

# **UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**THE PLIGHT OF UNACCOMPANIED REFUGEE GIRLS FROM THE  
DEMOCRATIC REPUBLIC OF CONGO IN NAIROBI**

**BY**

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**DECLARATION**

I declare that this is my original work and has not been presented in any other University or College for Examination or Academic purposes.

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This project has been submitted for examination with my approval as the university supervisor.

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Signature: \_\_\_\_\_

Date: .....

## **DEDICATION**

To my husband Samuel Kagecah Ndung'u and daughter Arianah Wanjiku Kagecah.

Whose inspiration makes every task easy to handle.

## **ACKNOWLEDGEMENTS**

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## ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
BID	Best interest determination
CARE	Co-operative for Assistance and Relief Everywhere
C P	Child protection
CPWG	Child Protection working group
CRC	Convention rights of children
CTD	Convention Refugee Travel Document
DRC	Democratic Republic of Congo
EC	European Commission
FAO	Food and Agricultural Organization
GTZ-IS	Gesellschaft für Technische Zusammenarbeit – International Services
GBV	Gender-based violence
GBVIMS	Gender-based violence information management system
G o K	Government of Kenya
HIV	Humane Immunodeficiency Virus
IP	Implementing partner
ICRC	International Committee of the Red Cross and Red Crescent Societies
IOM	International Organization for Migration
IRC	International Rescue Committee
JRS	Jesuit Refugee Service
LWF	Lutheran World Federation
MHA	Ministry of Home Affairs
NCCK	National Council of Churches Kenya

NGO	Non Governmental Organization
OAU	Organization of the African Unity
OP	Operational Partner
RCK	Refugee Consortium of Kenya
RESCUE	Rational Energy Supply Conservation, Utilization and Education
RSD	Refugee Status Determination
UAM	Unaccompanied minor
UN	United Nations
UNAIDS	Joint United Nations programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Funds
WFP	World Food Programme
WHO	World Health Organisation

## ABSTRACT

This research project is an attempt to analyse the multiple challenges faced by unaccompanied refugee children in urban settings but with an emphasis on young girls from the Democratic republic of Congo living in Nairobi, Kenya. The refugee child like all other children have rights and most of all is the right for them to just be children. This however is a privilege or luxury that most refugee children do not have. Despite these children fleeing their countries of origin due to well-founded fear, they get no reprieve in their countries of asylum because being unaccompanied they now have to figure out how they will feed for themselves, their children and most likely their siblings if they are the older ones.

This research discusses the situation of Congolese girls with regards to the Kenyan government, the local communities, UNHCR and their role in the lives of these children, their psychosocial support, their livelihood and the prospects of durable solutions for these children. This study has looked into various legal statutes providing for the rights of children including the Convention on the Rights of the Child, the UNHCR Guidelines on Refugee Children, and Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum, and Kenyan government immigration procedure on asylum seekers specifically children

The research finds that unlike what many people think, Kenya is not friendly particularly towards urban refugees. They are harassed by public officials, they are dehumanised by workers and are generally looked down upon by the general public.

The study recommends that Kenya comes up with a policy that will cater for the rights of urban refugees. In that way, Kenya would benefit, not only because the refugees would contribute towards economic growth, but also because this step will encourage more urban-based refugees to register with the government or with UNHCR.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the study

Most of the refugees from the Democratic Republic of Congo (DRC) living in Kenya have been uprooted from their homes due to the conflict situation that has persisted in that country for much of its independent history.<sup>1</sup> The conflict in DRC is blamed on the presence of multiple armed groups operating in various regions of the country but more incessantly in North and South Kivu provinces.

On the other hand, the conflict is fueled by illegal exploitation of natural resources such as diamonds such as diamonds, coltan, caserite, gold, tin, and copper to finance their activities.<sup>2</sup> The latest of the episodes of conflict in DRC may be traced to November 2006 when dissidents under the command of General Laurent Nkunda of the National Congress for the Defence of the People (CNDP), a Tutsi-led politico-military movement launched an offensive against the Armed Forces of the Democratic Republic of Congo (FARDC).<sup>3</sup>

On March 23<sup>rd</sup> 2009, a ceasefire ensued after the signing of a peace accord in Goma between the government of the DRC and General Nkunda's CNDP. Following the ceasefire, some of the combatants in CNDP were integrated into the DRC Armed Forces while others were demobilized.<sup>4</sup> The ceasefire however collapsed in March 2012 as the members of the CNDP who had been integrated in the army mutinied and launched new offensive under the banner of the M-23 rebel group.<sup>5</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the recent violence has displaced a total of 2.21 million

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<sup>1</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.13) *HPG working paper*, Humanitarian Policy Group.

<sup>2</sup> The United Nation (n.d.) Background to the Security Situation in the Democratic Republic of Congo(p.64):NewYork, Author.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

people and over 420,000 refugees fled to the neighbouring countries, including Kenya. This may be the origin of many of the refugee respondents in this study.<sup>6</sup>

While in Kenya, refugees are expected to be accommodated in one of the refugee camps in the country. These camps include Habaswein, Rhamu, Liboi, Mandera, Banissa, El Wak, Walda, Ifo, Hagadera, Dagahaley, Swaleh Nguru, Utange, Marafa, Hatimy, Jomvu, and Kakuma.<sup>7</sup> Though this is not the official communicated refugee policy in Kenya, the government has been said to express reservations about having refugees integrated in urban centers.<sup>8</sup>

Many refugees however avoid the living in refugee camps for various reasons among them the desire to advance themselves economically at the expense of losing the assistance and protection offered by the government and international agencies in camps. However, while life in urban centers may afford the beneficiary some level of economic independence, it is also fraught with risks and challenges; the greatest being living in the city illegally and the attendant harassment by police.<sup>9</sup>

This study, therefore inquires into the challenges faced by Congolese refugees in general and by unaccompanied female minor refugees more specifically.

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<sup>6</sup> OCHA (2009), Kenya Emergency Humanitarian Action Plan 210, Accessed at [http://ochadms.unog.ch/quickplace/cap/main.nsf/h\\_1](http://ochadms.unog.ch/quickplace/cap/main.nsf/h_1), September 16, 2013.

<sup>7</sup> Campbell, E. (2001) Refugee Protection in the era of Globalization: The case of Nairobi, p.73.- Binghamton University, New York.

<sup>8</sup> Campbell, E. H.,Kakusu, J.D. and Musyemi, I. (2006) Congolese Refugee Livelihoods In Nairobi And Iddi Musyemi, The Prospects Of Legal, Local Integration in *Refugee Survey Quarterly*, Vol. 25, Issue 2 pp.93 – 108.

<sup>9</sup> Campbell E. (2001) Refugee Protection in the era of Globalization: The case of Nairobi, p.66: Binghamton University, New York.

## **1.2 Statement of the Problem.**

One of the best adjectives to describe an unaccompanied teenage minor in an African city would be ‘vulnerable.’ Most urban based refugees in Kenya live there illegally considering that the government advocates for refugee settlement in refugee camps. Being unregistered, such refugees are not captured in the official statistics of the government and other humanitarian agencies. The situation gets compounded when the children are at risk of exploitation to provide cheap labor since they do not enjoy the protection of the state. Other types of exploitation that such a minor may encounter include sexual harassment and xenophobia from the host society.

Such a situation necessitates an investigative study targeting at this specific group of humanity in order to increase the enlightenment of all stakeholders on the plight of such children.

How can Implementing Partners (IPs) adjust their programs to ensure that such children get the benefits that they deserve from the protection of International Law?

## **1.3 Objectives of the Study**

This research study seeks to attain the following objectives:

- i. To assess the legal circumstances under which unaccompanied Congolese female minors live in, in the city of Nairobi.
- ii. To assess the challenges facing unaccompanied Congolese girls in Nairobi.
- iii. To establish the suitability of intervention measures undertaken by various Implementing Partners in addressing the challenges facing the unaccompanied Congolese girls in Nairobi.



## **1.4 Justification of the Study**

This study seeks to understand and inform the debate on the challenges facing the refugee minor in an urban setting. Specific focus is placed on the case of Congolese adolescent girls in Nairobi. The study also looks into the intervention mechanisms of the various stakeholders and seeks to identify the most suitable intervention mechanism to deal with these challenges.

Circumstances have conspired to cause very limited knowledge about the unaccompanied urban refugee female minor to reach support stakeholders from beyond the shadow of life in which she finds herself in. One circumstance is the fact that such a minor is likely to live without registering as a refugee with the United Nations High Commissioner for Refugees (UNHCR) or the Department of Refugee Affairs (DRA). The urge to remain unregistered occurs because more often than not, such registration would necessitate the minor being accommodated in refugee camps.

The knowledge obtained from this study will therefore be of benefit to stakeholders in encountering this new but inevitable trend in refugee migration issues. Secondly, this study will ignite debate among Implementing Partners on the best intervention mechanisms to put in place so as to reach the circumstance of such minors.

## **1.5 Literature Review**

### **1.5.1 Introduction**

This literature review sheds light in to the following issues: The refugee Problem in Africa, Refugees in Kenya and Gender issues related to refugee and children rights in Africa.

### 1.5.2 The Refugee Problem in Africa

While Africa makes up only 12% of the global population, 28% of the world's refugees and almost 50% of the world's internally displaced people live there - and are continuing to reside there for much longer periods of time with diminishing hopes for long-term solutions and with dwindling resources.<sup>10</sup>

Africa faces a serious refugee problem. In 1997, the UNHCR declared that of the people that were of concern to the organization, 35% were in sub-Saharan Africa.<sup>11</sup> The situation has not improved to date.

The largest refugee-producing regions of the world are in Africa. Of the world's 12 million refugees, 3.2 million are in Africa.<sup>12</sup> In addition Africa also hosts half of the world's 25 million internally displaced people (IDP).<sup>13</sup>

Some of the conflict situations that have displaced the largest number of refugees in Africa include: The Democratic Republic of Congo (DRC). Between 1996 and 2013, about 2.2 million people have been displaced. In the aftermath of the 1994 genocide, more than 2 million people found themselves displaced and seeking for asylum in neighbouring countries. It must also be noted that Somalia, after the collapse of the regime of Siad Barre has become a major source of refugees going to Kenya.

Campbell E.H (2001) says that the turbulent nature of Africa independence politics may be pointed to the economic globalization process that started in the 1970's. She says that the continent got marginalized from the benefits of the global economy and with it came a weakening of the state authority. This led to an increased potential for ethnic conflict and hence increased displacement of the people.<sup>14</sup>

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<sup>10</sup> Campbell, E.H (2001).Refugee protection challenges in the Era of Globalization: The case of Nairobi.

<sup>11</sup> UNHCR, (1997) (p.3)

<sup>12</sup> [www.rescure.org/refugees](http://www.rescure.org/refugees), accessed 10<sup>th</sup> September 2013

<sup>13</sup> [www.rescure.org/refugee](http://www.rescure.org/refugee), accessed 10<sup>th</sup> September 2013.

<sup>14</sup> Campbell, E.H (2001).Refugee protection challenges in the Era of Globalization: The case of Nairobi., p.86.

While Africa makes up only 12% of the global population, 28% of the world's refugees and 50% of IDPs live there. <sup>15</sup>The UNHCR says that most of the refugee situations in Africa are "protracted". This means that the refugee live in exile for more than five years with no immediate prospect of finding a durable solution, local integration or resettlement to a third country. <sup>16</sup>

### **1.5.3 Refugees in Kenya**

Prolonged conflicts in Africa have generated thousands of refugees and internally displaced persons. In the Eastern African region Kenya, Uganda and Tanzania have played host to thousands of refugees for long periods of time, sometimes exceeding 20 years. Kenya presently hosts over 250,000 refugees mainly from Burundi, Democratic Republic of Congo (DRC, formerly Zaire), Eritrea, Ethiopia, Rwanda, Somalia, Sudan, and Uganda.

Prior to the mass influx of the early 1990's, Kenya had a refugee status determination process that reflected the provisions of the 1951 UN Convention. Around 12,000 refugees were recognised under this process and currently reside in Kenya enjoying the standards of treatment laid out in that convention. However, with the mass influx of Somalis and Sudanese refugees escaping political crisis in early 1991, the Government discontinued its refugee status determination process and began to comply with the conventional approach of putting refugees in camps in order to attract sufficient external resources to cope with the material needs of the new refugees. <sup>17</sup>

At the moment, there are hundreds of refugees who have been living in Nairobi for more than a decade and the world attention keeps changing the cap due to new emergencies.

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<sup>15</sup> Campbell, E.H (2001). Refugee protection challenges in the Era of Globalization: The case of Nairobi., p.85.

<sup>16</sup> Ibid, p.84.

<sup>17</sup> Crisp, J. (2000a). "Africa's refugees: patterns, problems and policy challenges," *Journal of Contemporary African Studies*, Vol. 18(2): 157-178.

#### **1.5.3.1 Historical development of influx of Refugee Situation in Kenya**

Since it became independent in 1963 to date, Kenya has been host to refugees fleeing from countries neighbouring Kenya as a result of civil war, political unrest and upheavals that at one time or another obtained in those countries such as Ethiopia, Somalia, Sudan, Uganda and countries in the Great lakes region (Zaire, Burundi, Rwanda). At its peak, during the early 1990s, Kenya was host to the largest refugee population in East and Central Africa when it stood at close to a half a million. Today the refugee population is down to about a quarter of a million due to the voluntary resettlement of some of the refugees and the resettlement of others to third countries usually in Europe, Australia and the United States.

#### **1.5.3.2 Kenya's Refugee Crisis**

Kenya has been host to a protracted refugee crisis since the early 1990's resulting in the current population of well over 600,000 refugees in Kenya's refugee camps and well over 100,000 refugees currently reside in Nairobi, most of whom are not registered with the Government of Kenya or the United Nations High Commissioner for Refugees (UNHCR). Among the worst affected by this crisis are unaccompanied, orphaned and separated refugee girls and single young women without family members.

#### **1.5.3.4 Refugee required legal documentation in Kenya.**

The lack of a clear policy for clarifying and implementing the Refugee Act has created confusion over the legal status of refugees, their documentation and their associated rights.

As stated in the Refugee Act, refugees should have an Asylum Seeker Certificate if they are going through the RSD process, a Refugee Identification Pass if they have been granted asylum and a Movement Pass if they have permission to leave the camps.

In practice, however, refugees may also have a range of other documents: Alien Cards. These are issued by DRA. They give refugees the same status as other aliens, but do not confer refugee protection.

Appointment Letters. These are issued by UNHCR to people with appointments to begin the RSD process. Appointment Letters in theory provide temporary legal status, but they do not explicitly state that the holder is protected until the vetting procedure has concluded.

UNHCR Mandate Refugee Certificates. These are issued by UNHCR to people who have been granted asylum through the RSD process. They provide the necessary legal status for refugees.

In addition, the Immigration Act grants class M work permits to refugees who have fled to Kenya because of well-founded fears of persecution at home. Permits are renewable every two years.

Conversely, many displaced people in Nairobi have not registered upon entering Kenya and therefore have no official documents at all. Refugees interviewed with no documentation claimed that they did not register due to a lack of information on the process, concerns that they might be deported if they were unsuccessful, the cost of repeatedly travelling to UNHCR offices and fears of arrest. Many are also put off by the length of time the RSD process entails. Others do not register because they have acquired false documentation, particularly Alien Cards and Kenyan identity cards.

#### **1.5.3.5 The legal framework for refugees in Kenya**

In 2006, the government of Kenya passed a Refugee Act implementing the 1951 United Nations Convention Related to the Status of Refugees, the 1967 Protocol and the 1969 OAU Convention. The development of the Act followed a period of sustained advocacy by UNHCR and civil society organisations, including RCK. The Act classifies refugees into two main groups, statutory refugees and prima facie refugees, and lays out the conditions for the exclusion and withdrawal of refugee status. This includes those who have committed crimes either outside or within Kenya, have dual nationality and are able to seek refuge in their

second country of origin, or people from places where the conditions for seeking refuge no longer exist.

The Refugee Act also established a Department for Refugee Affairs (DRA) within the Ministry of State for Immigration and Registration of Persons (MIRP). DRA has responsibility for the administration, coordination and management of issues related to refugees. Its remit includes developing policies, promoting durable solutions, coordinating international assistance, receiving and processing applications for refugee status, registration, issuing identity cards and travel documents and managing the refugee camps. A Refugee Affairs Committee, also established under the Act, is responsible for advising the Commissioner for Refugees. It comprises a range of government officials, including provincial administrators, police officers and representatives of the MIRP, the Ministry of Foreign Affairs, the Ministry for Local Government, the Office of the Attorney-General, the Ministry of Finance, the Immigration Service, the Ministry of Internal Security, the National Security Intelligence Service and the National Registration Bureau. The Act also states that it should include representation from the host community and civil society.

The Act also determines the parameters for the Refugee Status Determination (RSD) process through which applications for refugee status are assessed. Upon entry into the country, asylum seekers have up to 30 days to report to reception centres set up by the DRA. Their details are subsequently recorded and they are issued with an Asylum Seekers Certificate which provides protection against arrest as an illegal migrant.

Asylum-seekers are subsequently interviewed to ascertain why they are seeking refuge. If refugee status is granted, it allows refugees and their families (if present during the RSD process) to remain in Kenya until it is safe for them to return to their country of origin or move to a third country. If asylum-seekers are denied refugee status, they have recourse to an Appeals Board and, if unsuccessful, to the High Court. If these appeals are rejected they have

90 days to leave the country. If granted asylum, refugees receive a Refugee Identification Pass and can apply for a Convention Travel Document, which enables them to travel abroad without a passport. Those considered by the DRA to have a legitimate reason to leave the refugee camps should receive a Movement Pass. Although the Refugee Act sets out the legal framework governing refugees and establishes the institutions and procedures to implement it, in practice there is inadequate capacity and will to ensure its effective implementation. The DRA has a limited number of staff, many of whom are just starting to gain operational experience in dealing with refugee issues. More broadly, there is no national refugee and asylum policy to assist with the implementation of the Refugee Act, and there is some confusion about the government's official position. According to the 'encampment policy', the government expects refugees to stay in camps to facilitate their protection and assistance needs and to safeguard national security. However, while the Refugee Act implicitly accepts this policy by outlining the procedure for appointing Refugee Camp Officers, it does not state which categories of refugees should reside in camps, or which areas should be designated for such settlements.

#### **1.5.3.6 The role of UNHCR (Kenya)**

In Kenya UNHCR is responsible for the Registration and RSD process. However, the large numbers of people seeking asylum in Kenya has put significant pressure on the agency, and the system is subject to significant delays. Many wait between six and 24 months for a decision on their status. Initial steps have started to enable the DRA to start taking over the RSD process by training of RSD officers by UNHCR RSD staff, as envisioned in the Refugee Act. The Danish government is funding a project to assist the DRA to develop a national 16 refugee policy and build its institutional capacity (DANIDA and MIRP, 2009).

With regard to encampment, UNHCR has revisited its 1997 policy statement on refugees and has developed a global 'Policy on Refugee Protection and Solutions in Urban Areas'

(UNHCR, 2009). This recognises the trend towards urbanisation and the increasing number of refugees living in towns and cities, and seeks to ensure that urban areas are recognised as legitimate places for refugees to reside and exercise their rights. It also commits UNHCR to maximising the ‘protection space’.

#### **1.5.3.7 Current Refugee Situation in Kenya**

Despite of hosting large numbers of refugees over a long period of time, the Kenya Government has not to date developed very clear guidelines and policies on how to deal with the refugees in Kenya. Unlike its neighbouring countries like Ethiopia, Sudan, Uganda and Tanzania, Kenya neither has any specific legislation dealing with refugees nor a ministry or department of government to deal with refugee affairs.<sup>18</sup> In general the situation is vague, haphazard, ad hoc and unplanned. In most cases the police, immigration department and the Ministry of Home Affairs are involved in issues dealing with the refugees with no clear definition of the role and functions of each of these departments. The only agency whose role appears clear and consistent is the U.N.H.C.R. which suffers the agony of dealing with the bureaucratic red tape presented by these multiple government organs.

Over the past one year and half, additional resources from partners and donors have been allocated to nutrition programmes in the refugees’ camps especially in Dadaab. This contributed to significant decrease in levels of acute malnutrition and associated mortality since 2010. Surveys conducted in 2011 showed that global acute malnutrition rates dropped from 22.2% in 2006 to 12% in 2008 for Dadaab and from >16% in 2006 to 11% in 2012 for Kakuma, still higher than acceptable levels. Micronutrient deficiencies such as anaemia are still very high among pregnant women and children with levels ranging from 55- 70% both Kakuma and Dadaab camps. The two camps joint currently host 300,000 refugees (240,000 in Dadaab and 53,000 in Kakuma) but is expected to reach 400,000 in 2013. It is reported

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<sup>18</sup> Landau, L. (2011). “Laws, policies, or social position? Capabilities and the determinants of effective protection in four African cities”, *Journal of Refugee Studies* 24(1): 1-22, Oxford University Press.



that majority (>80%) of new admissions in feeding programmes are new arrivals). Moreover, health facilities are facing increasing challenges to ensure access to adequate health and nutrition services to refugee populations.

While the UNHCR assessed the status of 20,761 refugees in Nairobi, a recent estimate has put the number of refugees living in Nairobi at well over 60,000-100,000. Many of the refugees living in Nairobi describe the camps as dangerous and totally devoid of economic activity.<sup>19</sup> Refugees have expressed that they should be allowed to live outside the camps in order to become economically self-reliant instead of wasting away in camps for years with no durable solutions in sight. UNHCR has acknowledged that the urge to escape from these conditions has exacerbated the problem of “illegal” caseloads of urban refugees in Kenya towns.

Arising from RCK’s interaction at the legal clinic and at other levels with refugees, it appears that refugees leave the camps for varied reasons, among them, insecurity, and the search for further education or simply the inability to cope with life at the camp. Such refugees live in urban areas largely without assistance from UNHCR, the majority in Nairobi.<sup>20</sup> Among them are skilled workers, teachers, doctors, traders, and artists. In Nairobi, most refugees are located in low and middle-income residential areas.

#### **1.5.3.8 Urban refugees in Nairobi**

Whereas self-settled refugees can be found in rural areas, urban refugees have been described as those who have self-settled in urban areas. This paper categorises urban refugees as ‘persons from recognised refugee producing countries who have settled in urban centres’. For purposes of this study, urban refugees refer to those persons who have settled specifically in Nairobi. This may include both asylum seekers and refugees.

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<sup>19</sup> De Vriese, M. (2006). “Refugee livelihoods: A review of the evidence”, UNHCR.

<sup>20</sup> Campbell, E. (2010). “Age, gender, diversity mainstreaming initiative key to urban protection”, Refugees International.

Several authors have provided characteristics of urban refugees that distinguish them from the camp or self-settled refugees found in rural areas. Some have argued that these groups have come from urban areas in their own countries and are unable to sustain themselves through subsistence farming. Urban refugees mainly consist of people from the middle and upper income classes<sup>21</sup>. Others argue that lower classes of urban refugees do exist and tend to live in sub-urban estates compared to the upper and middle class refugees who live in upmarket and middle class estates. Graim Kibreab emphasizes that urban refugees are therefore not homogeneous but can be socially differentiated<sup>22</sup>.

On their livelihoods, Tandon comments that, 'Urban refugees expect more than mere assistance and aspire for 'development' assistance to enable them start a free and self-sustaining pattern of life'. He adds that many urban refugees are shy of officialdom and do not announce their presence to UNHCR, for fear that they might be repatriated. Others may not report through ignorance of their rights and obligations as refugees.<sup>23</sup>

There is general agreement among the scholars that those refugees who choose to live in urban areas do so to avoid the idle life in the camp. They are eager to develop themselves and go out to look for opportunities but avoid making their presence officially known to the relevant authorities. Most urban refugees in Kenya are self-settled and have lived in the country for a minimum of five years, residing in various parts of Nairobi city. They originate largely from the immediate neighbouring countries and while most come directly from fleeing their countries and settle in urban areas, very few have previously lived in the camps. Urban refugees in Nairobi try to sustain a livelihood through business, petty trade, wage employment or simply subsisting on transfer earnings from various sources including

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<sup>21</sup> Louis P, (2010). '*Refugees in and from Uganda in the Post Colonial Period*'. In Holger Bernt Han and Michael Twaddle'. Uganda Now. Nairobi: Heinemann East African Studies

<sup>22</sup> Kibreab G, Eritrean and Ethiopian Refugees in Khartoum: What the Eye Refuses to See. African Studies Review 39 (3): 131-178, 1996

<sup>23</sup> Landau, L. (2011). "Laws, policies, or social position? Capabilities and the determinants of effective protection in four African cities", Journal of Refugee Studies 24(1): 1-22, Oxford University Press.

remittances from relatives at home or in rare instances, being supported by charitable, civil society and faith-based organizations. In fact, the majority of them are economically self-sufficient with different levels of income.

Refugees living in Nairobi exist largely without legal protection or material support from the Government of Kenya and the United Nations High Commissioner for Refugees (UNHCR).<sup>24</sup> This means that they lack the proper documentation and therefore suffer harassment from the police concerning their status. Yet, recognition and regularization of their status may enable them to engage freely in wage earning activities or to invest in viable business that can contribute positively to Kenya's economy. As a consequence, the Kenya Government is denied revenue that could emanate from business investments undertaken by refugees.

To a great extent, their positive and significant participation in the economy is dependent upon legalization of their refugee status, registration of their businesses and the requisite micro-finance support that will enable them to invest in viable economic ventures. Since refugees living in urban areas do so unaided by government and UNHCR support, those in the lower income group are largely unable to access basic welfare services, including education for their children. Indeed, the majority in the low-income bracket face more hurdles compared with their fellow refugees at the high and middle income levels. Conditions relating to the Government's style of addressing refugee affairs make it impossible for them to register their business or even acquire properties to improve their economic status. This leaves the lower income group vulnerable to all kinds of abuse.

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<sup>24</sup> UNHCR (2010). "UNHCR 2010 participatory assessment overall narrative report", UNHCR.

#### **1.5.4 Urban refugees**

Two differing views have been postulated regarding the impact of urban refugees on the host country. In giving the negative impact, E.G Ferris states that host governments are burdened with the art of balancing the competing economic, political, ethnic and humanitarian demands in the face of refugee presence.

The negative impact of urban refugees has always tended to down play the possible positive impact. According to Jacobsen, urban refugees possess skills and talents and given a chance can be an asset to the host economy.<sup>25</sup> The capital and skills some of them possess can be used to create jobs and expand markets.

The number of refugees living in urban areas across sub-Saharan Africa has, to date, remained largely unknown. Until now, refugees in the city have maintained a clandestine existence in order to avoid being apprehended or troubled by the authorities<sup>26</sup>. As a result, it has been extremely difficult to estimate or enumerate this significant and growing population. Those who study African refugees have long argued that official statistics of refugee populations should be regarded with caution, and some have argued that as many as half of African refugees have never been counted or registered, preferring instead to settle unofficially in the rural and urban areas of their host country . No matter which estimates are considered accurate, it is clear that there are significant numbers of urban refugees whose circumstances are not yet acknowledged or understood.

The fact that refugee children and families in Dar es Salaam have ended up in the situation that they are in reflects inadequacies in traditional responses to the perceived needs of refugees. In this sense, Tanzania is not exceptional; in fact, many would argue that its sometimes hostile and frustrated approach to refugees is mild compared to the challenges

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<sup>25</sup> Jacobsen, K. (2006). "Refugees and asylum-seekers in urban areas: A livelihoods perspective", *Journal of Refugee Studies* 19(3): 273-286, Oxford University Press.

<sup>26</sup> Willems R. In(2005): *Displacement risks in Africa: Refugees, resettlers and their host populations*. Ohta I, Gebre YD, editor. Australia: Trans Pacific Press; *Coping with displacement: Social networking among urban refugees in an east African context*; pp. 53-77

faced by many who seek asylum in the countries of the European Union, for example. And, while the term “refugee” encompasses a large and diverse group of people, it is clear that many share similar experiences and similar desires. For Congolese refugee children in Dar es Salaam, these wishes are straightforward: to end the war in the Congo; to be able to go to school; to have decent accommodation, clothes to wear and enough food to eat; and for their parents and guardians to have the opportunity to provide for their family<sup>27</sup>. Whilst restoring peace to DRC is undoubtedly a difficult task (although not impossible), the provision of children’s basic rights can more easily be accomplished. What is perhaps the greatest challenge is to foster an environment where the less tangible but equally important elements of social acceptance, cultural tolerance and respect for human dignity are made a reality. Understanding the perspectives of refugee boys and girls is an important step in meeting these challenges.<sup>28</sup>

### **1.5.5 Gender issues related to refugee and children rights in Africa.**

Research by the Women’s Refugee Commission has found that women and girls are less likely than refugee men and boys to have access to even the most fundamental of their rights<sup>29</sup>. This includes their right to food, health care, shelter, nationality, and documentation. They may face discrimination in many aspects of their lives and may be caught up in conflict, which forces them to flee. This can expose them to further risks during flight and in the countries where they seek safety<sup>30</sup>.

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<sup>27</sup> Hathaway, J. (2001). “Discussion guide on temporary protection,” paper presented to the 7<sup>th</sup> IRAP conference, Johannesburg, January 2001.

<sup>28</sup> Crisp, J. (2000a). “Africa’s refugees: patterns, problems and policy challenges,” *Journal of Contemporary African Studies*, Vol. 18(2): 157-178.

<sup>29</sup> Women’s Refugee Commission (2011). “*Dawn in the city: Guidance for achieving urban refugee self-reliance*”, Women’s Refugee Commission

<sup>30</sup> UNHCR (2010). “*UNHCR 2010 participatory assessment overall narrative report*”, UNHCR.

The dangers women and girls face are often related to the gender roles assigned to them and to the lack of gender equality between the sexes. Gender is not static or innate but is continually changing, and the gender roles and functions that women and men fulfill are often changed as a result of displacement and all concerned must readjust.

The roles assigned to women and men and their position in society influence the types of harm to which they are exposed. Men and boys are, for instance, more likely to be subject to forced military recruitment. Women and girls are more often subject to sexual violence, including domestic violence and trafficking. They are also at risk of a whole range of harmful traditional practices, including female genital mutilation, forced or early marriage, “corrective rape”, and so-called honor crimes<sup>31</sup>. Often this harm is inflicted in the domestic sphere by private actors rather than the state. This can lead to difficulties “proving” the persecution they have suffered. It can lead to poor assessment of issues such as the availability of state protection and of internal flight or relocation possibilities.

Many girls are sexually exploited and face violence before and during flight. Further abuse often takes place in displacement. Adolescent girls, many of them mothers and heads-of-households, are at particular risk of social marginalization and isolation, and are often overlooked within conflict-affected populations. Women and girls made up, on average, 47 per cent of the world’s 15.4 million refugees at the end of 2010<sup>32</sup>.

Women and girls face specific gender-based risks in every aspect of their lives. Their concerns differ depending on whether they are in camps or in cities, but everywhere refugee women and girls face sexual and physical abuse at endemic levels. They are discriminated

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<sup>31</sup> REDRESS, *Gender and Torture: Conference Report*, October 2011, IOR 50/001/2011 , available at: <http://www.refworld.org/docid/4ea7e6152.html> [accessed 27 May 2013] pp7

<sup>32</sup> UNHCR (2011). “*Statistical summary as of 30 September 2011: Refugees and asylum seekers in Kenya*”, UNHCR.

against in legal systems, in access to work permits, at health centers, in schools and on leadership boards. Even people working with them, who were aware of the problems, were shocked at the extent and the horror of the experiences so many of the women described.<sup>33</sup>

Mothers have sometimes to leave their children locked in huts or rooms when they go out to work, in an attempt to protect their children from abuse. In schools, teachers abuse their position of authority over refugee children, resulting in psychological trauma, sexually transmitted diseases, and teenage pregnancies, as well as high dropout rates and fear of school amongst many children<sup>34</sup>.

Specific groups of women and girls face particular concerns. Disabled women – if they have been able to flee – cannot easily build their own shelter or fetch their rations. This leaves them vulnerable to exploitation. Only rarely can they access the specialized healthcare, education or livelihood opportunities they need. Single women, unaccompanied girls and female-headed households are at heightened risk of inadequate shelter, unsafe work conditions and of sexual and gender-based violence and other forms of violence. Older women, especially those without family support, are particularly vulnerable in remote areas and where the terrain is difficult. Access to water, sanitation, rations and medical care can pose insurmountable problems. Even these women are not free from the threat of sexual violence. Lesbian, bi-sexual and transgender women are the most hidden. They are often despised and reviled in their own communities and by some service providers<sup>35</sup>. They face major problems in all these areas.

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<sup>33</sup> *ibid*

<sup>34</sup> Bower, K.(1993). “Recognizing violence against women as persecution on the basis of membership in a particular social group,” *Georgetown Immigration Law Journal* v. 7(1) p. 173-206.

<sup>35</sup> REDRESS, *Submission to the Committee on the Elimination of Discrimination Against Women for Consideration of the Combined 6th and 7th Report of the Democratic Republic of the Congo*, 24 June 2013, available at: <http://www.refworld.org/docid/51cc0ad04.html> [accessed 10 September 2013]

Also refugee women and girls who live in urban areas have reported higher rates of SGBV than those in camps with rape and fear or threat of it being the most common violation, “domestic violence” is next on the list. Additional factors influencing incidence of SGBV were reported as, lack of proper documentation from both UNHCR and the government, poverty, drugs and alcohol abuse, breakdown in cultural values, women living alone and general insecurity in the marginal unplanned settlements where most women refugees live and work. Women reported being at risk most at the workplace, streets and neighborhoods respectively<sup>36</sup>.

Women do not report most violations for fear of reprisals/victimization and previous experience when nothing was done after reporting. Prominent among reasons for not reporting is family pressure.

Without registration, women and girls cannot obtain ID cards and, by extension, access to food, shelter, health care, education, and work. Poor quality, overcrowded shelter leads to health problems and family violence.

Lack of access to income and self-sustaining activities forces many women to engage in survival sex to feed themselves and their families. This can lead to unwanted pregnancies and sexually transmitted diseases. It can lead to rape and exclusion from the community and from some services.

Without adequate health care, women and girls cannot work. Inadequate reproductive health services lead to complications with pregnancies and the deaths of mothers and children. Lack of adequate sanitary materials forces girls to miss school; women cannot seek work or attend meetings when menstruating. Lack of access to legal remedies leaves refugees vulnerable to

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<sup>36</sup> Sexual and Gender-based Violence. Reproductive Health in refugee situations, an inter-agency manual .UNFPA.1999.



perpetrators who act with impunity<sup>37</sup>. Without education, children stay at home and risk exploitation as child laborers or can be forced into child prostitution or early marriage.

Each protection problem increases the risks to which refugee girls are exposed, leaving them open to further abuse.

#### **1.5.6. Refugee situation in the Democratic Republic of Congo.**

DRC has over 2.4 million internally displaced and over 400,000 refugees in neighbouring countries as of November 2012. There are quite a number of armed groups that continue to threaten the peace of civilians thereby causing lots of suffering in terms of casualties, loss of livelihoods and homes crimes against humanity and deaths. With the current situation in DRC it would be hard to imagine that the number of refugees is going to decrease any time soon unless a quick and lasting solution is found to these problems. Armed militia continue to engage in inhuman acts especially against women and girls who end up being raped, killed or used as bush wives by the militia<sup>38</sup>. The DRC has even been referred to as the rape capital of the world<sup>39</sup> due to these heinous crimes.

Impunity is common when it comes to crimes of sexual violence committed by the security forces. For example, even after investigations into rape and other acts of sexual violence committed by at least 100 FARDC soldiers who attacked Kalambahiro and Bushani villages in North Kivu province, between 31 December 2010 and 1 January 2011, no trial has taken place to date. The mass rape allegedly committed by FARDC soldiers in Minova in November 2012 also illustrates the magnitude of the problem. While many soldiers were arrested soon after the incidents this was reportedly for not having obeyed orders to continue

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<sup>37</sup>Jacobsen, K. (2006). "Refugees and asylum-seekers in urban areas: A livelihood perspective", *Journal of Refugee Studies* 19(3): 273-286, Oxford University Press.

<sup>38</sup> REDRESS, *Submission to the Committee on the Elimination of Discrimination Against Women for Consideration of the Combined 6th and 7th Report of the Democratic Republic of the Congo*, 24 June 2013, available at: <http://www.refworld.org/docid/51cc0ad04.html> [accessed 10 September 2013]

<sup>39</sup> Fiona Lloyd-Davies, *Why eastern DR Congo is 'rape capital of the world'*,

<http://edition.cnn.com/2011/11/24/world/africa/democratic-congo-rape>, November 25, 2011Updated

fighting.<sup>3</sup> In respect of human rights violations committed in Minova, a dozen FARDC soldiers have been arrested and are awaiting trial, but only two have been arrested on charges of rape and two on charges of murder.<sup>40</sup>

## **1.6 Theoretical Framework**

The study was guided by the feminist theory in international relations. The theory was deemed important for this study because it clearly depicts that much of the suffering that refugee girls go through is as a result of the societal depiction of their role in the society due to their gender.

Feminist theory refers to approaches that take as their starting point the belief that gender hierarchies are socially constructed and ethically indefensible; whose purpose is to dismantle such hierarchies and aid in women's empowerment; and whose focus is thus primarily women and gender as it influences women's status. Feminist theorists alone have taken questions about gender seriously, showing that "gender is socially and culturally constructed and that beliefs about sexual difference play a part in constructing realities."<sup>41</sup>

## **1.7 Hypotheses of the study**

1. Majority of the unaccompanied girl refugees from the DRC living in Nairobi are not registered with either the UNHCR or the Government of Kenya.
2. Provisions of International Law regarding the welfare of refugees or the welfare of children hardly benefit the girl refugees from DRC living in Nairobi.
3. Multi-sectoral approach of intervention in refugee situations has not been successful in improving the quality of Congolese girl refugees living in Nairobi.

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<sup>40</sup> See MONUSCO and OHCHR, 'Report of the United Nations Joint Human Rights Office on human rights violations perpetrated by soldiers of the Congolese Armed Forces and combatants of the M23 in Goma and Sake, North Kivu Province and in and around Minova, South Kivu Province, from 15 November to 2 December 2012', May 2013, available at: [http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013\\_en.pdf](http://www.ohchr.org/Documents/Countries/ZR/UNJHROMay2013_en.pdf).

<sup>41</sup> Zalewski, Marysia. 1995. 'Well, What is the Feminist Perspective on Bosnia?' *International Affairs* 71:303-344.

## **1.8 Research Design and Methodology**

### **1.8.1 Introduction**

In this section, the population of the teenage girl refugees in Nairobi is discussed. The sample population used is also explained as well as the research design of the study. Methods of collecting data, data analysis, and data presentation are explained.

### **1.8.2 Population.**

The number of refugees living in urban areas across sub-Saharan Africa has, to date, remained largely unknown. Until now, refugees in the city have maintained a clandestine existence in order to avoid being apprehended or troubled by the authorities<sup>42</sup>. As a result, it has been extremely difficult to estimate or enumerate this significant and growing population. Those who study African refugees have long argued that official statistics of refugee populations should be regarded with caution, and some have argued that as many as half of African refugees have never been counted or registered, preferring instead to settle unofficially in the rural and urban areas of their host country . No matter which estimates are considered accurate, it is clear that there are significant numbers of urban refugees whose circumstances are not yet acknowledged or understood.

For purposes of this study, we will take the official population figure of urban refugees as given by UNHCR as 46,000. We however must be cautious because the unofficial figures point to a population of 100,000. These two figures have been quoted by Pavanello, Elhawary and Pantuliano (2010)<sup>43</sup> Campbell, Kasuku and Musyemi (n.d.) estimate the population of

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<sup>42</sup> Willems R. In(2005): Displacement risks in Africa: Refugees, resettlers and their host populations. Ohta I, Gebre YD, editor. Australia: Trans Pacific Press; Coping with displacement: Social networking among urban refugees in an east African context; pp. 53–77

<sup>43</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.9) *HPG working paper*, Humanitarian Policy Group.

Congolese refugees in Nairobi at 3,000 based on the approximation of local leaders.<sup>44</sup> This study approximates the population of Congolese refugees at 4000.

### **1.8.3 Sample Population.**

A sample size of 200 girls of ages 6-20 scattered over different estates of Nairobi were interviewed for the primary data presented in this study. The sample size is about 5% of the estimated Congolese refugee population living in Nairobi.

This sample population is considered to be large. It is however justifiable considering that the items at study are relatively heterogeneous in terms of economic status and educational backgrounds. Kothari, C.R. (2004) says that when the items under study are heterogeneous, a large sample size must be used for the study.<sup>45</sup>

### **1.8.4 Methods of collecting data.**

Questionnaires were administered to the whole sample of respondents. The questionnaire formed the bulk of the data used in the analysis of the information presented in this study.

Respondents to the interviews were identified to the following estates of Nairobi: Eastleigh, Kawangware, Komarock, Riruta Satellite, Mlango Kubwa, Zimmerman, Langata, Highrise, Donholm, Umoja, Buruburu, Kibera, Ngumo, Ruiru, Maringo, Hurlingham, South B, South C and Githurai.

Unstructured interviews were conducted with two of the respondents so as to supplement the data collected using the questionnaires.

Three focus group discussions were held at three different locations of Nairobi to further supplement the findings of the study. The focus group discussions were held at Maringo, Githurai and Eastleigh. Each of the groups consisted of five respondents of various educational qualifications.

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<sup>44</sup> Campbell, E.H., Kasuku. J.D. and Musyemi, I. (n.d.) Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal Local Integration,(p.4) . Nairobi: Authors.

<sup>45</sup> Kothari, C.R. (2004) *Research Methodology: Methods and Techniques* (p.174, 2<sup>nd</sup> edition). New Delhi: New Age International Publishers.

Two experts on urban refugees were also interviewed for this study. Both are staff with the UNHCR, Nairobi branch office.

#### **1.8.5 Data analysis.**

Suitable mathematical methods of analysis were utilised to extract the data from the questionnaires so as to enable the researcher to come to acceptable conclusions.

#### **1.8.6 Data Presentation.**

The data obtained was presented using tables, pie charts and bar graphs.

#### **1.8.7 Research design.**

This study takes an explorative design. This is necessitated by the fact that much of the information about urban refugees remains unknown. This includes the population of the refugees. The information remains unknown because a large number of the refugees do not register with either the government or the UNHCR. Thus the data surrounding the population is quite unclear.

When studying such a population, Kothari C.R. (2004) suggests an exploratory research design. The major emphasis of the exploratory research design is the discovery of ideas and insights from the people who have had an experience with the problem being studied.<sup>46</sup>

#### **1.8.8 Validity and reliability.**

The validity and the reliability of the data collected is enhanced by using different methods of collecting data. The methods used include the questionnaire, focus group discussions as well as interviews. Interviews were conducted with two refugee respondents as well as with two experts on urban refugees, working with the Nairobi Branch Office of the UNHCR. This was done with the sole purpose of enhancing the reliability of the data collected because different respondents would give their inputs to the study.

Validity of the instruments was improved by piloting them before the actual study.

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<sup>46</sup> Kothari, C.R. (2004) Kothari, C.R. (2004) *Research Methodology: Methods and Techniques* (p.36, 2<sup>nd</sup> edition). New Delhi: New Age International Publishers.

### **1.8.9 Ethical Considerations.**

Many of the respondents in this study requested to remain anonymous. The request was granted and the information obtained has not been used for any other purpose except for this research.

### **1.9 Definitions**

**Asylum seeker:** A person seeking to be recognized as a refugee in a country that he/she has fled to, to seek refuge but his/her claim of well founded fear has not yet been substantiated or he has not yet been recognized<sup>47</sup>.

**Refugees:** Refers to those who are outside their country of nationality, origin or habitual residence and who were unable or unwilling to return to that country because of well-founded fear of persecution due to their race, religion, nationality, political opinion, or membership in a particular social group."<sup>48</sup>

**Child :** According to article 1 of the convention on the rights of the child (CRC) is any person or human being below the age of 18years unless under the law applicable to the child, majority is attained earlier. According to UNHCR, children include asylum seeking children, internally displaced children, refugee children and stateless children<sup>49</sup>.

**Unaccompanied children:** These are also referred to as unaccompanied minors and they are children that have been separated from both parents and or relatives and are not in the care of any adult guardian who by law or even custom is responsible for doing so.

**Separated children:** These are children that have been separated from both their parents or from their legal or customary caregivers but not necessarily from other relatives for example uncles, aunts and other relatives.

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<sup>47</sup> UNHCR(1997), *The state of worlds refugees,A humanitarian agenda*, Oxford:oxford University Press inc,

<sup>48</sup> UN High Commissioner for Refugees, *Refugee Protection: A Guide to International Refugee Law*, 1 December 2001, available at: <http://www.refworld.org/docid/3cd6a8444.html> [accessed 24 May 2013]

<sup>49</sup> General assembly resolution,(1989),convention on the rights of the child(art1)

**Orphans:** These are children whose both parents are and known to be deceased.

**Best interest determination(BID):** This is the formal process through which strict procedural safeguards that have been designed to determine a child's best interest when it comes to decisions affecting the child.

**Child protection:** This is the prevention of and response to abuse, neglect, exploitation and violence against children

**Urban Refugee:** An urban refugee is any person who fits the 1951 United Nations Convention relating to the status of refugees, formally recognized or not, and who is self-settled, residing in urban areas and not in a refugee camp<sup>50</sup>

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<sup>50</sup> Jacobsen, K. (2006). 'Editorial Introduction. Refugees and Asylum Seekers in Urban Areas: A Livelihoods Perspective'. *Journal of Refugee Studies*, Vol 19 (3).

## **CHAPTER TWO**

### **LEGAL PROVISIONS ON UNACCOMPANIED MINOR REFUGEES IN KENYA.**

#### **2.0 Introduction**

The welfare of refugee minors in Kenya is safeguarded both by the international law and the Kenyan municipal law. Sections of international statutes that provide for the welfare of refugee children include:

#### **2.1 Universal Declaration of Human Right ( 1948 )**

One of the most basic sections of international law as far as the protection is concerned is the Universal Declaration of Human Rights. The declaration was approved on 10<sup>th</sup> December 1948.<sup>51</sup> While the declaration is clearly non-enforceable, it establishes a common standard of achievement for all peoples and nations.

One of the most important provisions with regard to the rights of refugees is the recognition of the right to a asylum or expressed in article 14. Of indirect relevance to refugees and the right to work and equal pay (article 23), the right to security (article 25) and the right to education (article 26).<sup>52</sup>

#### **2.2 The 1951 Convention Relating to the Status of Refugees.**

This is considered to be the primary law that caters for the welfare of refugees. It was drafted between 1948 and 1951 by a combination of committees, and a conference of plenipotentiaries. This convention is however criticised for its controversial definition of the term 'refugee' and its Eurocentric focus.<sup>53</sup>

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<sup>51</sup> Shaw, M.N. (2003) international law fifth edition, pp. 259-262] Cambridge university press, Cambridge.

<sup>52</sup> Ibid p.262

<sup>53</sup> Hathaway, J. C. (1991) the law of Refugee status, Ontario, Butterworth's, p. 6



According to the convention, a refugee is defined as ‘a person who as a result of events occurring before 1 January 1951 and owing to the well founded fear of being persecuted for reasons of race , religion , nationality , membership of a particular social group or political opinion , is outside the country of his nationality and is unable or , owing to such fears , is unwilling to avail himself of the protection of that country ; or who , not having a nationality and being outside the country of his former habitual residence as a result of such events , is unable or owing to such fears , is unwilling to return to it.’<sup>54</sup>

It must be noted that the convention was drafted when the East-West divide war at its peak. The insistence on the standard persecution meant that the refugee law would emphasize areas in which the Eastern bloc had historical problems in satisfying. Thus the convention adopted an incomplete and politically partisan human rights rationale.<sup>55</sup> The persecution standard was used to embrace soviet dissidents.

The convention also addressed the issue of a person who has more than one nationality. It says that a person shall not be deemed to be lacking the protection of the country of his nationality if , without any valid reason based on well- founded fears , he has not availed himself of the protection of one of the countries of which he is a national.<sup>56</sup>

In 1967, a protocol to the convention relating to the status of refugees was drafted which eliminated the requirement of the convention that the claim relate to a pre-1951 event in Europe. However, the protocol remained silent on the qualification of the person qualifying for protection. Only person whose migration is prompted by a fear of persecution on the ground of civil or political status come within the scope of conventions based protection.<sup>57</sup>

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<sup>54</sup> Ibid, p.6.

<sup>55</sup> Ibid, p.8.

<sup>56</sup> Ibid, p.35.

<sup>57</sup> Ibid,p.10.

This definition excludes most Third World refugees as their plight is mainly instigated by natural disaster, war or broad based political and economic turmoil that may not be termed as “persecution”.<sup>58</sup>

Third world refugees are excluded further from convention-based protection due to the consideration that protection as envisaged by the convention presumed “individualized” assessment of the asylum seeker. However, most refugee situations in Asia and Africa have involved large groups of immigrants where the assessment of each individuals merit has not been possible. This has necessitated an expansion of the concept of refugee.<sup>59</sup>

The expansion of the concept of refugee has subsequently been effected through a number of initiatives without having to amend the convention. This has happened through the various requests to the UNHCR to “extend its good offices” in situations producing refugees en masse.<sup>60</sup>

These requests have been made through the United Nations General Assembly, the Economic and Social Council and the Executive Committee of the UNHCR. Such requests have authorized the UNHCR to aid large scale involuntary migrants both in man-made and natural disasters. The organization has also assisted people who have been displaced within their country and has contributed towards the resettlement of refugees who are returning home.<sup>61</sup>

Another significant step towards the expansion of the definition of the term refugee is the attempt to draft a convention on Territorial Asylum. The need for a convention arises because the 1951 convention relating to the status of refugees failed to add any other obligation to the state beyond the ‘non-refoulement’. Non-refoulement (addressed in article 2 of the convention) refers to the requirement to state parties that a person who holds refugee status

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<sup>58</sup> Ibid, p.37.

<sup>59</sup> Ibid, p. 12.

<sup>60</sup> Ibid, p.13.

<sup>61</sup> Ibid, p.14

cannot be returned to the country of origin.<sup>62</sup> The proposed convention would also have effectuated the right to seek and enjoy asylum as contained in the Universal Declaration of Human Rights (Article 14) and the 1967 Declaration of the General Assembly on Territorial asylum.<sup>63</sup>

The attempt to draft the convention failed as states got preoccupied with their right to safeguard their sovereign right to grant asylum.<sup>64</sup> However, of relevance to the welfare of refugees, is that the expanded scope of protection had already been approved by 47 votes to 14, with 21 abstentions.<sup>65</sup> This indicates a sharp paradigm shift among states to conceive the concept of refugee more broadly than elaborated in the 1951 Refugees convention and the 1967 protocol.

### **2.3 The Organisation of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa.**

This legislation is of great importance not only to refugees in African states but to the refugee community in general. This is because through it, state parties extended protection to all persons compelled to flee across national borders by reason of any man-made or natural disasters, whether or not there is fear of persecution.<sup>66</sup>

The legislation is also seen as an adaptation of the definition of refugee in the developing world, considering that the definition of the 1951 convention has been criticised as being Eurocentric.<sup>67</sup> The OAU convention also places the individual in the central position of being a beneficiary of the international law. In addition, the OAU convention seems to suggest the amendments that need to be carried out in the 1951 convention.

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<sup>62</sup> UNHCR (1994) refugee children: Guideline on protection and care: Geneva, Author, p. 8

<sup>63</sup> U.N.G.A Resolution 217 A (iii) (1948) Universal Declaration of Human Right: New York, Author and U.N.G.A. Resolution 2312 (xxii), December 14, 1967

<sup>64</sup> Hathaway, J.C. (1991) P. 15

<sup>65</sup> Ibid, p. 15

<sup>66</sup> Ibid, p.16.

<sup>67</sup> Ibid, p.16.

First, the OAU convention acknowledges that abuse may not only occur as a result of calculated acts of government of the refugee's state of origin. The convention recognises that abuse may also occur when the government loses authority due to foreign aggression or occupation.<sup>68</sup>

The OAU convention, unlike the 1951 convention recognises the concept of group disenfranchisement where groups of people leave their country as a result of wide spread public disorder.<sup>69</sup>

Thirdly, the OAU convention recognises that the reason for fright may sometimes be indeterminate. The important thing is that one was compelled to seek refuge. This is a departure from the postulates of the 1951 convention that specifies the acceptable reason for one to qualify for asylum as "fear of being persecuted for reasons of race, religion, nationality, membership of a particular group..."<sup>70</sup>

Finally, the OAU convention, unlike the 1951 document recognises that one may have to seek for asylum in a foreign land even before attempting to get accommodated elsewhere in his own country.<sup>71</sup>

The OAU convention has been lauded as being suitable for developing nations. It has provided a reliable platform for UNHCR activity in Africa and has been modelled in the Cartagena Declaration of American states.<sup>72</sup>

#### **2.4 The Organisation of American states Definition of Refugee Status.**

The Cartagena Declaration was adopted by 10 Latin American states in 1984 and is the latest attempt at defining the concept refugee. The Declaration shares the liberality of the OAU convention, except in two areas.

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<sup>68</sup> Ibid, p.17.

<sup>69</sup> Ibid, p.18.

<sup>70</sup> Ibid, p.18.

<sup>71</sup> Ibid, p.20.

<sup>72</sup> Ibid, p.22.

First, the Catargena Declaration requires that the applicant show that their lives, safety or freedom has been threatened in the country of origin. Secondly, the convention does not extend protection to persons who flee serious disturbance of public order when only a part of their country is affected.<sup>73</sup>

## **2.5 The Provisions of the International Law on Children.**

The 1951 convention and the 1967 protocol set the same standards for children as for adults.<sup>74</sup>The 1951 convention says that a child who has a well founded fear of persecution in his own state for reasons of race, religion, nationality, membership of a particular social group or political opinion may claim asylum in member states.

Article 22 of the convention is relevant to refugee children because it provides that children refugees must receive the same treatment as nationals in primary education and treatment at least as favourable as that given to non-refugee aliens in secondary education.<sup>75</sup>

One of the most comprehensive legislations on children is the 1989 convention on the rights of children (CRC). Some of its provisions are discussed here under.

### **2.5.1 The Convention on the Rights of the child (CRC)**

The UNCRC is based on four guiding principles namely: non-discrimination, best interests of the child, the right to survival and development and respect for the views of children.<sup>76</sup>

Non-discrimination is provided for in article 2. It states that no child shall be subjected to any form of discrimination on account of his age, sex, disability, religion, custom, colour, birth or other status, race, language, political or other opinion, national, ethnic or social origin.<sup>77</sup>

The principle of Best interest of the child is articulated in article 3. It calls on state parties to ensure that in all actions concerning children, their best interests is a prime consideration.

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<sup>73</sup> Ibid, p.23.

<sup>74</sup> UNHCR (1994) Refugee Children: Guidelines on Protection and Care: Geneva, p.17.

<sup>75</sup> Ibid, p.22.

<sup>76</sup> National Council For Children's services (n.d.). Guidelines for Child Participation in Kenya, (p.2): Nairobi, Author.

<sup>77</sup> Ibid, p.2.

Children should be adequately protected in all actions taken by them or by adults in their favour. Adults involved in the work of protection and care of children must be competent in safety aspects.<sup>78</sup>

As regards the right to life, survival and development, article 6 of the convention says that children have a right to survival, should be protected from any form of violence, abuse or neglect and that they may grow up in an environment that ensures their physical, mental, spiritual, moral, psychological and social development and prepares them to live as individuals in a free society.<sup>79</sup>

Article 12 of the convention provides that the views of the child need to be heard and that state parties to ensure that children are allowed to express their views in a manner consistent with their evolving capacities as well as ensuring that their views are included in legal provisions, policy and judicial decisions according to the relevant provisions.<sup>80</sup>

### **2.5.2 The African Charter on the Rights and Welfare of the Child (ACRWC)**

The African Charter on the Rights and Welfare of the Child was adopted by the Organisation of the African Unity (OAU) in 1990. Outside the UNCRC, it is the only regional convention that sets out rights, norms and universal principles for the status of children. Its main call is for the creation of an African Committee of Experts on the Rights and Welfare of the Child. The Committee was created in 2001 with the mission to promote and protect the rights established by the ACRWC. The Committee is also tasked with the responsibility of interpreting the disposition of the ACRWC by the member states and advise accordingly.

In addition, the ACRWC makes a deliberate attempt to customize the CRC to the African situation. For example, Article 1 discourages any custom, tradition, religious or cultural practice that is inconsistent with the provisions of the statute.<sup>81</sup>

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<sup>78</sup> Ibid, p.2.

<sup>79</sup> Ibid, p.2.

<sup>80</sup> Ibid, p.2.

<sup>81</sup> Article 1 of the ACRWC.

Article 2 expressly defines a child as a person of 18 years or younger. While advocating for the right to education for all children, Article 11 addresses the education of the girl child more specifically, urging for affirmative action for the girl child. In addition, the Committee of Experts has urged member states in consistence to this article to ensure that girls are given a chance to continue with education after pregnancy.

In article 22, the Convention out rightly prohibits the recruitment of children as soldiers. Sexual exploitation and abuse is addressed in Article 27 of the statute. In the case of Africa, this provision was important in curbing the rampant children marriages across the continent.<sup>82</sup> Article 23 secures the right for refugee children and internally displaced children to receive appropriate protection and humanitarian assistance.<sup>83</sup> Article 25 addresses the plight of unaccompanied minor refugees requiring member states to assist such children to unite with their parents where possible.<sup>84</sup>

## **2.6 Provisions of the Kenyan Municipal law for the rights of children and refugees.**

The Kenyan municipal law addresses issues of children and refugee rights through The Children's Act, 2001 and The Refugees Act 2006. The two statutes will be discussed below.

### **2.6.1 The Children Act of 2001.**

The Children Act of 2001 (Revised in 2012) is an Act of Parliament that makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. It also makes provision for the administration of children's institutions and is the legal instrument through which the provisions of the UNCRC and the ACRC are operationalised.<sup>85</sup>

Some of the parts of the Act that are relevant to this study include: Article 10 (1) and (5) in which children are protected from all forms of Child labour as defined in section 5 Article

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<sup>82</sup> Articles 22 and 27 of the ARCWC.

<sup>83</sup> Article 23 of the ARCWC.

<sup>84</sup> Article 23 and 25 of the ARCWC.

<sup>85</sup> The Children Act of 2001, Introduction Clause.

10<sup>86</sup>. In Article 10 (2), children are protected from recruitment into armed conflict. In the case of conflict, the Act demands that all provisions regarding the rights of the child be observed.<sup>87</sup>

Article 10 (3) confers the responsibility of providing rehabilitation care, recovery and reintegration into normal social life for any child who may become a victim of armed conflict or natural disaster to the government.<sup>88</sup>

Article 11 confers a right to every child to have an identity indicated in the form of a name and a nationality. Where such identity is absent, the government is expected to provide appropriate assistance and protection with a view of establishing the identity of the child.<sup>89</sup>

Through Article 15, children are protected from all forms of sexual exploitation.<sup>90</sup>

In Article 31, the National Council for Children Services is established with the powers to supervise, plan, finance and coordinate child rights and welfare activities and advise the government on all aspects thereof.<sup>91</sup>

The interests of refugee children are addressed in Article 32 (2) (h) where the National Council for Children Services is tasked with the responsibility of ensuring best interests for children among displaced or unaccompanied children held in care whether in refugee camps or in any other institution.

### **2.6.2 The Refugee Act of 2006.**

In this section we look at the legal environment surrounding the protection of refugees in Kenya. The issues to be looked at include: definition, registration, establishment of the Department of Refugee Affairs, Provisions relating to the families of refugees and Refugee women and children.

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<sup>86</sup> Article 10 the The Children Act, 2001.

<sup>87</sup> Article 10 (2) of the Children Act, 2001.

<sup>88</sup> Article 10 (3) of the Childrens Act, 2001.

<sup>89</sup> Article 11 of the Children Act 2001.

<sup>90</sup> Article 15 of the Children Act, 2001.

<sup>91</sup> Article 31 of the Childrens Act 2001.



### **2.6.2.1 Definition**

In Article 3 of the Act, Kenya defines takes a maximalist stance in the definition of refugee.

The stance is said to be maximalist because it goes beyond that offered in the UN convention on refugees, 1951 and the 1967 protocol. Kenya's definition takes into consideration also of the definition by the The Organisation of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa. It states that a person shall be a statutory refugee (a) owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or

(b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to a well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.<sup>92</sup> The Act further defines refugee as a person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>93</sup>

### **2.6.2.2 Registration**

The Act requires an asylum seeker who has entered Kenya and wishes to remain within Kenya as a refugee to present himself before a registration officer and apply to be recognized as a refugee. The asylum seeker is then required to fill an application form and return it in person at a designated refugee reception office within thirty days of his entry into Kenya.<sup>94</sup>

An asylum seeker and members of his family then appear in person for a registration interview. An appointed officer in charge of registration centre forwards the applications of

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<sup>92</sup> Article 3 of the Kenya Refugee Act, 2006.

<sup>93</sup> Ibid.

<sup>94</sup> Article 4 of the Kenya Refugee Act, 2006.

all the asylum seekers registered in that centre to the refugees status determination centre. A person who is already lawfully in Kenya is eligible to apply for asylum.<sup>95</sup>

An asylum seeker who has applied for refugee status is then issued with an asylum seeker pass which shall remain valid for one year from the date of issuance, or until a final determination of the asylum application, whichever comes earlier.<sup>96</sup> According to Article 7 of the Act, an unaccompanied or separated child is given priority at the registration centre.<sup>97</sup>

Once the application for asylum is accepted, refugees of 18 years and above are issued with a refugee identity card while minors are issued with refugee identity pass as the case might be.

### **2.6.2.3 Establishment of DRA**

The Act also established the Department of Refugee Affairs, (DRA) headed by the Commissioner for Refugee Affairs. The Department is responsible for all administrative matters concerning refugees in Kenya, and co-ordinates all activities and programmes relating to refugees in Kenya.<sup>98</sup>

### **2.6.2.4 Rights and duties of refugees in Kenya**

Article 16 states that refugees in Kenya are entitled to the rights and obligations of the international conventions to which Kenya is party to. Article 16 (2) and (3) address the establishment of refugee camps and transit centers. Then Article 16 (4) makes it clear that in respect of wage earning employment, refugees will be subject to the same restrictions as are imposed on persons who are not citizens of Kenya. This provision might be the very reason that many refugees fail to cooperate with the government especially on the issue of living within restricted refugee camps. This is because many of the refugees consider that they would get better economic opportunities for themselves in urban centers. This then makes the

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<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Article 7 of the Refugees Act 2006.

<sup>98</sup> Article 6 of the Refugees Act 2006.

relationship between the refugee community and the government to be rather cold, and at times harsh.

Although the requirement that refugees be ‘contained’ in refugee camps is not the stated policy of the government of Kenya, GoK, the fact that the Refugee Act, 2006 fails to offer alternative measures to accommodate refugees should be worrying. Verdirame, G. (1999) says that refugee camps are ‘legal anomalies’ in which the administration of justice is left in the hands of humanitarian agencies.<sup>99</sup> There appears to be a legal void as far as alternative modes of accommodating refugees in Kenya is concerned. Since this has a direct impact on urban refugees many who choose not to register with the government so as to participate in the economic life of urban centers, it is therefore imperative to point out this legal cavity at this stage.

#### **2.6.2.6 Refugee women and children**

There are provisions in the Law that are specific to women and children. The Commissioner is required to ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas. It is also the responsibility of the commissioner to ensure that a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and assistance. The Commissioner is then expected to assist such a child to trace the parents or other members of the family of the refugee child in order to obtain information necessary for the reunification of the child with the child’s family. Where the parents of the child or other members of the child’s family cannot be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family.

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<sup>99</sup> Verdirame, G.(1999) Human Rights and Refugees: The Case of Kenya. In Journal of Refugee Studies 12(1), p.54.

### **2.6.3 The Employment Act.**

The discussion of sections of the employment Act in this section is justified by the prevalent practice of employment to refugee children in Kenya. Most of these children, especially girls, are employed as house helps.

The Employment Act 2007 (Revised in 2012) makes extensive provision against child labour in Kenya. In Article 52, the Act defines “employment” as a situation where a child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for purposes of payment. Employment of the child is also deemed to have occurred when the child’s labour is used for gain by any person or institution whether or not the child benefits directly or indirectly. Alternatively, child employment is said to have occurred when there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.<sup>100</sup>

Article 53 grants power to the minister to declare any work, contract or activity as “worst form of child labour” and prohibits the employment of children in such labour.<sup>101</sup> Article 54 requires members of the public to make complaint to the police if they find a child who is being subjected to child labour. The officer concerned then makes investigations and if need be prosecutes the case.

According to Article 55, the Labour officer is at liberty to cancel labour contracts entered into where one of the parties is a child.<sup>102</sup> The article also provides that the labour officer may declare a person unsuitable for employment to a given employer, on the basis of being a child.<sup>103</sup> Any person who proceeds to employ such a minor despite the advice of the labour officer is said to be in offence.

Article 56 creates a room where children between 14 years and 16 years can be employed in some “light work” which is “not likely to be harmful to the child’s health or development;

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<sup>100</sup> Republic of Kenya(2007) The Employment Act. Article 52.

<sup>101</sup> Republic of Kenya(2007) The Employment Act. Article 53.

<sup>102</sup> Republic of Kenya(2007) The Employment Act. Article 55.

<sup>103</sup> Ibid.

and not such as to prejudice the child's attendance at school, his participation in vocational orientation or training programmes approved by the Minister or his capacity to benefit from the instructions received".<sup>104</sup> In Article 59, the employment of children at night is restricted.<sup>105</sup> Child labour may however be called to use during emergencies and where the minister suspends the provisions of Article 59 in the *Gazette*.

Employers are required to keep important details regarding the child such as date of birth and entry into and leaving employment.<sup>106</sup> A medical examination may be required at by an authorized officer at any time during the child's employment.<sup>107</sup> Articles 64 and 65 provide for the penalties for unlawful employment of child and Penalty in case of death or injury of a child.

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<sup>104</sup> Republic of Kenya(2007) The Employment Act. Article 56.

<sup>105</sup> Ibid, Article 59.

<sup>106</sup> Article 61.

<sup>107</sup> Article 62.

## CHAPTER THREE

### THE REFUGEE GIRL

#### **3.1 Introduction.**

In this chapter, the issues that confront an unaccompanied refugee minor in an urban setting are investigated. The socio-economic setting in which such a minor lives in is examined. Secondary sources of information such as text books, newspaper and magazine reports, briefs and reports of humanitarian organizations and data bases are relied upon for the analysis.

#### **3.2 Origin of the refugee camp.**

Harrel-Bond, B. (2000) asks: “Are refugee camps good for children?”<sup>108</sup> I propose that the question should be: “Are refugee camps good for anyone?” A lot of research findings show that they are not.

In the global south, the government struggles to provide both for her population and for asylum seekers. The refugees then tend to suffer the shortage, such that refugee camps are almost invariably associated with malnutrition and disease. In nine camps in Sudan, the Centre for Disease Control, Atlanta, Georgia, found the acute malnutrition of children under five varied between 20 per cent and 70 per cent.<sup>109</sup>

One other criticism of refugee camps is their authoritative administrative structure in which the refugees are depersonalized becoming numbers without names or persona. Everything gets highly organized, akin mental institutions or prisons. The residents easily get traumatized by the circumstances.<sup>110</sup>

These facts have been vindicated by the fact that hardly do people choose to become residents in a camp whenever any other option arises. The American University in Cairo

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<sup>108</sup> Harrell-Bond, B. (2000) Are Refugee Camps Good For Children? (p.1) Cairo: In *News in Refugee Research Working Paper* No.29.

<sup>109</sup> Ibid, p.2.

<sup>110</sup> Ibid, p.2.

approximates that more than half of the refugee population chooses not to be accommodated in refugee camps, finding their ways to the urban centers of the global south.<sup>111</sup>

Harrell-Bond, B. (2000) explains that the refugee camp is a product of the Modernization theory that was the dominant premise of economic growth in the newly independent states of Africa in the 1960s. A basic tenet of modernization theory was that progress will come more quickly when people have been uprooted than in situations where new methods are introduced in a settled area. According to the theory, when people move to new areas they are more receptive to new ideas than if they remain in familiar surroundings.<sup>112</sup>

The refugee camps are more precisely the result of the modernization theory having failed to work. UNHCR and the World Bank never intended that the camps would be the centers of internment that they were to become in independent Africa. The two institutions intended to take the displaced communities through programs where they would learn new skills of developing self sustaining societies. The idea was that these communities of people who were more receptive of new knowledge would then impact on their neighborhoods, and hence bring about the modernization of Africa.<sup>113</sup> The experiment failed when the World Bank withdrew its financial support, preferring to invest instead in large scale infrastructural projects like dams.<sup>114</sup> The poor funding of refugee camps by the governments of independent Africa as well as international financial partners are to blame for what refugee camps turned out to be.

### **3.3. The Lure of the City.**

There has been a shift among the refugee community of the world to prefer to be accommodated in urban centers instead of the traditionally popular option of the refugee

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<sup>111</sup> The American University (2003) Research on Refugees in Urban Settings: Methods and Ethics. (p.1) *Workshop Report*, Author.

<sup>112</sup> Harrell-Bond, B. (2000) Are Refugee Camps Good For Children? (p.4) Cairo: In *News in Refugee Research Working Paper* No.29.

<sup>113</sup> Ibid, p.5.

<sup>114</sup> Ibid, p.5.

camps. UNHCR (2012) reports that out of the 10.4 million refugees that were in the world at the end of 2011, more than 5 million were living in urban centers.<sup>115</sup>

This trend towards urbanizing refugee protection solutions has seen the UNHCR adopt The Global Policy on Refugee Protection and Solutions in Urban Areas.<sup>116</sup> This policy aims at recognizing cities as legitimate places for refugees to reside and exercise their rights. In Kenya however, DRA officials have expressed concerns that such a policy would induce refugees to leave camps for the urban centers.<sup>117</sup>

The following have been cited as the reasons that entice refugees from refugee camps to urban centers: First, there are better prospects for gaining more decent livelihoods in urban centers. Compared with the ‘safety’ of the refugee camps (though coupled with dependence and poverty) many of the refugees prefer to take the risk and venture to the urban centers.<sup>118</sup>

This is how one Congolese musician living in Nairobi put it: “There is no economic life in camp, only dependence on rations. I would rather risk arrest and face the problems of crime in Nairobi making my own way than live a life of boredom and hopelessness in the camp.”<sup>119</sup>

Secondly, there have been reported cases of rising insecurity in Kakuma and Dadaab refugee camps.<sup>120</sup> Rape, killings and abductions are more frequently being reported from the refugee camps. This threat has particularly increased in Dadaab refugee camp since 2011 when the Kenyan army went across the border of Somalia to fight the terrorist group Al-Shabaab. Some of the residents therefore feel safer in the relative anonymity that the city accords them.<sup>121</sup>

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<sup>115</sup> Morand, M., Mahoney, K. And Rabkin, J. (2012) The Implementation of UNHCR’s Policy on Refugee Protection and Solutions in Urban Areas; Global Survey, 2012.(p.7) UNHCR.

<sup>116</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.18) *HPG working paper*, Humanitarian Policy Group.

<sup>117</sup> Ibid. p.18.

<sup>118</sup> Ibid, p.10.

<sup>119</sup> Quoted by Campbell, E.H., Kasuku. J.D. and Musyemi, I. (n.d.) Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal Local Integration,(p.5) . Nairobi: Authors.

<sup>120</sup> Ibid, p.10.

<sup>121</sup> Ibid, p.10.



Some refugees have also cited the harsh climatic conditions of Kakuma and Dadaab as the reason why they chose to leave the refugee camps.<sup>122</sup>

Other refugees said that they prefer to leave the camps so that they would look for employment prospects.<sup>123</sup>

### **3.3 Challenges of life in the city.**

Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) have enumerated some of the challenges that are faced by urban refugees.<sup>124</sup> They say that such refugees risk being arrested and being detained. This is because a sizable number of them do not have the necessary registration documents and are therefore living in the city illegally. In the case of Kenya, this is accompanied by extortion and demand for bribes by city council security guards as well as the police, in exchange of keeping the status of the refugee undisclosed to the authorities.<sup>125</sup>

Another problem that urban refugees are likely to face is the problem of exploitation. This comes because the urban refugees are perceived by the entrepreneurs as a source of cheap labor. This results because since most of the refugees are in the city illegally, the profiteers know that the refugee workers cannot report them to the authorities. For children refugees, this exploitation keeps them from attending school, therefore entrenching them to a life of poverty.

Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) also point out that urban refugees are vulnerable to sexual based gender violence (SBGV). This is particularly so in the case of girl children.<sup>126</sup>

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<sup>122</sup> Ibid, p.10.

<sup>123</sup> Ibid, p.10.

<sup>124</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.9) *HPG working paper*, Humanitarian Policy Group.

<sup>125</sup> Campbell, E.H., Kasuku, J.D. and Musyemi, I. (n.d.) Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal Local Integration,(p.4) . Nairobi: Authors.

<sup>126</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.9) *HPG working paper*, Humanitarian Policy Group

One other problem that affects urban refugees is the problem of xenophobia by the local population. This results over several reasons. There is a mistaken idea among the Kenyan population that refugees are given a lot of money by their sponsors in remittances. Driven by jealousy, a lot of hatred is then turned toward the refugees. Xenophobia also results due to business rivalry. Most urban refugees do not go looking for jobs because their chances, without the proper documentation would be very narrow. A large proportion of the urban refugees end up self-employed in the informal sector. The local population has been known to fight the refugees so as to remove them from business. Consider the example of Veronique Kahinda, a Congolese hair stylist working in Nairobi. Veronique worked for two years in a salon in the City Centre with a Rwandan and two other Congolese women. The business next to them was also a salon, owned and staffed by Kenyans. After several months of being accused by their Kenyan competitors of ‘stealing customers,’ the refugee-owned salon was forced to close down and relocate. “That Kenyan lady kept calling the police, telling them we did not have any documents. The situation got so bad that we had no choice but to go. Anyway, it is not our fault if the Kenyans like the Congolese way to twist hair” says Veronique Kahinda (2004). Veronique recently left the salon and now goes to her customer’s home for hair braiding and twisting. “It is easier for me to work inside someone’s home than out in a salon, because you never know when City Council will come.”<sup>127</sup>

Urban refugees are also at risk of suffering Sexual and Gender based Violence (SGBV). This results in a number of ways. First, the refugee may be abused sexually by the employer or close relatives of the employer. If the refugee is not properly registered, she might be threatened with arrest where the employer-turned abuser compromises the police to have the refugee to be arrested. The refugee, to survive in the competition of the city may also result to prostitution. Through this risky lifestyle, they also risk getting infected with HIV/AIDS. Some

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<sup>127</sup> Quoted by Campbell, E.H., Kasuku, J.D. and Musyemi, I. (n.d.) Congolese Refugee Livelihoods in Nairobi and the Prospects of Legal Local Integration,(p.4) . Nairobi: Authors.

refugees are not able to afford good housing in the city and therefore end up sharing houses in densely populated areas of the city where houses are cheaper.

The urban refugee who lives without proper documentation also risks being a target of human trafficking rackets.<sup>128</sup> They also are unable to access quality health care, education and protection services.<sup>129</sup>

On the other hand, the presence of refugees in Kenyan urban centres when the country has not yet developed a policy for such accommodation puts a strain on the government and will not be encouraged. One of the common issues raised by the government in opposing the occupation is that the refugees pose a security threat. Such refugees also place an extra strain on the already inadequate local infrastructure.<sup>130</sup>

### **3.4 Care and Protection: Assessing the alternatives available for urban refugees**

Three alternatives are considered to be viable for the rehabilitation of refugees. We look at each of them, paying attention at the pros and cons of each of them. The three alternatives are local integration, resettlement and voluntary repatriation.

#### **3.4.1 Voluntary repatriation (Return and Reintegration)**

After the conflict situation has been addressed, sometimes the people who have been offered refugee status in one country desire to go back to their original homes. Sometimes the desire to return is not voluntary but as a result of pressure by the host state and due to deteriorating conditions in the areas they have settled.

The UNHCR says that return will only be sustained only if it is accompanied by other factors, namely, establishment of a representative government, the restoration of basic education and

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<sup>128</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.18) *HPG working paper*, Humanitarian Policy Group.

<sup>129</sup> Ibid,p.18.

<sup>130</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.9) *HPG working paper*, Humanitarian Policy Group

health services: the demobilization of soldiers and the revitalization of the national economy<sup>131</sup>.

Customarily, the international community has always exercised voluntary repatriation.<sup>132</sup> The international community's desire to promote the return of refugees has been so strong that the current debate is whether repatriation should always happen at the time of the refugee's wish or they may be compelled to do so when circumstances improve in the country of origin.<sup>133</sup>

The UNHCR has however clarified that the basics of the success of international repatriation is on the voluntariness of the process. (p.90)

UNHCR has however in the past applied the 'cessation clause' as provided for in the 1951 convention. The clause says that people should only enjoy the rights and privileges of refugees only when it is absolutely essential. UNHCR has applied this concept to 15 countries where peace has been restored and democratic system of government has been established.<sup>134</sup>

UNHCR explains that it has in the past been forced to support involuntary and sometimes unsafe repatriations. This circumstance occurs in places where the safety of the refugee cannot be guaranteed in the country of asylum.<sup>135</sup> One example of such repatriation is the repatriation of Rwandese refugees from Zaire in 1994 after violence erupted in refugee camps. In this arrangement, the UNHCR insists on having unhindered access to the refugees once they have returned to their country of origin.<sup>136</sup> Refugees repatriated under such a condition may seek asylum elsewhere if they find it impossible to remain safely at home.<sup>137</sup>

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<sup>131</sup> UNHCR (1997) the state of the world's Refugees: A Humanitarian Agenda (p.143) : New York. Oxford University press

<sup>132</sup> Ibid, p.90

<sup>133</sup> Ibid,p.90

<sup>134</sup> Ibid, p.91.

<sup>135</sup> Ibid, p.91.

<sup>136</sup> Ibid, p.92.

<sup>137</sup> Ibid,p.93.

The returnees may need to be aware that the process of reintegration is also fraught with danger, including physical insecurity. For example, Hutu returnees coming back from Tanzania were attacked and killed by members of the Tutsi dominated armed forces.<sup>138</sup>

In some situations like Cambodia returnees may be received with suspicion or contempt by those who did not become refugees. In Chad, returnees were attacked due to jealousy aroused by the material goods and money they were perceived to have gained through exile.<sup>139</sup>

### **3.4.2 Local integration**

Voluntary repatriation is normally the preferred end for most refugees. However, other solutions are becoming increasingly popular especially with the increasing number of urban refugees.<sup>140</sup> Local integration was the preferred solution in the 1960s-1980s where refugee populations were hoped to become self-sufficient and impact on the wider society.<sup>141</sup>

These integration projects however did not prove to be very successful largely because host governments did not support the integration of refugees in their land. Success stories of local integration have however been recorded in Uganda and Mexico. In Uganda, around 180,000 refugees primarily from Sudan were given land and agricultural inputs with the aim of long-term integrations.

In Mexico the government agreed to permanently resettle 30,000 Guatemalan refugees.

Local integration is currently being looked at as a possible remedy to the problem of urban refugees.<sup>142</sup>

The UNHCR says that the success of local integration programs depends on three factors. First, the host government must be in full support of the project. Secondly, the area of the refugees'

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<sup>138</sup> Ibid, p.154.

<sup>139</sup> Ibid,p.155.

<sup>140</sup> Ibid,p.92.

<sup>141</sup> Ibid,p.93.

<sup>142</sup> Nairobi-globalization,p199

settlement must be support of the exiles' long-term presence. If there is a degree of animosity between the host and refugee community, integration cannot occur.

Thirdly, local integration must be economically viable providing for sufficient agricultural land, market, employment and income generating opportunities.<sup>143</sup>

Campbell .E, Kasuku, J, and Musyemi I (n.d) have recommended integration as the solution to the problem of urban refugees. They urge that local integration might turn out to be the solution that everyone had ignored all along.<sup>144</sup>

To the state, local integration carries negative connotations of scarcity of resources and insecurity. However, the researchers say that states have a lot to gain if they would consider local integration as one of the solutions to the problems of refugees. They draw their findings from the successes of refugee entrepreneurs in the city of Nairobi, who despite the harassments by the authorities and a harsh competitive business environment have succeeded prominently. In the words of the researchers, such entrepreneurs have integrated “peacefully and productively.”<sup>145</sup>

They also argue that an urban refugee policy that supports integration would provide the government with the record of refugees working in Nairobi.<sup>146</sup> The refugees would be facilitated to obtain the correct documentation and therefore work with less uncertainty and insecurity.<sup>147</sup>

### **3.4.3 Resettlement**

Resettlement is one of the solutions that are considered to be durable for the refugee problem.

It involves the transfer of refugees from a state in which they have sought protection to a third state that has agreed to admit them as refugees with permanent residence status.<sup>148</sup> In

2009, Kenya submitted for resettlement 9, 552 Somalia refugees and 409 refugees from the

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<sup>143</sup> Ibid, p96.

<sup>144</sup> Ibid,p38.

<sup>145</sup> Ibid,p.39.

<sup>146</sup> Ibid, p.40.

<sup>147</sup> Ibid,p.40.

<sup>148</sup> UNHCR, 2004 Resettlement Handbook, UNHCR, and p.17

Democratic Republic of Congo.<sup>149</sup> owing to Kenya's stand against urban refugees only 10% of the resettled refugees originated from urban areas. The rest were sourced from refugee camps. Most of those resettled were resettled Canada and the U.S.<sup>150</sup>

Campbell E.H. (2001) says that the resettlement programs, by benefiting those in camps more, are entrenching a culture that does not espouse self sufficiency among the refugees.

### **3.5 Assessing the lifestyles of Congolese refugees in Nairobi.**

Campbell, E. H, Kasuku,J.D. and Musyemi, I (n.d) have shed light into the livelihoods of Congolese refugees in Nairobi. In their paper, *Congolese Refugee Livelihoods In Nairobi And The Prospects Of Legal, Local Integration*, they say that most of the Congolese refugees came to Nairobi for the first time in the 1990s as war raged at home regarding the ouster of Mobutu Seses Seko.<sup>151</sup> The government policy on refugees then, as it is now, favored the encamping of refugees in remote locations of the country far from the economic vibrancy of the city. At that time, after registration of the refugees in Nairobi, they were then taken to Walda refugee camp in the North, a camp which has since closed.<sup>152</sup>

According to the researchers, it is at around the same time that the Congolese refugees discovered the opportunities that were available in the city of Nairobi. They did not report to camp, choosing to live independent, illegally and without the support of the government or the UNHCR.<sup>153</sup>

Today, the Congolese presence in Nairobi is quite well established. The economic influence of the Congolese may not be as pronounced as that of the Somali and the Ethiopians<sup>154</sup> but they also control a sizeable chunk of influence and business in the city. The Congolese

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<sup>149</sup> Pavanello, S., Elhawary, S. And Pantuliano, S. (2010) Hidden and Exposed: Urban Refugees in Nairobi, Kenya. (p.31) *HPG working paper*, Humanitarian Policy Group.

<sup>150</sup> Ibid,p.31

<sup>151</sup> Campbell, E. H, Kasuku,J.D. and Musyemi, I (n.d). *Congolese Refugee Livelihoods In Nairobi And The Prospects Of Legal, Local Integration* (p.8) State University of New York at Binghamton, USA.

<sup>152</sup> Ibid, p.8.

<sup>153</sup> Ibid, p.11.

<sup>154</sup> Ibid, p.9.

merchants have since cut a niche for themselves in certain businesses in the city. Most popular businesses with which the Congolese are associated include the entertainment businesses such as music, dancing, hotel industry, beauty & barbering, as well as tailoring.<sup>155</sup> More trade has also expanded into the exchange of currencies and trade with precious stones. Today, certain establishments in the city centre and in East Leigh are largely Congolese controlled.

Congo has since continued to produce refugees as violence continues to reign in certain areas of the country. The latter day refugees to the city of Nairobi are likely to follow into the trade careers of these pioneering “enterprising-refugees”.

The Congolese music in Kenya finds a ready appreciation and most of the singers from Congo easily get themselves signed to performances in night clubs and other entertainment facilities. Although, the music industry is dominated by men, women and young girls get involved particularly as dancers in the characteristic Congolese vigorous music.

The presence of the Congolese in the hotel industry is very conspicuous. The Congolese establishments are normally located near the main bus stations. In these establishments, women get hired as waiters, cooks and occasionally as managers.

Congolese women have also been known for their expertise as hairstylists. They are said to be good in braiding the African hair and therefore their presence in the city is very well appreciated by local ladies.<sup>156</sup> It is in these trades that we are likely to meet with some of the respondents of our study.

One other area that Congolese personnel have distinguished themselves in is in fashion design. In this aspect, they are known to be good designers for the *Kitenge* African wear which is worn by both men and women. This has created opportunities for the Congolese not just as tailors but also as traders in the coveted fabric. Authentic *kitenge* material reaches

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<sup>155</sup> Ibid, p.9.

<sup>156</sup> Ibid, p.9.



Nairobi from Congo via Uganda. Many small scale *kitenge* traders, including documented refugees and other migrants, travel to Kampala to purchase the material from Congolese traders working there, some of whom are refugees. These refugees then sell the material to friends in the tailoring business in Nairobi or to individual customers. Much of this material is sold wholesale in small stalls in the narrow alleyways around River Road in the City Center and in small marketplaces in Eastleigh. Tailors who do not receive material directly will purchase it from these traders. Kitenge material and final products are also sold to Congolese refugees living in the camp.<sup>157</sup> Other livelihoods that Congolese women will be involved in include teaching and especially the teaching of French in cheap private city schools or as interpreters and home tutors.

Congolese refugees in Nairobi do not live concentrated in one estate like the Somali are known to prefer to live in East Leigh. With Congolese refugees, they are scattered in all the estates of the city. Campbell, Kasuku, and Musyemi (n.d.) however indicate that the largest population of Congolese refugees are to be found in Eastleigh.

A common stereotype shared by some locals toward Congolese is that since the country is rich in gold, diamonds, and other resources, the people are also rich.<sup>158</sup> This then works against the Congolese in various ways. First, they are likely to pay more expensively for services such as rent. Secondly, the notion may make them targets of thefts that are so common in the city.

### **3.6 Separated and Unaccompanied Refugee Girls and Young Women**

Separated and unaccompanied refugee children and youth are considered the most vulnerable and invisible population in the world, with refugee girls and young women facing the highest risks of exploitation, assault, forced marriage, and abuse, resulting in extreme barriers to education, medical care, and employment. There are no statistics revealing the number of

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<sup>157</sup> Ibid, p.16.  
<sup>158</sup> Ibid, p.21

unaccompanied refugee children in Nairobi, especially girls and also young women who are just over 18 years of age, but Heshima Kenya and UNHCR believe this number to be over 25,000. Classified by human rights organizations as “unaccompanied,” most have fled from persecution in the nearby countries of Somalia, Sudan, Ethiopia, and the Democratic Republic of Congo. The refugee children and youth Heshima Kenya serves are often survivors of unimaginable atrocities including having had to flee persecution in their countries and being torn from their family members, many of whom have been killed or have disappeared in war. With very limited access to formal assistance in Nairobi, such as shelter, education, and medical care, refugee girls cope with extreme poverty and the physical and emotional scars from war and, in many cases, prior abuse and exploitation.

### **3.7 Integrating into the refugee life in Nairobi.**

In an urban environment, the relationship between an unaccompanied young refugee and his or her host family is critical, often making the difference between a life of protection and one of exploitation. Upon arrival in a country of first asylum, unaccompanied refugee youth, like most refugees, must immediately find a safe place to stay. For young refugees, the urgency to find shelter in an urban environment often means locating someone willing to host them. Many youth find hosts informally, sometimes just by walking the streets and stopping people to ask for assistance.

In Nairobi the most common arrangement for unaccompanied young refugees involves them working for a host family in exchange for shelter. The dependency of these young people on their hosts means they are likely to work long hours and to be unable to negotiate salaries and rest time. In Kenya, labour – including child labour – is regulated by the Employment Act of 2007. However, since the majority of work done by refugees is informal, it is largely unregulated and thus beyond the effective reach of any legal protection.

The nature of young refugees' work behind closed doors and outside any regulatory regime, their lack of legal protection in the country, and the lack of adult relatives to protect them or seek retribution for abuse makes unaccompanied young domestic workers highly vulnerable to labour exploitation, and even physical or sexual violence. It has been established that, 30% of youth reported that they had not registered with UNHCR, many because their 'employers' would not let them off work to do so.

The work most frequently takes the form of domestic labour in private homes and is done predominantly by young women and girls. In fact, refugee boys complain that it is difficult for them to find shelter because there are so few 'employment' opportunities for them, whereas refugee girls "can always find work as house girls".

It has also been established that , 80% of house girls and boys receive no money from their 'employers'. They work in return for shelter, typically sleeping on the floor of the kitchen and eating separately from the rest of the family, often eating only the family's leftovers. Some, like Stephen, a 16-year-old girl from DRC , work all day every day of the week in return for food only. "I wash the clothes, fetch water, cook and clean the bathroom. I work from morning till evening. They pay me only with food. If I don't work, I don't eat." At night he has to "look for somewhere to sleep" and he usually sleeps on the street.

Some young refugees do other work in return for shelter. Some male youth, and a smaller number of female youth, work in shops, restaurants, tailors, salons and barbershops; they clean, fetch water, run errands and do the dishes. Typically, the work is in exchange for permission to sleep in the place of business itself.

Many young refugee workers have experienced some form of physical violence from their 'employer'. One 16-year-old Congolese girl was burned on the side of her face with a spoon that had been heated for that purpose. Young refugees working as house girls are frequently subjected to sexual harassment, assault, rape and attempted rape by the men and boys of the

family they work for and live with. Zainab, a 15-year-old Congolese, explains that “the boys of the family used to scare me when the mother was out of the house; they tried to rape me many times.”

Often, house girls who have been raped by their ‘employers’ are then thrown out when found to be pregnant. One girl who became pregnant as a result of rape was then accused by her host of being a prostitute and evicted from her home. The church that had been supporting the girl also withdrew its support, on the basis that the girl was immoral for having had a child out of wedlock.

### **3.8 Opportunities for interaction – and support**

Though agencies working in Nairobi agree that many host situations are far from suitable, their ability to take action is constrained by a severe lack of resources to assist refugees in urban areas; they are sometimes forced to accept, just as many young refugees do, that a negative host situation, even one involving exploitative labour, is better than no host at all.

For example, Faith, a 16-year-old unaccompanied Congolese girl, had identified a host before he went to register with UNHCR in early 2010. Faith was taken in by a family with a tailoring shop who had found him begging outside the mosque. He works all day in the family’s shop, every day of the week. In exchange he is allowed to sleep in the shop and is given the family’s leftover food to eat. At night he stays in the shop while the family returns to their home. According to Faith, a number of agencies in Nairobi are aware of his living situation. However, none of the agencies has been able to offer him alternative shelter, leaving him to conclude that they believe he is better off with the family than without.

Young refugees like Faith are at their most vulnerable immediately after their arrival in an urban area, especially if they are alone. Finding shelter is so critical that many feel compelled to quickly accept whatever home they can find. Effective coordination is needed between

UNHCR's various programme teams and agencies working in Nairobi's refugee communities in order to identify vulnerable young refugees as quickly as possible and fast-track them for appropriate solutions.

Because many of the most vulnerable young refugees are not free or able to travel to UNHCR to register themselves, it is critical that agencies working in the communities where refugees are living proactively seek to identify those at risk and refer them to UNHCR.

UNHCR and partner agencies should take advantage of the several opportunities they have to monitor a young refugee's situation, starting at the point of registration and typically proceeding through Refugee Status Determination interviews and several subsequent protection interventions. It is especially important that unaccompanied minors are identified as early as possible in the process so that Best Interests Determinations<sup>2</sup> can be conducted to identify the most appropriate interventions for them and help them access the services they need to survive. These early interactions with newly arrived refugees should be seen as opportunities to identify individuals with particular vulnerabilities before those vulnerabilities are allowed to become chronic, permanently undermining refugees' chances for stabilising their lives.

**CHAPTER FOUR**  
**ASSESSMENT OF THE CHALLENGES FACING THE UNACCOMPANIED**  
**CONGOLESE FEMALE REFUGEE MINOR LIVING IN NAIROBI**

**4.0 Introduction**

The information in this chapter is based on a study conducted in various estates of Nairobi aimed at determining the challenges that face an unaccompanied Congolese refugee minor living in the city of Nairobi. The study also sought to determine the legal status of the refugees and to find out the intervention measures adopted by the various stake holders to alleviate the suffering of the female Congolese refugee minor in Nairobi.

The study was conducted between the 15<sup>th</sup> and 20<sup>th</sup> July 2013. The respondents included 200 refugee young women from different estates in the city of Nairobi. Questionnaires were administered to the respondents. In addition, interviews were held with some of the respondents as well as with workers in the field of refugee resettlement. Some information was also collected through focus group discussions.

**4.2 Research Findings**

**4.2.1 Features of the sample population.**

**4.2.1.1 Residence**

Table 1 below shows the classification of the sample population according to residence.

*Table 1: Classification of the respondents according to residence.*

RESIDENCE	NUMBER OF RESPONDENTS
East Leigh	23
Kawangware	11
Komarock	14
Riruta Satellite	7
Mlango Kubwa	11
Zimmerman	9
Lang'ata	16
High Rise	6
Donholm	4
Umoja	17
Buruburu	4
Kibera	6
Ngumo	9
Ruiru	5
Maringo	8
Hurlingham	8
South B	12
South C	16
Githurai	14
TOTAL	200

*Source: Author*

From table 1 above, we notice that female Congolese refugee minors are scattered in all parts of Nairobi. This indicates that the economic background of the respondents is widely varied.

The residences of the refugees however can point to a bigger image; the economic well being of the respondents. From table 1 above, we notice that close to 11.5% of the respondents live in Eastleigh, an estate that is well known for the high concentration of refugees from other countries such as Somalia and Ethiopia. It is also well known for employing large numbers of small scale traders. This could be an indication of the occupation of choice for most of the respondents.

#### 4.2.1.2 Occupation

Table 2 below shows the characteristics of the respondents according to occupation.

<b>Occupation</b>	<b>Number of respondents.</b>
Hoteliers	9
Teachers	6
Unemployed	26
Primary school pupils	26
Secondary school students	23
College students	26
Musicians	6
Performers	2
Tailors/ fashion	8
Beauticians	12
Small business	18
Shop attendants	22
House girls	16
Total	200

*Source: Author*



From table 2 above, we observe that most of the respondents are either unemployed, attending school or in self employment. The percentage of the unemployed is 13%. These statistics confirm that most of the refugee girls are either in self employment, attending school or employed in the informal sector. It is imperative to note that it is rare to find any of the female refugee minors holding a corporate position or working with the government of Kenya. In terms of economic empowerment, this trend calls upon the country to rethink the possibility of engaging the refugee population in its development agenda.

The table above also shows that there is a high level of dependence in the refugee community. Assuming that all the students and the unemployed are dependent, then we get 101 respondents out of 200, a dependency ratio of 50.5%.

#### **4.2.1.3 Age**

Table 3 below shows the classification of the respondents according to age.

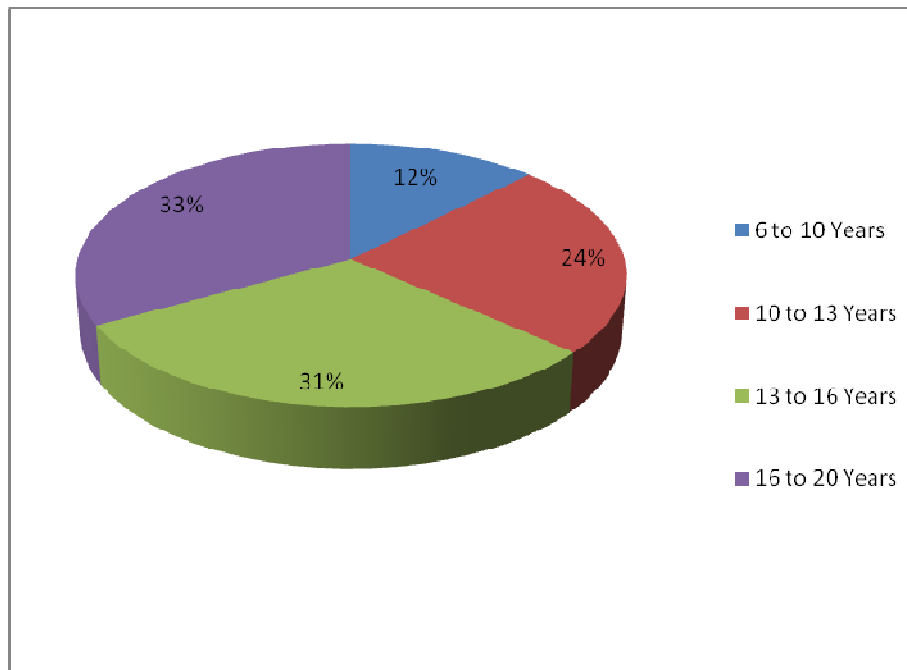
*Table 3: Classification of the respondents according to age.*

Age bracket	Number of respondents.
6-10	25
10-13	48
13-16	61
16-20	66
<b>TOTAL</b>	<b>200</b>

*Source: Author*

This data may be represented in a pie chart as shown in figure 1 below:

*Fig.1: Classification of respondents according to age.*



*Source: Author*

From table 3 and Figure 1 above, we notice that the majority of the respondents (33%) are aged between 16 and 20 years. This age bracket is an economically active age bracket and programs should be put in place to utilize their knowledge, skills and talents for the growth of the economy of the host country.

#### **4.2.1.4 Religion**

The responses showed that 156 respondents were Christians. This represents 78% of the population sampled. Traditionalists were 15, accounting for 7.5% of the sample. 17 respondents said they ascribed to no religion. This is 8.5% of the sample. 12 respondents were Muslim, accounting for 6% of the population sampled.

#### **4.2.1.5 Education Attained**

The majorities of the respondents have attained Secondary education or are attending Secondary school. There were 104 such respondents, accounting for 52% of the sample. Those with primary education or below accounted for 33.5% (67 respondents) while those with diplomas were 16, that is equivalent to 8%. Respondents having degrees were only 13, accounting for 6.5% of the respondents.

From these results, we notice that the refugee population is quite endowed with educational capability. When one considers the education capability of the refugee respondents, one sees the reason why the refugee children should be supported to maximize their ability, despite the challenges that they face.

#### **4.2.1.6 Support by NGOs**

92 respondents accounting for 46% said that they had received economic support from some NGOs including Refugee Consortium of Kenya (RCK) and Kituo cha Sheria for legal matters, Hebrews Immigrants Aid Society (HIAS), GTZ for healthcare, FARAJA Trust, Jesuit Refugee Service (JRS), Tushirikiane Afrika (TUSA) Trust. The only complain that was received in this regard was the fact that some of the organisations were not consistent in the provision of aid and the refugees were still left to look for means for themselves.

52 respondents, accounting for 26% were recipients of aid from UNHCR while none of the respondents had received any aid from the government of Kenya.

#### **4.2.1.7 Legal status.**

It is in the issue of identification documents that one realises the tendency of the Congolese refugees to keep to themselves and to avoid much discussion on this issue. First, the respondents especially in the Focus Group Discussions expressed their fear of sharing information related to their identification documents with strangers. They said that the issue had caused them to be harassed severally by police.

On asking the type of identification documents held by the respondents, 17 of the respondents or 8.5% did not respond at all. 28 respondents (14%) chose the option “cannot tell”, 27 respondents held expired documents and 32 respondents had no documents at all. All combined, this proportion of respondents add up to 104 which is 52% of the sample. It is clear that there is a problem with the issue of identification documents.

The legal status of the respondents is as shown in the table below.

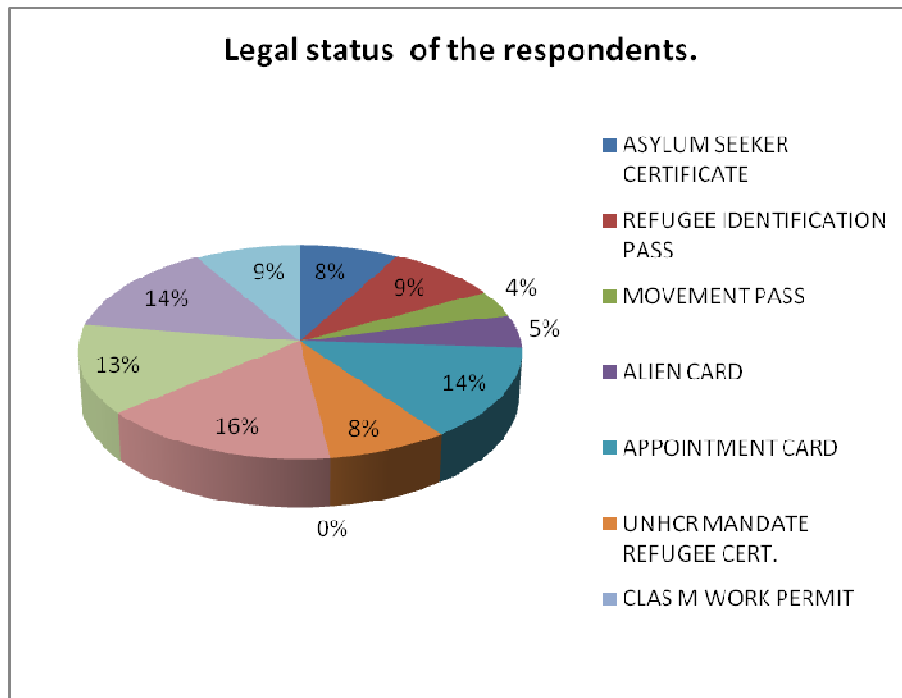
*Table 4: Legal status of the respondents.*

<b>Legal document produced</b>	<b>No. of respondents</b>
Asylum seeker certificate	16
Refugee identification pass	18
Alien card	10
Appointment card	28
UNHCR mandate refugee certificate	16
Class M work permit	0
Movement pass	8
No response	17
Expired Certificate	27
Won't reveal	28
No document produced	32
<b>TOTAL</b>	<b>200</b>

*Source: Author*

The data may be presented in a pie chart as shown in figure 2 below:

Figure 2: Legal status of the respondents.



Source: Author

#### 4.2.1.8 Source of livelihood

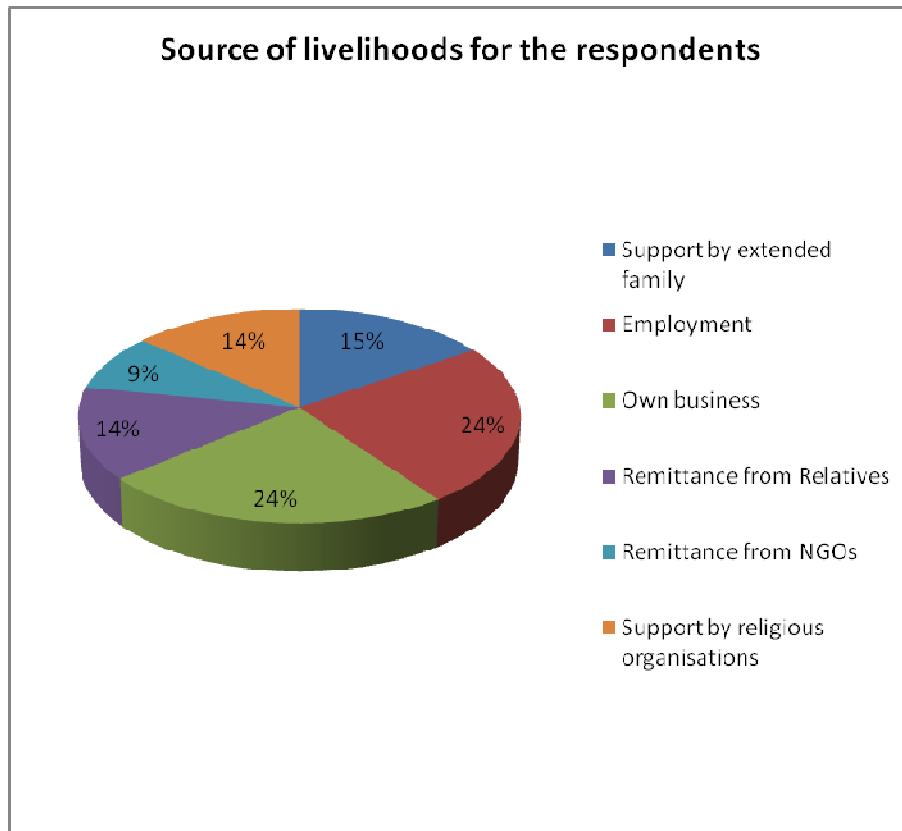
The table below shows the sources of livelihoods for various respondents.

Table 5: Source of livelihoods for the respondents.

Description	No. of respondents
Support by extended family	31
Employment	49
Own business	48
Remittance from Relatives	28
Remittance from NGOs	17
Support by religious organisations	27
TOTAL	200

Source: Author

Figure 3: Source of livelihoods for the respondents.



Source: Author

#### 4.3 Treatment of Refugees in Kenya by the various actors.

The information in this section was collected using a Likert scale in which 4 statements were administered. The respondents were required to tick against their views regarding the issue being determined. A 5-point scale was used where 1 represented “strongly disagree”, 2 represented “disagree”, 3 represented “neutral/undecided” 4 represented “agree” and 5 represented “strongly agree”. The statements aimed at determining the treatment of refugees by: the government, the police, the public, NGOs, and their understanding of their rights as refugees.

The responses were tabulated as below showing the frequencies of the respondents at a given issue.

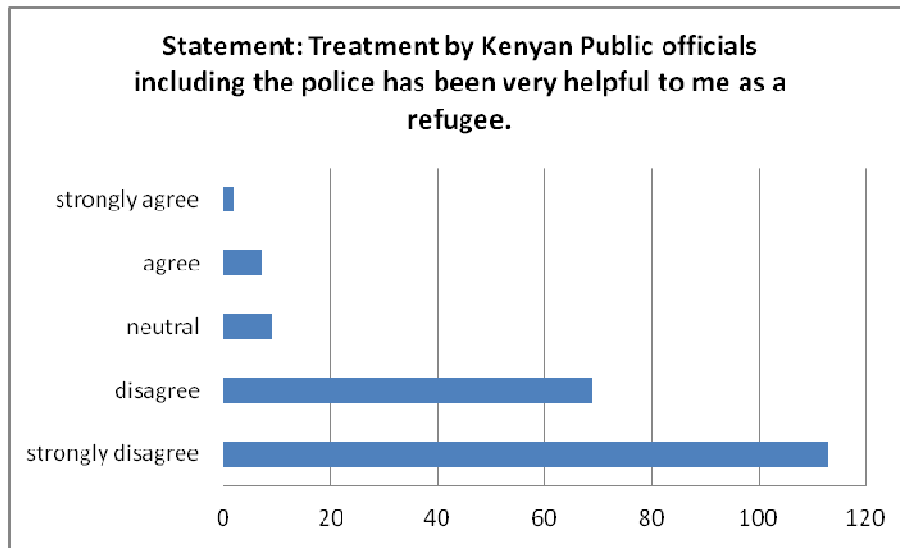
*Table 6: Views of respondents towards certain care-giving institutions.*

<b>Statement</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1. I do not encounter xenophobic tendencies by Kenyans very frequently	27	71	82	13	7
2. I have benefited very much from the assistance offered by the UNHCR officials.	38	64	54	32	12
3. I am aware of my rights as a refugee and I am a full beneficiary of the same.	87	75	30	8	0
4. Treatment by Kenyan public officials including the police has been very helpful to me as a refugee.	113	69	9	7	2

*Source: Author*

For each of the statements, a bar graph indicating the frequency of respondents on the issue concerned is presented.

### 4.3.1 Perception of the treatment of refugees by Kenyan public officials



*Source: Author*

From this result, we understand that most refugees judge the treatment that they receive from Kenyan officials including the police harshly. 182 respondents are in strong disagreement with the statement required. There are no refugee respondents who are happy with the treatment that they receive from the government authorities. As gathered from interviews and from focus group discussions, most officials, especially the police and the city council officials will always treat refugees unfairly in an attempt to extort bribes from them. As for registration of refugees, the respondents said that the process is too slow and that it lacked transparency.

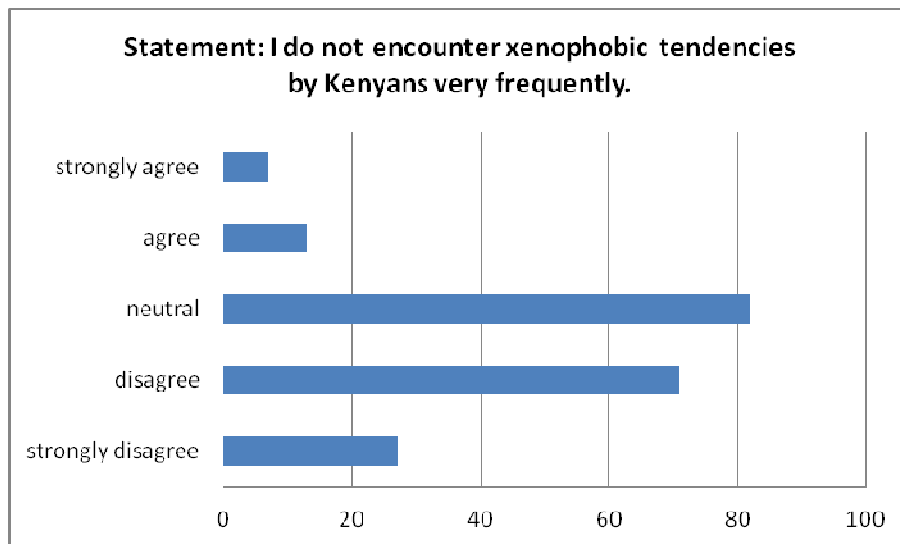
As we conducted this study, we realised that the government of Kenya had released a circular to the effect that all urban refugees and asylum seekers must relocate to refugee camps. The argument of the government was that the proliferation of refugees in urban centres had proved to be a threat to the security of the country. The perception of the government



officials in the Department of Refugee Affairs (DRA) at this time was thus hostile among the urban based refugees who do not wish to be taken back to the refugee camps.

The high court has since decided against the directive. In a decision to a case that had been filed by a local NGO, Kituo cha Sheria and seven refugees, high court judge, David Majanja has said that the government had not shown convincingly that the presence of refugees in urban centres was the cause of insecurity in towns and cities in Kenya.<sup>159</sup>

#### 4.3.2 Perception of the treatment of refugees by the general Kenyan public.



*Source: Author*

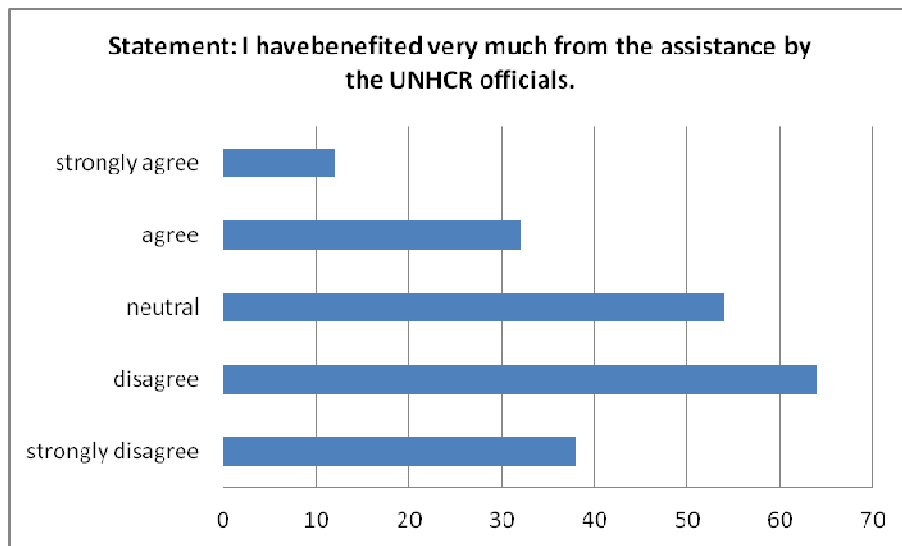
This statement was meant to measure the perception of the refugees towards the reception that they receive from Kenyans in their daily life. From the frequencies recorded above, we realise that the refugees are uncomfortable with the attitudes of Kenyans towards them. 180 respondents were either non-committal or disagreeing with the statement.

<sup>159</sup> Chepkemei, P.(July 27, 2013) State stopped from relocating refugees. Nairobi: In *The East African Standard*, July 27, 2013.

Supplementing this result with the findings from the focus group discussions, we understand that most refugees have Kenyan friends whom they think are supportive. However, they also complained of a prevailing attitude that refugees are ‘rich’ because they are funded by ‘donors’. The respondents said that that attitude had led them to be targets of robberies in Nairobi. They also complained of being harassed by Kenyan who were competing with them in businesses.

Kenyan employers were said to take advantage of refugees and that they wouldn’t expect to be paid equally with Kenyans for an equal task. This was especially so with the case of house girls.

#### 4.3.3 Perception of the treatment of the refugees by the UNHCR officials.

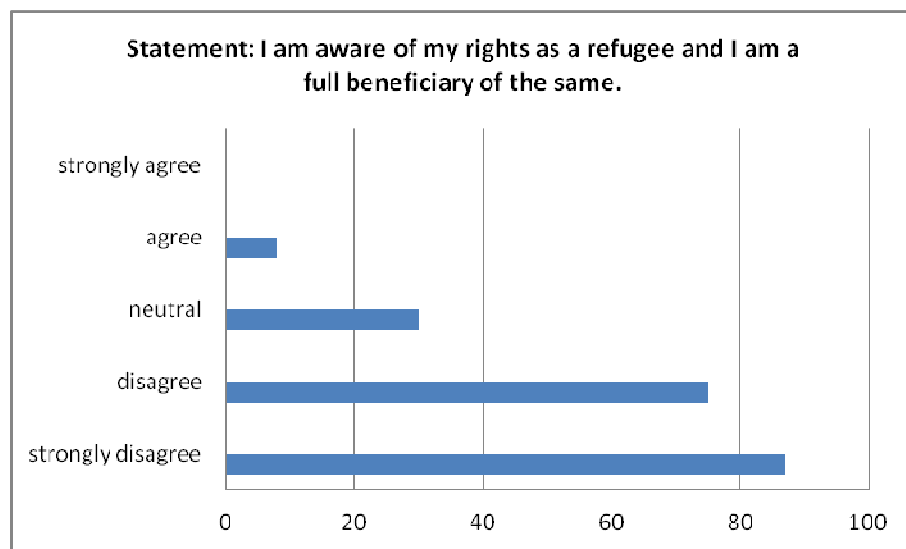


*Source: Author*

Compared to the other category of stakeholders in the protection of refugees, UNHCR officials are looked at more favourably. However, there is still a strong resentment

considering that 102 respondents did not agree with the statement. The positive perception may be attributed to the fact that UNHCR is in constant contact with some of the refugees. The rejection of the statement may stem from the misconception that UNHCR works with the government of Kenya.

#### 4.3.4 Awareness of the refugee of the protection by the international law.



*Source: Author*

As can be seen from the statements above, most respondents disagree with this statement. 162 respondents expressed open disagreement to the statement.

One of the reasons for this could be the lack of awareness on their rights and obligations as refugees under the international law. This came up during the interviews and also during the focus group discussions.

Most of the respondents for example thought that the requirement that they should be held in camps was a provision in the international law and they therefore felt themselves to be in disharmony with the law.

#### **4.4. Results from interviews and focus group discussions with the refugee respondents.**

Much of the results from interviews have been alluded to in the discussions above. Here are elucidated some of the challenges that a refugee faces as they were explained by the respondents.

Most significant of all is the issue of legal status. Most urban refugees had problems with their papers and felt that Kenya should adopt a more straight forward way of registering refugees. The registration process should also be quickened.

As for the government's perception of urban refugees as a security threat, the refugees felt unfairly discriminated against. They thought that the government should work closely with the refugee community for purposes of eliminating security threats and should not appear to be hostile to them. They especially expressed concerns that refugees are widely perceived in Kenya as traffickers of drugs and illicit weapons.

Other refugee girls expressed concern over the rampant sexual abuse against them. This happens with the employers and even in the neighbourhood. They expressed concern that it would be very difficult for them to obtain justice from Kenya courts; and that if it were to happen; it would take a very long time.

As for xenophobia, the respondents said that most Kenyans thought that they had a lot of money with them. They had therefore become easy targets for petty thieves and robbers due to this perception. They said that there was need to enlighten Kenyans of the challenges that refugees face in the country so that more people would be sympathetic of their conditions.

#### **4.5 Interviews with UNHCR staff.**

The staff interviewed for this study suggested that there is need for Kenya to come up with a policy on urban refugees. They said that though passing the Refugee Act was a step in the right direction, it was not yet sufficient to cater for the refugees in the modern society. They suggested that a dynamic urban refugee policy would benefit the country as refugees take up productive roles in the economy.

## **CHAPTER FIVE**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Summary**

This study has focused on the challenges that a Congolese female minor living in Nairobi go through.

Chapter one focuses on the background to the study including introduction, definition, objectives, hypotheses and theoretical framework.

In chapter two, the legal framework providing for the right of the Refugee child are analyzed in the chapter, both local and international statutes that are in focus include the United Nations Convention on the rights of the child (UNCRC). Others include the Universal Declaration of Human Rights, The 1951 convention relating to the status of Refugee, The organization of Africa Unity (OAU) Convention Governing Specific Aspects of Refugee problem in Africa and the Organization of America States Definition of Refugee Status.

Analyzed also is The Africa Charter on the Rights and Welfare of the child. (ACRWC). Provisions of the Kenyan Municipality law for the Rights of children and refugees are also studied. They include the children Act of 2001 and the Refugee Act of 2006.

Chapter three focuses on the lifestyle of the refugee Girl in Nairobi. In this chapter the Origin of the refugee camp is discussed. There is also a discussion why refugees are increasingly being lured into the city.

In another section of the chapter, the challenges that a refugee female minor are discussed, we then discuss the methods that are commonly used for permanent protection of refugees. Here we focus on voluntary repatriation, local integration and resettlement.

In chapter four, a study is conducted involving 200 Congolese refugee minor living in Nairobi. From the study, we understand that most of the refugee girls do not have the

required legal documents. An analysis of the perception of the refugee women over the treatment they require from various Kenyan stakeholders.

The study reveals that the respondents suffer xenophobia from the general public and undergo harassment from public officials.

Regarding the benefit of international law, most refugee girls appeared ignorant of their rights and obligation officials of UNHCR office in Kenya were mildly thought about in the study.

Chapter five closes with conclusion, summary and appropriate recommendations.

## **5.2 Conclusion.**

In this conclusion, determination is made on whether the objectives of the study were achieved or not. It shall also be determined whether the findings of the study support the hypothesis of the study or not.

First, the study aimed at assessing the legal circumstances under which unaccompanied Congolese refugee females live in while in the city of Nairobi. That was accomplished and the study found that most of the unaccompanied children refugees from the Democratic Republic of Congo (DRC) do not possess the requisite legal documentation for refugees or asylum seekers.

Secondly, we analysed the challenges facing Congolese girls in Nairobi. A number of challenges were highlighted including the harassment by police, and other public officers. The study also found that some of the minors get molested by their seniors and employers in many ways including being sexual abuse. Congolese refugees in general were found to have been targets of xenophobic practices from the general public. This is so because they are perceived to possess a lot of money. It was found that the refugees have been subjects of attacks by robbers and petty thieves because of this perception.

Thirdly, the suitability of the measures undertaken by the various implementing partners in addressing the challenges facing the unaccompanied Congolese children in Nairobi were addressed. It was found that it would be advisable that the partners look for a way to work together to advocate that the government puts together a policy on refugees and more specifically for a policy on urban refugees.

As regards the hypotheses, it was found that most of the refugee respondents were not registered with either the government or UNHCR. The study findings also support the second hypothesis that the provisions of international law hardly benefit the Congolese girl refugee child. This has been found by the study that found that most refugees are not even aware of the provisions of the international law regarding the rights of children and refugees.

Finally, the study found that multi-sectoral approach of intervention in refugee situations does not improve the quality of Congolese girl refugees living in Nairobi. The study suggests a combined approach of the non-governmental actors in addressing refugee issues in Kenya.

### **5.3 Recommendations**

From the study, two recommendations are made: First, that the government of Kenya should consider local integration as one of the means of protecting refugees. From that intervention measure, the government will not only benefit from the goodwill of the refugees but also will have better statistics about the refugees in the country.

Secondly, the study recommends that civil society responsible for refugee issues combine hands to agitate for the creation of a refugee policy in Kenya.



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