# LIVED EXPERIENCES OF URBAN REFUGEES: THE CASE OF CONGOLESE REFUGEES IN UMOJA, NAIROBI KENYA, 1998-2015

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# DECLARATION

## DECLARATION

This project is my original work and has not been presented for the award of a degree in any other university.

Signature _____ Date: 6|12|2023

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This project has been submitted for examination with our approval as university supervisors.

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## DEDICATION

I dedicate this thesis to the scholarship around refugee studies.

## ACKNOWLEDGMENT

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# ABBREVIATIONS

COI        -        Country of Origin

DRA ID     -        Department of Refugee Affairs-Identification

RAS        -         Refugee Affairs Secretariat

RSD        -        Refugee Status Determination

SGBV       -        Sexual Based Violence

UNHCR      -        United Nations High Commissioner for Refugees

**ABSTRACT**

This research examines the difficulties faced by Congolese refugees in Umoja, Nairobi, Kenya, during the political unrest in the Democratic Republic of Congo (DRC) from 1998 to 2015. It investigates discriminatory practices experienced by Congolese migrants, particularly those in Umoja, influenced by their treatment within Kenya's refugee protection system and the local community. The study explores into the origins, development, and factors contributing to the marginalization and profiling of Congolese migrants in Umoja, Nairobi. It also analyzes the perceptions of the host community, the vulnerabilities of Congolese migrants within Kenya's evolving protection framework, and the challenges faced by those in Umoja. Key actors in the refugee protection sector, including the Danish Refugee Council, UNHCR and Church World Service, were engaged through purposeful sampling. Qualitative research method was used to analyze the data as thematic analysis revealed recurring patterns in the experiences of Congolese immigrants in Umoja. Online, phone, and group interviews, were employed for data collection. The findings indicated significant impacts on Congolese migrants due to changes in Kenya's refugee policies, particularly regarding documentation and the encampment policy. Despite established protection frameworks, sporadic and ineffective implementation persisted, resulting in challenges. The study identified the profiling of Congolese refugees, misconceptions about their wealth, and manipulation of the protection space system by economic migrants amplified their marginalization. Because of that certain organizations implemented pre-assessment mechanisms for specific services, notably third-country resettlement. The research highlighted characteristics leading to low rejection rates in acquiring refugee status, due to limited knowledge of DRC's conflict dynamics in the actor's space. It explored the perception of Congolese refugees as temperamental and challenges in their integration into Umoja. Unique geographical features of Umoja area in Umoja sometimes led to their exclusion from resource distribution efforts. In conclusion, the research emphasized the need for improved implementation of refugee protection frameworks in Kenya, accurate profiling, and an understanding of the unique challenges faced by Congolese refugees in Umoja. The findings have implications for policymakers, humanitarian organizations, and stakeholders involved in refugee protection and integration efforts in Kenya.

**CHAPTER ONE**

**1.1 Introduction**

The current system of regional and global refugee protection emerged after World War Two and has evolved into a structure that plays a crucial role in safeguarding 65.3 million refugees worldwide.[1] Within this framework, the 1951 Convention and its 1967 Protocol are widely acknowledged as enduring elements with a specific mandate to protect refugees, as States are parties to either the Convention or Protocol.[2] As a result, refugee protection frameworks are supported by states and implemented within the framework of international refugee protection. States and entities responsible for refugee matters are required to adhere to, implement, and enforce these policies for the welfare of refugees. Countries are accountable for refugee protection, with UNHCR overseeing their compliance.[3]

Kenya, similar to other African nations, has been a host to emigres since the 1980s, initially accommodating around 12,000 refugees. [4]During this time, the conditions for refugees were favorable, with the freedom to move and reside within Kenya.[5] However, the political turmoil in neighboring countries such as Sudan, Somalia, Ethiopia, Burundi, Rwanda, and the Democratic Republic of the Congo in the 1990s resulted in a significant increase in the number of refugees seeking asylum in Kenya. By the late 1990s, the refugee population in Kenya had surged to approximately 220,000, a substantial rise from the 12,000 refugees in the late 1980s.[6] Additionally,

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[1] (UNHCR 2015)

[2] Feller, Erika, Volker Türk, and Frances Nicholson, eds. 2003. *Refugee Protection in International Law:* UNHCR's Global Consultations on International Protection. Cambridge University Press. Cambridge: Cambridge University Press.

[3] Jastram, Kate, and Marilyn Achiron. *Refugee Protection: A Guide to International Refugee Law*. Geneva: Inter-Parliamentary Union, 2001.

[4] Campbell, Elizabeth H. 2006. "*Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration.*" Journal of Refugee Studies 19, no. 3 (August): 396–413. https://doi.org/10.1093/jrs/fel011.

[5]Limbo, Idil. "*In Shelter of each other, notions of home and belonging amongst Somali refugees in Nairobi.*" New Issues in Refugee Research (UNHCR) 233 (2012).
[a]*Possibilities for Integration.*" Journal of Refugee Studies 19, no. 3 (August): 396–413. https://doi.org/10.1093/jrs/fel011.

in 2009 Carrie Hough noted that the UNHCR and Human Rights Watch documented a significant increase in the refugee population in Kenya, with numbers rising from 430,871 in 2010 to 639,097 by 2012. This influx of refugees was also attributed to the second Congo war as well as refugees from other adjoining countries.[7] As, on August 2, 1998, a new armed uprising initiated a second liberation war in the Democratic Republic of Congo (DRC), that aimed at overthrowing the regime of Laurent Kabila. The conflict arose from internal disagreements among the original members of the Alliance des Forces Democratiques pour la Liberation du Congo-Zaire (Alliance of Democratic Forces for the Liberation of the Congo—ADFL), the coalition that had installed Kabila as the leader of Congo in May 1997. Despite achieving a military victory over Mobutu's army, the movement continued to struggle with internal dissent. Kabila's decision in July 1998 to dismiss the Rwandan contingent of the Forces Armees Congolaises (Congolese Armed Forces—FAC) acted as a catalyst, exacerbating an already crisis and many sought asylums in adjacent countries including Kenya.[8]

Further, Elizabeth Campbell asserts that in addition to existing refugee policies, informal and undocumented conventions were used in Kenya to address refugee-related concerns. Therefore, Kenya adopted in 1991 an encampment policy in managing the refugees in the country that made the country appear to be hostile to refugees. Since the 1970s, has been a destination for individuals seeking refuge from regional conflicts, albeit for a relatively limited number of individuals. The influx of refugees into Kenya increased significantly due to regional instability. As a result, Kenya has decided to hand over its responsibility for refugee matters to the United Nations High Commissioner for Refugees (UNHCR), despite the UNHCR's primary mandate being the oversight of states responsible for protection. This shift, along with the implementation of an encampment policy, had a significant impact on the lives of refugees in the country, particularly those living in urban areas. It worth noting that Kenya's adoption of the encampment policy was driven by the challenges of managing the sudden increase in refugee numbers. Correspondingly,

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[7] Weiss, Herbert F. 2000. *War and Peace in the Democratic Republic of the Congo*. Uppsala Sweden: Nordiska Afrikaninstitutet.

[8] Afoaku, Osita G. 2002. "*Congo's Rebels*." Palgrave Macmillan US, EBooks, January (January), 109–28. https://doi.org/10.1057/9781403982445_7.

the discourse on this subject has involved political considerations, the securitization of refugees, and a noticeable change in refugee policy, raising questions about territory, sovereignty, and citizenship.[9]

Subsequently, the Refugee Act in Kenya was implemented in 2006, marking a significant development in Kenya's refugee-related policies. While scholars and non-governmental organizations have recognized Kenya's efforts in this area, there were concerns about the inconsistent application of these policies for the protection and benefit of refugees. Despite the enactment of a new refugee policy in 2006, critics pointed out the ineffective enforcement of legal frameworks by relevant authorities. Cristiano D'Orsi accentuates that problems arise when legal refugee frameworks are not properly implemented or enforced. Urban refugees had expected the 2006 policy to address their protection needs in urban locales and provide exceptions to the encampment policy. However, the non-enforcement of these provisions and the continued consideration of the encampment policy by the state impacted their experiences in the city. Furthermore, Idil Lambo suggests that encampment policy application was less rigorous in practice because various facets of the policy were never clearly described in writing, and instead, the guidelines are integrated, in an *ad hoc*. Elizabeth Campbell and Idil Lambo claim that despite the strict encampment policy and lack of exceptions, Congolese refugees, like the majority of urban refugees, defied the government's camp policy to live illegitimately in Nairobi in the 1990s and early 2000.[10] Despite Congolese refugees coming in Nairobi, they lived a hidden life. Different groups of Congolese refugees were scattered in hidden populations with various studies being done on Congolese refugees in Kitengela[11], Kayole and Pangani[12], Kasarani, and Kawangware and

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[9] Agwanda, Billy. 2022. *"Securitization and Forced Migration in Kenya: A Policy Transition from Integration to Encampment."* *Population and Development Review*, March (March). https://doi.org/10.1111/padr.12483.

[10] Limbo, Idil. "*In Shelter of each other, notions of home and belonging amongst Somali refugees in Nairobi.*" New Issues in Refugee Research (UNHCR) 233 (2012).

[11] Kamau, Simon Njoroge. 2015. *"Evolution and Coping Mechanisms of Congolese Refugees in Kitengela, Kajiado County- Kenya: 1960- 2015."* Ku.ac.ke. https://doi.org/http://ir-library.ku.ac.ke/handle/123456789/19010

[12] Hough, Carrie. *"Newcomers to Nairobi: The protection concerns and survival strategies of asylum seekers in Kenya's capital city."* UNHCR: Policy development and evaluation service, 2013.

Kasarani[13]. However, according to Silas Namweya, there was a rising Kingdom of Congolese refugees in Umoja where there are no refugee related studies done yet.

Later, the UNHCR 2009 refugee urban policy was established to address the protection needs of refugees in urban areas, including those in Kenya. Hence, the refugee regime in Kenya has had a significant impact on the experiences of refugees, particularly those in urban settings. Among these groups, Congolese emigrants faced notable disadvantages compared to Somalis and Ethiopians, ranking third after these two groups. This resulted in specific challenges for Congolese emigrants, particularly due to their relatively lower refugee recognition rate in Kenya, as highlighted by Andrew Maina's research. This suggested potential marginalization experienced by Congolese emigrants in urban areas, particularly in Nairobi's Umoja, Kenya, influencing their way of life in the city. Despite the existence of the new policy, as noted by Danny Turton, there has been no effective solution to meet the needs of urban emigres. In light of these policy developments, the study aims to explore the lived experiences of Congolese refugees in Umoja, Nairobi, both with and without refugee status.

## 1.2 Statement of the problem

The existing body of literature on emigre protection informing their lived experiences highlights the challenges that arise from various factors within the protection space, including interactions between different actors, established policies, and intrinsic features of refugees.[14] According to scholars like Cristiano D'Orsi, the challenges faced by refugees can be considered as universal gaps in protection.[15] This concept is further elaborated by Erika Feller, Volker Türk, and Frances Nicholson, who have identified refugee protection challenges arising from non-enforcement or

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[13] Waithera, Kibe. n.d. "*the influence of refugee integration on socio-economic development of Kenya: a case study of urban refugees in Nairobi (2006- 2019) spring 2020.*" Accessed December 26, 2022. https://erepo.usiu.ac.ke/bitstream/handle/11732/6913/Kibe%20Christine%20Waithera%20MIR%202020.pdf?sequence=1&isAllowed=y

[14] Goodwin-Gill, Guy S, and Jane McAdam. 2007. *The Refugee in International Law*. Oxford University Press, USA.

[15] Cristiano D'Orsi. 2016. *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven*. New York, Ny: Routledge.

implementation gaps in policies.[16] These gaps, referred to as refugee protection gaps, have a significant impact on the lives of refugees within a state. Furthermore, other scholars, such as Andrew Maina, have highlighted the influence of specific characteristics, such as the country of origin, which can place certain refugee groups at a disadvantage in various areas of protection.[17]

Numerous studies have explored urban refugeehood, for instance Carrie Hough who examines survival strategies, coping mechanisms of Congolese emigres in Nairobi,[18] Likewise, Tendayi Achiume has critiqued the global policy of the United Nations Refugee Agency, arguing that it inadequately addresses structural xenophobic discrimination, which disproportionately affects refugees due to their foreign status.[19]As her study informs on sidelining of refugees based on their area of domicile like in urban milieu and their country of origin.

Despite the extensive literature on urban refugeehood, there remained a critical gap in understanding the vulnerabilities and marginalization experienced by Congolese refugees in Umoja, Nairobi, and their interactions within Kenya's refugee protection framework. While previous research, such as that by Elizabeth Campbell has explored the broader experiences of Congolese emigrants in Nairobi,[20] and specific attention to Umoja as a distinct locale is scarce. Andrew Maina's work provides a general perspective on discrimination against Congolese refugees countrywide, attributed to profiling practices. However, a detailed examination of these profiling practices and their evolution over time was crucial for understanding the lived experiences of Congolese emigrants.

This research aimed to address this gap by investigating the origins, evolution, and underlying factors driving the mentioned marginalization and profiling by Andrew Maina of Congolese

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[16] Feller, Erika, Volker Türk, and Frances Nicholson, eds. 2003. *Refugee Protection in International Law:* UNHCR's Global Consultations on International Protection. Cambridge University Press. Cambridge: Cambridge University Press.

[17] Maina, Andrew. *Is My Claim Meritorious?* Congolese Experience of the Refugee Status Determination Process in Kenya. 2014.

[18] Hough, *Newcomers to Nairobi.*

[19] Achiume,Tendayi *"Beyond Prejudice: Structural Xenophobic Discrimination against Refugees,*" *Georgetown Journal of International Law* 45 (2013), https://consensus.app/details/rights-refugee-agency-used-compel-regulation-explicit-achiume/943adbccb4bb5473af230f7cf650863a/.

[20] Campbell, Elizabeth H. 2006. "*Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration.*" Journal of Refugee Studies 19, no. 3 (August): 396–413. https://doi.org/10.1093/jrs/fel011.

refugees in Umoja, Nairobi. It sought to identify their vulnerabilities within the host community and amidst the dynamic landscape of Kenya's refugee protection framework. Finally, the study was positioned to provide essential insights that move beyond generalizations, shedding light on the particulars of urban refugeehood and the precise challenges faced by Congolese refugees in Umoja in Nairobi.

**1.3 Research questions**

i.   Are there vulnerabilities that Congolese refugees encounter while residing in Umoja amidst the changing refugee regime in Kenya between, 1998-2015?

ii.  How did the profiling of Congolese émigrés evolve over the period?

iii. What protection challenges were confronted by Congolese refugees in Umoja during the years 1998-2015?

**1.4 Research objectives**

i.   To investigate the vulnerabilities and lived experiences of Congolese refugees within the context of the shifting refugee regime (1998-2015).

ii.  To investigate the development of profiling and marginalization of Congolese refugees in Umoja (1998-2015).

iii. To assess the protection challenges encountered by Congolese emigres in Umoja (1998-2015).

**1.4 Justification of the study**

The rationale for this study is deeply rooted in the elaborate interplay between the experiences of refugees, discrimination, the host community, and the broader framework of refugee protection. The decision to focus on the lived experiences of Congolese refugees in Umoja from 1998 to 2015 was supported by the findings of a previous study by Andrew Maina, conducted in collaboration with Great Lakes Civil Society and the Refugee Consortium of Kenya. Maina's research revealed a significantly lower recognition rate for Congolese refugees in Kenya compared to other groups, necessitating an understanding their experiences with or without a refugee status.[21] As he seems to suggest that they are marginalized, it prompted the study to investigate the phenomenon of

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[21] Ibid. 18.

discrimination among the Congolese emigres of Umoja within the protection space and their area of domicile.

The chosen timeframe of 1998 to 2015 is purposeful and well-justified. Encompassing the aftermath of the Second Congo War, a period marked by conflict and displacement, this timeframe aligns with a significant historical event that led to the arrival of Congolese refugees in Umoja. The war, occurring from August 1998 to July 2003, initiated by the Rwandan Patriotic Front and their Congolese allies, created a complex regional scenario with lasting consequences.[22] This period also coincided with substantial changes in Kenya's refugee protection landscape, including the recognition of urban refugeehood in 2009 and regional dynamics influencing Kenya's refugee regime in 2015.[23] Correspondingly, on April 2, 2015, an assault at Garissa University College resulted in the fatalities of 148 students and left 79 others wounded. Following this event, the government implemented stringent measures regarding refugees in the city, leading to the closure of key refugee service offices such as the DRA offices.[24]This had a significant impact on the refugee system and the safeguarding of refugees in Kenya, presenting a distinct and noteworthy shift that was not directly relevant to the current study.

The significance of studying Congolese migrants in Umoja lied in the unique insights it offered into the lived experiences of a specific refugee group within a distinct community. Carrie Hough emphasizes the distinct challenges faced by emigres in urban locales, accenting the unique vulnerabilities of Congolese networks in Nairobi. Further, she illustrates the challenges faced by Congolese refugees in Nairobi generally, highlighting the absence of affluent support networks compared to other refugee groups in the city.[25] Therefore, a comprehensive examination of this specific group in Umoja was imperative to understand their unique challenges related to émigré protection. The authors like Carrie Hough examined the Congolese population in Nairobi as a whole,[26] but Umoja area stands out due to its distinctive blend of low and moderate economic

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[22] Turner, Thomas *The Congo Wars: Conflict, Myth, and Reality* (London; New York: Zed Books, 2007).

[23] Kenya Comprehensive Refugee Programme," 2015, https://www.unhcr.org/ke/wp-content/uploads/sites/2/2016/08/KCRP-2015.

[24] Agwanda, *Securitization and Forced Migration in Kenya.*

[25] Ibid.

[26] Hough, *Newcomers to Nairobi*

status among its inhabitants, leading to its emergence as a hub for informal enterprises, including salons, barber shops, and the music industry, which are notably done by Congolese immigrants.

Ultimately, the study aspired to contribute to academic understanding, inform policies, and propose interventions for the betterment of refugee well-being. By expanding the knowledge base for students and scholars, raising methodological awareness. The research intended to impact not only academia but also refugee organizations, activists, and the refugees themselves. The goal is to provide a foundation for effective policy-making and implementation that can positively influence the refugee landscape in Kenya.

## 1.5 Literature review

The objective of this study was to address a significant gap in the current discourse on refugees by examining the vulnerabilities of Congolese emigrants and the development of profiling that has led to the marginalization of Congolese refugees living in Umoja. The research aimed to analyze various aspects of their marginalization within the Umoja area, while also placing these experiences within the broader context of refugee protection in Kenya between 1998 and 2015, and the difficulties encountered in ensuring their safety and well-being. The scholarly discussion pertaining to Congolese migrants in Nairobi has been enriched by the valuable insights provided by multiple researchers. One such researcher, Elizabeth Campbell, has focused her study on the means of subsistence adopted by Congolese refugees residing in Eastleigh, paying special attention to their economic tactics.[27] The author's research was pertinent to the investigation as it provided valuable insights into the challenges faced by Congolese immigrants in Nairobi. Consequently, it was deemed essential to explore a different area in Nairobi where Congolese immigrants are known to reside and examine their experiences. Similarly, to, Julie Tippens investigates the increasing health challenges faced by urban refugees, specifically examining Congolese refugees in Kenya. Tippens thoroughly examines the various strategies adopted by these refugees to cope

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[27] Ibid,

mentally.[28] Her research suggests that Congolese emigrants encounter significant challenges that warrant further investigation as well as the work of Simon Njoroge, where he discourses the experiences of Congolese emigrants in Kitengela, highlighting the enduring survival mechanisms fostered through communal initiatives since the 1960s.[29] In contrast to Somali immigrants, who tend to concentrate in specific areas, Congolese immigrants are dispersed across various urban locations such as Pavanello, Elhawary, and Pantuliano in Eastleigh, Satellite, Kawangware, Kayole, Ruiru, Githurai and Kangemi .[30] Despite the extensive scholarly literature on urban refugeehood in the Congo, there is a notable lack of attention given to the issue of refugee marginalization in the Umoja locality. This highlighted the need for further academic inquiry in this area. Previous research has predominantly focused on the experiences of Congolese refugees in areas such as Kasarani, Kayole, Githurai, and Kangemi. Umoja area stands out due to its extensive layout and the thriving informal economy, which is largely driven by Congolese immigrants working in sectors such as salons, tailoring, and music bands. Similarly, the urban planning of Umoja area creates a unique environment where low and middle-income residents coexist, providing a discreet space for both refugee living and business activities. Umoja entices Nairobi residents particularly those seeking saloon services. Consequently, Andrew Maina's assertion regarding discrimination of Congolese refugees in obtaining refugee status explains the importance of this investigation.[31] By exploring the development, and underlying factors contributing to their marginalization, this research sought to illuminate their experiences within the host community and within the intricate framework of refugee protection in Kenya.

Furthermore, the revolving nature of Kenya's refugee system from the 1990s to 2015 has brought about significant transformations that have implications for individuals seeking asylum in the

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[28] Tippens, Julie A. 2019. *"Urban Congolese Refugees' Social Capital and Community Resilience during a Period of Political Violence in Kenya:* A Qualitative Study." *Journal of Immigrant & Refugee Studies* 18, no. 1 (February): 42–59. https://doi.org/10.1080/15562948.2019.1569744.

[29] Ibid,

[30] Pavanello, S., Samir Elhawary, and S. Pantuliano. 2010. *"Hidden and Exposed: Urban Refugees in Nairobi, Kenya."* Semantic Scholar. 2010. https://www.semanticscholar.org/paper/Hidden-and-exposed%3A-Urban-refugees-in-Nairobi%2C-Pavanello-Elhawary/4242284a1d8ebbc0c29c03f1afc267fb35f9db45

[31] Maina, Andrew. *Is My Claim Meritorious*? *Congolese Experience of the Refugee Status Determination Process in Kenya.* 2014.

country. This raised a crucial inquiry into the lived experiences of Congolese emigrants in light of these developments. Scholars such as Harrel and Kagan shed light on the obstacles faced by refugees in terms of safeguarding, which often stem from the insufficient implementation of policies. They draw attention to a noteworthy observation made by the United Nations High Commissioner for Refugees (UNHCR) that governments struggle to effectively enforce their own refugee instruments and agreed-upon frameworks. This creates a disparity in responsibilities between the state and the UNHCR, with the former being accountable for executing refugee protection measures and the latter overseeing policy implementation.[32] Given the complexities of these changes and their implications, an examination of the experiences of Congolese emigrants in Umoja, Nairobi was essential.

In relation to the protection of refugees, Catherine Phuong asserts that the effectiveness of refugee safeguarding is contingent upon the fulfillment of several criteria. These criteria include the absence of any potential for oppression, forced expulsion, or any form of cruelty or inhumane treatment. Additionally, there should be no additional significant risks posed to the individuals in question. Furthermore, there should be a genuine potential for achieving a sustainable resolution either within the host country or originating from it, within a specified timeframe. Lastly, the provision of lawful permission for residency should be in place to prevent any unfair treatment.[33] However, Feller, Turk, and Nicholson typify that the UNHCR appreciates that today's emigré struggles are multiple and diverse and that there exist shortfalls in protection, despite the fact that basic tenets of the Convention regime are as sound and essential as ever. Inopportunely, the authors generalize the phenomenon of refugee protection gaps in all states without mentioning specific protection gaps in respective states.[34]

Further, Cristiano D'Orsi clarifies that the causes of these shortfalls or protection gaps is as a result of non-enforcement or no implementation at all of refugee policies by the necessary actors. As the

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[32] Harrell B, Kagan M. *The Road Home for Africa Refugees*, *Protecting the Rights of Refugees in Africa*: Beginning with the UN gatekeeper. November 11, 2004.

[33] Phuong, Catherine. *"The Concept of 'Effective Protection' in the Context of IrregularSecondary Movements and Protection in Regions of Origin*." *Asylum-migration nexus | Effective protection* (Global Commission on International Migration (GCIM)) Global Migration Perspectives, No. 26 (April 2005).

[34] Feller, Türk and Nicholson, eds. 2003. *Refugee Protection in International Law*.

author delves into protection gaps in Sub-Saharan Africa, he affirms the existence of these gaps responsible for refugee challenges.[35] Both works attempt delineate the protection gaps causing refugee challenges as universal or similar in every state. However, the epochal studies of Michael Kagan migrate these notions of refugee protection challenges from obscurity to parity where their arguments find antecedents of the state, actors in protection space, regional refugee policies and protection problems pertinent.[36] The Scholars highlight the existence of universal gaps in protection, which manifest differently in each state's specific circumstances. It becomes apparent that these gaps are a result of the interaction between states and their established or ratified policies regarding refugees. Therefore, it was vital to understand the impact of Kenya's refugee policies on Congolese migrants in Umoja, Nairobi which the study examined. This is particularly important due to their highlighted marginalization, especially when seeking protection, such as applying for refugee status. An important consideration was whether the evolving state policy was successful in adequately safeguarding Congolese refugees within the Umoja community in Nairobi.

Additionally, the enactment of urban refugeehood recognition in 2009 raised expectations because of its broad inclusion of many facets relevant to an urban refugee. As Kiragu, Crisp, and Campbell, maintain that the international urban refugee recognition policy employs the constructs of protection in a very broad form ranging from admittance to tackling a diverse range of concerns such as community programs, accessibility to public services, ability to make a living promotion, and self-sufficiency.[37] Howbeit, refugees living in the cities still experience difficulties according to Evan Calabria. The author's argument presupposes that there is finite support and protection of urban refugees.[38] The author's proposition is identical to that of Elizabeth Campbell and Simon Njoroge. According to Elizabeth Campbell, a notion of antagonism and unreceptive insolence towards urban refugees exists in the city. As she argues based on frangibility of post 1991 refugee

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[35] Cristiano D'Orsi. 2016. *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven*. New York, Ny: Routledge.

[37] Campbell Elizabeth, Crisp Jeff , Kiragu Esther. "*Navigating Nairobi: A review of the implementation of UNHCR's urban refugee policy in Kenya's capital city* ." January 2011

[38] Calabria, Evan Easton. "*Urban Displacement, Local Engagement: Examining the past, current and future role of cities in forced displacement."* (Refugee Studies Centre, University of Oxford) 2020

regime; a regime that was insistent of encampment policy of all refugees.[39] On other hand, Simon Njoroge unveils the survival journey of Congolese refugees in Kitengela, a metropolitan area of Nairobi since 1960s.Displaying a clear picture of the refugees' experiences along the evolving framework in Kenya.[40] These presumptions from the authors framed the impression to inquest on the interaction of the new Kenyan refugee regime of 2006 and 2009 international urban refugee recognition policy with the Congolese refugees in Umoja, Nairobi.

Apart from there being an existing local, regional, and international refugee framework to protect urban refugees, discrimination of émigrés is a conundrum that putative scholars have urged on specially in the West and more of discriminatory treatment of emigres in Australia.[41] Émigré discrimination is deeply engraved in multisystem processes that facilitate oppressive conditions, and can be endemically inculcated into host communities and these constrain lives of refugees. Discrimination can occur on the basis of one's race, dialect, faith, place of origin, and/or other considerations.[42] Tendanyi Achiume acknowledges that there is emigré unsatisfactory treatment and that refugees are disadvantaged as a result of the pernicious impact of laws, guidelines, and procedures on refugees: on account of their identity as refugees, regardless of the absence or not of explicit refugee provisions. [43]Therefore, it was relevant for the study to explore areas of discrimination encountered by Congolese emigres. Especially, with the already known study of Andrew Maina that insinuates that profiling of Congolese émigré do exist leading to their marginalization

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[39] Campbell, *Urban Refugees in Nairobi: Problems of Protection.*

[40] Kamau, Simon Njoroge. 2015. *"Evolution and Coping Mechanisms of Congolese Refugees in Kitengela, Kajiado County- Kenya: 1960- 2015."* Ku.ac.ke. https://doi.org/http://ir-library.ku.ac.ke/handle/123456789/19010

[41] Pittaway, Eileen, and Linda Bartolomei. 2001. "*Refugees, Race, and Gender: The Multiple Discrimination against Refugee Women.*" *R*efuge: Canada's Journal on Refugees 19, no. 6 (August): pp21–32. https://doi.org/10.25071/1920-7336.21236.

[42] Edge, Sara, and Bruce Newbold. 2012. "*Discrimination and the Health of Immigrants and Refugees: Exploring Canada's Evidence Base and Directions for Future Research in Newcomer Receiving Countries.*" Journal of Immigrant and Minority Health 15, no. 1 (May): pp141–48. https://doi.org/10.1007/s10903-012-9640-4.

[43] Achiume, *Reimagining International Law for Global Migration.*

Moreover, discrimination of émigrés is pervasive in states' actions, the UNHCR, the civil society and other partners in refugee protection space. Jane MacAdam and Goodwill Gill have examined roles of actors in émigré protection and implied that responsibility avoidance creates these experiences for refugees.[44]These responsibilities by actors in protection begin from the admittance stage as Crisp, Kiragu and Campbell emphasize, and salient trend of discrimination of emigres is palpable. For instance, Andrew Maina in his study notes that there is low recognition rate of Congolese refugees as compared to other groups in Kenya. Citing different reasons such as nationality profiling in which Congolese refugees find themselves unable to acquire refugee status easily compared to other refugee groups; Maina agrees that such sideling by actors tasked to safeguard refugees influences their lived experiences in Kenya. Therefore, this scholarly work informed the study on existence of profiles of this particular group acknowledging the importance to explore how such profiles developed. Further, the aegis of refugees requires refugee status as a doorway according to Michael Kagan,[45] and if such a key component of protection is left out, then protection challenges are ineluctable. It was therefore riveting for the study to find out the notions behind discrimination of Congolese refugees and how these profiling came to be.

The immigrant guidelines, which in many ways expose refugees to challenges, as well as the prevalent segregation of Congolese refugees, open the door to an examination of how these emigrants live in Nairobi. As Muindi and Mberu imply that Congolese refugees in particular come to Nairobi with hope to have easier access to assistance from the émigré protection agencies and the government.[46] As Congolese emigres come to Nairobi, they have different landing and coping mechanisms unique to them compared to other émigré groups in Nairobi as Campbell suggests. In other works, the author observes survival mechanisms of Somalis in Nairobi and suggests that living outside the refugee camps in Kenya places the refugees on an ineligibility list to receive any assistance from the Government of Kenya or the UNHCR. From her study, it was eminent that all refugees outside the camps face difficulties in receiving assistance and getting legal protection Additionally, Elizabeth Campbell allude that, many Congolese emigrants live a hidden life in

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[44] Goodwin-Gill, Guy S, and Jane McAdam. 2007. *The Refugee in International Law*. Oxford University Press, USA.

[45] Maina, *Is My Claim Meritorious*?

[46] ("Urban refugees in Nairobi: tackling barriers to accessing housing, services and infrastructure", 2019)

Nairobi, in contrast to Somali, Ethiopian, and Sudanese refugees who live together in well-known areas of Nairobi.[47] It piqued the researcher's interest in learning about their experiences. Because the patterned life in hidden neighborhoods indicates the presence of causative challenges that are intriguing to examine.

## 1.7 Theoretical framework

## Lee Migration Hypothesis theory/Push and pull theory

In migration studies, the push and pull theory has been applied to the study of urban refugeehood, which refers to the phenomenon of refugees living in cities rather than camps. According to proponents of the push and pull theory, refugees are driven to cities by a combination of factors that "push" them out of their home countries and "pull" them to cities.

Alexander Betts, a professor of forced migration and international affairs at the University of Oxford, is a key proponent of the push and pull theory in the milieu of urban refugeehood. Betts argues in his book "Refuge: Transforming a Broken Refugee System" that refugees are driven from their home countries by factors such as war and persecution, and are drawn to cities by the availability of jobs, education, and other opportunities. He contends that, when compared to refugee camps, urban areas can provide refugees with greater autonomy, dignity, and self-sufficiency.[48] The push and pull theory will be useful in the context of this work because scholars and researchers have used the push and pull theory to explain the patterns and causes of human migration. The research employed this theoretical framework to elucidate the factors contributing to the presence of Congolese immigrants in the Umoja area of Nairobi. Owing to the history of conflicts in the Democratic Republic of Congo (DRC), many Congolese emigres were compelled to seek asylum in Nairobi due to persecution and other adversities prevalent in armed conflicts. Additionally, the allure of improved prospects in the urban setting prompted some Congolese individuals to establish residence in the city. This theory shaped the context of chapter two and four in explaining the presence of these emigres in Umoja. Additionally, urban refugee hood a major component of interest in this study depends on this theory to explain the existence of

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[47] Ibid.
[48] Betts, Alexander, and Paul Collier. 2018. *Refuge: Transforming a Broken Refugee System*. Lieu De Publication Inconnu: Penguin Books.

Congolese refugees in Umoja, Nairobi and the key history facets of the host and country of origin. As some of the proponents like George Ravenstein of this theory assert that existence of refugees in urban areas can only be explained by the push and pull factors.

In the context of urban refugeehood, sociologist Loic Wacquant in his book "Punishing the Poor: The Neoliberal Government of Social Insecurity," berates the theory of pull and push in migration studies as one that overlooks the role of structural factors like political and economic policies, laws and regulations, and urban governance in shaping the opportunities and challenges that refugees face in urban areas.[49][50] The punditry of Loic Wacquant on the theory as overlooking the structural factors of a society will be the reason why the structuralism theory will be relevant to use to fill the gap in push and pull theory in addressing the key components of the proposed study.

**Structuralism theory**

This theory was valuable to the study as it complements the push and pull theory, which has a limitation in not considering the various aspects of structures, systems, or policies. The structuralism theory was beneficial to the study as it helped explain the elements of the protection framework, particularly in the context of the problem that was investigated, which is the examination of the experiences of Congolese refugees in Umoja within the evolving refugee regime and their marginalization due to profiling. In this study, the policies serve as the structures that are implemented to safeguard refugees.

Structuralism is a theoretical perspective on the functions that societies such as entities, caste systems, and guidelines interact in society. Structuralism theory first emerged in the early twentieth century and is affiliated with authors such as Émile Durkheim, Talcott Parsons, Herbert Spencer, and Robert Merton, who dominated American social theory in the 1950s and 1960s.[51] In migration

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[49] Wacquant Loic. 2009. *Punishing the Poor: The Neoliberal Government of Social Insecurity.* Durham, N.C.: Duke University Press.

[50] Pokutta, Dalia. n.d. *"The Laws of Migration. BY E. G. Ravenstein."* *Www.academia.edu.* Accessed January 24, 2023. https://www.academia.edu/22451640/The_Laws_of_Migration_BY_E_G_Ravenstein.

[51] "Functionalist Theory." 2020. In The SAGE International Encyclopedia of Mass Media and Society. 2455 Teller Road, Thousand Oaks, California 91320: SAGE Publications, Inc.

studies, structural theory emphasizes the role of social structures in shaping migration patterns and refugee experiences, particularly in addressing the lived experiences of urban refugees in cities. The structuralist theory accentuates how social structures limit opportunities and create obstacles for refugees a problem the proposed study seeks to examine among the Congolese emigres living in Nairobi.

Structuralism holds that all aspects of a society's institutions, duties, social standards, and so on play an important role and are required for the society's long-term survival. This theory was key in explaining the experiences of Congolese refugees are directly influenced by structures in place and their interaction with the members. Particularly the concept of institutions of protection, because the systems are built into the UNHCR and existing institutions such as government institutes in charge of protection, and non-governmental organizations, and their functionality contributes to whether the communities they support are well or facing challenges.[52] Congolese immigrants' interactions with the local population and the refugee system in urban areas have shaped their lived experiences, as influenced by the utilization of policies and structures within the protection space. The policies implemented and their development from 1998 to 2015 have had a profound influence on the daily experiences of these individuals, particularly in their interactions with law enforcement and when attempting to obtain refugee status. The supplementary evaluations conducted on Congolese immigrants as a result of incorrect profiling within the realm of protection represent a systemic viewpoint that has had adverse effects on their lives, leading to difficulties in navigating urban life. The challenges related to protection that they encountered partly stemmed from the manner in which the refugee system engaged with them, as evidenced in the various chapters.

### 1.8 Scope and limitations

The Second Congo War, occurring predominantly between 1998 and 2003 during the interim government's rule, earned the epithet "Africa's world war" due to its complex dynamics and external involvement. This prolonged conflict led to an estimated death toll of around 3.8 million

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[52] Sujata, Patel, and Dev Pathak. n.d. "*functionalism, neo-functionalism and system analysis* Introductory Overview." Inflibnet.Ac.In. Accessed August 17, 2022. https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000033SO/P000288/M004975/ET/1493789375etnew.pdf.

individuals, primarily due to the exacerbation of starvation and disease resulting from the ongoing hostilities. Furthermore, millions of individuals were forced to seek refuge in neighboring countries.[53] The research objectives of this study were to investigate the experiences of Congolese refugees in Kenya during a period of changing refugee policies, to analyze the development of profiling practices that resulted in their marginalization, and to examine the protection challenges faced by these refugees between 1998 and 2015.

The focus of the study is on Congolese individuals who migrated to Kenya between 1998 and 2015, a period marked by conflict and significant migration from the eastern region of the Democratic Republic of Congo. The chosen time frame is based on historical evidence of large-scale displacements of Congolese people due to aggression in the eastern part of the DRC during this period. Consequently, many Congolese refugees have sought refuge in neighboring countries, including Kenya. Also, the period is characterized by refugee regime in Kenya. The research period designated for this study extends until 2015, with a primary focus on exploring the experiences of Congolese refugees residing in Umoja, Nairobi. The examination is situated within the conceptual framework of protection within the Kenyan regime, taking into account its dynamic and evolving nature, and how this framework has influenced the lived realities of the Congolese emigres. This aspect is crucial in determining an appropriate target sample during the data collection phase. As a result, the insights gained into the experiences of Congolese refugees remain relevant throughout the duration of this study. The year 2015 holds particular significance due to significant changes in the protection landscape. The United Nations High Commissioner for Refugees (UNHCR) introduced the 2015 Comprehensive Programme, which represents a transformative approach to protection.[54] In May 2016, the closure of the DRA (Department of Refugee Affairs) office and the implementation of RAS (Refugee Affairs Secretariat) marked a significant  change  in  the approach  to  managing  refugees  in  Kenya.[55] These developments

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[53] Weiss, Herbert F. 2000. *War and Peace in the Democratic Republic of the Congo*. Uppsala Sweden: Nordiska Afrikaninstitutet.

[54] "*Kenya comprehensive refugee programme.*" 2015.
https://www.unhcr.org/ke/wp-content/uploads/sites/2/2016/08/KCRP-2015

[55] *"Recognising Nairobi's Refugees the Challenges and Significance of Documentation Proving Identity and Status*." 2017. https://www.nrc.no/globalassets/pdf/reports/refugees-in-nairobi/recognising-nairobis-refugees.pdf

introduced new elements that are not in line with the focus of the proposed study. Additionally, there was a period of heightened civil unrest in South Sudan during this time, which has led to shifts in the demographics of refugees in Kenya. Notably, the group of refugees from South Sudan received prima facie recognition, resulting in a change in their relative proportions. Consequently, Congolese refugees have now been ranked fourth in the hierarchy, following Somalis, Sudanese, and Ethiopians.

According to Issa Ali Bashir, there has been a notable increase in the number of individuals migrating to urban areas. This trend is particularly evident among refugees seeking asylum in Kenya, who have chosen to resettle in the city of Nairobi.[56] Mamdani Mahmood further elaborates on this preference for urban living among refugees and migrants, attributing it to the ingrained belief among Africans that cities inherently offer a higher quality of life compared to rural areas. This perception was originally constructed by colonial powers.[57] Elizabeth Campbell, Esther Kiragu, and Jeff Crisp expand on this discourse by suggesting that the appeal of cities lies in their ability to provide access to opportunities and more favorable socio-economic environments. This perspective helps explain why Nairobi, for instance, became a host to approximately 63,000 registered refugees, as reported by the United Nations High Commissioner for Refugees (UNHCR). The researchers note that many refugees chose to travel to Nairobi in order to benefit from simplified documentation processes for acquiring refugee status. Additionally, there is a prevalent belief that the city serves as a crucial transit point for onward travel to other countries, particularly in Europe, with the aim of pursuing resettlement. Another significant factor contributing to the selection of Nairobi as either a final destination or a transitional point is the prominent presence of non-governmental organizations, United Nations entities, and embassies, all actively involved in providing assistance to refugees. This collective presence not only strengthens the viability of Nairobi as a relocation option but also enhances its importance as a

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[56] Issa, Ali Bashir. 2013. "University of Nairobi faculty of arts department of history and archaeology '*Home' near Home: Somali Migrants to Kenya*, 1991-2013." Uonbi.Ac.Ke. 2013. http://erepository.uonbi.ac.ke/bitstream/handle/11295/59195/%E2%80%9CHome%E2%80%9D%20Near%20Home%3A%20Somali%20migrants%20to%20Kenya,%201991-2013.pdf?sequence=3.

[57] Mamdani, Mahmood. *Citizens and subjects*. New Jersey: Princeton University Press, 1996.

gateway for onward travel to various countries. As a result, the refugee population in Nairobi is steadily increasing, both in terms of numbers and impact.[58]

The study of Congolese refugees in Nairobi presents an important area of investigation within the field of urban refugee studies. Recognized by international refugee protection agencies, Congolese refugees make up the third-largest refugee group in Nairobi, comprising 10% of the population. This places them behind Somali refugees at 43% and Ethiopian refugees at 26%.[59] Given their significant presence, it is crucial to examine the dynamics and challenges faced by this population within the urban context. Of particular interest is the unique vulnerability of Congolese refugees in Nairobi, as evidenced by existing literature and identified issues. This vulnerability arises from a combination of factors, including their asylum claims, the circumstances in their country of origin, and the perceptions they encounter in the host country. This distinct vulnerability sets them apart from other refugee groups in the city and necessitates a more nuanced examination. While it is commonly assumed that the linguistic affinity of many Congolese refugees to Swahili facilitates their integration with both Kenyans and fellow Congolese refugees, the reality is more complex. Each refugee group in Nairobi faces specific challenges that shape their experiences. For example, Somali refugees are known to reside in Eastleigh deal with security concerns, which contrasts with the dispersed nature of Congolese refugees across different areas of Nairobi, including Kasarani, Kayole, Umoja, Githurai, and Kitengela.[6061]

Among these locations, the Umoja area stands out as a particularly interesting subject for study. While previous research has explored various areas, there is a noticeable research gap specifically regarding the lived experiences of Congolese emigrants in this region. Umoja's unique urban configuration makes it an intriguing setting for refugees to potentially assimilate discreetly, further

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[58] Campbell, Crisp and Kiragu. "*Navigating Nairobi: A review of the implementation of UNHCR's urban refugee policy in Kenya's capital city.*"

[59] Limbo, Idil. "*In Shelter of each other, notions of home and belonging amongst Somali refugees in Nairobi.*" New Issues in Refugee Research (UNHCR) 233 (2012).

[60] Betts, Alexander, Naohiko Omata, and Olivier Sterck. 2018. "*Refugee Economies in Kenya.*" (February). https://www.rsc.ox.ac.uk/publications/refugee-economies-in-kenya/.

[61] Kamau, Simon Njoroge. 2015. "*Evolution and Coping Mechanisms of Congolese Refugees in Kitengela, Kajiado County- Kenya: 1960- 2015.*" Ku.ac.ke. https://doi.org/http://ir-library.ku.ac.ke/handle/123456789/19010.

complicated by the prevalence of concealed livelihoods among a significant portion of refugees in Nairobi, a phenomenon extensively documented in the literature. The vibrant informal sector in Umoja, characterized by a range of businesses such as clothing production, barbershops, massage parlors, and culturally significant Rhumba night performances, aligns closely with the economic inclinations of Congolese immigrants. [62]This sector not only accommodates Congolese refugees but also the native Kenyan population, adding to the complexity of their integration dynamics. Focusing specifically on the Umoja area within Nairobi, this research aims to illuminate on the unique protection challenges faced by Congolese emigres. As the population of Congolese refugees in Umoja continues to grow, this area provides an ideal vantage point for understanding the intricacies of their experiences. While previous studies by Waithera Kibe, Elizabeth Campbell, Simon Njoroge, Angela Wavinya have explored Congolese refugees in various settings in locations such as Kayole, Githurai Kasarani, and Eastleigh.[63] This justifies the selection of Umoja as the central focus of this study even as reports show their rising number in Umoja area.[64]

In terms of methodology, this study adopts a qualitative framework, a deliberate choice driven by its ability to provide an understanding of the challenges associated with protecting the rights of refugees within Nairobi's Congolese community in the Umoja area. The qualitative approach allows for an exploration of the experiences, capturing the essential nature of their lived experiences and fostering a deep understanding of their marginalization. An anticipated difficulty

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[62] Campbell, E. H. 2006. "*LIVELIHOODS in the REGION: Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal, Local Integration.*" *Refugee Survey Quarterly* 25, no. 2 (January): pp,93–108. https://doi.org/10.1093/rsq/hdi0128.

[63] "Daystar Repository Home." n.d. Dspace.daystar.ac.ke. Accessed August 29, 2022. http://dspace.daystar.ac.ke.
   *Thesis on child protection a case of Kitengela*, by Angela Wavinya

Waithera, Kibe. n.d. "*the influence of refugee integration on socio-economic development of Kenya: a case study of urban refugees in Nairobi (2006- 2019)* SPRING 2020." Accessed October 5, 2022. https://erepo.usiu.ac.ke/bitstream/handle/11732/6913/Kibe%20Christine%20Waithera%20MIR%202020.pdf?sequence=1&isAllowed=y.

Refugees, United Nations High Commissioner for. n.d. "*Promoting Livelihoods to Build the Self-Reliance of Urban Refugees in Nairobi.*" UNHCR. Accessed August 29, 2022.
https://www.unhcr.org/en-au/554343cb9.

[64] Nyamweya, Silas. n.d. "*The Congolese Rising Kingdom in Umoja Estate.*" The Standard. Accessed August 29, 2022. https://www.standardmedia.co.ke/ureport/article/2001311232/the-congolese-rising-kingdom-in-umoja-estate.

in conducting the research is the potential language barrier, as migrants from the Democratic Republic of Congo primarily speak Lingala and French. To address this issue, the researcher plans to enlist the help of a research assistant who is proficient in both languages. Additionally, identifying Congolese refugees residing in Nairobi may prove to be challenging, as they often lead a discreet lifestyle. Therefore, the researcher intends to utilize existing social networks, such as churches, music bands, and acquaintances residing in Umoja, to gather relevant information and establish contact with Congolese refugees in the informal sector.

**1.9 Hypothesis of the study**

This study has the following hypotheses:

**Hypothesis 1**: Congolese refugees are vulnerable to marginalization and have experienced problems due to an evolving refugee regime in Kenya: The case of Umoja, 1998-2015

**Hypothesis 2:** There exists profiling of Congolese emigres: The case of Umoja, 1998-2015.

**Hypothesis 3:** Congolese emigres witnessed a series of protection challenges arising from them sidelined: The case of Umoja, 1998-2015

**1.10 Methodology**

The main objective of this research was to fill a notable gap in the existing body of literature by examining the development of narratives and profiling that contributed to the marginalization of Congolese immigrants in Umoja, Nairobi. This marginalization led to various protection challenges for the Congolese immigrants, particularly within the dynamic context of Kenya's fluctuating refugee regime from 1998 to 2015. A qualitative approach was utilized to gather a comprehensive dataset from a combination of primary and secondary sources. The secondary data were obtained from research studies, reports, and academic articles, which were critically evaluated for reliability and relevance. Works by Alexander Betts, Gil Loescher, James Milner, T. Paul Collier, James Hathaway, and Karen Jacobsen, particularly "Refugees in Africa: The Politics of Protection," played a crucial role in shaping the theoretical framework of the study.

Primary data collection involved the use of a question guide, and online, phone, and oral interviews were used. Purposeful sampling targeted key individuals in the refugee protection field, resulting in 26 interviews. This included representatives from five international non-governmental organizations actively assisting refugees in Nairobi, as well as Congolese immigrants residing in Umoja. An additional interview was conducted with a representative from the United Nations High Commissioner for Refugees (UNHCR). The qualitative approach allowed for a thorough exploration of the narratives of Congolese immigrants. Additionally, thematic analysis identified recurring patterns and themes, enriching the study's findings. To ensure confidentiality, some participants chose to remain anonymous, which encouraged a more open sharing of their experiences. The use of snowball sampling, where refugees referred the researcher to potential participants, expanded the network and ensured a more inclusive data collection process. However, the study encountered limitations, as some refugees requested incentives such as food items, which posed challenges due to limited resources. Additionally, the vastness of Umoja with multiple regions complicated reaching all Congolese refugees, potentially limiting equal representation of each region. Phone interviews with participants working outside Umoja introduced variations in their experiences compared to those solely residing in the area. Despite these limitations, the study significantly contributes to the understanding of the challenges faced by Congolese immigrants in Umoja of Nairobi.

# CHAPTER TWO: SUSCEPTIBILITIES OF CONGOLESE EMIGRES

## 2.0 : Introduction

The challenges surrounding the protection of refugees have become increasing due to ongoing factional struggles and conflicts worldwide. In the context of African states, the problem of protecting emigrants has deep roots stemming from entrenched conflicts within states. It is then important to acknowledge the presence of Congolese emigrants in neighboring countries such as Kenya and the difficult history they have faced. This chapter aims to analyze the repercussions of the conflict in the Democratic Republic of Congo (DRC), which resulted in Congolese immigrants seeking asylum in Kenya. Furthermore, this study examines the challenges encountered by Congolese migrants, which ultimately lead to their social exclusion in the receiving nation. The denial of their refugee status further exacerbates their vulnerabilities, even within the confines of the protective environment. Besides, the examination of refugees in Kenya necessitates an understanding of the impact of the country's refugee policies on emigrants. It is essential to comprehend the experiences of Congolese immigrants within the context of a dynamic refugee regime between 1998 and 2015. Therefore, this chapter focuses on the experiences of Congolese emigres residing in the urban area of Umoja, Nairobi, as they seek protection. The dynamic nature of Kenya's refugee regime significantly shapes their encounters due to their susceptibility to discrimination. This protection aspect is closely intertwined with Kenya's revolving nature of refugee policies, resulting in a spectrum of experiences for refugees, ranging from hospitality to xenophobia. Furthermore, the chapter investigates how the intermittent implementation of refugee policies by various actors involved in refugee protection impacts Congolese migrants living in Umoja, Nairobi.

## 2.1 : DRC aggression and Congolese refugees' displacement to Nairobi

The Democratic Republic of Congo (DRC) serves as a notable example of an African nation that has experienced significant turmoil since gaining independence. History of the Democratic Republic of Congo reveals a long and intricate series of conflicts, encompassing various complexities such as the enduring consequences of colonialism, power struggles among different factions within the state, and the detrimental influence of imperialistic powers encroaching upon

its sovereignty. The case of the Democratic Republic of Congo illustrates the patrimonial nature that characterizes many post-colonial African states, contributing to their political instability and hostile socio-economic climates. As Chabal and Daloz depict that the authoritarian nature of the post-colonial order is a key factor in the instability of these states. As well as the concentration of power, transitions of leadership, and interference by hegemonic forces have resulted in numerous crises across Africa.[65]

Various authors have offered their perspectives on the reasons behind the conflicts in African states and such states include Democratic Republic of Congo. For instance, Samuel Huntington argues that the condition of African states is a consequence of the failed attempt to transplant Western models of governance onto Africa. Conflicting ideologies imposed by the West have failed to align with African identities, leading to internal struggles within African states.[66] Mamdani Mahmood, on the other hand, suggests that the colonial powers' establishment of a dual system of government, which segregated citizens and subjects based on racial and ethnic differences, has had a lasting impact on African societies. This division has perpetuated inequalities, conflict, and violence. He refers to the conflicted state of Africa as a legacy of colonialism. Additionally, Achille Mbembe contributes to our understanding of postcolonial dynamics in Africa by introducing the concept of "necropolitics." He argues that post-colonial governance in Africa extends beyond mere political control and incorporates the power to determine life and death. These autocratic regimes in Africa employ various means, including violence and surveillance, to maintain their power.[67] Therefore, the conflict in the Democratic Republic of Congo embodies all of these factors, as explained by its complex and interconnected nature.

The Democratic Republic of the Congo experienced the Second Congo conflict between 1998 and 2003, which led to approximately 5 million fatalities. According to Herbert Weiss in his work "War and Peace in the Democratic Republic of the Congo," the conflict can be traced back to

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[65] Chabal, Patrick, and Jean-Pascal Daloz. 1999. *Africa Works: Disorder as Political Instrument*. *Google Books*. International African Institute. https://books.google.com/books/about/Africa_Works.html?id=7O8WJB-kzewC.

[66] Huntington, Samuel P. 2011. *The Clash of Civilizations and the Remaking of World Order*. *Amazon*. A edition. New York: Simon & Schuster. https://a.co/d/3VFFbDz.

[67] Mbembe, Achille. 2006. *"Nécropolitique." Raisons Politiques* 21, no. 1: 29. https://doi.org/10.3917/rai.021.0029.

longstanding ethnic tensions, exacerbated by the lingering effects of colonialism and the involvement of Cold War powers. The protraction of this intricate conflict is attributed to a combination of factors, including ethnic grievances, ideological disagreements, and disputes over resources.[68]

According to Gerard Prunier and Georges Nzongola-Ntalaja, the Democratic Republic of the Congo (DRC) experienced a resurgence of hostilities in 1998, instigated by dissident factions supported by Rwanda and Uganda. This led to widespread violence, particularly in the eastern regions of the country, where numerous human rights violations occurred, including massacres, sexual atrocities, and the forced recruitment of children into armed groups. As a result, a significant number of civilians were displaced. Efforts to achieve peace through negotiations were unsuccessful for several years until a pivotal moment in 2003 when a peace agreement was finally reached. This agreement required the demobilization of foreign forces and the establishment of power-sharing between the government and insurgent groups. The formal end of the conflict came with the Sun City Agreement, which was signed in South Africa. However, sporadic outbreaks of violence persisted, leading many civilians to seek refuge in neighboring countries. [6970]Hence, the outbreak of hostilities led to a substantial influx of Congolese refugees into Kenya and neighboring countries.

## 2.1: Vulnerabilities of Congolese emigres

In his research paper titled "Is my claim meritorious? Congolese experience of the refugee status determination process in Kenya," Andrew Maina conducted a study in Kenya that examined the rejection of Congolese asylum claims. The study conducted a comparative analysis of the rates of rejection for asylum seekers from the Democratic Republic of Congo (DRC) in comparison to individuals from other nations. The findings indicated that Congolese asylum seekers were more prone to encountering adverse outcomes during the administrative review phase of the Refugee

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[68] Weiss, *"War and Peace in the Democratic Republic of the Congo."*

[69] Gerard Prunier, "*Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe," (*New York: Oxford University Press, 2009), xxviii.

[70] Georges Nzongola-Ntalaja, "*The International Dimensions of the Congo Crisis,"* Global Dialogue 6, no. 3/4 (2004): 116.

Status Determination process. In this stage their status is determined. This is significant because rejection in the refugee status determination process increases protection challenges due to a lack of documentation. However, it is important to note that documentation in most cases does equate to protection, as shown in Julie Tippens' study on urban Congolese in Kenya.[71]

Refugees may possess various documents such as Alien Cards, Appointment Letters, and UNHCR Mandate Refugee Certificates. These documents are supposed to provide legal status and protection for refugees who have been granted asylum through the Refugee Status Determination process. Yet, in some instances even with these, many will face protection problems. Additionally, Congolese emigres in Umoja, Nairobi face legal vulnerabilities. Despite generally low rejection rates, there are factors within the protection system that contribute to their rejections. For example, inadequate language interpretation services have been cited as a reason for rejection, as there may be differences in dialects between the asylum seekers and interpreters. Some asylum seekers also suspect interpreters of having political biases. However, the United Nations High Commissioner for Refugees (UNHCR) disputes these claims and suggests that successful recognition rates among eastern Congolese communities indicate effective interpretation. Inadequate or inaccurate Country of Origin Information (COI) also contributes to rejection rates.[72] Furthermore, the rejection of asylum seekers was attributed to their inability to accurately recollect the specifics of their journey to Kenya. This could be owing to the long flight distance and a lack of pre-resettlement counseling. Furthermore, the presence of post-traumatic stress disorder (PTSD) as a result of traumatic experiences may heighten their vulnerability. According to Carrie Hough, Congolese networks are often perceived as weaker compared to the Somali refugees and other émigré communities due to their dispersion across various areas in Nairobi and their comparatively less stable income sources. Somalis have good business networks and work very closely with Ethiopian communities, therefore able to support each other. As opposed to Congolese émigrés that face challenges in supporting newcomers, and it is not uncommon for recently arrived Congolese asylum seekers to struggle in securing more than one meal per day.

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[71] Ibid.

[72] Andrew Maina, *Is my claim meritorious.*

Furthermore, the Banyamulenge, a group of Congolese émigrés, have voiced their concerns regarding the feasibility of living in refugee camps. They argue that the presence of other Congolese groups within these camps, some of whom may be their adversaries and have been involved in armed conflicts in their country of origin, poses a significant threat. Moreover, residing in an urban center such as Nairobi presents an even greater challenge, as the local police force may have connections with their Congolese enemies or other refugee groups. Consequently, this situation renders them highly vulnerable in the city, akin to navigating through darkness with caution.[73] Based on the accounts provided by Congolese immigrants in Umoja, it is evident that they face a higher risk of discrimination, which in turn leads to protection issues. This is due to the assumption that their physical appearance will enable them to easily blend in with the residents of Nairobi. Additionally, there is an assumption that they can communicate in Swahili, the local language, and engage in conversations with the hosts. However, this assumption is not always accurate, as many Congolese immigrants primarily speak Lingala and sometimes French, rather than Swahili.[74] In comparison, Nairobi residents are more comfortable interacting with Somali immigrants, even if there are language barriers, and are able to continue conversations because of presence of native Somalis. Though, majority of Nairobians struggle to communicate with Congolese immigrants who speak Kiswahili Kiungwana.

Consequently, the language barrier often renders Congolese immigrants vulnerable to marginalization, particularly in business settings. It is worth noting that other groups of refugees, such as Sudanese and Ethiopians, have a long-standing presence in Nairobi. For example, the Nubians in Kibera and the Oromos, who coexist well with Somalis, also the hosts have ethnic groups with ties to Somalis and Ethiopians as well. And Somali refugees also have native Somalis in Nairobi, making it difficult for hosts to easily distinguish between refugee Somalis and native Somalis. Although these immigrant groups in Nairobi possess distinct characteristics from the local residents, this does not place Congolese immigrants in a more advantageous position. In fact, it often makes them more vulnerable to marginalization, as they are not easily identifiable within

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[73] Online interview, Banyamulenge Congolese refugee, Nairobi.2023

[74] Focus group. Umoja Innercore. Nairobi. 2023

the crowd. Once identified as refugees, their ability to establish relationships with others becomes strained, unlike other groups who may be perceived as natives and do not face automatic marginalization. This is particularly evident when seeking assistance from the police.[75]

## 2.2 : Contrasting dynamics of amity and enmity

Kenya was once a hospitable refuge for a large number of refugees from neighboring countries such as Somalia, Ethiopia, and Sudan, before the year 1991. Despite the challenges posed by the large influx of refugees, the Kenyan government demonstrated its commitment by providing essential necessities such as food, shelter, and medical care. Additionally, refugees were allowed to live and work within the country's borders. In some cases, this hospitable approach even extended to granting citizenship to certain refugees, allowing them to embrace a new national identity.[76] In her scholarly work titled "Refugee Rights in Kenya: Bridging the Chasm between Theory and Practice," Eva Freudenthaler conducts a comprehensive examination of the historical period preceding the implementation of encampment policies in Kenya. Through her analysis, Freudenthaler investigates the challenges faced by refugees within the borders of Kenya. Her research provides valuable insights into Kenya's initial approach towards refugees, revealing a more lenient stance that aligned with the principles outlined in the 1951 Convention Relating to the Status of Refugees and its accompanying 1967 Protocol. According to Freudenthaler's study, the policy orientation prioritized the protection and integration of refugees within Kenyan communities.[77]

In the early 1990s, Kenya underwent a notable shift in its treatment of refugees. Historically recognized for its provision of asylum, assistance, and even allocation of land and resources, Kenya's stance towards refugees progressively evolved towards a more exclusive and restrictive

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[75] Oral Interview, respondent, Nairobi. 2023

[76] Betts, Alexander, Naohiko Omata, and Olivier Sterck. n.d. "Refugee Economies in Kenya." https://www.rsc.ox.ac.uk/files/files-1/refugee-economies-in-kenya.

[77] Freudenthaler, Eva. "*Refugee rights in Kenya between theory and practice*." Vienna Journal of African Studies 12, no. 23 (2012): pp107-133.

approach. The pivotal moment occurred in 1991 when the Kenyan government introduced a novel refugee protection strategy that emphasized containment and exclusion. Consequently, refugees were barred from residing in urban areas or municipalities without proper legal authorization, and transgressors of this regulation faced the potential consequences of arrest and detention.[78]

Consequently, in the late 1990s, Kenya experienced a significant increase in the number of refugees it was responsible for, with the population growing from 12,000 in the late 1980s to 220,000. A report by the UNHCR and Human Rights Watch, authored by Carrie Hough, highlights the continued upward trend during that period, with the number of refugees rising from 430,871 in 2010 to 639,097 in 2012. These escalating figures prompted Kenya to adopt a refugee encampment policy as a strategic measure to address the growing refugee population. Similarly, Nyambane Kerubo, Lucy Kiama, and Rufus Karanja work on the historical development of Kenya's refugee encampment policy, depicted that these developments were deeply intertwined with security concerns, economic needs, and the complex political motives of Kenya.[79]

Accordingly, due to this policy, documentation process by emigres in attempt to seek protection posed a significant challenge to Congolese emigres. Which required refugees like Jean and his family, who resided in Umoja in the city, to periodically return to refugee camps for administrative purposes such as obtaining documentation and applying for refugee status. This bureaucratic requirement had complex financial implications for Jean and his family.

> "I have been in the country since 1998, and there have been a lot of problems when it comes to living
> in the city. Many times I have moved back to the camps with my family and moved again to the city.

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[78] Elizabeth H. Campbell, "Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration," Journal of Refugee Studies 19, no. 3 (August 2006): pp396-413, https://doi.org/10.1093/jrs/fel011.

[79] Hough, "*Newcomers to Nairobi".*

Nyambane A. Kerubo, *"Refugees' Rights Vs. Responsibilities: An Analysis of Kenya's Refugee Encampment Policy"* (2013).

James Hathaway, *"Kenya: From Host to Home?" in Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, ed. Erika Feller, Volker Türk, and Frances Nicholson (Cambridge: Cambridge University Press, 2008), 696.

In the early 2000s, you would be advised to go back to the camp to apply for status or seek any documentation. Though lately now, we can access UNHCR here in Nairobi. Going back to the camps was so hectic, no finances to move around." [80]

The inhospitable treatment of refugees in Kenya led to the implementation of an encampment policy, which placed a considerable financial burden on emigres like Jean and his family as they frequently transitioned between the city and the camp, depleting their already limited resources. This disrupted family dynamics, resulting in adverse effects on the education and social relationships of the children. Furthermore, the policy limited access to essential urban services, impeding the process of integration. The search for necessary documents, such as movement passes, mandate letters, and DRA identification, had a significant impact on the educational trajectory of immigrant children, often necessitating interruptions in their schooling. Also, the complex bureaucratic procedures involved in obtaining necessary documentation also discouraged refugees from seeking assistance. Jean's experiences serve as an example of how government policies directly impact the lives of refugees, causing disruption, exacerbating financial instability, and hindering urban integration.

Over time, the regime imposed ever-stricter controls, like barring refugees from seeking out decent work according to Evelyn Kiswii.[81] While some scholars like Lucy Kiama and Rufus Karanja acknowledge that the Kenyan government periodically adjusted its encampment policy, allowing refugees to reside outside of the camps but with proper documentation. Nonetheless, the emigres regime restricted refugees to remaining in urban areas and limited access to resources. Therefore, immigrants were deprived of prospects for employment, education, and entrepreneurship.[82]Wherefore, urban refugees, according to Philip Marfleet, were continually disparaged and hidden from the public.[83] Hence, it is important to note that Kenya's shift from a

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[80] Oral Interview, Jean, Nairobi. 2023

[81] Kiswii, Evelyn. *"Refugee influx and (in)security: Kenya's Experiences, 1991-2012"* (PhD diss., University of Nairobi, 2013), 41.

[82] Opongo, Elias O. *"Refugee Undesirability and Economic Potentials: Questioning Encampment Policy in Forced Migration." In Refugees and Forced Migration in the Horn and Eastern Africa: Trends, Challenges and Opportunities, pp* 115-130. 2019.

[83] Marfleet, Philip. *" Forgotten,"" hidden": Predicaments of the urban refugee."* Refuge 24 (2007): 36.

welcoming approach to an encampment policy presented a significant change that had adverse consequences for refugee protection.

## 2.3: The impasse between optimism and materiality

The treatment of refugees and the encampment policy became subjects of dispute by various stakeholders and the international community. In response to these concerns, the Refugee Act of 2006 was enacted, signifying a significant milestone in safeguarding the rights of immigrants in Kenya. This legislation marked a departure from previous policies that primarily focused on containment, instead establishing a comprehensive framework aimed at providing support and empowerment to refugees residing within the country's borders. A crucial element of this transformative process was the establishment of the Refugee Affairs Secretariat, which assumed the responsibility of managing refugee affairs and ensuring their safety and well-being. The enactment of the 2006 Refugee Act was particularly significant due to the increasing number of refugees arriving from neighboring countries. The primary objective of the Act was to grant refugees access to essential services and unrestricted mobility within Kenya, while also safeguarding them from discrimination and exploitation.[84]

Despite the legal restrictions afforded by the act, immigrants in urban areas continued to encounter serious difficulties. Based on research by Alexander Betts, Sara Pavanello, Samir Elhawary, and Sara Pantuliano, the custom of keeping refugees in camps was not an exception in the act. A further finding of the study was that refugees who resided outside of the camps were at risk of being exploited, marginalized, and mistreated.[85] Urban refugeehood was criminalized and it led to the unjustified arrest, deportation, and harassment of refugees, particularly those who were deemed to pose a national security danger. Because the Kenyan government frequently prioritized national security over the safeguarding of refugees' rights. The émigré's Act in Kenya fell short of

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[84] Simon Kanzolo, *"The Refugee Question in Kenya: Challenges and Prospects,"* Journal of Refugee Studies 27, no. 2 (2014): 187-206.

[85] Sara Pavanello, Samir Elhawary, and Sara Pantuliano, *"Humanitarian Action and Urbanization: New Challenges and Opportunities,"* Overseas Development Institute (June 2010), accessed March 2, 2023, https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5985.pdf.

establishing a cohesive refugee policy that handled the particular trudges faced by refugees residing in metropolitan areas. This resulted in scarce access to essential services like healthcare and education as well as challenges in finding legal employment for urban refugees.[86]

According to Julie Tippens and Gaim Kibreab, Congolese refugees residing in Nairobi were confronted with human rights violations, encompassing physical abuse, arbitrary detentions, and forced evictions. They endured persistent pressure from law enforcement agencies and criminal organizations, living in a perpetual state of fear and uncertainty. Despite the existence of the Refugee Act of 2006, these refugees encounter discrimination and encounter limited access to essential services, primarily due to the government's ineffective enforcement of protective measures. The act failed to adequately address their needs, resulting in restricted employment opportunities, healthcare, and educational resources, as there is a lack of a comprehensive refugee strategy in place. Moreover, Congolese refugees in Umoja, Nairobi faced significant challenges, including compromised safety and limited access to services, which can be attributed to the government's preference for confining refugees to camps. This is particularly burdensome for Congolese émigrés, who grappled with these daily hardships. Furthermore, the 2006 Refugee framework lacked a gender-sensitive approach, exacerbating the difficulties faced by these refugees. The government's approach in Kenya further marginalized urban refugees, exposing them to heightened risks and inadequately addressing their needs.[87]

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[86] Gaim Kibreab, "*Refugees and Development in Africa: The Case of Eritrea*" (Oxford: James Currey, 2012), 96.

Macharia Kamau, *"Displacement, Dilemmas and Durable Solutions: Somali Refugees in Nairobi"* (PhD diss., University of Nairobi, 2015), 34-35.

Betts, Alexander. *"Refugees and Forced Displacement: International Security, Human Vulnerability, and the State."* Journal of Human Development 4, no. 2 (2003): 259-277.

[87] Tippens, Julie A. 2016. "Urban Congolese Refugees in Kenya: The Contingencies of Coping and Resilience in a Context Marked by Structural Vulnerability." *Qualitative Health Research* 27, no. 7 (August): 1090–1103. https://doi.org/10.1177/1049732316665348

Kibreab, Gaim. "*Refugees and Development in Africa: The Case of Eritrea.*" Journal of Refugee Studies 25, no. 3 (2012): pp378-394.

For instance, Musosa a Congolese refugee (the émigré gave me the name and said it's not his real name, he doesn't trust anyone), expressed his disillusionment with the level of police protection. He laments that the safety of Congolese refugees in the city was and still is solely reliant on divine intervention (faith in God), as locals often mistreat, mishandle, or steal from them with impunity. Seeking recourse through the police was futile, as they were known to subject refugees to further harassment, leaving them without any hope for justice.

> "One of my Congolese friends went to report that his house was locked by the landlord, and he needed to retrieve his belongings. However, the police mocked him and told him to behave, saying this isn't his country. It's clear that protection policies exist on paper, but they often don't work well in the city. This is especially true in Umoja, where locals live alongside the police; there's even a whole apartment complex with police officers here in Umoja 1. They are familiar with each other. As refugees, we try to keep a low profile and avoid trouble. Not everyone is hostile towards us, but for us Banyamulenge, we are afraid to go to the police. We fear that some people who caused us to flee have connections with the police." [88]

In addition, Elizabeth Campbell, Esther Kiragu and Jeff Crisp provide a historical overview of UNHCR's adherence to the Kenyan government's encampment policy during the 1990s to the early 2000s, which resulted in challenges for refugees residing in urban areas, particularly Nairobi, due to limited assistance and a lack of constructive engagement with the urban refugee community. However, a shift in approach occurred with the implementation of the Nairobi Initiative in response to a resettlement scandal in the early 2000s. UNHCR adopted a more proactive stance to address the needs of refugees in Nairobi, actively involving the urban refugee community and various stakeholders. This initiative led to the establishment of an urban refugee programs, characterized by partnerships with non-governmental organizations, community-based organizations, and self-help groups. These efforts aligned with the principles subsequently incorporated into UNHCR's new urban refugee policy introduced in 2009.[89]

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[88] Oral Interview, respondent, Nairobi.2023

[89] Refugees, United Nations High Commissioner for. n.d. "Refworld | Navigating Nairobi: A Review of the Implementation of UNHCR's Urban Refugee Policy in Kenya's Capital City." Refworld. Accessed September 14, 2023. https://www.refworld.org/docid/4d6ca8302.html.

The UNHCR's urban refugeehood recognition policy in 2009 was formulated as a response to the escalating number of refugees seeking protection in urban areas and the inadequacy of the conventional camp model. Guided by a neoliberal perspective, as Ali Bhagat denotes, this policy aimed to prioritize individuality and market-oriented solutions, while also emphasizing the significance of work, education, healthcare, and housing rights. However, the implementation of this policy in Kenya was influenced by political and economic factors, including international pressure to adopt the policy, the growing urban refugee population, and the need for safety and basic amenities.[90] It is worth noting that the Kenyan government adhered to the traditional camp model until the adoption of the UNHCR policy in 2009. The international pressure to adopt the policy was driven by concerns regarding crimes against humanity committed against urban refugees in Nairobi and the potential security implications of hosting a substantial number of unregistered migrants.

Jeff Crisp contends that the 2009 urban refugee policy sought to differentiate itself from its predecessor in 1997 by acknowledging the difficulties posed by rapid urbanization. It recognized urban areas as legitimate places for refugees and aimed to create an environment that would facilitate refugee protection. The policy emphasized fostering positive relationships with urban refuges. It also emphasized the importance of providing assistance and promoting self-reliance for refugees in urban areas, recognizing the complexities they face. The policy employed the concept of "protection space" to safeguard the rights and needs of refugees. Implementation of the policy involved a range of activities, but encountered challenges such as resource allocation, the influence of host countries, collaboration with non-traditional partners, and the presence of diffuse discourse. The impact of the policy extended beyond urban refugees, influencing other humanitarian contexts and the formulation of global refugee policies. [91] It is also imperative to note that safeguarding the well-being of refugees is a responsibility entrusted to the Kenyan government, as evidenced by the enactment of the urban refugee recognition act in 2009 and the subsequent implementation of

[90] Bhagat, Ali. 2019. *"Governing Refugee Disposability: Neoliberalism and Survival in Nairobi." New Political Economy*, March (March), 1–14. https://doi.org/10.1080/13563467.2019.1598963.

[91]Crisp, Jeff. 2017. *"Finding Space for Protection: An inside Account of the Evolution of UNHCR's Urban Refugee Policy." Refuge: Canada's Journal on Refugees* 33, no. 1 (March): 87–96. https://doi.org/10.25071/1920- 7336.40451.

collaborative initiatives between the UNHCR and various governmental and non-governmental entities. It is commonly misconceived that the primary duty of protecting refugees, particularly those residing in urban settings, lies solely with the UNHCR. However, this is not accurate. The role of the UNHCR is to oversee the government's efforts and provide assistance in ensuring the protection of refugees.[92]

However, the implementation of these policies remained inconsistent, primarily affecting Congolese emigres in Umoja in Nairobi.[93] In the Umoja area, Congolese emigrants expressed their dissatisfaction with the policy that designates them as urban refugees, claiming that it is unfamiliar to them. They argued that whether this policy exists or not, it makes no difference in their daily lives. They are responsible for their own sustenance and survival, and when faced with difficulties, it becomes distressing. Residing in Umoja is not entirely without fear, as there is a constant awareness that someone may be plotting harm against them. This underlying knowledge creates a sense of unease and prevents them from living a normal life. They must navigate their surroundings cautiously, avoiding any actions that may offend the local population or lead to trouble. Many Congolese refugees in Umoja area rely on churches and community initiatives for support, which is not consistently available. Moreover, these refugees often lack awareness of where and when to access support services. Complicating matters further, the Umoja area is geographically complex, with multiple subdivisions such as Umoja one, two, three, and Umoja Innercore. Consequently, when resources or assistance are distributed, these distinct areas are not adequately considered, as some stakeholders mistakenly treat the entire region as a single entity. [94]

According to Andrew Maina, from the Durable Solutions Secretariat of Danish Refugee Council, the provision of protection in urban areas poses significant challenges in terms of maintenance and implementation. The distribution of resources to urban areas can be likened to the introduction of incentives, which may inadvertently motivate individuals who do not qualify for assistance to manipulate the system in order to gain access. Consequently, this resulted in a situation where the intended beneficiaries do not receive the necessary support or essential supplies provided by

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[92] Online Interview, Mugambi Kithamba, UNHCR & Danish Refugee Council, Nairobi. 2023

[93] Ibid,
[94] Oral Interview, Focus Group, Umoja Innercore, Nairobi. 2023

stakeholders in the field of protection. Furthermore, this situation also discouraged stakeholders from providing incentives such as food.[95]

## 2.4 : Conclusion

This chapter presents an examination of the experiences of Congolese refugees residing in the Umoja area of Nairobi within the context of Kenya's evolving refugee framework. The shift in Kenya's treatment of refugees from hospitality to xenophobia, along with the consistent enforcement of the encampment policy, presents difficulties for urban refugeehood. Despite the enactment of the 2006 Refugee Act, these refugees encounter financial constraints, documentation issues, and intricate dynamics involving various stakeholders. The sporadic enforcement of refugee policies significantly influences their experiences, resulting in discriminatory treatment by entities such as the police based on their choice of residence. Research findings demonstrate the impact of inconsistencies in policy implementation and deficiencies in protection on Congolese refugees in Umoja. The withdrawal of support from certain stakeholders exacerbates challenges, alongside opportunistic actions of groups pursuing personal interests. Specific refugee groups, particularly the Banyamulenge, face ongoing dangers, contributing to a decline in their overall quality of life characterized by constant fear and caution, limiting their ability to lead normal lives. The unfamiliarity and ineffectiveness of municipal locale protection policies place the primary burden of sustenance on the refugees, who heavily rely on irregular support from churches and community initiatives.

The complex geographical nature of Umoja leads to disparities in resource allocation, as stakeholders mistakenly treat the area as a homogeneous entity, neglecting its diverse regions. Respondents from the actors' space highlight the inherent challenges of providing protection and resources in urban settings, where resource manipulation may occur. A s well as the lack of awareness and understanding of these policies among key stakeholders, particularly the police force, presents significant obstacles for Congolese refugees in Umoja. These findings collectively accentuate the necessity for a collaborative effort from all stakeholders to comprehend and fulfill

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[95] Online Interview, Andrew Maina. Durable Solutions Secretariate, Nairobi. 2023

their responsibilities in safeguarding urban refugees. Policymakers, humanitarian organizations, and local communities must work together to address the complex challenges faced by urban refugees, fostering an environment free from discrimination and mistreatment.

# CHAPTER THREE: PROFILING AND MARGINALIZATION

## 3.0 : Introduction

Refugee discrimination or marginalization refers to the unfair or prejudiced treatment experienced by individuals who are forced to flee their home countries due to persecution, conflict, or other dangerous situations. As a result, the issue of discrimination against refugees is a global concern that has significant implications for human rights, social justice, and international relations.[96] The chapter builds upon the concept of refugee discrimination or marginalization, drawing from Kieran Oberman's insights. It identifies two primary forms of discrimination: deliberate actions by the host communities towards emigres and subtle forms embedded within the structural framework of the refugee system and government actions. Oberman's analysis highlights the far-reaching consequences of the refugee system on the lives of those it aims to protect, as well as the dilemmas faced by states bound by the principle of non-refoulement.

In the previous chapter, an examination of the lives of Congolese emigrants in Umoja, Nairobi, amid a changing framework revealed a significant shift in Kenya's treatment of refugees over time. Kenya, once known for its welcoming approach to displaced populations, adopted a more xenophobic stance, primarily due to the implementation of an encampment policy. This policy complicated the experience of urban refugees, including Congolese emigrants in Umoja, who faced restricted access to protective mechanisms and challenges. However, this chapter focuses on the profiling and marginalization experienced by Congolese emigrants in Umoja. This study probes into the historical context of discriminatory practices and emphasizes the impact of protective spaces and the communities in which Congolese emigres reside. Andrew Maina's research in the literature review revealed a concerning trend of high rejection rates among Congolese refugees seeking official recognition. This phenomenon prompted for further investigation into the factors of marginalization and development of these profiling that disproportionately affect this group compared to other refugee categories. Within Kenya's regime landscape, the research gap becomes evident—the need to understand the origins and evolution of

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[96] Kieran Oberman, *"Refugee Discrimination – The Good, the Bad, and the Pragmatic,"* Journal of Applied Philosophy 37 (2020): pp 695-712, https://doi.org/10.1111/ja pp.12448.

profiling mechanisms that contribute to the marginalization of Congolese emigrants in Umoja. It aims to illuminate the specific dimensions of marginalization impacting immigrants in the Umoja area, considering the unique attributes of both the refugee population and Umoja locale in Nairobi. Additionally, the inquiry narrowed its focus to Congolese emigrants who arrived in Kenya between 1998 and 2015, a period marked by unrest and conflict in the Democratic Republic of Congo (DRC) that forced many to seek asylum in neighboring countries. This timeframe also aligns with significant shifts in Kenya's refugee policies.

### 3.1 : Discrimination of emigres

According to Prem Kumar Rajaram, migrants frequently face marginalization within urban settings, as their experiences are closely connected to societal structures. In urban locales, they are often subjected to being perceived as outsiders or 'strangers'.[97] In addition to Prem Kumar Rajaram perspective, Kieran Oberman insists there are only two primary forms of discrimination. The first is deliberate discrimination perpetrated by governments, while the second is a more subtle form inherent in the structure of the refugee system itself. Oberman also acknowledges the profound impact of the refugee system on refugees. He observes that states face limited options due to their primary obligation of non-refoulement, which prohibits the return of refugees to dangerous situations.[98] Also, in migration literature, marginalization can be defined in three key ways: involuntary exclusion from society, relative deprivation involving poor living conditions and limited opportunities, and a process that systematically excludes migrants from essential aspects of social life.[99]Tendayi Achiume contributes an additional dimension to this discourse by discussing structural discrimination that affects immigrants. This type of discrimination is ingrained in policies, laws, and practices, and it disproportionately harms refugees due to their foreign status. It can curtail employment opportunities, access to education, housing choices, and social services solely based on an individual's refugee status. The term "structural" underscores

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[97] Rajaram, Prem Kumar. 2018. *"Refugees as Surplus Population: Race, Migration and Capitalist Value Regimes." New Political Economy* 23, no. 5 (January): 627–39. https://doi.org/10.1080/13563467.2017.1417372.

[98] Oberman, Kieran. 2020. "Refugee Discrimination – the Good, the Bad, and the Pragmatic." *Journal of Applied Philosophy* 37, no. 5 (July): pp,695–712. https://doi.org/10.1111/japp.12448.

[99] Keung Wong, Daniel Fu, Chang Ying Li, and He Xue Song. 2006. *"Rural Migrant Workers in Urban China: Living a Marginalised Life." International Journal of Social Welfare* 16, no. 1 (December): pp,32–40. https://doi.org/10.1111/j.1468-2397.2007.00475.x.

the fact that this discrimination is deeply entrenched within systems and institutions, and it has significant implications for the human rights and well-being of refugees.[100] In order to gain a comprehensive understanding of the discrimination faced by Congolese refugees in Umoja and the development of such marginalization and profiling, it is imperative to analyze these dynamics within the context of the entities responsible for safeguarding Congolese refugees and the host communities in Umoja. This study examines discrimination which can also be described as discrimination, expounding origins and evolution of the profiling of Congolese emigres in Umoja.

## 3.2 The historical development of discrimination against refugees

The treatment of refugees throughout history has been profoundly influenced by geopolitical dynamics, security concerns, and shifting political ideologies according to Alexander Betts. The Cold War, a defining era of the 20th century, witnessed a superpower rivalry between the United States and the Soviet Union. During this period, the politics of asylum took center stage, with Western nations, particularly the United States, being influenced by superpower politics in their refugee policies. Alexander Betts highlights the selective nature of refugee protection based on political alignment, revealing that refugees were granted asylum based on their affiliation with communist or non-communist regimes. This differential treatment of refugees accentuates the complex relationship between politics and compassion in refugee protection.[101] Consequently, the dawn of the 21st century brought significant shifts in global politics and security, particularly following the September 11 attacks in the United States. This event led to heightened vigilance and suspicion, prompting Western nations to adopt security measures that unfortunately resulted in racial profiling and discrimination against refugees from specific regions, primarily the Middle East. David Cole draws parallels between this era and McCarthyism, highlighting the negative impact of the War on Terrorism on refugee treatment. Refugees, already fleeing turmoil, found themselves caught in a web of security measures, overshadowing their dreams of finding

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[100] Achiume, E Tendayi. n.d. "*Structural Xenophobic Discrimination against Refugees*." https://www.ohchr.org/Documents/Issues/Racism/AdHoc/9thsession/TendayiAchiume_Item6.pdf.

[101] Betts, Alexander. 2009. *Forced Migration and Global Politics*. John Wiley & Sons.

sanctuary.[102] Further, the rise of populist nationalism poses a significant threat to asylum rights and refugee treatment. David Scott FitzGerald delves into this subject, revealing how populist leaders exploit anti-immigrant sentiments to consolidate power. The consequences of this phenomenon are far-reaching, including the implementation of restrictive policies, divisive rhetoric, and an environment conducive to increased refugee discrimination. FitzGerald argues that the political economy of refugee migration and foreign aid becomes intertwined with the ascent of populism, further complicating the prospects for those seeking refuge.[103]

## 3.3 Evolution and profiling of Congolese refugees in Umoja, Nairobi

Urban areas pose numerous challenges for refugees, including legal disparities, social exclusion, and difficulties in accessing assistance. In the Umoja area of Nairobi, Congolese emigrants in Umoja feel marginalized and neglected in terms of meeting their basic needs and receiving protection. They perceive that once the local population becomes aware that they are not Kenyans, they are treated as outsiders and face marginalization. The Congolese immigrants expressed frustration with the lengthy process of seeking refugee status, as staying in the city without proper documentation poses significant risks. This was particularly evident when attempting to find employment, as employers, who are predominantly Kenyans, prioritize individuals with the necessary documents to avoid jeopardizing their businesses. The Congolese immigrants struggled to survive without refugee status, often enduring years without official recognition. This is as a result of profiling existing in some protection spaces as earlier research connotes. Some Congolese emigre believed that their treatment may have been influenced by their non-membership in the East African community. Some Congolese immigrants also felt that refugees from the East African community may have received better protection in Nairobi. Consequently, Mugambi Kithamba, a respondent who works with refugees, seemed suggest that Congolese refugees underwent more rigorous assessments due to the complex conflict in the Democratic Republic of Congo (DRC). Also, in some instances Congolese refugees faced challenges in their applications due to

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102 Cole, David. *"The New McCarthyism: Repeating History in the War on Terrorism."* Harvard Civil Rights-Civil Liberties Law Review 38, no. 1 (2003): 1-76.

103 FitzGerald, David Scott. *"The Political Economy of Refugee Migration and Foreign Aid."* International Organization 55, no. 4 (2001): 901-933.

inconsistencies in their persecution stories, which may have been attributed to the distance they traveled to Kenya and the lack of evidence or recollection of their persecution experiences. Nevertheless, in the context of resettlement, particularly to the United States, Congolese emigrants had a comparative advantage over other refugees due to the security checks that were biased in their favor, as the majority of them are not Muslims. Conversely, groups such as Somalis, who are predominantly Muslim, were subjected to more rigorous checks in order to prevent potential terrorist infiltration. Likewise, it is worth noting that many Congolese individuals in Nairobi are also economic immigrants, which prompted the protection system to impose stricter criteria on them, as these economic immigrants also sought access to protection.[104]

Additionally, the study noted that reasons behind the high rates of rejection among Congolese asylum seekers, was attributed to insufficient or unreliable country of origin information (COI). COI plays a crucial role in the evaluation of evidence presented by asylum applicants by Refugee Status Determination (RSD) officers. [105]This situation illustrates a form of discrimination, as it pertains specifically to a group that experiences a disproportionately high rate of rejection for refugee status. Consequently, a larger number of individuals from this group find themselves in a state of uncertainty and are unable to access the necessary protection. Additionally, this implies that other groups of immigrants are given priority in terms of receiving information about their country of origin, which is crucial for determining their legal status. Moreover, it appeared that Congolese emigrants in Umoja exhibited a deficiency in their understanding of the various procedures within the space of protection, resulting in a high rate of failure during assessments.[106] This was perceived as marginalization and is attributed to the Congolese community's tendency to withhold information from one another, unlike other communities such as the Somalis who actively share information. Additionally, a Congolese emigrant expressed the notion that there is a lack of mutual support within their community, with individuals primarily focused on their own well-being.[107]

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[104] Online Interview, Mugambi Kithamba, Nairobi.2023

[105] Online Interview, Andrew Maina, Nairobi.2023

[106] Online Interview, Kevin, Church World Service, Nairobi. 2023
[107] Ibid,

The Umoja area is renowned for its sophisticated planning, with distinct sections such as Tena, Umoja One, Umoja Two, Umoja Three, and Umoja Innercore spread across different locations. Congolese emigrants residing in Umoja expressed gratitude for the support they received in the early days from various organizations, particularly churches, which provided assistance in the form of education for their children and even scholarships for technical training. Consequently, information dissemination within Umoja is limited, as updates shared in one location may not reach other Congolese emigrants residing in different regions. Furthermore, well-wishers and aid providers often concentrate their efforts in one area, assuming that it will suffice. Yet, Congolese emigrants are dispersed throughout the Umoja area and do not stand out physically from the local population therefore one cannot identify them outrightly. Additionally, the emigrants assert that the incentives provided were insufficient, as other groups exploit the system to obtain these resources. Consequently, the limited resources available are unable to meet the needs of every emigrant in the city. Congolese immigrants in Umoja also observed that the Kenya school system does not adequately consider the needs of refugees. For instance, one immigrant's son completed primary and secondary school in Kenya, but the university admission body refused to admit him to a public university through the regular government system, despite meeting the necessary qualifications. Consequently, the parent had to enroll the son in a public school as a private student, which is financially burdensome due to the high cost of education for private students. On the other hand, groups like Somalis enjoy an advantage because Kenyans are aware of the presence of Kenyan Somalis and therefore do not discriminate against them. However, Congolese emigrants in Umoja are often perceived by Kenyans and host communities as wealthy individuals who have come to Nairobi to engage in gold trading. This perception has been deeply ingrained among the host communities, particularly due to the Congolese emigrants' fashion choices, which differ from the typical Nairobian preference for second-hand clothing known as "mitumba." Such profiling is widespread among many Kenyans and even among those involved in the protection sector. Additionally, Congolese immigrants in Umoja have reported feeling marginalized in the healthcare sector. For instance, one Congolese immigrant had an encounter with a health officer who advised the emigre not to seek medical treatment as they have unfamiliar diseases from Congo not known in Kenya. because, these same refugees lack the financial means to pay for their own treatment.

Congolese refugees in Umoja similarly expressed fear and limited access to the healthcare system, as they feel they have no other options available to them.[108]

In the marketplace, the deliberate use of language, metaphors, and symbols reinforces existing the unequal treatment of Congolese refugees in Umoja. This disparity is particularly evident in the informal sector, where Kenyans possess linguistic advantages that allow them to effectively communicate with clients in their native tribal dialect. This advantage is not afforded to Congolese refugees, who face linguistic barriers in attracting customers. As a result, this linguistic divide perpetuated unequal economic opportunities in favor of Kenyan citizens, further marginalizing Congolese refugees within the informal sector. Congolese immigrants are often perceived as lacking distinct physical features that differentiate them from the native population. Consequently, this can lead to misunderstandings and misinterpretations of their behavior, particularly when they do not respond promptly while selling items in the market. In contrast, Nairobians are familiar with other immigrant groups, such as Somalis and Nubians, whose physical features may indicate a potential language barrier. As a result, many Nairobians will quickly switch to Somali Swahili or English when communicating with these groups. This highlights the irony that what initially appeared to be an advantage for Congolese immigrants in terms of their ability to easily integrate into the local community can actually work against them in terms of the assumptions made about their language proficiency and cultural understanding. For example, a Congolese émigré residing in Umoja but selling clothes in Gikomba expressed their frustration with communication difficulties with customers. Many Kenyans in Nairobi use slang language in Swahili, such as 'kinde' for ten shillings, 'finje' for fifty shillings, and 'soo' for one hundred shillings. The émigré is unable to communicate using this slang, and some customers choose not to engage with them as a result. Other sellers intentionally use this slang to ensure that their Congolese counterparts do not attract clients.[109] Additionally, the marginalization experienced by Congolese refugees in Umoja is often associated with the negative actions of certain individuals within their community. This leads to generalizations and discrimination against Congolese refugees. In addition, Umoja is a mixed area of slums and middle-class residents, and negative narratives about Congolese refugees

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[108] Online Interview, Amisi, Nairobi. 2023

[109] Online Interview, Respondent, Nairobi. 2023

spread quickly within the communities. These narratives depicted Congolese refugees as untrustworthy individuals, making them susceptible to suspicion and skepticism, particularly in employment contexts. The unfortunate generalization of their behavior resulted in exclusionary practices that further stigmatize this community. For instance, there was an incident where a Congolese refugee applicant was denied employment based on a stereotype of having a hot temperament, which was erroneously associated with the entire group. The Congolese émigré had previously been a French teacher in a local school in the area but hit a student, leading the school and parents to believe that all Congolese people are unfit to teach their children. This perception was deeply ingrained within the Umoja-Innercore community, making it difficult to change their opinion. Furthermore, due to the ongoing conflicts in the Democratic Republic of Congo, many people assume that many Congolese refugees are responsible for the atrocities and have come to live and hid in the city, Nairobi. However, it is important to note that the Congolese refugees in Umoja are good people who have been unfairly generalized and stigmatized.[110]

## 3.4 Marginalization of Congolese refugees in Umoja, Nairobi.

Legal constraints have been identified in scholarly literature as a significant factor contributing to the marginalization of refugees residing in urban areas. These constraints, often rooted in national immigration laws and policies, can have far-reaching consequences for displaced individuals. For instance, Alexander Betts, in his work "Survival Migration: Failed Governance and the Crisis of Displacement," underlines the impact of restrictions on refugees' ability to legally work in urban settings, which can push them into informal and exploitative labor markets. This not only results in economic marginalization but also perpetuates their reliance on humanitarian aid, trapping them in protracted hardship.[111] Gil Loescher and James Milner argue that legal restrictions, which limit freedom of movement and access to formal employment, can foster dependency and marginalization within urban environments.[112] In certain cases, refugees may resort to offering bribes to obtain essential refugee necessities, which ideally should be provided without such

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[110] Oral Interview, Congolese refugees' group in Umoja Inner core, Nairobi, September 2023

[111] Betts, Alexander. 2013. *Survival Migration*. Cornell University Press.

[112] Loescher, Gil, and James Milner. 2005. *"The Significance of Protracted Refugee Situations." The Adelphi Papers* 45, no. 375 (July): 7–12. https://doi.org/10.1080/05679320500212098.

conditions. This occurrence can be attributed to the pre-assessment that was being conducted by some protection organizations to verify the refugee status of Congolese immigrants since many economic immigrants' sort to benefit from the protection process. However, that was perceived as an act of marginalization by Congolese émigrés in Umoja.[113]

Social and cultural factors play a significant role in the marginalization of urban refugees, creating barriers that hinder their access to essential services and employment opportunities. Janette Habashi's research highlights the importance of language acquisition programs in facilitating integration.[114] For example, within the Umoja community, Congolese emigrants in Umoja faced difficulties in using slang and local dialects, particularly in informal sectors like clothing markets and nail parlors. This linguistic divide often isolated from interactions with employers and customers, as competitors sometimes seemed to skillfully use Swahili slang to divert clients. Consequently, language becomes a powerful tool of marginalization in urban environments.[115]

Furthermore, gender has a pronounced impact on the marginalization of refugees, especially in slum areas. In Umoja, a community with a mix of slums and middle-class residents, Congolese emigrants have shed light on the prevalence of sexual and gender-based violence. They insinuated that reporting such incidents to the police becomes a daunting task, especially when proper documentation is lacking. This distressing reality can prolong the suffering of those affected, exacerbating their marginalization.[116] Likewise, Elena Fiddian-Qasmiyeh emphasizes the significant role of religious practices and identities among refugees, highlighting the importance of respecting diverse beliefs to foster social inclusion.[117] Within Umoja, several Congolese emigrants established their own house fellowships and churches. Particularly the Banyamulenge clan, who experienced severe marginalization in their home country, continued to face fear within

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[113] Ibid,

[114] Habashi, Janette. n.d. *Political Socialization of Youth a Palestinian Case Study*. *Www.academia.edu*. Accessed September 27, 2023.
https://www.academia.edu/30995239/Political_Socialization_of_Youth_A_Palestinian_Case_Study.

[115] Online Interview, Amisi, Nairobi. 2023

[116] Ibid,.

[117] Louise Berg, Mette, and Elena Fiddian-Qasmiyeh. 2018. *"Introduction to the Issue." Migration and Society* 1, no. 1 (December): 1–6. https://doi.org/10.3167/arms.2018.010102.

Umoja, Nairobi. Certain congregations, such as the Agape church, are predominantly made up of Congolese nationals, including many refugees. Jeremy, a Congolese refugee, has observed differences in worship styles between Kenyans and Congolese, with Congolese services characterized by vibrancy, while Kenyan congregations tend to be more reserved makes them chose to have their own.[118] These multifaceted factors intricately shaped the experiences and interactions of urban refugees within these complex urban landscapes.[119]

## 3.5 Conclusion

In conclusion, this chapter has provided insights into the dynamics of discrimination faced by Congolese emigrants residing in Umoja, Nairobi. The findings highlight that these emigrants encountered varying degrees of discrimination, which are often influenced by their country of origin, particularly in the context of the complex and evolving conflict landscape in the Democratic Republic of Congo (DRC). The lack of readily available and up-to-date Country of Origin Information (COI) to actors in protection space significantly impedes their chances of obtaining official refugee recognition, leading to low recognition rates.

Moreover, the economic migration patterns of Congolese nationals to Nairobi, including those seeking protection, necessitate additional assessments to determine their refugee status. Within the space of protection, distinct profiling emerges, indicating that refugees who opt for urban living must be self-sufficient, a presumption that does not uniformly apply to all refugee groups. Congolese emigrants, in particular, often lack the established networks and affluent connections that some other refugee communities possess, such as the Somalis. Another prevailing misconception among host communities and actors in the protection sphere is the belief that Congolese emigrants are primarily involved in the gold trade. Therefore, a blanket assumption that they can fend for themselves, whereas some Congolese refugees lamented they have not touched gold in their lives even if it comes from their country. Additionally, they are perceived as integrating more seamlessly into the local community due to their lack of distinctive features that

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[118] Oral Interview, Jeremy, Nairobi. 2023

might set them apart from the general population. Paradoxically, this phenomenon allows them to lead inconspicuous lives within the Umoja area, making it challenging for organizations supporting urban emigrants to identify and assist them effectively. Language barriers further compound their challenges, as the assumption that Congolese emigrants speak Swahili often leads to miscommunication. Their Swahili dialect, distinct from that of the locals who opt to use eastlands Swahili slang that is totally different from their Swahili. This presents difficulties in both business interactions and social integration. The evolving profiling identified in this chapter significantly contribute to the marginalization of Congolese emigrants in Umoja.

Furthermore, the unique characteristics of the Umoja area itself contribute to the marginalization of this group. Umoja is a diverse locality comprising slums and middle-class neighborhoods, with distinct sub-areas scattered across its geography. The dispersion of Congolese emigrants across five Umoja localities which include Tena, Umoja one, Two, Three and Inner core complicates the provision of support and protection, as organizations and individuals may only operate in specific areas, leaving some refugees underserved. By achieving the objectives of this chapter, the research has filled a crucial knowledge gap in studies on the marginalization of refugees, particularly within this specific geographic context, Umoja where such investigations were previously lacking.

# CHAPTER FOUR: PROTECTION CHALLENGES OF CONGOLESE EMIGRES IN UMOJA, NAIROBI; 1998-2015

## 4.1 Introduction

This chapter investigates the challenges related to the protection of Congolese emigrants who established themselves in the Umoja area between 1998 and 2015. The primary focus of the chapter is on the refugee protection and mandate of those emigres seeking protection. It provides a comprehensive understanding of the concept of refugee protection, encompassing the definition and identification of refugees within the existing frameworks of refugee regimes. The chapter also acknowledges the significance of the evolution of instruments for refugee protection. Furthermore, it analyzes the factors that have influenced the settlement of Congolese emigrants in the Umoja area, highlighting the unique characteristics of the region that have contributed to its popularity as a destination for Congolese emigrants. Additionally, the chapter examines the roles played by various actors involved in the field of refugee protection, and explores the multiple factors that influence the migration of Congolese refugees to the Umoja area.

In the previous chapter, the study identified specific characteristics of Congolese refugees in Umoja that make them vulnerable to various forms of discrimination, whether through legal systems, the dynamics of their residential area, or their country of origin. Building on these findings, this chapter examines the protection challenges that arise from the marginalization and profiling experienced by Congolese emigrants domiciled in Umoja. These protection challenges are closely linked to the interactions between protection actors or institutions, the host communities, and the specific geographical characteristics that give rise to particular challenges faced by Congolese refugees. This research aims to uncover the nuances of these protection challenges as experienced by Congolese emigrants in Umoja. The study is of great importance as it seeks to illuminate the experiences of Congolese refugees who settled in the area between 1998 and 2015. It serves as evidence of the changing treatment of refugees in Kenya, where evolving refugee regimes and policies, including encampment policies, have had a significant impact. Importantly, these Congolese emigrants had unique insights into the requirements of that era, such as the issuance of DRA IDs, which distinguished them from later arrivals who were unaware of the intricacies of the refugee landscape during that period.

## 4.2 The Concept of refugee Protection and the mandate

The concept of refugee protection has a lengthy historical background, encompassing all-inclusive comprehension of safeguarding refugees that encompasses legal and various dimensions. The primary duty of safeguarding refugees lies with individual States. Over the course of its five-decade existence, the United Nations High Commissioner for Refugees (UNHCR) has collaborated extensively with governments, functioning as their allies in the pursuit of refugee protection.[120] It is worth noting that the United Nations High Commissioner for Refugees (UNHCR) assumes a pivotal role in delivering this protection by actively pursuing solutions such as repatriation and integration in collaboration with national governments. Throughout the years, the notion of refugee protection has undergone significant development, characterized by an expanded definition of refugees and the establishment of wide-ranging standards for their treatment. This evolution has been further reinforced through international collaboration and agreements, reflecting a worldwide dedication to addressing the challenges faced by refugees as Antonio Fortion argues.[121]

Moreover, Regional agreements, such as the 1969 Organization of African Unity (OAU) Convention, have broadened the definition of refugees to include individuals who are forced to leave their countries due to external aggression, occupation, foreign domination, or events that severely disrupt public order. Kenya, as a signatory to these agreements and with its 2006 refugee framework, has the responsibility to safeguard the well-being of refugees who meet these criteria. [122] Correspondingly, Catherine Phuong's evaluation of the United Nations High Commissioner for Refugees' (UNHCR) refugee protection highlights several essential conditions for ensuring adequacy. These conditions include the absence of persecution, refoulement, torture, or any other form of harm. Additionally, there should be no significant threats to the lives of refugees, and there

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[121] Fortin, A. 2000. *"The Meaning of 'Protection' in the Refugee Definition." International Journal of Refugee Law* 12, no. 4 (October): 548–76. https://doi.org/10.1093/ijrl/12.4.548.

[122] "Refugee protection: *A Guide to International Refugee Law*." n.d. https://www.refworld.org/pdfid/3cd6a8444.pdf.

should be a genuine possibility of finding a durable solution in a timely manner, either locally or externally. Furthermore, refugees should be protected against arbitrary actions during their stay.[123]

Protection challenges are problems refugees face as a result of gaps in the protection space like the institutions like government.[124] These challenges could be as a result of the ineffective implementation of the refugee policies of factors that are attributed to refugees themselves. For instance, in the case of Congolese émigrés in Nairobi, one the causes of the challenges they face is the aspect of the country of origin which they perceive that they are discriminated due not being part of East African community.

## 4.3 Factors that contributed to Congolese emigres' settlement in Umoja.

The Umoja area, situated in Nairobi, Kenya, has emerged as a sanctuary for a considerable number of Congolese emigrants seeking asylum from the turmoil and conflict in their home country. While the motivations behind their migration are multifaceted and diverse, this research focuses on a specific aspect: the involved interplay between Umoja's planning and dynamics that facilitate the apparent assimilation of Congolese refugees into the local community. Umoja is far from being a homogeneous urban landscape; rather, it is characterized by a diverse array of five distinct regions, each possessing its own unique characteristics and demographics. This diversity, coupled with a mixture of middle-class and low-class neighborhoods, inadvertently creates an environment in which Congolese refugees can reside inconspicuously within the community without attracting excessive attention. The diversity within Umoja has proven advantageous for Congolese refugees, as it allows them to seamlessly integrate into various neighborhoods, each with its own economic and social composition. This integration enables them to lead relatively inconspicuous lives, shielding them from the scrutiny often faced by newcomers in more regular communities. Furthermore, a crucial factor contributing to the inconspicuousness of Congolese refugees is their

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[123] Harvey, Colin. 2005. *"Catherine Phuong, the International Protection of Internally Displaced Persons*, Cambridge University Press, Cambridge, 2004 Xix + 293pp. ISBN 0–521–82686–1." *International Journal of Refugee Law* 17, no. 4 (December): 823–27. https://doi.org/10.1093/ijrl/eei035.

[124] Cristiano D' Orsi, *Asylum seekers and refugee protection.*

ability to minimize interactions with the local police force. While acknowledging the coexistence of hosts and law enforcement, the dynamics in Umoja are distinct. The refugees have adeptly learned to remain in the background, navigating their daily lives with minimal interference from authorities except in rare occasions when hosts decide to take them to police. This adaptability and resilience demonstrate their capacity to thrive in an unfamiliar land. Additionally, a majority of emigrants in the area were directed by relatives and friends who had previously settled there. Also, the rapid urban development of Umoja over the years has further solidified its role as an economic hub, particularly within the informal sector. Many Congolese refugees have ventured into businesses such as salons, clothing stores, tailoring shops, and barber services. This entrepreneurial spirit has not only allowed them to at least survive but has also contributed to the economic vibrancy of the area.

**4.4 Protection challenges of Congolese emigrants in Umoja: 1998-2015**

In contrast to refugees residing in camps, who receive aid and protection as mandated by the United Nations High Commissioner for Refugees (UNHCR) and as a means for the host government to concentrate them in a specific area, Congolese emigrants in Umoja frequently encountered limited, unevenly distributed, and inadequate assistance to fulfill their basic needs. In many instances, no assistance was available at all. This disparity arose from the fact that urban refugees are left to rely more heavily on their own resources, and there was underlying assumption that they are self-sufficient in comparison to their counterparts in refugee camps.[125][126] In certain cases, a number of Congolese refugees residing in Umoja areas faced economic hardships that led them to choose to return to the refugee camps. The engagement of Congolese refugees in Umoja informal sector of employment is particularly widespread. Some Congolese emigrants in Umoja work as French teachers in private schools, while many others are employed in salons, massage parlors, barber shops, construction sites, tailoring, and the sale of second-hand clothing in various parts of Umoja

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[125] Kobia, Kofi, and Leilla Cranfield. "Literature review: Urban refugees." *Refugees Branch, Citizenship and Immigration Canada* (2009): pp1-19.
[126] Online Interview, Wanambisi, Danish Refugee Council, Nairobi. 2023

and the city, such as Gikomba. Many Congolese refugees sought informal employment in order to conceal their refugee status, as employers in Kenya's informal sector typically did not require identification. This was facilitated by the fact that casual laborers, known as "watu wa mkono," are often paid on a daily or weekly basis, which allows for a lack of attachment to the work. However, employers frequently took advantage of their vulnerable circumstances by offering low wages, imposing long working hours, or subjecting them to hazardous working conditions, particularly in construction projects where they were engaged in tasks such as lifting cement. Although some Congolese emigrants were qualified for better jobs, the lack of documentation to prove their qualifications often resulted in them being relegated to lower positions. The exploitative practices prevalent in these employment arrangements went unreported due to the refugees' fear of being identified and subsequently detained or deported to the camps. Consequently, the absence of regulations in the informal economy and the prevalence of lower wages posed significant challenges for Congolese refugees in sustaining themselves and their families.[127]

Furthermore, the nature of domestic legislation in host countries emerges as a significant determinant of the refugee experience. In certain key host states, including Kenya, protection was primarily governed by informal and ad hoc policies until 2006 rather than formalized legal or policy commitments. This lack of a structured legal framework contributes to challenges in safeguarding refugees' rights and adherence to established international protection standards. Since the encampment policy of 1991 was very well in play, Congolese emigres in Umoja who resided there since early 2000s expressed their difficulties they endured in seeking legal status as refugees since urban settlement of emigres was criminalized. Congolese émigrés travelled back and from the camps to get the right documentation. But, even with the legal status that was obtain after a long time of waiting, there was a disconnect between refugees' legal recognition and their actual access to rights and opportunities. Even in cases where they obtained legal status, this recognition does not necessarily translate into tangible benefits. A myriad of factors, including the economic conditions of the area of domicile, restrictions on employment, limited refugees' ability to access their rights and improve their livelihoods.[128] Identity documents emerged as a crucial aspect of

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[127] Online Interview, Nectar, Nairobi.2023

[128] Oral Interview, Jean, Nairobi. 2023

refugee protection. These documents such as, DRA IDs, movement pass, mandate letters served as the first line of defense against arbitrary arrest and deportation, while also enabled Congolese refugees to access essential services. However, there was no reliability of agencies responsible for issuing these documents. Some of the documentation problems were as a result of lack of real-time information of the Country of Origin by agencies of protection, therefore raising their refugee status rejection rate, with no allowances for appeal. Some Congolese immigrants who succeeded, the identification to recognized refugees was inconsistent, leaving the Congolese refugee claimants without identity documents for extended periods.[129]

Correspondingly, Congolese emigrees in Umoja faced significant obstacles in accessing affordable healthcare services. These challenges stemmed from various factors, including the inflated cost of medical car and language barrier all of which frequently impede refugees from receiving the necessary medical attention. Furthermore, health officials sometimes struggled to differentiate between refugees and economic immigrant populations that always wanted also to benefit from protection, leading to the denial of fundamental health services that the Congolese refugees are entitled to.

According to Beth Kobia, the local population in Nairobi holds different perceptions of various refugee groups, leading to varying relationships. In the Umoja area, tensions have been observed and continue to persist between Congolese emigrants and the local population, particularly when Congolese refugees are perceived to have better economic prospects than the local residents, particularly in areas such as music. Instances have been noted where Congolese emigre bands are considered superior to local bands and are given preference to perform in clubs in Umoja. Consequently, this has created resentment and strained relations among local band members who reside in Umoja, as they feel that the Congolese bands have taken away their business opportunities, despite the fact that the Congolese bands are simply more skilled in music, which is highly appreciated by Kenyans, especially rumba music. This has often resulted in xenophobia and discrimination against Congolese immigrants. Furthermore, some landlords and employers have taken advantage of Congolese refugees who receive assistance by charging them higher rent, assuming that they have ample funds from the United Nations, or offering lower wages. In some

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[129] Ibid.

cases, when Congolese refugees were unable to pay rent, landlords locked their belongings inside their houses, and the police were unhelpful in assisting them in retrieving their belongings. The mistreatment of Congolese refugees in Umoja by certain members of the local population took various forms, including xenophobic attitudes, discrimination, and harassment, although it is important to note that not all host communities subjected these emigres into mentioned challenges because generally, Kenyans mind their own business. [130]

Moreover, some local business proprietors perceived certain Congolese emigrants as competitors, resulting in attempts to impede or close down businesses owned by Congolese emigrants. Services such as massage parlors, nail salons, and hair braiding, which are prevalent within the Congolese emigrant community in Umoja Two, have been targeted by local business owners who have colluded against specific Congolese emigrants, often resorting to bribery of law enforcement officials to force their relocation from the area. This perception of Congolese refugees as economic adversaries posed additional obstacles to their self-sufficiency and integration into the local economy.[131]

Further, Congolese émigrés in Umoja lamented that there was a notable proclivity for emigrants to be erroneously perceived as criminals, a predicament that was further exacerbated by language barriers when interacting with law enforcement authorities. Consequently, this exacerbation contributed to a more unfavorable situation. Especially if it is a local who set you up with the police. It was not uncommon for the police to exploit Congolese emigrants by soliciting monetary bribes from them, likely due to the misconception that individuals from the Democratic Republic of Congo possess substantial wealth based on their well-groomed appearance and assumption that they are trading gold. However, this assumption was unfounded, as many Congolese refugees fled dire circumstances in their home country and encountered significant challenges in establishing a livelihood in Nairobi, where the cost of living is exorbitant.[132]

Additionally, UNHCR encounters difficulties in distinguishing urban refugees from economic immigrant populations and residents coexisting in the same neighborhoods. And also, the

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[130] Oral Interview, Jeremy, Nairobi. 2023

[131] Ibid.

[132] Online interview, Pierr, Nairobi.2023

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complexity of the Umoja area makes it challenging to maintain contact with individual Congolese refugees, ultimately impeding effective advocacy on their behalf. Unlike refugees in camp settings, Umoja area Congolese immigrants typically lack the support of a large aid community or advocacy. Similarly, UNHCR's policy choices, such as restricting assistance in urban areas to refugees, aim to prevent the creation of a pull factor attracting refugees to cities. However, these policies have inadvertently contributed to challenges of Congolese emigres in comprehensive support.[133]

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[133] Online Interview, Andrew Maina, Durable Solutions Secretariat, Nairobi.2023

**4.5 Conclusion**

In the final chapter of this study, the focus is on examining the protection challenges faced by Congolese emigres who have been residing in Umoja between 1998 and 2015. The objective of this chapter was to gain a comprehensive understanding of these challenges by considering the various factors that shape the experiences of this refugee community. Firstly, the chapter explores the concept of protection, aiming to understand what refugee protection entails and whose responsibility it is to protect emigres. Additionally, the chapter analyzes the factors that led Congolese emigres to settle in Umoja, recognizing that the same characteristics of the area that attracted them also presented challenges. The research discovered that the distinct geographical composition of Umoja, consisting of five regions, along with the narratives surrounding Congolese emigres, the protection framework, and the host community, significantly influence the protection challenges faced by this group. Unfortunately, many stakeholders overlook the geographic diversity within Umoja, resulting in inadequate support for certain groups of Congolese emigre refugees in different parts of Umoja. This emphasizes the importance of tailoring protection strategies to the local context. Furthermore, the research highlights the detrimental effects of marginalization and profiling on the lives of Congolese refugees. Narratives perpetuated within the host community and protection organizations have unintentionally contributed to misconceptions about these Congolese immigrants, hindering their access to essential resources and support systems. Addressing these harmful narratives is crucial in tackling the protection challenges faced by Congolese emigres. Therefore, it is essential to reflect on the broader implications of the study findings. The experiences of Congolese refugees in Umoja serve as a reminder of the critical importance of tailored and inclusive approaches to refugee protection in urban environments. The lessons learned from this study should inform future strategies and policies aimed at enhancing the well-being and security of refugee populations in similar contexts.

**CHAPTER FIVE: CONCLUSION**

This research aimed to investigate the vulnerabilities and experiences of Congolese emigrants residing in the Umoja area. Specifically, the study examined their profiling and how it has evolved over time, leading to protection challenges in their place of residence. Based on the existing body of research, there are low numbers of Congolese emigrants who have been officially acknowledged as refugees. This knowledge gap prompted an exploration into whether this marginalization was unique to Congolese emigrants compared to other emigres residing in Nairobi. Consequently, the study delved into the profiling of this specific group of emigres and its development over time, considering the historical context of refugee influx from the Democratic Republic of Congo (DRC) to neighboring countries, including Kenya, between 1998 to 2015. Additionally, the study took into account the concurrent increase in refugee numbers in Kenya within that particular time, which influenced the dynamics of the refugee regime. Furthermore, the existing literature on urban refugeehood primarily focused on general aspects of Congolese emigrants in Nairobi, such as livelihoods, economic factors, and psychological well-being. This highlighted a lacuna regarding marginalization in Nairobi, and Umoja was selected as the study area due to the scarcity of refugee-related studies in this location, despite previous evidence of Congolese emigrants having long-established residency there.

This study aimed to investigate the marginalization experienced by Congolese emigrants in the Umoja area, with a focus on understanding the discrimination they face and the underlying vulnerabilities that contribute to their exclusion. The research drew on conceptual frameworks proposed by scholars such as Tendayi Achiume to inform the dynamics of discrimination encountered by these urban refugees. The findings revealed that Congolese emigrants in Umoja expressed a sense of disadvantage due to their non-inclusion within the East African block. They perceived that the government provided preferential treatment to emigrants from the East African community, as a significant number of these emigrants were granted refugee status based on their nationality (prima facie) during the historical period under examination. In contrast, Congolese emigrants had to undergo individual scrutiny to establish their eligibility for refugeehood. The difficult journey and the passage of time since their flight also added to their difficulties, potentially leading to post-traumatic stress.

Furthermore, the research explored the factors contributing to the discrimination faced by Congolese emigrants and examined their experiences within the evolving Kenyan refugee system. In some cases, the system exacerbated their challenges. Kenya's refugee policies were subject to adjustments influenced by external pressures, political considerations, and other variables, and was not consistently implemented to ensure the protection of refugees in urban areas. As a result, refugees were compelled to adopt a hidden lifestyle, further exacerbating their predicaments. The covert nature of these refugee communities posed significant obstacles, as it hindered their identification and access to assistance from refugee services located in Nairobi.

Further, findings highlight a range of challenges faced by Congolese refugees residing in the locality of Umoja. These difficulties were primarily attributed to changes in the Kenyan refugee governance framework, which led to complications in areas such as documentation due to the implementation of the encampment policy. Despite the introduction of the urban refugeehood framework and the establishment of the 2009 UNHCR urban refugee policy and the 2006 Kenyan refugee act, which were intended to protect refugee rights, their application has been inconsistent, resulting in limited practical benefits for Congolese refugees. A portion of the Congolese migrant population perceived these protective guidelines as being written for the sake of being on paper. Also, there exists profiling which was a result of misconceptions held by the host community and protection organizations, which inaccurately portrayed them as wealthy individuals because of the way they dress and them being involved in the gold trade. Additionally, the presence of a significant number of economic Congolese migrants in Nairobi, posing as refugees to access the refugee protection system and its associated incentives, further exacerbated the predicament of genuine Congolese refugees in Umoja, Nairobi. As a result, certain initial assessment procedures by some protection actors, implemented in response to the prevailing perception that the majority of Congolese refugees were economic migrants, were seen as a form of marginalization. Furthermore, a lack of understanding of the conflict in the Democratic Republic of Congo among personnel in protection organizations contributed to high rejection rates in the granting of refugee status. There was also a prevalent belief in the Umoja area that Congolese refugees had a volatile temperament, which influenced their interactions with the host community and, particularly, their prospects of securing formal employment, such as teaching the French language in local schools.

The theoretical contributions of this study underwrite to the existing body of knowledge on the marginalization of refugees, with a specific focus on an urban environment like Umoja, which has received limited attention in previous refugee research and where the marginalization of Congolese migrants had not been previously investigated. From a practical standpoint, this research emphasizes the importance of understanding and challenging the misconceptions and narratives surrounding Congolese refugees, as they do not accurately represent their lived experiences.

The study area presented a significant challenge due to its size, requiring a comprehensive approach that involved representatives from various regions. There could intriguing aspects to explore specific aspects of urban refugeehood within the broader geographical scope of Umoja or a specific location within it. Additionally, researchers may find it valuable to investigate the dynamics and economic impact of the informal sector operating in Umoja in subsequent studies. This research suggests that further investigations could delve deeper into the complexities of protection challenges. Examining the experiences of Congolese refugees in other urban settings could contribute to the ongoing discourse on refugee marginalization. Personally, this research has enhanced my understanding of the intricate dynamics of refugee protection and emphasizes the importance of dispelling misconceptions that hinder the effectiveness of protection measures.

In conclusion, this study has successfully integrated various themes explored historically throughout its chapters. It has shed light on the complex relationship between evolving refugee governance structures, prevailing narratives, and the multifaceted challenges associated with protecting Congolese refugees in Umoja from 1998 to 2015. Therefore, it is crucial to acknowledge that safeguarding refugees is not only a moral obligation but also a collective responsibility. The experiences of Congolese refugees in an urban locale like Umoja, in Nairobi serve as a powerful reminder that misconceptions and prevailing narratives should never overshadow the fundamental principles of compassion, empathy, and the protection of human rights.

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