OF TERMS
Refugee:
The 1951 convention defines a refugee as any person who 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 of his nationality and is unable or unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it15.

15 UNHCR (1996)
This study will define a refugee as a displaced person who has been force to flee his/her country due to prevailing instability in the home country that pauses a major threat to one's physical, psychological, emotional and social wellbeing.

**Protection:** Putting proper mechanisms in place to ensure that there is adequate security that can safeguard people from both physical and emotional harm.

**Post traumatic Stress disorder.** This is a condition where people who have gone through a traumatic experience find themselves re-living the traumatic events over and over again in their minds.

**Escape trauma** is a condition where people go through a lot of pain just by virtue of their having to flee their homes to escape from life threatening conditions such as death.
CHAPTER TWO: LITERATURE REVIEW.

2.1 HISTORICAL OVERVIEW

The upsurge of refugees dates back to the period after the world war II when the peace enjoyed by people worldwide was disrupted forcing many people to flee from their previously peaceful homes and countries to seek refuge in other countries presumed to have friendlier environment. The refugee problem became the concern of the international community which, for humanitarian reasons began to assume responsibility and looked for ways of putting mechanisms in place aimed at protecting and assisting refugees. This led to the formation of the 1951 Convention which was aimed at coming up with clear guidelines defining the legal status of refugees so that they could easily be distinguished worldwide. Soon after formulation of the Convention, there was the emergence of new refugee situations, making it necessary to have the provisions of the 1951 Convention adjusted in order to be applicable to such new situations. As a result, a Protocol relating to the status of refugees was Formulated and after deliberation by the general assembly, it was open for accession and entered into force on 4th October 1967.

2.2 PROBLEMS WOMEN FACE DURING WAR

Women are usually victims of persecution and human rights violations during civil strife. Three quarters of the total refugees globally comprise of women and children. They are usually vulnerable with

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16 UNHCR 1996 p. 5
17 UNHCR 1996, Convention and protocol relating to the status of refugees. P6
their physical security at risk both during flight from their homes and even after they have found refuge in host countries. The violent situations that cause them to flee their home countries are usually the beginning of their trauma.

The women face a myriad of problems which they are compelled to endure in their new living conditions right from the onset of their refugee status which range from rape, displacements, killings and separation from siblings\(^\text{18}\). By the time they reach the refuge countries, they are already emotionally harassed and traumatized. Women are usually victimized and brutalized during war. It is therefore evident that they experience the direct impact of the wars and should be given special attention when it comes to seeking refuge. When dealing with issues affecting women refugees, prevention of gender violence and physical protection should be given special consideration.

During war, women also have to endure the pain of losing their families either through death or separation. The traditional family patterns are disrupted leaving refugee women with neither intact nuclear families nor extended ones.

The women remain responsible for most domestic activities which are both time consuming and potentially dangerous and they are often left with the burden of taking care of the children and household activities

on their own. They have to endure problems which range from illnesses, hunger, poor shelter and witnessing of violent events in their home countries. Some women are also victimized because of the activities of their male relatives.

By the time the women reach the countries of refuge, they are usually very much traumatized and suffer a psychological condition called the Post Traumatic Stress disorder. This is a condition where the inflicted find themselves re-living the traumatic events over and over again in their minds. Another common condition is ‘escape trauma’ where refugees go through a lot of pain just by virtue of their having to flee their home countries to escape persecution. They undergo distress because of not knowing if they will ever be able to return\(^{19}\). The women come to the countries of refuge when they are both physically and emotionally ill and are usually in desperate need of medical attention which in most cases is lacking.

**2:2:1 Children as victims of war**

Children are mainly victims of conflicts as they do not play any role in the emergence of such situations. They are usually the most affected, because of their vulnerability but in some instances their needs are usually underrated. Children and girls suffer a lot when it comes to wars because they end up losing their families and stability of their homes at such tender age. Most of them lose their parents and

siblings who may be killed in wars or they get separated during flight where they end up in different camps or countries of asylum.

The children end up in very vulnerable situations as they lack parental guidance and protection. Some children find themselves in very challenging situations when they are forcibly recruited into armed forces of resistance groups. They are recruited as actual soldiers and in other situations they are required to carry guns and other crude weapons used in war. This was the case in Sierra Leone where children were recruited and were exposed to drugs and other risky behaviour. They would even kill their own family members because of the effects of drugs. The same was the situation in Cambodia and Rwanda. One of the most publicized UN reports in the 90s, on the impact of armed conflict on children detailed the ways in which children were recruited and used by armed groups and the challenges they faced by their reintegration into society after hostilities. Child soldiers were very common in Sudan and Somalia and the proximity of the refugee camps to the borders constituted a risk factor in the forced recruitment of minors who had first arrived in Kakuma camp. A classic example was the Sudanese minors. Out of the 12,000 minors who first arrived at Kakuma in 1998, only 3800 were remaining in 2001. The others were reported to have been taken to the war front in Sudan where most of them died. Children who had escaped from the war in Sudan turned out to be unsafe refugees. For instance, in 1996, an SPLA mobilization team was dispatched to Kakuma and over 500

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refugees were enlisted, including minors, some of whom had been in the SPLA ‘Red Army’ who had been trained in Ethiopia and had escaped. The team threatened, harassed and abducted minors in Kakuma and even in Nairobi\textsuperscript{21}.

Children get displaced when they are at a very crucial developmental stage of their lives. The effects of wars and refugee status impact negatively on their growth and future lives yet agencies dealing with refugees have not shown special sensitivity to their needs. It is difficult to grant an unaccompanied child asylum status in some countries. What the UNHCR has attempted to do is to put the children under a special category where the primary emphasis is to reunite them with their families should they be traced.

Very little is said about their protection as a special group once they get into the camps. Many girls are subjected to rape or early marriages because of their vulnerability. This is basically because there are no strong mechanisms to protect the girl child.

The Convention on the rights of a child states that children and adolescents are entitled to special care and assistance and that their developmental needs and dependency as well as their lower legal and social status make their special attention necessary\textsuperscript{22}.

\textsuperscript{22} UNHCR (2003)
It is difficult for a child who is unaccompanied to obtain refugee status using the same criteria and procedures applied to adults. Yet some countries insist that every individual regardless of age meets the refugee status conditions as stipulated in the 1951 Convention. Children have not been sufficiently protected as their rights are ignored. A good example is Sudan where children's rights have been terribly violated. There have been reported cases of child slavery, child abuse and early marriages. A case which demonstrates this point is one of a 10 year old Dinka boy, who gave testimony of how Arabs attacked their village, killed his parents and took him away to a place where he took care of goats and was given a new name. He was mistreated and isolated until he was rescued and placed at a rescue centre as he could not trace his family. The same was the case for a 17 year old girl who was abducted and sold to other Arabs when she was small. She reported how she was mistreated and forcefully circumcised. She would herd cattle, fetch water and walk bare foot in harsh weather and even made to sleep on the floor. She was raped on several occasions and finally got pregnant. These are just but a few of the testimonies of children who suffer in war torn countries.

2:3 Refugee rights on entry and determination of status.

When refugees flee from their countries of origin due to prevailing hostility, their primary aim is usually to seek protection in safer zones in another country. Unfortunately in many instances they encounter unpleasant situations and more harsh experiences in the host

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countries. It is at this stage that they come into contact with the UNHCR which is the main international body that deals with refugee issues.

More often than not, the refugee’s rights are violated when it comes to seeking refugee status. They are compelled to cross boarders to other countries where they encounter many problems right from the time they leave their home countries upto the time when they become accepted as refugees. They are even harassed by boarder guards and soldiers when trying to seek asylum in another country. Women as a group face a lot of challenges when seeking asylum because they are not specifically recognized as a social group in status determination. Lack of credibility is common due to difficulties in obtaining evidence to support their claims. A classic example is Kenya where studies carried out by Berrel-Bond revealed that lack of credibility among women is common due to difficulties in obtaining evidence to justify that they are under fear of persecution. In the early 1990’s lack of credibility among women was easily abused by UNHCR officials because the interviewing style was usually inquisitorial and insensitive. One refugee from Rwanda called Buyeya reported how the interviewer had a cynical, arrogant and intimidating tone and that even some refugees were body-searched during the interview to see if they were hiding documents to conceal their true identity. The interview had more to do with the credibility of a person than facts, in the application for asylum. The UNHCR officials have even been accused of violations which include demanding sexual favours from

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women refugees and girls or rape, in exchange for services. The women refugee’s rights have been violated all the way and this goes back to the international instruments that were formed to specifically look into the welfare of refugees. IN Uganda in 1996, a serious incident occurred at InterAid where a woman refugee came out of the offices crying and said that the InterAid social worker had attacked her with a knife. Although the refugees at the scene tried to protest demanding that she be taken to hospital, InterAid refused and called in the police who beat up the refugees senseless and arrested them. 

2.4 Legal instruments relating to Refugees

2.4:1. 1951 convention and the 1967 protocol

The 1951 convention defines a refugee as any person who as a result of events occurring before 1st 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 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 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. The protocol adopted the same definition but only removed the time limitation.

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It is quite evident that right from the definition formulated by the main governing body and despite the unique problems women and children face during war situation, there is no special mention of women and children. It is therefore clear that the international instruments governing the welfare of refugees are gender biased in their definition of who is to qualify as a refugee, as the issue of women and their gender remains silent.

The Convention and the Protocol based their definition on narrow grounds by only looking at the civil and political rights of refugees. It was not taken into consideration the fact that women and children suffer most in the event of war and therefore deserved special mention. More often than not, they are sexually abused and even forcibly married by the warlords, yet when they use such grounds to seek asylum it becomes very difficult because going by the definition of a refugee in the 1951 Convention and the 1967 Protocol, they cannot qualify as refugees on these grounds. It can therefore be said that the agony that women and children go through originates right from the main governing body which whether deliberately or otherwise ignored their plight.

2:4:2. 1969 OAU Convention
These instruments are believed to have defined a refugee on a broader context than that of the 1951 Convention. They defined a refugee as a person who owing to external aggression, occupation, foreign domination or events seriously disturbing the public order, are
compelled to seek refuge or who left their country because their lives, safety or freedom were threatened by generalized violence, internal conflicts or a massive violation of human rights. The OAU seemed to have excluded the term “well founded fear” by leaving open the definition to include persons fleeing from civil disturbances, violence and war irrespective of whether or not they had a well founded fear. All the same, this definition though an improvement over that in the 1951 Convention ignored or also failed to make special mention of women and children as a special group at risk. The definition is still gender neutral as it says nothing about the protection of women and children. Oloka-Onyango states that from the African perspective, the word refugee is “African hospitality” which is in great contrast with racist and restrictive policies presently applied in western states.

Oloka Onyango goes further to say that the OAU was formed to address issues such as burden sharing, non-rejection at the border, non-refoulement, voluntary repatriation and temporary asylum. However it manifests many problems because it fails to mention rights of refugees and is also silent on women and children. The Convention has instead created several barriers in relation to rights of movement, expression and association. The OAU was more concerned about the maintenance of harmonious relationships between African states and was therefore not sensitive in safeguarding refugee rights particularly women and children. Oloka concludes that the African states have let their citizens down as it was hoped that Africa being the most affected

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27 UNHCR (1996) Voluntary repatriation: International protection
continent with civil wars, would take refugee issues seriously and put proper mechanisms in place to protect these groups of people. Instead, the African states treat refugees insensitively and have continued to infringe on their rights.

2.4.3 The Refugees Bill 2003

The refugees bill adopts the definition of a refugee from both the 1951 Convention and the 1969 OAU Convention. Similarly, therefore, it makes no mention of women and children as a special group at risk. However, section 21 of the Bill attempts to offer protection to women and children by mandating the Commissioner for refugee affairs to ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas. It will be noted however that the Bill does not enumerate the kind of measures envisaged which makes it difficult to determine whether such measures are sufficient to protect women in all spheres of their lives. The section creates the impression that only physical security is to be taken into consideration which leaves the emotional aspects exposed. The section further creates a limit on the protection to be given to women refugees by referring to designated areas only. What happens to refugee women who through no fault of their own find themselves outside the so called designated areas? Though a good attempt at making provision for protection of women and children, the Bill fails to recognize that gender related problems go beyond issues of physical safety.
2.4.4 The Kenya citizenship Act Chapter 170 Laws of Kenya

This is an Act of Parliament to make provision for the acquisition of citizenship of Kenya by registration in certain cases, to regulate the manner and circumstances in which Aliens may be naturalized as citizens of Kenya among others.

Section 3 of the Act which deals with the circumstances under which one may be registered as a citizen of Kenya does not make any mention of refugees. Refugee women and children at Kakuma therefore have a limited chance of becoming citizens of Kenya. According to the Act, Aliens may only be considered for registration if they are of African descent and have been resident in Kenya for a period of five years and if have remained of good conduct throughout the period.

2.4.5 The Immigration Act chapter 172 Laws of Kenya

This is an Act of Parliament to amend and consolidate the law relating to immigration into Kenya and for matters incidental thereto and connected herewith.

The Act concerns itself with orderly entry into and departure from Kenya. It makes no mention of refugees neither do any of the provisions of the Act allude to the special circumstances of refugees. If anything, section 3 of the Act describes a Prohibited Immigrant as “person who is not a citizen of Kenya and who is incapable of supporting himself and his dependants (if any) in Kenya”. It is evident from this provision that refugees could easily be considered as
prohibited immigrants and therefore end up being charged in Kenyan courts for being in Kenya illegally.

Refugee women and children therefore get no protection under this legislation and are in fact exposed to possible arrest and conviction.

2.4.6 The Aliens Restriction Act Chapter 173 Laws of Kenya
This is an Act of Parliament to enable restrictions to be imposed on aliens and to make such provisions as are necessary or expedient to carry out such restrictions into effect. This Act defines an alien as "any person who is not a resident of Kenya."

Section 3 of the Act empowers the Minister to impose restrictions on aliens including requiring them to reside and remain within certain places or districts. The act does not make any mention of refugees or their special circumstances. This therefore means that refugees may be restricted to live in certain areas only as is the case at Kakuma refugee camp. This is clearly against the 1951 convention which requires that refugees be allowed freedom of movement.

The UNHCR was formed around the same time with the 1951 Convention. It is solely aimed at providing international protection to refugees all over the world and is based on humanitarian principles as
it strives to seek permanent solutions for the problems of refugees. UNHCR has adopted the same definition of a refugee as stipulated in the 1951 Convention and the 1967 Protocol on refugees\textsuperscript{29}. This clearly demonstrates that there is a bias against women even by the body charged with the responsibility of their protection. Much as the UNHCR tries to assist in the administration and settlement of refugees, a lot more needs to be done particularly for women and children. The major obstacle to UNHCR is that most host countries do not give it sufficient legal authority in disseminating policy issues which are pertinent to the protection of refugees.

The back stops at the UNHCR which is the main agency charged with the responsibility of dealing with refugees. Loescher reported that way back in 1980s, UNHCR did not give priority to protection of refugees in Africa. There was what was referred to as “full-belly” theory which believed that rights and legal protection were pointless for “starving" refugees\textsuperscript{30}. As a result, UNHCR ignored to monitor the compliance of host countries with refugee law and it also failed to facilitate prosecution of cases involving mistreatment of refugees in local courts, as it did in Europe.

This combination of disregard for protection and a flawed assistance policy characterized UNHCR’s work in Kenya and Uganda and resulted in a vicious circle of economic and legal marginalization of refugees

\textsuperscript{29} UNHCR (1992): An introduction to international protection of refugees (RLDI) Training module
from their hosts\textsuperscript{31}. This clearly shows that UNHCR has not done enough in the area of protection problems facing refugees. Even in their address to the 54\textsuperscript{th} session of the Commission on Human Rights, UNHCR acknowledged that there are gaps and weaknesses on the international, regional and national human rights standards and structures relating to refugees which must be identified. These 'gaps' and 'weaknesses' were the international protection regime for refugees which had loopholes\textsuperscript{32}.

2:5 VIOLATION OF REFUGEE RIGHTS IN COUNTRIES OF REFUGE

2:5.1: Refugees in settlement camps

In the Kenyan situation, refugees are required to live in camps where the UNHCR provides assistance. While in the camps, families are required to share communal living where they live among strangers to an extent of even living with persons considered as traditional enemies. The social and clan support systems for protection of widows, single women and children are often no longer present. Even night patrols which would enhance physical protection of refugees are not carried out\textsuperscript{33}.

Uganda, which is also a member of all the Conventions, restricts the movement of refugees who are marginalized and kept in camps. Unlike Kenya however, the 1995 constitution of Uganda includes bill of rights which enshrines not only civil and political rights, but also

\begin{quotation}
\textsuperscript{32} Gorlick B (2000) Human Rights and refugee rights; enhancing protection through international human rights law. P.4
\textsuperscript{33} UNHCR (1979) Collection of International Instruments concerning refugees
\end{quotation}
economic, social and cultural rights of “all persons” thereby including refugees.

Uganda has an Act called the Control of Alien Refugees which was enacted in 1960 and which remains the basis of current refugee Administrative policy. It is exclusively concerned with the control of refugees but not establishing standards for their treatment (Harrell 2005). Refugees in this country are perceived as passive victims and more of a burden than people capable of contributing to the host society. Most countries view refugees as a burden and a security threat who need to be kept away from the rest of society.

This is a violation of the 1951 Convention’s article 26 which states that each refugee will have the right to choose their places of residence and will have the freedom to move freely within the territory of the country of refuge (UNHCR, 1979). What comes out clearly is the fact that, as much as UNHCR has the full responsibility of handling refugees, it does not have powers to decide how and where they should be settled. The host countries tend to feel that they are doing the refugees a favour by accommodating them. The UNHCR is therefore left with no alternative but to go along with the domestic laid down regulations.

Gorlick noted that some states such as Europe have introduced stringent measures aimed at discouraging asylum seekers from entering their territories. Such measures include visa restrictions,
imposition of carrier sanctions and the use of administrative detention of asylum seekers\textsuperscript{34}.

There is lack of domestic refugee laws in many countries and where a country fails to adhere to the international law in protection of refugees, they are left in a vulnerable position. They become more vulnerable to attacks both from within and across the borders. For instance in Kenya, until 1991, the government was solely in charge of refugee status – determination and UNHCR was only an observer and advisor. Therefore, the UNHCR’s ability to discharge its protection function and supervision of compliance with refugee law was greatly hindered (Berrell – Bond 2005). Due to lack of diplomatic protection from countries of origin, refugees are vulnerable and become victims of failures in the rule of law. In such circumstances, the treatment they receive in the host countries is repressive and characterized by roundups by police, detention, torture, sexual violence and even assassinations. There is definitely a gap in the international protection regime as every country sees refugees as a burden and a security threat.

There is thus urgent need to address the issue of legal protection of women refugees and children. Women require a legal status that accords them adequate social and economic rights and access to such basic needs such as food, shelter, clothing and healthcare.

\textsuperscript{34}Gorlick B (2000) Human rights and refugee rights; enhancing protection through international human rights law. P.2
2:5:2 Right to gainful employment

Article 17 of the Convention stipulates that the contracting states shall accord refugees lawfully staying in their territory rights to engage in wage earning employment. This right has been ignored by most states particularly those that keep the refugees in camps like Kenya. Their ability to depend on themselves has been reduced and they are forced to rely entirely on relief food.

2:5:3 Security rights

The 1951 Convention, Article number 16 says that refugees should have access to courts of law on territories of all contracting states but this provision has been violated by most states. It is upon the UNHCR through the governing international bodies to enforce this law by first putting mechanisms in place that will ensure legal protection for women and children, aimed at mitigating their vulnerability. The level of security in the camps where refugees are taken is often very low. This means that the host countries do not prioritize the security of the refugees. UNHCR has however made attempts to make special provisions aimed at reducing the vulnerability of women. In its handbook, it has categorized women and children as special cases and it refers to women as ‘women at risk’. It suggests that women who fear persecution or severe discrimination on the basis of their gender or transgression of social mores be considered under a particular social group for the purpose of refugee status (UNHCR handbook).
These are women who face protection problems because they are single heads of families or those who are accompanied by adult males who are unable to support and assemble the family together or play the role of head of the family. UNHCR has attempted to develop protection guidelines for women and children but this is mainly based on social and economic issues, and the fact that the camps are so poorly maintained, the physical protection offered is not adequate. Very little or nothing is said about legal protection and there are no proper mechanisms put in place to enable women to access legal redress easily within the camps. This study seeks to establish the level of legal protection put in place by UNHCR in the process of redefining its programmes in addressing issues affecting women and children. It also seeks to establish whether children’s rights are adhered to in the procedure manuals developed by UNHCR.

Some countries have tried to emulate the re-defined programmes developed by UNHCR in their effort to address the problems of women and children as special cases that require special attention. Such countries include Australia, Canada, Netherlands, Denmark and Finland among others. They assist UNHCR by accepting women refugees as persons of special concern. They have women-at-risk programmes which were created in recognition of the need for protection of women under fear of persecution. Gender guidelines have been written to assist decision-makers to understand how women may be persecuted differently from men and the difficulties women may face in describing their experiences. These difficulties
may include cultural and gender-sensitive interviewing techniques. The programme provides interviewers and interpreters of same sex and recognizes the role of gender in credibility determination issues\textsuperscript{35}. Within the same programme are children who are mainly unaccompanied minors. They get supervision and counselling and the assistance is availed up to 18 years of age. Some may be adopted or put in childcare homes.

This is a good sign by UNHCR, which is working well mainly in the western countries. A lot more needs to be done so that such programmes can be adopted by African states and Kenya in particular in order to alleviate the problems of women and children refugees.

The issue of protecting women and children pauses a problem which must be addressed with urgency because refugees worldwide continue to grow in numbers and are swiftly losing ground in terms of legal protection. Women are not the byproducts of war but are specific objects of war and they require special attention (Wolper 1991). This starts right from their protection in the camps where their living standards should be made conducive to their special circumstances. They should also be involved in decision making concerning their security so that all issues affecting them can be addressed.

The international bodies concerned with refugees have established three main solutions which are perceived to be durable solutions to problems of refugees. These are voluntary repatriation, resettlement and local integration. Much as these measures are encouraging, their actual application does not always make them the best solutions for the refugees. For instance, the solution of resettlement may appear to be good but practically, it may have devastating effects on the social, psychological, economic and political wellbeing of the refugees. If a refugee is resettled in a country whose citizens have racial segregation attitudes, this may worsen the psychological condition of the refugee. Even local integration will have the same devastating effects because if the locals refuse to accept the refugees and continue to isolate them as aliens, then their general wellbeing may be affected. In cases where refugees are repatriated, they may go back to worse conditions where they may be required to rebuild their lives with no financial and other support. Memories of the war may be revived, interfering with their healing process. In cases where some lived happily with their families and upon return, probably some of the family members are missing due to death or separation, this can cause anguish and suffering to families. Some refugees particularly women may find it very difficult to reclaim family property in cases where husbands are dead. This serves to demonstrate that the durable solutions may not always be in the best interest of refugees.
2.7 THEORETICAL FRAME WORK

It is evident that for any system to work effectively, the main players must put proper mechanisms in place. It is important to develop a working network which will ensure the successful delivery of services. Talcott Parsons came up with the systems theory which emphasized that a system consists of individual actors, interacting with each other in a situation that has at least physical or environmental aspects, actors whose relation to their situation including each other is defined and mediated in terms of a system of culturally structured and shared symbols. This relates very well to the situation of refugees, who are under the mandate of the UNHCR, the International Convention on Refugees, the host country and NGOs which give humanitarian services. It is important for these agencies to co-ordinate among themselves and ensure that they address problems affecting refugees as a block. It would be very difficult for instance, for the UNHCR to bring up refugee related matters in law courts and implement legal protection for women if there is no support from the government.

Talcott goes on to say that various social structures performed a variety of positive functions for each other. In the case of refugees the Kenyan government performs a positive function by accepting refugees to seek refuge in her land. The UNHCR assumes a very noble responsibility of giving humanitarian assistance to the refugees, as do other agencies. What is needed is for these agencies to carry out their

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functions as a team to ensure that all issues affecting refugees particularly women and children are adequately addressed.

It is very pertinent for adequate systems to be put in place which will work in coordination to ensure the security of refugees as they settle in the camps. This means that the hosting country and the relevant agencies need to work in collaboration so that legal mechanisms are well enhanced in order to protect these refugees.

Talcott went on to put emphasis on the structural components of the systems. He viewed systems as collective functionalists, which should be structured so that they operate combatively with other systems. This is not the case with the Kenyan refugees because most of the work is left to the UNHCR and Non Governmental Organizations as the government does not prioritize the refugee issues as a social problem. Unless the government works in collaboration with these agencies the law enforcement efforts will obviously be frustrated.

Parsons adds that to survive, the system must have the requisite support from other systems. The system must be a significant proportion of the needs of actors and must have at least a minimum of control over potentially disruptive behavior. If conflict becomes sufficiently disruptive, it must be controlled. This is where legal mechanisms are very crucial so as to control any disruptive behaviour emanating from deviants.
CHAPTER THREE: METHODS

3:1. The setting
This is a study of the Kakuma Refugee Camp – Kenya.

3:2. Data Collection Instruments
Mutai states that documents provide a source of data which is permanent and available in a form that can be checked by others. That review of documents shows that the researcher is aware of the available functions of resources. Such resources provide signposts for the reader about where the researcher is coming from. The study therefore made use of the secondary data from the relevant resource centers, which included the UNHCR.

3:3. Data Analysis
The analysis was mainly qualitative as findings were gathered from various journals, documents and reports. They were then presented and discussed accordingly and necessary recommendations were made.

37 Mutai Benjamin 2000- How to write quality research proposal. Thelley inc. New York
4:0 CHAPTER FOUR

4:1 PRESENTATION OF THE FINDINGS

The section presents and discusses data collected mainly from UNHCR publications, books, surveys and other reading manuals. The section is divided into various sub-titles touching on matters relating to protection of refugees with particular focus on women and children. It also reports efforts being made by humanitarian agencies in trying to address the issue of protection of this vulnerable group.

4:1:1 The security situation at the Kakuma camp

Kakuma is known to host among the largest number of refugees in Africa and therefore the issue of security is of great concern, particularly that of women and children. Within the camps, there are Local Committees headed by local elders chosen by refugees themselves. The committees take charge of matters of security at the grassroots level. Women are hardly represented in these committees. The committee members pointed out that women by tradition are not supposed to belong to such committees yet insecurity towards women, particularly rape and abduction for early marriages is quite rampant. The situation is made worse by the fact that the camp lacks lighting and other security facilities.

A survey carried out by Barrell-bond revealed that there are police posts outside each camp but some are hardly operational. At night,

there is usually a night patrol made up of Kenyan guards and refugees in an effort to enhance security\textsuperscript{39}. However, security reports compiled by LWF for the 1995-6 period depict a harsh situation with suicides, widespread theft, armed robberies, riots, murders and discovery of unidentified corpses as the order of the day\textsuperscript{40}.

Lack of security has affected the lives and livelihoods of the entire camp population. One of the main causes of insecurity has been clashes between members of different ethnic groups within the camps. These were mainly southern Sudanese who were reacting to war in Sudan. A classic example was a case reported by an intern working for Windle Trust and was teaching English to ‘minors’ in the camp. He was reported as having described the situation as follows: “we have a major problem here. People are trying to kill each other, big time- Dinka vs. Didinga mainly. Ironically, we had a peace committee this morning to no a vail..boys with spears and shields began attacking people. At the moment, patients are to be transported to Loki because there are so many serious cases. The fight seems to be extending to Ethiopian community and the others…”(Barbara Harrel Bond 2005)

He added that the Somali Bantus in Kakuma 2 were rebelling against the state of the camps which were dismal, no shelter, and it was pouring with rain. All these indicate that security at the kakuma refugee camp is wanting.

\textsuperscript{39} Barbara Harrell Bond et al: (2005) Rights in Exile. P. 152-3 \\
\textsuperscript{40} The weekly security report, 1996. Kakuma Camp.
In 1999, the UNHCR reported that the inter ethnic conflict between the Dinka and Didinga tribal groups resulted in six deaths and 77 refugees were seriously injured. 456 shelters were burnt down while 6,500 were displaced within Kakuma camps (UNHCR 1996f: sec 3(2)(2)). During the incident, thousands of women and children living in the camp took temporary refuge in or near UNHCR compound to avoid attack.

Ethnic animosity is a big problem at the camp as refugees carry enmity from their home countries to the camps. Tension always soared between Ethiopian and Eritrean refugees. There is also a lot of animosity between Rwandan Tutsis and Hutus. Tutsi refugees were recurrently accused of being spies and subjected to racist abuse. One Tutsi’s house was burnt just because of his origin. A Tutsi of Rwandan origin married a Hutu and his house was also set on fire. He reported to UNHCR and requested for travel documents to leave the camp but UNHCR only told him to be patient while the case was being investigated. As he waited, he was eventually beaten up by a group of Rwandese refugees. Despite this he was still denied travel documents and was advised by the district officer to use a different reason other than insecurity. He changed his reasons and finally managed to get travel documents but was advised not to go to UNHCR branch office in Nairobi as they would not be able to change his situation and he would have to return to Kakuma.
4.1.2 The protection centre.

Kakuma has a ‘protection area’ for individuals whom UNHCR recognizes as facing persecution and harassment in the camp, and can not be protected through refugee committee system. The centre is only surrounded by a fragile fence, leaving people vulnerable to attacks at night. Those inside the protection area become easily identifiable targets. Being admitted to this area takes a lengthy and uncertain process because of the multi layered system that is put in place to identify those in danger. Cases can take up to three months to be determined while the victims continue to be exposed. They first have to be assessed by LWFs social services department and then referred to UNHCR field office before being passed on to the protection officer(only if there is one). A classic example is a case reported by an intern working for LWF. A Sudanese woman was a victim of serious assault by a man who claimed to be the brother of her missing husband and wanted to marry her under the custom of ‘wife inheritance.’ One night she fled from her home when he came with a knife and attempted to kill her. She camped outside the compound gates seeking safety that is guaranteed by UNHCR. The intern urgently wrote to UNHCR and submitted the same afternoon, hoping that a ruling would be made the same day as a matter of urgency. He said “No action was taken that afternoon, or the next day, or that week despite my attempts to convince officials that it was an urgent case. After two months, my internship was done and I left the camp not knowing if the case was ever resolved”41.

41 Barbara Harrell Bond 2005 p. 155
Refugees living in the protection area are seen by others as ‘privileged’ because chances of being resettled in another country are high. UNHCR is reported to be adamant to security complaints by refugees claiming that many are concocted by refugees seeking a fast route to resettlement.

Another example which illustrates protection problems facing refugee women and girls is that of Somali sisters, Ifrah 14 years and Oba 12 years. They ended up at Kakuma camp after a long saga of years of separation, failed foster families, attempted abduction of Ifrah by Kenyan Somalis from Dadaab and her escape to East Leigh. When they arrived at Kakuma, UNHCR kept the girls in a reception centre with no adequate shelter or protection. Another Liberian refugee staying in the same centre while protecting his family tried to help them by making an effort of getting them ration cards but after that they were stolen! A few days after, Ifrah heard someone call her name, only to realize it was one of the men who had tried to abduct her. Oba advised her to leave Kakuma. Ifrah was then found sleeping on the street outside UNHCR office in Nairobi, after two dangerous days of travel from Kakuma.

All these reported cases provide evidence that security issues are not well addressed by the UNHCR. Refugees particularly women and girls are vulnerable. Lack of protection can be blamed on both the UNHCR which has exhibited a measure of laxity in responding to matters affecting refugees and the Kenyan government for failing to implement
laws that would enhance protection of refugees. This therefore answers some of the research questions which evidently shows that refugees face numerous problems within the camps and that very little effort has been made to improve security at the camps.

4:2 UNHCR as the main custodian of refugees.
UNHCR is the main body entrusted with the protection of refugees and also in finding durable solutions to their problems. According to UNHCR policy, it is believed that durable solutions can be achieved through voluntary repatriation brought about by peace, integration and resettlement.

4:2:1 Voluntary repatriation as a durable solution.
UNHCR believes that when conditions return to normal in the country of origin, going back home is considered to be the most beneficial solution for refugees when conditions in the camps become unbearable, it is hoped that by going back to their homes of origin, refugees would be able to resume their lives in a familiar setting under the protection and care of their home country. The decision to return home is usually voluntary and refugees are provided with objective up to date information on the situation in their country of origin to enable them to make an informed decision about repatriation. UNHCR provides individual assistance such as financial resources to those who require.\(^\text{42}\)

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\(^{42}\) UNHCR 1996, Convention and protocol relating to the status of refugees. P.26
4:2:2 Resettlement as a durable solution and protection for refugees.

UNHCR sees resettlement as a vital instrument of protection and durable solution. It is geared towards the special needs of refugees whose lives, liberty, safety, health or other fundamental human rights are at risk in their country of asylum. When refugees are under protection threat, the UNHCR relocates them to another country which is believed to be safer. For instance, women such as Somalis or Sudanese who are at risk of cultural practices like FGM, or those in mixed marriages such as Hutus and Tutsis are usually considered as having protection problems. They are mainly relocated to western countries such as Canada and USA, which have resettlement programmes. This is usually seen as the best protection mechanism for refugees. UNHCR believes it is the best alternative where there is no other option available to guarantee the legal and physical security of the refugees.43

4:2:3 Local integration

Local integration of refugees in the country of asylum is a solution to refugee problems especially when the possibility of repatriation is not foreseeable. This kind of programme is not available in Kenya as refugees are restricted to camps where they are believed to remain temporarily while awaiting resettlement. Local integration is basically granting asylum and assistance to refugees. This intervention would be the best solution to protection problems faced by the refugees as

43 UNHCR (1990): Policy on refugee women
they would be able to intermingle freely with the locals and be economically independent. Such programmes work well in China where the government has created rural agricultural settlements for refugees where they become self-sufficient through agricultural activities. Families receive plots of land to farm and can reconstruct their lives similar to the ones they had left behind. In integration, refugees are able to participate in the local economy, have access to education, housing, medical care and other social services.

4:1:4 UNHCR policy on children and adolescents.
UNHCR has developed comprehensive guidelines and procedures that ensure protection and care of all children and adolescents. Unaccompanied minors are categorized as being at special risk in recognition of the universally recognized principles of best interests of children. Of particular importance is family re-unification as it strives to promote reunification of minors with their families. Where family reunion is not possible or is contrary to minors interest, they are taken care of by foster families on an interim basis or are adopted or taken to childcare centers or resettled to other countries like it was done for the ‘lost boys’ from Sudan.

4:2:4 UNHCR policy on Women.
It refers to them as ‘women at risk’. UNHCR defines women at risk as those with protection problems and are single heads of families. They may suffer from a wide range of problems including refoulement and

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other security threats, sexual harassment, violence, abuse, torture and different forms of exploitation\textsuperscript{45}.

Other problems could be derived from persecution as well as from particular hardships sustained either in their country of origin, during flight or in the country of asylum. UNHCR has expounded on the 1951 Convention definition by including women so that they could also be considered as a special case. In its guidelines on the protection of women\textsuperscript{1991} UNHCR has highlighted gender related persecution as that directed towards women and girls. It may involve severe discrimination amounting to persecution for transgressing social mores of the society in which they live. According to UNHCR, typical examples of gender related persecution include FGM, sexual violence, domestic violence, forced or early marriages and homosexuality.

UNHCR has acknowledged that women face enormous problems during war which includes hardships sustained either in their country of origin, during flight or in the country of asylum. The trauma of having been uprooted from familiar surroundings, deprived of normal family, separation during flight, abrupt change in roles, lack of communal and cultural ties , in addition to absence of an adult male family head renders women under these circumstances more vulnerable\textsuperscript{46}.

UNHCR has tried to re-define the eligibility criteria for women, otherwise ineligible under the general selection criteria. It has

\textsuperscript{45} UNHCR (1991) Guidelines on protection of refugee women

\textsuperscript{46} UNHCR (1991) Guidelines on protection of refugee women
classified women under the ‘social category’ criteria. It defines a social
group as a particular group of persons who share a common
characteristic other than their risk of being persecuted, or who are
perceived as a group by society. The characteristic will always be one
innate, unchangeable, or which is otherwise fundamental to identity,
conscience or the exercise of ones human rights.
Women’s gender places them at risk of subjection to additional
protection problems such as abduction, rape, sexual abuse,
harassment and exploitation. UNHCR seeks to protect them and to
offer rapid solutions to their problems. However, all it does is to
identify such issues and appreciate the fact that there is need for
improved security. This clearly indicates that the security measures
aimed at protecting refugee women particularly at the Kakuma refugee
camp are still at a very low level. If women’s needs are to be taken
seriously, then they should be actively represented in the local
committees. As much as UNHCR has tried to address women issues
such as re-defining their handbook to accommodate women as being
at risk, a lot still needs to be done especially to eliminate bureaucracy
in their operations.

4:3 SUMMARY OF THE FINDINGS AND DISCUSSIONS.
The findings of this study clearly illustrate the hardships refugee
women and children go through at the kakuma refugee camp. It is
evident that the UNHCR has not done enough to ensure security and
proper protection of the women and children. Various reports and
testimonies have shown how UNHCR sometimes fails to respond to
problems affecting refugee women. All that there is at the camp is the protection area, which is hardly secure enough to guarantee the safety of the women and children. In paper, it is indicated that the UNHCR has a protection officer who assesses special needs of refugees, but the reality on the ground shows that the protection officers are hardly available in the field.

The findings clearly support the hypotheses of this study that the existing refugee law does not offer adequate protection to refugees particularly women and children. It is therefore important for the agencies concerned with refugee issues to put in place proper mechanisms that will ensure women and children are given adequate security. It can be said that the government of Kenya has let the refugees down. It has done very little to support UNHCR with programmes that could improve the living conditions of the refugees.

In the first instance, keeping refugees in camps is against the international refugee law. Secondly, no effort is made to ensure that refugee settlements were at least at a reasonable distance from the border of the countries of origin. As Barrell-Bond rightly put it, the locations of the camps places refugees at higher security risks to enemies from their home countries who cross over and easily access the camps. In most cases, not only have soldiers failed to protect the refugees from rebel attacks, but they have themselves been responsible for looting and raping women. UNHCR therefore lacks the means to ensure security in refugee settlements. Such security can
only be provided by effective security forces or by allowing refugees to settle elsewhere and not in camps.

The government therefore needs to play a bigger role by being sensitive to the protection needs of refugees and the first step would be to allocate a proportion of the budget towards meeting the needs of refugees. The police posts within the camps are hardly operational as the officers are not enough to man them all. The security problems facing refugees should be prioritized as an urgent social concern that should be addressed by all stakeholders.

4:4 RECOMMENDATIONS

From the findings of this study, it is evident that not enough has been done to provide protection to refugees particularly women and children. It is evident that the situation on the ground is worse than what is presented on paper out there.

The study therefore makes the following recommendations which if implemented, would improve the security situation of women and children at the Kakuma refugee camp.

1. A legal framework should be set up to operate from the Kakuma refugee camp. The framework should specifically be focused on protecting women and children as a special group at risk. It should be empowered legally to handle sensitive issues affecting women ranging
from rape, physical abuse and abduction among others and women can be assisted to seek redress.

2. There is need to sensitize hosting countries like Kenya on the need to protect the human rights of refugees. This will in turn enable them to sensitize their domestic structures such as the armed forces and the judiciary through retraining on human rights issues and the need to protect refugee women and children as a special and vulnerable group.

3. Women should be involved in programmes set up within the camp. They should be well represented and be involved in decision making to ensure that measures put in place address their concerns. UNHCR should ensure a good representation of women in the local committees so that their concerns can be properly addressed.

4. UNHCR, as the international structure mandated to handle refugee issues has failed to effect Article 35 of the 1951 convention in which states undertake to provide UNHCR with information and statistical data on the implementation of the Conventions regulations among others. There is currently no system of reviewing state practices to ensure that states are in compliance with the international standards of protection and safeguarding the human rights of refugees. UNHCR should therefore activate this policy and establish a network which will ensure that all states comply and treat refugees equally across the board in accordance with the laid down regulations.
4:5 CONCLUSION

The study sought to look into protection problems affecting refugee women and children at the Kakuma refugee camp, and measures being taken to enhance their security. The findings have revealed that very little has been done to address protection issues affecting women. It is evident that the women’s gender places them at a heightened risk, but their plight has not been prioritized. This is as a result of bureaucratic systems at the UNHCR offices and the insensitivity of the Kenyan government to gender issues.

The large number of refugees that the UNHCR is currently handling at the Kakuma refugee camp makes it difficult to address women’s problems in a special way. However that alone cannot be accepted as sufficient excuse as the UNHCR has been accused of being insensitive to issues affecting refugees as its response rate is usually very slow. This is why it is important to establish a legal framework which will be focused on dealing with issues affecting women and children. It is strongly believed that such a mechanism will help ameliorate the situation, making the camps fairly habitable and eventually mitigating the level of vulnerability among women and children.

4:6 AREAS FOR FURTHER RESEARCH

1. This study concentrated on legal protection of women and children. There is need to look at protection problems affecting men and the elderly as well.
2. The study was centred at the Kakuma refugee camp. It is important for similar studies to be carried out at the Dadaab refugee camp and other camps in East Africa to find out if the situation is any different in these places.

3. Further research should be carried out on the emotional trauma the refugees undergo while in the camps.
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