

**THE ROLE OF AID IN PROTRACTED REFUGEE SITUATIONS: THE  
CASE OF KENYA, 1991 - 2013**

**BY**

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**OCTOBER, 2014**

**DECLARATION**

I declare that this is my original work and has not been submitted for a degree in any other University.

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Date

This project has been submitted for examination with my approval as University Supervisor.

.....  
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.....  
Date

## **DEDICATION**

To the millions of refugees who find themselves in protracted situations around the world.

## **ACKNOWLEDGEMENTS**

I would like to thank my supervisor Dr. Ibrahim Farah for his guidance. For your wisdom, patience, feedback and suggestions, for steering me in the right direction; I am indebted to you.

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## **ABSTRACT**

The international regime's focus on durable solutions for refugees – Repatriation, Integration and resettlement as the only viable options for refugees only serve to perpetuate the protracted situations as time has proven that they are ineffective. This lack of foreseeable alternatives has dire consequences on the entire refugee population. In Kenya for example, aid organizations and the government seem to be stuck at the emergency phase characterised by saving lives, protection and provision of basic needs and have not yet moved on to finding durable solutions. The genuine intention of aid agencies has also been put to question. This study sought to establish whether aid has contributed in one way or another to this protracted situation and investigate to what extent it has contributed to creating a situation of perpetual dependency within the refugee population. This study used secondary data in analysing the variables. Secondary data include data gathered from documents search such as media reports, analysis and review of published books, journals, papers, periodicals, and unpublished works as well as government's official documents. The study used secondary data in the form of documented information from libraries and other relevant institutions. The findings from these secondary data were analysed through content analysis. The key emerging issues in this study were that resettlement was effectively the only durable solutions for refugees in protracted situations in Kenya, however, moving forward and in recognition that only a small percentage of refugees can be resettled to third countries, wherever possible, policy actors should seek to work in harmony with, rather than against, refugees' efforts to become more productive and empowered members of society. Two areas have emerged for further studies in respect to refugees in protracted situations namely; (i) the contribution of resettled refugees in curtailing dependence on aid and (ii) the significance of self-reliance strategies in combating protracted refugee situations.

## **LIST OF ABBREVIATIONS**

AU - African Union

DRA – Department of Refugee Affairs

EHRP – Emergency Humanitarian Response Plan

EU- European Union

GFD – General Food Distribution

HRW – Human Rights Watch

IDP - Internally Displaced Person(s)

JRS- Jesuit Refugee Services

NGO – Non Governmental Organisation

OAU – Organization of African Union

PRRP – Protracted Relief and Recovery Operation

PRS – Protracted Refugee Situation (s)

RAD – Refugee Aid and Development

RSD- Refugee Status Determination

SGBV – Sexual Gender Based Violence

SPP – Security Partnership Project

SRS – Self Reliance Strategy

UN- United Nations

UNGA – United Nations General Assembly

UNHCR- United Nations High Commissioner for Refugees

WFP – World Food Programme

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## CHAPTER ONE

### INTRODUCTION TO THE STUDY

#### 1.1 Introduction

Prior to 1980, refugees in the Kenya were allowed to reside in any place of their choice. The Thika Reception Centre however, provided accommodation for some of these refugees and the Kenyan government was responsible for determining refugee status.<sup>1</sup> Before 1991, the Kenyan government used an ad hoc administrative refugee status determination (RSD) system to recognise refugees. Asylum seekers were interviewed by an Eligibility Committee made up of representatives from the Ministry of Home Affairs, the Department of Immigration and UNHCR observers. However, as a reaction to the high influx of refugees from neighbouring countries which were facing civil strife, the government begun accommodating the refugees in camps located close to the borders; Kakuma in the Turkana County and Dadaab in Garrisa County. Refugees from Somalia were accommodated at the Dadaab complex while those from Ethiopia, Sudan and DRC were accommodates at Kakuma.

These camps were initially intended to be temporary situations where relief efforts would easily be coordinated in preparation for more durable solutions, most notably repatriation back to their countries once the political situation had been addressed. The management of these camps and the provision of aid to the refugees was championed by the UNHCR which coordinates its relief works through implementing partners comprising of NGOs, other specialised UN agencies and other operational partners such as government agencies. The number of NGOs and aid organizations

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<sup>1</sup> The Thika Reception Centre was established in October 1981 at Thika town, near Nairobi. The reception centre was used by the Kenya government from October 1981 until April 1995.

working with refugee has increased tremendously since the 1990s. These organisations provide humanitarian aid in terms of food provision, education, protection and health services to the refugees.

Notably however is that as the number of NGOs and aid organizations increase and grow in size and scope to provide assistance to the refugees, little effort has been made to find lasting durable solutions to the protracted situations the refugees find themselves in. What we have, on the contrary, is a situation where refugees are increasingly becoming dependent on aid and are living in a state of 'limbo' twenty years on.

## **1.2 Background**

The United Nations General Assembly (UNGA) provided the definition of the term refugee in the 1951 Convention Relating to the Status of Refugees (Convention) adopted on 28 July 1951 as:

‘Any person who owing to a well-founded fear of being persecuted for the reasons of race, religion, nationality, membership of a particular social group or political opinion; is outside the country of his nationality and is unable to, or, owing to such fear, is unwilling to avail himself of the protection of that country.’<sup>2</sup>

This convention was adopted to deal with the aftermath of the World War II in Europe, the inspiration for this adoption being the global commitment to ensuring that the trauma caused by the war would not be repeated. In 1967, the Protocol related to

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<sup>2</sup> 1951 Convention Relating to the Status of Refugees, adopted on 28 July 1951 in Geneva by the United Nations General Assembly.

the Status of Refugees (Protocol) was adopted to reinforce and expand the scope of the convention as the problems of displacement has spread all over the world

Kenya is a state party to both the 1951 Convention and the 1967 Protocol. In addition, Kenya is also a signatory to the 1969 OAU Refugee Convention<sup>3</sup> as well as other international and regional human rights instruments that are relevant to refugee protection. In particular, the OAU convention broadened the definition of the term 'refugee' to:

'the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the 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>4</sup>

The provisions of this convention provide more protection to refugees than the 1951 Geneva Convention. On the domestic front however, Kenya was lacking in national refugee legislation up to until 2006 when the Refugee Act was enacted by parliament and came into force signifying the country's continued commitment to refugee protection.

The history of refugees in Kenya can be traced back to independence. The country has been host to refugees from its neighboring countries which have experienced civil

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<sup>3</sup> The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa came into force on 20 June 1974. The convention stemmed from a meeting of heads of states and Government held in Addis Ababa 6-10 September 1969. It has since been ratified by 50/54 African states.

<sup>4</sup>1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, (n 1) art I (2).

strife, political unrest and upheavals since gaining their independence. These include countries such as Somalia, Sudan, Burundi, Rwanda, Ethiopia and Eritrea, including Uganda in the 1970s when Ugandan citizens were fleeing the ruthlessness of the Idd Amin regime. Current statistics place the number of refugees in Kenya at over 500,000. Out of this number 50, 000 are in Nairobi and other major towns such as Lamu and Mombasa. This constitutes the urban refugees.<sup>5</sup>

When Kenya initially accommodated the refugees fleeing civil strife in their countries in the early 1980s and the 1990s, it was anticipated that this refugee situation would be temporary, and that most of them would soon be able to return to their countries of origin. At the time, the camp seemed to be the most appropriate option in terms of facilitating the eventual repatriation of the refugees.

Twenty years on however, these refugees are still languishing in the refugee camps and find themselves in protracted refugee situations keeping them from normal productive lives and heavily reliant on aid for sustenance. The UNHCR estimates that as at 2011 there were over 7 million refugees in protracted refugee situations in 30 countries, and over 27 million internally displaced persons (IDPs)<sup>6</sup> with Kenya and Tanzania facing the biggest challenge of these protracted situations in Africa.<sup>7</sup>

The UN High Commissioner for Refugees' (UNHCR) Global Consultations on International Protection defined protracted refugee situations as one where, over time,

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<sup>5</sup>UNHCR Statistical Summary on Refugees and Asylum Seekers in Kenya, May 2014.

<sup>6</sup>UNHCR, Protracted Refugee Situations: Unlocking Crises of Protracted Displacement for Refugees and Internally Displaced Persons, Working paper, 2011.

<sup>7</sup>Gill Loescher and James Miller. The Long Road Home: Protracted Refugee Situations in Africa, Survival: Global Politics and Strategy, 2005, 47:2, p153-174.

there have been considerable changes in refugees' needs, which neither UNHCR nor the host country have been able to address in a meaningful manner, thus leaving refugees in a state of dependency and often without adequate access to basic rights even after many years spent in the country of asylum<sup>8</sup>. The measure of protracted situations was placed at a refugee population of more than 25000 persons who have been in exile for 5 years or more. People in protracted refugee situations are often deprived of freedom of movement, access to land, and legal employment rendering this as one of the most compelling challenges confronting governments around the world.

The UNHCR contends that protracted refugee situations stem from political impasses which are as a result of political action and inaction, both in the country of origin and in the country of asylum. These situations endure and persist because of ongoing problems in the country of origin and become protracted as a result of responses to refugee inflows, involving restrictions on refugee movement and employment possibilities, and encampment<sup>9</sup>.

### **1.3 Statement of the Research Problem**

Persistent and stagnant refugee situations are a growing challenge for the international community and the search for a solution to these protracted situations has been an elusive task for aid organizations, policy makers as well as the International regime. Aid has however been a constant. Aid organizations have metamorphosed and increased considerably since the 1990s all in an attempt to alleviate refugees' suffering. Refugees caught up in these protracted situations are forced to rely on

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<sup>8</sup>UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc.EC/54/SC/CRP.14, 10 June 2004, p.2.

<sup>9</sup>Ibid, p.1.

humanitarian aid for extended periods of time and their lives are marked by conditions of idleness and hopelessness

The international regime's focus on durable solutions for refugees – Repatriation, Integration and resettlement as the only viable options for refugees only serve to perpetuate the protracted situations as time has proven that they are ineffective. This lack of foreseeable alternatives has dire consequences on the entire refugee population. In Kenya for example, aid organizations and the government seem to be stuck at the emergency phase – characterised by saving lives, protection and provision of basic needs - and have not yet moved on to finding durable solutions.

The genuine intention of aid agencies has also been put to question. This study will seek to establish whether aid has contributed in one way or another to this protracted situation and investigate to what extent it has contributed to creating a situation of perpetual dependency within the refugee population. The study will seek to answer the question: are aid agencies solely interested in self-perpetuation? Are they out of jobs without people to help?

The role of the Kenyan government in the plight of refugees will also be critically examined and especially in its role in overseeing the aid organizations operating in the country. The Department of Refugee Affairs (DRA) which draws its mandate from the Refugee Act 2006, the Convention 1951, the Protocol 1967 as well as the OAU convention 1969, is charged with among other things coordination of provision of services and management of the refugee camps in the country. When DRA was instituted in 2006, it was meant to gradually take over management of refugee affairs

from the UNHCR in totality. This ‘take-over’ process has however been extremely slow and lacks commitment.

This study seeks to examine the changing role of aid in response to the protracted refugee situation in Kenya, with a bias on Somali refugees in Kenya who have borne the brunt of protracted situation since the early 1990s, and to investigate whether aid has created dependence within the refugee population. A pertinent question this study will seek to answer is whether the relationship between these actors and the refugees is a symbiotic one: Do the actors in the refugee regime stand to benefit from the protracted refugee situation? And if so, how does this perceived benefit contribute to the current status quo? It will also investigate the role of aid agencies, the host government and the international community in finding a lasting solution to the protracted situation.

The researcher notes that in describing characteristics and causes of protracted refugee situations, the UNHCR is seen to shift blame entirely to state governments and has conspicuously avoided mention of their own role in enabling these situations given the fact that UNHCR is mandated to actively look for solutions to refugees’ plight. It is the researcher’s assertion that none of the actors in the ‘refugee regime’ are willing to take responsibility for the current state of affairs and this lack of ownership hinders the search for a long term solution to these protracted situations.

#### **1.4 Objectives of Study**

The main objective of the study is to examine the role of aid in the protracted refugee situation in Kenya



More specifically, the study aims to:

- i) Provide an overview of the protracted refugee situation in Kenya;
- ii) Analyse the role of aid in the protracted refugee situation in Kenya;
- iii) Explore the linkage between aid and the protracted refugee situation in Kenya.

## **1.5 Literature review**

The literature review explores pertinent literature in respect to the protracted refugee situation in Kenya and around the world as well as the evolution and effectiveness of aid in addressing this protracted situation. The literature review will seek to provide a historical context to humanitarian aid and the refugees' dynamic as well as give an overview of the current context. The literature review will also seek identify the knowledge gap that currently exists that the study will seek to fill.

### **1.5.1 Definitional Debates**

There is no simple definition to a protracted situation as these situations are not all alike. In 2004, the UNHCR defined a protracted situation as:

‘One in which refugees find themselves in a long-standing and intractable state of Limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years of exile.’<sup>10</sup>

The UNHCR placed the measure of protracted situations was placed at a refugee population of more than 25000 persons who have been in exile for 5 years or more. This has since amended to exclude the 25000 persons' and 5 year criteria. The

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<sup>10</sup>UNHCR 2009a; Preamble.

UNHCR estimates that there are currently an estimated 30 protracted situations around the world with the current average duration of these situations increasing from 9 years in 2003 to 20 years in 2011<sup>11</sup>.

Loescher and Milner contend that refugee situations have been present in the African continent since independence (1960s and 1970s), mostly arising from liberation wars in countries like Democratic Republic of Congo (then Zaire), Angola, Mozambique, Sudan and Rwanda. It was a period of upheavals as the continent gained independence and geared up for self rule. These countries had just come out from the struggle for independence and factions that fought alongside each other in the struggle for independence were now on opposing sides, each feeling more justified to be in leadership thus creating tension and dissidence which in most cases erupted into full blown civil wars. An increasing number of citizens fled to neighbouring countries for safety. This was also at the height of the cold war where the US and Former Soviet Union were trying to further their ideologies in Africa and supported different movements in an effort to exert influence.

Loescher and Milner argue that this manipulation only served to exacerbate conflict situations resulting in massive refugees' inflows. The two superpowers provided assistance to the refugees by building settlements and provided support to either established regimes in the countries of origin or, more typically, exiled fighters seeking to overthrow those regimes<sup>12</sup>. The refugee situations thus developed a political dimension, a situation that persists to date. Loescher and Milner posit that

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<sup>11</sup>Refugees Studies Centre. Forced Migration Review: Protracted Displacement. University of Oxford,, Issue 33, 2009, p.9.

<sup>12</sup>Gil Loescher and James Milner. The Long Road Home: Protracted Refugee Situations in Africa. University of Oxford, 2006, p.153-174.

seeking a solution has proved an uphill task especially after the end of the cold war when the two powers shifted focus from Africa to other regions such as Eastern Europe where they were more interested in exerting their influence. Repatriation at the time was not an option most states were not keen on exploring this options as the refugee settlements in existence at the time mostly either comprised the rebel movements that had attempted to overthrow the governments or in cases where the rebel movements had been successful, comprised of the overthrown governments. Furthermore, continued conflicts in the countries of origin, as is the case with Somalia, make repatriation difficult.

Smith agrees with this view and further argues that host governments have become increasingly uncomfortable and suspicious of the refugee population as increasing levels of insecurity in these host countries are attributed to proliferation of arms by the rebel refugee groups. According to Smith, most of these host countries, Kenya included, resort to 'Warehousing'<sup>13</sup> of refugees or encampment and curtailing movement of the refugees in an attempt to manage the growing security concerns until permanent solutions are found. The refugees are also accused of placing undue pressure on local resources and the environment at the expense of the local population.

Most host governments in Africa facing refugee problems seem to have abdicated responsibility for refugees to international agencies such as the UNHCR and in exchange for opening up their borders to refugees; they have now stipulated that

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<sup>13</sup>Merrill Smith (Ed). Word Refugee Survey: Warehousing Refugees: A Denial or Rights, a Waste of Humanity, 2004 p.38.

refugees remain in camps until a solution can be found in another country. UNHCR maintains that these protracted situations are the combined result of the prevailing situations in the country of origin, the policy responses of the country of asylum, and the lack of sufficient engagement in these situations by a range of other actors. Failure to address the situation in the country of origin means that refugees and displaced people cannot return home and are left in a state of limbo for extended periods of time and dependent on humanitarian aid.

In the absence of clear policies on refugee matters, Slaughter and Crisp argue that the UNHCR has been left as the state of the refugees responsible for maintaining peace and order<sup>14</sup>. In Kenya, the Somali refugees have faced the longest protracted situation since the collapse of the Somali Republic in 1991 with the ousting of the then authoritarian president Siyad Barre. Milner posits that initially, large amounts of donor funding flooded in to the country to deal with the high influx of refugees from Somalia which helped to stabilize the situation and this saw a fall in the rate of displacement. UNHCR and the government now moved to a phase of ‘maintenance’ and with the passing of time, this acquired the character of a protracted situation<sup>15</sup>. Donor fatigue however set in the late 1990s and this saw a decline in refugee funding. In her research, Lindley observes that Somali refugees cannot themselves solve their crisis of citizenship, access to rights and a permanent solution to the protracted

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<sup>14</sup> Amy Slaughter and Jeff Crisp, A Surrogate State? The Role of UNHCR in Protracted Refugee Situations, *New Issues in Refugee Research*, Research Paper No. 168. 2009.

<sup>15</sup> James Milner. *Refugees, the State and the Politics of Asylum in Africa*, Basingstoke, Palgrave Macmillan, 2009.

refugee situation – this remains the collective responsibility of Somali political actors and the international community<sup>16</sup>.

### **1.5.2 Aid in Protracted Refugee Situations**

Most scholars and aid agencies agree that delivery of aid and in particular humanitarian aid in emergency situations is a complex undertaking especially in developing countries which have no clear aid policies. From the late 1990s to early 2000s for instance, a number of factors emerged to shape the aid agenda in protracted situations. According to Macrae and Harmer, these new factors include; (i) a changing focus from linking relief and development to linking aid and security bringing about the dimension of securitization of aid, (ii) concern among development aid actors to re-engage in countries potentially excluded from aid. This stemmed from concerns regarding performance, and corresponding pressure from the establishment of the Millennium Development Goal (MDG) benchmarks; (iii) a steady internationalization of responsibility for human security and welfare, if necessary conducted outside the framework of the recipient state; and (iv) a growing convergence between the conceptual frameworks of the development and humanitarian arenas.

Macrae and Harmer opine that aid allocation and the type of aid is therefore largely shaped by concerns for the development needs of recipient countries, other states however use aid rather as an instrument of foreign and commercial policy interests<sup>17</sup>.

Aid agencies and donors in general have been in the past accused of using aid to further their own agenda at the expense of the vulnerable refugees that they are

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<sup>16</sup>Anna Lindley, *Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya*, Refugee Survey Quarterly, (2011), p1-36.

<sup>17</sup>Adele Harmer and Joanne Macrae, *Beyond the Continuum: The Changing Role of Aid Policy in Protracted Crises*, HPG Research Report. 2004.

mandated to protect and assist. Graham Hancock in his book 'Lords of Poverty' argues that a great deal of aid money channeled to third world countries is spent purchasing expertise that Americans and Europeans provide. According to a detailed study of refugee relief in South East Asia, most agencies' operating, logistics and miscellaneous costs are enormous and almost impenetrable; most of these costs being channeled towards staffing and personnel matters.<sup>18</sup>

Hancock criticises UNHCR, the Refugee Agency and states that whereas UNHCR is not in itself an implementing agency, it raises money from UN member governments which it then passes to implementing partners and NGOs contracted to do the actual fieldwork and proceeds to perform a supervisory role. This supervision however, is of poor quality and at times lacking. Hancock suggests that UNHCR could and should be more thorough in vetting and scanning the voluntary agencies that it subcontracts in the field and hopefully be able to weed out the 'worst abuses inflicted on refugees'<sup>19</sup>. This argument is supported by Waldron and Hasci who observe that 'any group capable of writing a proposal is eligible to participate in UNHCR coordinated efforts.'<sup>20</sup>

Many analysts share these sentiments in relation to UNHCR and aid organizations. For example, Michael Irwin, a former World Bank Director in a scathing report on the world bank dubbed 'Banking on Poverty: An Insider's look at the World Bank' revealed that as at 1987, the bank's regular staff numbered over 6000 and the

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<sup>18</sup>Graham Hancock. *Lords of Poverty: The Power, Prestige and Corruption of the International Aid Business*. New York. Atlantic Monthly Press, 1989, p99.

<sup>19</sup>*Ibid.*

<sup>20</sup>Sydney Waldron and Naima Hasci, *Somali Refugees in the Horn of Africa: State of the Art Review*. Studies on Emergency and Disaster Relief. University of Oxford, 1995.

administrative budget stood at USD 816 Million. These employees enjoy inflated tax-free salaries, salary supplements for spouses as well as first class travel and hotels. The budget approved for developmental loans at the time stood at a meager 17.7 billion. Irwin concludes his report by claiming that the World Bank is hypocritical in prescribing financial discipline and savings for developing countries while it lavishes handsome salaries and other benefits to its own bureaucrats.<sup>21</sup>

Stevens critiques the UNHCR and states that the organization's primary interest lies in its own size and status and not in the welfare of the refugees it is mandated to protect<sup>22</sup>. Steven argues that rather than force states to respect their obligations with regard to the rights of refugees, and confront states where necessary, UNHCR has become an accomplice of states, accepting the "militarization" of its operations by the US and NATO, and promoting "containment", refugee camps and repatriation to insecure environments and that UNHCR "has condemned an uncountable number of refugees to death and misery in the camps and 'safe havens'".<sup>23</sup>

These criticisms notwithstanding, it does not preclude the gains made by these agencies in respect to addressing protracted refugee situations in Africa and in providing the much needed emergency material assistance to refugees. It would therefore be unfair to condemn the UNHCR and aid organizations based on this critique. Slaughter and Crispin in a rebuttal to Steven's argument, suggest that host countries have largely neglected Refugee populations leaving the UNHCR and other

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<sup>21</sup>Michael Irwin, *Banking on Poverty: An Insider's Look at the World Bank*, Foreign Policy Briefing No.3. Cato Institute, 1990.

<sup>22</sup>Jacob Stevens. *Prisons of the Stateless: The Derelictions of UNHCR*, New Left Review, No. 42. 2006.

<sup>23</sup>*Ibid.*

humanitarian organizations to assume the primary role in delivery and coordination of support to refugees through means of emergency relief and in the long term through care and maintenance while the state's role is limited to allowing the refugees into their territories and observing the non-refoulement principle<sup>24</sup>. Slaughterhouse and Crisp argue that “under this arrangement, the notion of state responsibility has become weak in its application, while UNHCR and its humanitarian partners have assumed a progressively wider long term range refugee responsibilities, even in countries which are signatories to the 1951 convention.....”

Slaughterhouse and Crisp suggest that the world's protracted situation are to a large extent the outcome of actions taken or not taken by states- both in developing regions which host refugees and in the developed countries that play a leading role in the Un and the international refugee protection regime. They absolve the UNHCR by stating that UNHCR's role in protracted refugee situations is influenced by external factors such as competing priorities, inadequate funding program objectives and timelines<sup>25</sup>. UNHCR's role which is primarily dictated by donor countries is limited in the kind of assistance to refugees to primarily humanitarian aid as opposed to development aid.

Attempts by the UNHCR from relief to developmental assistance have been met by stiff resistance from host governments who are all too eager to retain the visibility of the refugees they hosted in camps; funded by donor states and coordinated by the UNHCR. The view of host governments in this scenario is that if development aid were to be targeted at refugee situations, it would lead to a reduction in the level of

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<sup>24</sup> Amy Slaughterhouse and Jeff Crisp, A Surrogate State? The Role of UNHCR in Protracted Refugee Situations, *New Issues in refugee Research*, No. 168 , 2009.

<sup>25</sup> Ibid.



international assistance available for their regular development programmes and that it would imply their agreement to long term settlement of refugees in their territories.<sup>26</sup> Many analysts, notably Barber believe that aid has been substituted for political initiatives that would resolve the root causes of emergency migrations.

### **1.5.3 Perceptions and Power Relations**

The Dadaab Refugee Camp comprises of four (4) camps; Dagahaley, Ifo, Hagadera, and Ifo2 managed by the DRA. UNHCR has a coordinating role while NGOs operate as implementing partners. As at 2011, there were 1,022 aid workers from 22 agencies living on the UNHCR compound. Aid workers and refugees (beneficiaries) have an intricate relationship which is riddled with accusations and counter-accusations from both sides. Refugees on one hand accuse aid workers of inhumane treatment, corruption and abuse while the aid workers generally view the refugees as ‘a dishonest lot’ out to ‘cheat’ the system.

Agier raises the issue of the problematic relationship between aid workers and refugees. He points out that despite UNHCR being viewed positively back home (in the USA), the situation is very different on the ground as its staff are generally feared and distrusted by the refugees because of the presumed power they wield as well as the lack of accountability when they are accused of committing offences. Agier accuses senior staff members of remaining in capitals and not properly monitoring the aid workers in the field or their treatment of refugees<sup>27</sup>. In particular, aid workers have

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<sup>26</sup>Ibid

<sup>27</sup>Michel Agier. *On the Margins of the World: The Refugee Experience*. Polity Press. 2008

in the past been accused of sexually exploiting refugees which prompted the UNGA to commission an investigation into alleged sexual exploitation in 2002<sup>28</sup>.

The report indeed unearthed numerous instances and abuse of refugees by aid workers and recommended that the Office for the Coordination of Humanitarian Affairs (OCHA) take the lead in coordinating and harmonizing the codes of conduct. In addition to this, UNHCR was tasked with the role of coordinating other aid agencies and NGOs and ensuring that mechanisms are put in place whereby refugees would be able to report incidences of exploitation in confidence and anonymity if desired<sup>29</sup>. In addition, aid has been accused of fuelling conflicting and repression by supporting oppressive governments, feeding warring factions and enabling them to exercise social control over populations as well as producing new kinds of dependence<sup>30</sup>

On the other side of the divide, aid workers view refugees as individuals who are out to get the most for themselves and are unnecessarily being dependent on aid and lacking initiative towards self-sustenance<sup>31</sup>. This negative perception is further exacerbated by the increased attacks, kidnappings and killings of aid workers around the world. According to 'Aid Worker Security Report, 2013', there were at least 167 incidents of major violence against aid workers in 19 countries in 2012 which resulted in the deaths of 274 aid workers<sup>32</sup>. The report also found that aid worker kidnappings

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<sup>28</sup> The investigation into allegations of sexual exploitation of refugees by aid workers was pursuant to the General Assembly resolutions 48/218B of 29 July 1994 and 54/244 of 23 December 1999.

<sup>29</sup> Report of the Secretary General on the activities of the Office of Internal Oversight Services. Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa, 2002.

<sup>30</sup> Alexander Betts and Gil Loescher. Refugees in International Relations. Oxford University Press. 2011 p.42.

<sup>31</sup> E. Valentine Daniel and John Knudsen, *Mistrusting Refugees: In Search of the Locus of Trust*, University of California Press, 1995.

<sup>32</sup> Adele Harmer, Abby Stoddard and Kate Toth, *Aid Worker Security Report, The New Normal: Coping with the Kidnapping Threat*, 2013.

have quadrupled over the past decade with more aid workers being victims of kidnapping than of any other form of attack since 2009.

Daniel and Knudsen in examining the relations between actors, situations and established humanitarian practices conclude that the entire structure of the humanitarian regime is predicated on the exercise of a type of authority which is itself maintained and legitimized by the absence of trust between the givers and the recipients. In fact, the whole structure of the humanitarian regime is fraught with competition, suspicion and mistrust<sup>33</sup>

#### **1.5.4 Kenya's Response**

As mentioned earlier, Kenya currently hosts over 500, 000 refugees and asylum seekers in the two camps: Dadaab and Kakuma as well as the urban refugees living in major towns. This inflow of refugees in to Kenya begun in the 1970s with Ugandans fleeing the dictatorial Amin regime, however, the refugee situation dramatically changed in the 1990s with a vast number of refugees entering the country in response to regional crisis. By 1992, the number of refugees had skyrocketed to nearly 400, 000 from 14,500 in 1991<sup>34</sup>. Prior to this influx, the Kenyan government adequately managed the refugee situation in and undertook Refugee Status Determination (RSD) through an Eligibility committee. Recognised refugees were issued with identity cards and were able to integrate into the society.

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<sup>33</sup>Ibid, p.219.

<sup>34</sup>E.Odhiambo-Abuya. UNHCR and Status Determination Imtaxaan in Kenya: An Empirical Survey, Journal of African Law. 2004, p.188.

The government was not prepared for this upsurge in refugee numbers and it lacked the capacity for refugee protection. In addition, Kenya was also going through a 'rough' political climate with the agitation for multi-party democracy increasing and the government shifted focus from refugee protection to stabilising its own political climate. The government therefore transferred its responsibilities for refugee protection to UNHCR who stepped in to fill this gap<sup>35</sup>. At the time both parties agreed to encampment, which was initially meant as a temporary solution that would make it easier for the UNHCR to access the refugees and provide the much needed relief and protection. This saw the birth of the refugee camps in Kenya. Refugees are currently still enclosed in restricted camps where their freedom of movement is curtailed.

Despite the government claiming to have an official encampment policy, this has never been gazetted and there is no formal policy in this regard. On 18 December 2012, the Kenyan government made an announcement that it would stop registering urban refugees and that any refugee currently living in urban areas should immediately relocate to designated camps. This was instigated by a surge in terror attacks in Nairobi and an increase in insecurity which was blamed on the refugee population in Nairobi. The government claimed that it was within its right to make this declaration and that the 2006 Refugee Act allowed it to determine where refugees would live within its borders. The government has however been accused by those working with refugees as moving in between spates of enforcement and indifference towards encampment to the detriment of the refugee population and this has been the cause of heated debates which have more recently resulted in court battles between NGOs working with refugees and the government.

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<sup>35</sup> Ibid.

Kenya was indeed lacking in national refugee legislation until 2006 when the Refugee Act was passed. This Act in essence, was an implementation of the 1951 Convention, the 1967 Protocol as well as the 1969 OAU Convention. The act also established the Department of Refugee Affairs (DRA) within the Ministry of Persons. DRA is tasked with the responsibility of administration, coordination and management of issues related to refugees and its mandate also includes developing policies, promoting durable solutions, coordination international assistance, receiving and processing applications for refugee status, registration, issuing identity cards and travel documents and managing the refugee camps.<sup>36</sup>

DRA has limited staff who are inexperienced in dealing with refugee matters and although the Act sets out the legal framework governing refugees, in practice there lacks capacity to ensure implementation. Moreover, a national refugee and asylum seeker policy is missing to assist in implementation and this brings about confusion in implementing, particularly in regards to the 'encampment policy'.<sup>37</sup>

### **1.5.5 Literature Gap**

A review of the literature reveals that over the years, there has been a lot of interest in investigating the causes and management of protracted refugee situations across the world. Numerous studies have been conducted to try and find solutions to these protracted situations. There is, in this respect, substantial literature on refugees. The realm of Aid is yet another area that has been widely researched by many scholars, most of whom discredit its relevance in alleviating poverty and poverty situations.

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<sup>36</sup>Sara Pavanello, Samir Elhawary and Sara Pantuliano, Hidden and Exposed: Urban Refugees in Nairobi, Kenya, HPG Working Paper, March 2010, p.15.

<sup>37</sup>Ibid, p.15.

There have been a lot of studies on humanitarian aid and how this can be channelled better to reach this vulnerable group.

The literature review however also reveals a gap, particularly in investigating the linkage between aid and the protracted refugee situation in the country and across the world. The literature review has revealed that aid to refugees is currently still stuck at the 'emergency phase' and has not yet progressed wholly to finding durable solutions to protracted refugee situations; leading to a situation of perpetual dependence on this aid for basic survival. Moreover, the intentions of the aid agencies at actually finding solutions are in question and may not be genuine as the motivation for aid is seen to be fuelled by interests of 'self-perpetuation' as opposed to the needs of the refugees. This implies that aid efforts have not been channelled towards finding solutions but rather to maintaining the status quo in order to validate its existence.

This study therefore intends to fill in this gap that has not been delved into. The study seeks to explore the role of aid in the protracted refugee situation in Kenya and identify the linkage. Guided by the objectives, the study will also aim to determine how best aid can be engaged to mitigate risks in integration and encourage acceptance.

### **1.6 Justification of the Study**

There is currently a lot of debate currently going on in Kenya regarding the state of refugees. The general population's perception of 'abused' generosity in regards to hosting refugees has not helped the situation and the local population has become increasingly suspicious of the refugees putting pressure on the government to act

decisively on matters refugees. In particular, the recent terror attacks across the country as well as the undue pressure placed on the environment and resources have all been attributed to the increase in refugee populations across the country and have only served to increase the ridge between the refugees and the local population. The government has reacted to this pressure by enacting the encampment policy, which though favoured by the locals, contravenes basic human rights and refugee conventions as well as other instruments that the Kenyan government has ratified. Furthermore, there are suspicions that these refugee camps harbour extremists and terror groups operating from within the camps making this encampment policy counterproductive.

This study will benefit the government in critically looking and assessing its obligations with regards to protection of refugees under international law as well and establish how it can be proactive in creating a mutually benefiting relationship/situation between hosts (local population) and refugees. The study will try to find ways in which refugees and locals in general can be empowered so as to avoid dependence on aid.

This study is cognisant of the fact that until the international regime intervenes in the current crisis in neighbouring countries, namely Somalia and South Sudan; the refugee problem will continue being a 'thorn in Kenya's flesh'. The government therefore need to devise its own methods of dealing with the protracted situation which have adverse effects on country in terms of increased insecurity and pressure on the environment and resources. The hope here is that the study will draw

generalizable results that can be applied in other countries facing similar protracted refugee situations.

This study is also intended to enrich the academic field and especially in refugee studies which is an issue that has largely been ignored in Kenya with very little if any focus given to the area up until the recent spike in increase terror threats to the country by the Al Shabaab. Most of the literature on refugee issues is from former aid workers and in particular former UNHCR staff members. Scholars have seldom delved into the refugee issue which has in recent times been seen to change the entire dynamic of the country security machinery and this therefore makes it an issue that needs to be critically examined.

### **1.7 Hypotheses**

This study tested the following hypotheses:

- i) Refugee situations will prolong if there is no ownership and political will to address such protracted refugee crisis;
- ii) Overdependence on external aid plays a significant role in protracted refugee situations;
- iii) There is a direct correlation between increase in aid and protracted refugee situations.

### **1.8 Theoretical Framework**

The theoretical framework for this study is based on the Positive Political Theory (PPT) which is a variant of the Rational-choice theory. This theory is concerned with the understanding phenomena through the use of analytical models which, it is hoped,



lend insight into why outcomes look the way they do.<sup>38</sup> The positive political theory is founded on two assumptions: (1) that these phenomena results from decisions made by the relevant individuals and (2) that these decisions are to a large extent a consequence of preferences, beliefs and the actions of these individuals.<sup>39</sup>

The assumption here is that individuals and organisations have well defined preferences over a given set of alternatives and will chose what in their opinion is the 'best' alternative. Individuals and organizations are thought to rank their preferences consistently over a set of possible outcomes, taking risks and uncertainty into consideration and acting to maximise their expected pay offs<sup>40</sup>. This then brings in the aspect of rational self-interest which determines the behaviours of these individuals and/or organisations. One of the key objectives of the study is to explore the linkage between aid donor behaviour and the interest of the recipients' needs and it is the researcher's assumption that all actors in the refugee regime have their own self-interests and that the choices made are geared towards maximising their benefits.

Amadeus and Bueno de Mesquita in their review of the positive political theory opine that the goal of the theory is to build models that predict how individuals' self-oriented actions combine to yield collective outcomes. Positive political theorists strive to determine whether these complex strategic political interactions have predictable, law-like outcomes that exhibit stability. This would signify that the agents' actions combine in such a way that, given the collective social outcome of agents' self-oriented actions, no individual could achieve a greater expected pay-off if

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<sup>38</sup>David Austen-Smith and Jeffrey Banks, *Social Choice Theory, Game Theory and Positive Political Theory*, Annual Reviews, Political Science, 1998. P.259-287

<sup>39</sup>. Ibid.

<sup>40</sup>Ibid.

he had unilaterally selected an alternative course of action<sup>41</sup>. In this study, these individual self-oriented actions represent the actions of actors in the refugee regime (aid agents, donors, aid workers) whilst the collective outcome represent the protracted refugee situation being studied.

The Positive Political Theory will indeed show that that all actors in the refugee regime as mentioned above are in pursuit of their own selfish interests and the choices made are the sum product of a cost-benefit analysis with little if any focus on the interests or needs of any other party.

### **1.9 Research Methodology**

The study adopted a mixed method approach combining both qualitative and quantitative studies. Qualitative studies allowed the researcher to explore behaviours, perspectives, feelings and experiences in depth through a holistic framework. In contrast, quantitative research which is a formal systematic approach employed numerical data to obtain and analyse information. The researcher combined both designs to be able to get a holistic picture whilst attempting to answer the research question. The quantitative methods were used to affirm and generalise findings acquired from the qualitative methods.

Data collection took place for a period of two weeks; the first week at the Dadaab Refugee Camp and the second week in Eastleigh, Nairobi. Secondary data was collected through reviewing relevant material such as UNHCR statistical data and research findings by scholars in the field. Primary data was collected through the use

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<sup>41</sup>S.M Amadae and Bruce de Mesquita. The Rochester School: The Origins of Positive Political Theory. Annual Review Political Science. 1999. p.269-295.

of open ended interviews which the researcher with the aid of research assistants conducted with the refugee population, local community representatives and aid workers in the Dadaab refugee camp as well as Eastleigh, Nairobi. The researcher employed random sampling to identify respondents. Due to cost constraints, the researcher conducted telephone interviews. Relevant permissions to conduct interviews was sought from the relevant authorities; DRA and UNHCR before data collection commenced.

The researcher focused on the Dadaab Refugee camp as it is the largest refugee camp in Kenya and hosts the largest number of Somali refugees who have been in protracted situations for over twenty (20) years. The Dadaab camp also has the highest number of humanitarian and aid organisations operating within the camp in Kenya. The limitations the researcher faced in the course of the study included; inaccessibility of the camp due to security concerns and cost constraints. The researcher overcame these limitations through the use of research assistants who were sourced from within the camp as well as through conducting telephone interviews to cut down on travel costs. The researcher also had a good working relationship with aid staff operating in the camps who were willing respondents. The researcher was cognisant to take care of any biases arising.

### **1.10 Chapter Outline**

Chapter one (1) introduces the topic of study by setting out the context of the study, the scope, statement of the problem, justification, theoretical framework, literature review and literature gaps, hypothesis and methodology of study. Chapter two (2) provides an overview of the refugee situation in Kenya and looks at refugee aid and in

particular, the works of the UN and NGOs in this respect as well as the impact of aid on the refugees. The chapter will also examine the perceptions the refugees have towards aid and aid agencies and vice versa. Chapter three (3) covers the case study. Taking Kenya as a case study and specifically refugees in the two refugee camps in Kenya, Dadaab and Kakuma, this chapter will critically review the role of aid in this refugee context. Chapter four (4) brings out the key emerging issues from the study and provides a critical analysis of these emerging issues. Chapter five (5) concludes the study and provides a summary and the key findings. This chapter winds up the study by drawing recommendations and further suggestions for areas of study.

**CHAPTER TWO**

**THE ROLE OF AID IN PROTRACTED REFUGEE SITUATIONS: AN  
OVERVIEW**

**2.1 Introduction**

As seen from the earlier chapter, the majority of the refugees in Kenya originate from Somalia, having fled prolonged conflicts and drought in their home country. As these conflicts persist, these refugees find themselves in desperate protracted situations which span decades with no durable solution in sight. Kenya bears the burden of hosting this ever growing number of refugees from neighbouring countries which places undue pressure on the host population as well as natural resources. Moreover, the government does not have clear policies or the capacity for refugee protection and is most times seen to have knee-jerk reactions to situations arising from hosting the refugees. The government has been accused by those working with refugees as moving in between spates of enforcement and indifference towards refugees to the detriment of the refugee population and this has been the cause of heated debates which between NGOs working with refugees and the government.

This Chapter seeks to provide an overview of the protracted refugee situation in Kenya. It will provide a background on refugees in Kenya as well as provide an insight on the current situation. The Chapter will also look into aspects of aid and in particular, the works UN and other NGOs as well as other actors and the impact that this aid has on the refugee. The chapter concludes by highlighting the perceptions of the refugees towards the aid and vice versa.

## **2.2 Background**

Protracted 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 about 630,926 refugees mainly from Burundi, Democratic Republic of Congo (DRC, formerly Zaire), Eritrea, Ethiopia, Rwanda, Somalia, Sudan, and Uganda.<sup>42</sup>

Kenya has acceded to the international refugee conventions, namely: the 1951 UN Convention on the status of refugees and its 1967 Additional Protocol, and the 1969 OAU Convention Governing Specific Aspects of Refugee problems in Africa, but has to date not domesticated these. A draft refugee bill took a long time to be domesticated due to the lack of a refugee framework; management of refugees has been ad hoc and unpredictable.<sup>43</sup> 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 who resided 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

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<sup>42</sup> UNHCR Statistical Summary on Refugees and Asylum Seekers in Kenya, May 2014.

<sup>43</sup> UNHCR, (1997), A country operations plan: Kenya (revised) initial 1998.

of the new refugees.<sup>44</sup> UNHCR took over the registration and management of refugees and as a result refugees received mandate letters that entitled them to assistance in the camps and protection from refoulement only.<sup>45</sup> They were not however allowed to work, to move and were confined to two isolated camps in Kenya's arid districts of Turkana and Mandera. This mandatory camp policy which was originally intended as a temporary stopgap measure to enable the Government to devise an effective way of dealing with the large numbers of refugees has become a permanent feature of refugee management in Kenya.

### **2.3 The Refugee Situation in Kenya: An Overview**

Kenya currently hosts some 630,926 refugees and asylum seekers. The majority of the country's refugees reside in its two desert refugee camps Dadaab, in North Eastern Province, and Kakuma, in North Rift Valley Province and a large number also live in Kenya's significant cities, most notably Nairobi.<sup>46</sup> In addition, an unknown but likely high number of de facto refugees live unregistered in the country, most commonly in urban centres. Kenya's refugee history began with the country's hosting of Ugandan refugees displaced by political coups during the 1970s. By the end of the 1980s, Kenya's official refugee numbers stood at 15,000; the majority of these were Ugandans who had managed to integrate into the country's socio-economic landscape relatively smoothly, acquiring Kenyan identity cards and gaining access to social services relative to Kenyans.<sup>47</sup> Kenya's refugee situation changed dramatically with

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<sup>44</sup>Ndege, Kagwanja and Odiyo, *Refugees in Law and Fact: A Review of the Literature and Research Agenda in Kenya* occasional Paper Series Vol. 1 No. 1, 2002.

<sup>45</sup> Report of the 'Inter-Agency Retreat on Urban Refugees' organised by UNHCR and RCK at Norfolk Hotel in August 2005.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

the onset of the nineties, which saw a surge in the number of refugees entering Kenya in response to regional crises.

This began with a wave of an estimated 300,000 Somali refugees between 1991 and 1993 following the collapse of the SiadBarre regime in 1992 into camps at the border at Liboi, north coast (Marafa), around Mombasa (Utanga) and the Dadaab camps in North Eastern Province.<sup>48</sup> Shortly after, the collapse of the Unity government in Ethiopia displaced around 40,000 Ethiopians into Kenya.<sup>49</sup> The same year, 12,000 Sudanese minors entered Kenya fleeing the insecurity resulting from the fighting between the SPLM and the Government of Sudan, resulting in the creation of Kakuma refugee camp. Around this time, Congolese fleeing the Mobutu regime after ten years of fighting were also flowing into Kenya.

By 1992, Kenya's refugee numbers had reached around 420,000, as compared to an estimated 13,000 in 1991.<sup>50</sup> Refugee flows into Kenya continued into the nineties and beyond. New arrivals of Somalis into the country persisted through 2006, in spite of the government's closing of the border, as people fled the insecurity brought by the ousting of the Islamic Courts Union by U S-sponsored Ethiopian and Transitional Federal Government forces. The majority of these refugees were Somali.<sup>51</sup> There have been further waves of Somali refugees entering Kenya in recent years, with thousands fleeing the devastating drought which was compounded by restrictions placed on aid imposed by insurgent group Al Shabaab who controlled some of the worst-hit

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<sup>48</sup> According to UNHCR's official statistics: UNHCR, 2012a, 'Statistical Summary as of August 2012: Refugees and Asylum Seekers in Kenya'.

<sup>49</sup> Ibid.

<sup>50</sup> Odhiambo-Abuya, E., 2004, 'United Nations High Commissioner for Refugees and status determination Imtasaan in Kenya: an empirical survey,' in *Journal of African Law*, 48 (2), pp. 186-206.

<sup>51</sup> Ibid.



areas.<sup>52</sup>The crisis saw numbers in Dadaab refugee camp swell to 400,000, making it Kenya's 'second biggest city', hosting over four times more than its original capacity of 90,000 people.<sup>53</sup> UNHCR's mid-term objective for South Sudanese refugees since the 2005 Comprehensive Peace Agreement (CPA) has been repatriation, though this is generally believed to have been a problematic process to say the least. While UNHCR supported those who voluntarily repatriated with integration grants, they were not given repatriation packages, and many returnees found a lack of infrastructure and services and poor living conditions at 'home'. In addition, ethnic conflicts in South Sudan saw significant numbers of new arrivals from South Sudan, which has halted UNHCR's repatriation programme.<sup>54</sup>

Currently, Somalis make up the substantial majority of refugees in Kenya, with their numbers officially at 535,318, the majority residing in the Dadaab refugee camp complex.<sup>55</sup>Ethiopian refugees follow; UNHCR figures state that 35,873 Ethiopian refugees live in Kenya, mainly in Dadaab but with significant numbers in Nairobi, though these figures are not disaggregated according to the different Ethiopian ethnic groups in Kenya. South Sudanese refugees are the third biggest refugee population in Kenya at 32,146, the vast majority officially residing in Kakuma, though statistics suggest that unofficial numbers in Nairobi are significant. Congolese are the fourth biggest refugee community in the country, officially at 12,742, the majority officially registered in Nairobi, though some 5,500 reside in Kakuma. Other refugee

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<sup>52</sup>Rice, X. 2011 'Somali refugee settlement in Kenya swells as row grows over empty refugee camp.' in The Guardian.

<sup>53</sup> UNHCR, 2012a, 'Statistical summary as of August 2012: Refugees and asylum seekers in Kenya.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

communities in Kenya are Sudanese (6,052), Burundian (3,808), Eritrean (1,980), Rwandan (1,783) and Ugandan (1,041).<sup>56</sup>

### **2.3.1 Legal framework for refugees in Kenya**

Kenya signed and ratified the 1951 United Nations Convention relating to the status of refugees as well as the 1969 Organisation of African Unity Refugee Convention. Conversely, up until 2006 Kenya lacked any national legislation on refugees. While Kenya's early refugee policy has been described as open and accommodating, since 1990 it has been characterised by seemingly harsh policies which aimed to contain the refugee 'problem' and refugees' movements. Due to overwhelming numbers of refugees in the country by 1992, the Government of Kenya (GOK) assigned all responsibility for registering, determining the status and ensuring the protection of asylum seekers during this period to UNHCR.<sup>57</sup>

The government applied containment policies to its refugee population, targeted particularly at the growing Somali refugee population; refugees were allowed to reside only in camps, and those needing to travel out of the camps for medical needs, to take up education opportunities or fleeing specific and targeted insecurity in the camps were required to carry a movement pass issued by UNHCR.<sup>58</sup> Following sustained advocacy by UNHCR and civil society organisations, in 2007 Kenya adopted the Refugee Act 2006, through which the 1951 UN Convention and the 1969 OAU Refugee Convention were implemented at the national level.<sup>59</sup> The Act identified two categories of refugees: statutory refugees and prima facie refugees, and

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<sup>56</sup> Ibid.

<sup>57</sup> Kenya', New Issues in Refugee Research Working Paper no. 16.

<sup>58</sup> Crisp, J, 'A state of insecurity: the political economy of violence in refugee-populated areas of Kenya', New Issues in Refugee Research Working Paper no. 16. 1999

<sup>59</sup> GOK, 2006, The Refugee Act, GOK Printer: Nairobi. Government of the Netherlands, 2011, 'Netherlands', in UNHCR Resettlement Handbook.

laid out the provisions for those who should be excluded from gaining refugee status or should have their refugee status withdrawn from them, including people who had committed crimes against peace or humanity; have committed war crimes or serious non-political crimes outside or inside Kenya; have been guilty of acts contrary to the principles of the UN or AU; have dual nationality. In addition, where the circumstances which caused an individual to flee have changed, the individual should be excluded from receiving refugee status.<sup>60</sup>

The Refugee Act also makes room for some deviation from Kenya's de facto encampment policy, allowing refugees to reside in urban areas provided that they are able to sustain themselves financially. However, Pavanello et al<sup>61</sup> argue that Kenya continues to lack the national refugee and asylum policy required to assist with the implementation of the Refugee Act, and that there is as a result substantial confusion around the government's official position on where refugees should reside.

The Refugee Act established a government department responsible for refugee issues, the Department for Refugee Affairs (DRA), which operates within the Ministry of State for Immigration and Registration of Persons. The Refugee Act declares that the DRA is responsible for the management, coordination and administration of refugee issues, including developing policies, seeking durable solutions, coordinating international assistance, issuing travel documents and managing the refugee camps. The vision for the DRA was to take over from UNHCR as lead agency on refugee issues in Kenya; all issues pertaining to refugees should first come to the DRA, after which the DRA could then assign responsibility for those issues to stakeholder

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<sup>60</sup> Ibid.

<sup>61</sup>Pavanello, S, S. Elhawary and Pantuliano, S. 'Hidden and Exposed: Urban refugees in Nairobi, Kenya.' Humanitarian Policy Group, Working Paper. 2009

agencies, including UNHCR. While some refugees are today able to legally reside outside of the camps, there are no official guidelines around which refugee groups may or may not.

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Since March 2011, asylum seekers have been required to register with the DRA.<sup>63</sup> On arrival in Kenya, asylum seekers have up to 30 days to report to DRA reception centres distributed across the country in Kakuma and Dadaab refugee camps, Shauri Moyo neighbourhood in Nairobi, Nakuru in Rift Valley, Mombasa and Malindi in Coast Province, and Isiolo in Eastern Province. Here, asylum seekers' essential information, photographs and fingerprints are taken and they are given a letter confirming their registration as they await a government alien ID card.<sup>64</sup> The new system is felt to be positive, in that it demonstrates greater responsibility-sharing

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<sup>62</sup>Ibid.

<sup>63</sup>Konzolo, 'An overview of refugee status determination and the rights of refugees in Kenya: the protection envisaged under the 2006 Refugees Act', paper prepared for Refugees Studies Centre Workshop on Refugee Status and Rights in Southern and East Africa, 2010

<sup>64</sup> Ibid.

between the GOK and UNHCR. However, the system has also been found to be inefficient; refugees wait long periods before being issued with the ID card and one informant reported a current backlog of 60,000 refugee ID cards. Recently, the government announced that all refugees being resettled to third countries are required to hold alien ID cards.<sup>65</sup>

Having registered with the DRA and been issued with an asylum seeker certificate, asylum seekers from southern Somalia and South Sudan are automatically granted refugee status as prima facie refugees. Asylum seekers from other countries or regions undergo an eligibility interview for statutory refugee status (refugee status determination, or RSD).

This process continues to be conducted by UNHCR, though both the RSD process and issuance of mandates will ultimately be the responsibility of the DRA and UNHCR and the GOK are currently engaged in capacity building in order to make this transition which will likely be problematic in light of the backlog issue.

There has been some criticism of UNHCR's role in RSD, with the view that acting as 'judge and jury' compromises UNHCR's fairness and neutrality, and promotes mistrust in the agency by refugees themselves. This mistrust and suspicion has been certainly a common theme from asylum seekers in both Nairobi and Kakuma.<sup>66</sup>

The RSD process may vary; according to UNHCR, if one's case is straightforward, an asylum seeker may be required to go through only one interview, but if there are some

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<sup>65</sup>Pavanello, S., S. Elhawary and Pantuliano, S. 'Hidden and Exposed: Urban refugees in Nairobi, Kenya.' *Humanitarian Policy Group, Working Paper. 2010*

<sup>66</sup>Odhiambo-Abuya, E., 2004, 'United Nations High Commissioner for Refugees and status determination Imtaxaan in Kenya: an empirical survey,' in *Journal of African Law*, 48 (2), p.186-206.

areas of ambiguity in one's case, one may be recalled for several further interviews before a decision is made approving or rejecting an asylum seeker for refugee status. In addition, asylum seekers may be called for an RSD registration interview ahead of an actual RSD interview.

Those who are approved as refugees are issued with a mandate which is valid for two years, after which a refugee must seek its renewal from UNHCR. A number of refugees and asylum seekers who have been interviewed in both Nairobi and Kakuma spoke of numerous eligibility interviews with UNHCR and long waits for a decision, sometimes for several years.<sup>67</sup> This can put a lot pressure on refugees in Nairobi in particular, who have to source transport costs to UNHCR's offices, often only to be told to return the following week. Those who are rejected are given a 30 day period to appeal to an Appeals Board, after which they are required to leave the country, a policy that was created under the 2006 Refugee Act.<sup>68</sup>

An interview with RCK, Nairobi on 20 July 2012 indicated that those who are successful are granted the mandate and receive a Refugee Identification Pass.<sup>69</sup> Those residing in the camps and are granted refugee status, are issued with a ration card and are entitled to all of the support services available in the camp. Should they wish to leave the camps, their reason to do so must be approved by the DRA, after which they are issued with a movement pass.<sup>70</sup>

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<sup>67</sup> Ibid.

<sup>68</sup> Konzolo, 'An overview of refugee status determination and the rights of refugees in Kenya: the protection envisaged under the 2006 Refugees Act', paper prepared for Refugees Studies Centre Workshop on Refugee Status and Rights in Southern and East Africa, 2010

<sup>69</sup> Pavanello, S., S. Elhawary and Pantuliano, S. 2010 'Hidden and Exposed: Urban refugees in Nairobi, Kenya.' *Humanitarian Policy Group Working Paper*.

<sup>70</sup> Ibid.

Refugees in Nairobi who are granted the mandate are able to access services offered by refugee agencies, such as medical and food assistance (HIAS, Refuge Point, GIZ) and legal aid and advocacy (Kituo Cha Sheria, RCK), though it is the policy of UNHCR to advise refugees that they will have more reliable access to services in the camps. On receiving the ration card, refugees may unofficially get to Nairobi, leaving their card number with family or friends so that they can be contacted in the event of being called for an interview, including for resettlement, when they return to the camps. Refugees also return to the camps from Nairobi for headcounts in order to maintain their official residency there as well as to keep their ration card or their name on a family member's card.<sup>71</sup>

#### **2.4 Refugee Aid: The Works of UN and NGOs**

Kenya has been providing protection and life saving assistance to refugees since the 1960s. During the 1990s, major influxes were witnessed from Sudan, Somalia and Ethiopia. While returns took place as the situation improved in places of origin for Sudanese to South Sudan and Ethiopians to Ethiopia, a significant number of refugees remained and continue to be hosted in Kenya. In 2011, Kenya saw an unprecedented influx of Somalis as a result of drought and insecurity in their homeland.

Since the 2011 influx, humanitarian actors in Kenya have collectively spent close to \$1 billion for the provision of protection and assistance to refugees and asylum seekers.<sup>72</sup> The bulk of the resources was spent in Dadaab refugee camp where the number of refugees approached the half a million mark. More recently as a result of the growing influx from South Sudan and Sudan, the Kakuma programme in Turkana

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<sup>71</sup> Ibid.

<sup>72</sup> UNHCR, 2012a, 'Statistical summary as of August 2012: Refugees and asylum seekers in Kenya.'

has been expanding, and is receiving greater donor support. The 2014 Kenya Comprehensive Refugee Programme seeks to present a consolidated view of refugee related programmes being implemented by humanitarian actors including UNHCR, non-governmental organizations (NGO's), United Nations Agencies and government entities. This is in conjunction with the UNHCR Global Appeal for 2014, the Inter-agency Appeal for South Sudan launched in March 2014 and other programme documents and appeals for 2014 issued by organisations involved in protection and assistance to refugees.<sup>73</sup> It is not meant to supersede any of these programmes and activities, but to bring them together in an effort to present a coherent summary of the Kenya refugee programme with combined requirements for priority interventions.

The approach represents an inclusive planning process and asks for complementary resources to those UNHCR centrally allocates for the Kenya operation, part of which is distributed and implemented through partners. The considerable resources and capacity of all partners are fully represented, allowing stakeholders to better account for the resources being brought to the operation. Most importantly, this approach is an attempt to plan and prioritise resources in a comprehensive manner to ensure funds are used in relation to one set of priorities with complementary targets to reduce duplication.

The needs review and detailed planning process of the past few months have been significantly affected by the ongoing influx from South Sudan and the need to heavily invest in developing the new sites in Kakuma. These specific requirements, which are also summarised in the Inter-Agency Appeal for South Sudan (2014) mentioned above, added more than \$45.7 million to the requirements jointly assessed before the

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<sup>73</sup>UNHCR (2011-2013); Kenya Comprehensive Refugee Programme.



influx began in late 2013. Consequently, the Kenya refugee operation requires an estimated \$375 million in 2014.<sup>74</sup> These funds are expected to cover the basic food requirements of all refugees in Kenya, emergency assistance including food and infrastructure investments for the new arrivals estimated to be at least 50,000 South Sudanese refugees, continued care and maintenance for an estimated 575,000 refugees by year end, and the voluntary repatriation of 10,000 Somalis.

The food requirements of \$122 million represent 33% of the total requirement. Non-food assistance and protection in the camps in Dadaab and Kakuma as well as in the urban programme require about \$253 million in 2014, with the greater portion being \$141 million for Dadaab, \$84 million for Kakuma, and some \$27 million for the urban programme. As of 1 April 2014, the total resources available for the programme had reached \$149 million, or \$220 million considering funds received for food assistance. The additional South Sudan requirements have so far received a limited response from donors, with some \$7.3 million received or pledged.<sup>75</sup>

## **2.5 Other Actors**

The 2011 influx of over 150,000 refugees from Somalia fleeing famine and conflict generated a previously unseen donor response to fund the requirements of the Kenya refugee operation. Some \$350 million were received jointly by UNHCR, WFP and partners in 2011. For UNHCR alone, there was a year-on “jump” in available funding by over \$49 million compared with 2010.<sup>76</sup> The Dadaab operation attracted both traditional donors as well as a number of non-traditional donors including the World Bank, the IKEA Foundation and the Qatar Foundation’s Educate a Child initiative. A

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<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Ibid

host of private donors including the Saudi Prince Campaign, MorneauShepell and the Dutch Lottery campaign for education also contributed a considerable amount of funds to both Dadaab and Kakuma. Furthermore, in-kind donations exceeded \$10 million, and included relief supplies such as tents, food items and school materials.

The positive trend of high donor interest in the Kenya refugee operation continued in 2012 and 2013, with funding for non-food assistance and protection averaging about \$170 million per year, though food assistance declined from the peak of \$142 million in 2012 to \$113 million in 2013, partly due to the reduction in population figures.<sup>77</sup> The bulk of resources received were for Dadaab while Kakuma was less successful in attracting substantial contributions from key donor governments, which would have allowed much needed investment in aging infrastructure. However, there was a marked increase in the range of private donors to the operation, which spurred various innovations in programme delivery, and mainly employed solar energy and IT technology in education and vocational training.

Gradually, the donor profile has shifted back to traditional government donors and a few private donors who prefer funding specific sectors and activities mostly in Kakuma, due to the smaller size of the operation as compared to Dadaab and the better security conditions. The unprecedented involvement of the World Bank as a major health and nutrition partner for Dadaab in the aftermath of the 2011 emergency ended after some two years. Since then the operation has been trying to attract a significant private and/or non-traditional donor.<sup>78</sup> The operation managed to secure a sizeable contribution from the Instrument for Stability (IFS), a previously untapped

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<sup>77</sup>UNHCR.(2013). Refugee and Asylum Seekers in Kenya.Statistical Summary.

<sup>78</sup>Ibid

funding instrument of the EU in Kenya which has been the main source of funding for the Security Partnership Project (SPP) with the Government of Kenya. Also, several multi-year grants have been secured for the operation, providing much needed predictability and resulting in real savings due to long-term contracts for a range of services and goods.

Despite the current competing global humanitarian priorities, there is a need to ensure continuous provision of basic services at an acceptable level and avoid a situation where returns are not in essence voluntary and thus compromise the international standards of protection. At the end of 2013, a temporary reduction in food rations due to shortfalls in WFP funding caused anxiety amongst refugees who believed that the reduced food basket was linked to a push for a return to Somalia.

The Kenya refugee operation was included in the Kenya Emergency Humanitarian Response Plan (EHRP) since 2007.<sup>79</sup> The funding requirements of UNHCR and WFP made up the bulk of the EHRP needs, with partners' requirements not comprehensively reflected. 2013 marked the end of the EHRP in Kenya and underlined the need for a programmatic and resource mobilization platform for the Kenya refugee operation. The recent influx from South Sudan which comes only a few years after a major repatriation of refugees almost closed the Kakuma operation and has highlighted the need to anchor the refugee operation in the UN Development Assistance Framework for Kenya (UNDAF) and to attract other development partners such as the World Bank and the Africa Development Bank.<sup>80</sup>

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<sup>79</sup>UNHCR, *Navigating Nairobi: A review of the implementation of UNHCR's urban Refugee Policy in Kenya's capital city*. Policy Development and Evaluation Service, United Nations, High Commissioner for Refugees Case Postale2500 1211 Geneva 2, Switzerland, 2011

<sup>80</sup>UNHCR, *Refugee and Asylum Seekers in Kenya. Statistical Summary, 2013*.

This would help to avoid extended humanitarian assistance programmes, ensure a better cohesion between responses to the needs of refugees and their host communities, while at the same time prepare refugees to be effective actors in the reconstruction and rehabilitation efforts in their country. In addition, support to livelihoods and turning refugee camps into sustainable and economically viable units anchored in their respective counties, is a vision for the future of the operation regardless of the size of the refugee caseload in Kenya. The implementation of this vision is expected to start with the establishment of a new camp to respond to the ongoing influx of South Sudanese refugees. On the other hand, the refugee operation has to be included in the disaster preparedness structures and mechanisms of the Government of Kenya that are in their nascent stages.

## **2.6 The Impact of Aid on Refugees**

### **2.6.1 Food Assistance**

Approximately 10,000 metric tons of vital food supplies are distributed monthly to nearly half a million refugees in Dadaab and Kakuma.<sup>81</sup> WFP will continue providing food assistance as outlined in its protracted relief and recovery operation (PRRO) 200174: Food assistance to refugees is aimed at meeting minimum nutritional requirements through general food distributions (GFD); managing moderate acute malnutrition and prevent severe acute malnutrition in pregnant and lactating women and children under 5 years of age through the targeted supplementary feeding programme improving micronutrient access among pregnant and lactating women and children aged 6-23 months through a blanket mother-and-child health and nutrition (MCHN). This includes improving the dietary diversity of pregnant women and their

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<sup>81</sup>Ibid

families through provision of fresh food vouchers; increasing adherence and meeting the nutritional needs of people living with HIV, tuberculosis and chronic diseases; maintaining enrolment, attendance and reduce the gender disparity in primary schools in the camps through the school meals programme; increasing enrolment and attendance of disenfranchised youth in life skills training centres through food-for-training and; increasing the capacity of host communities to meet their food needs through food assistance for assets.

The WFP PRRO will be extended to March 2015 so that the new PRRO can take into account the findings and recommendations of the recent corporate operation evaluation and the planned 2014 WFP-UNHCR Joint Assessment Mission. A market study funded by ECHO in Dadaab and Kakuma camps is intended to look at the capacity of local markets with the view to pilot different transfer modalities (vouchers or cash). WFP is aimed at undertaking an evaluation of its Fresh Food Voucher pilot project, examining value for money, cost-effectiveness, scalability and potential for commodities substitution in the general food distribution. In 2014 targeted food assistance interventions for PLWs and children less than 5 years is aimed at further linking the preventive nutrition (Mother, Infant and Young Child Nutrition) and behaviour change strategies.

WFP has recently adjusted, through a budget revision, its PRRO planning figures from 580,000 to 520,000 refugees (this does not include the 36,000 beneficiaries from the host communities living around the camps and being supported under this PRRO through Food for Assets projects).<sup>82</sup> The adjustment of the PRRO planning figures was the combined result of UNHCR's verification and WFP/UNHCR's biometric

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<sup>82</sup>UNHCR.(2013). Refugee and Asylum Seekers in Kenya.Statistical Summary.

project, which reduced WFP monthly requirements from US\$12 to US\$10 million. The adjustment also took into account the influx of new refugees from South Sudan into Kakuma, currently around 32,000. The increase in the South Sudanese refugee caseload is more than counter-balanced by the overall reduction of the actual numbers due to the verification process and the biometric project. Nevertheless, to meet needs, WFP must mobilise \$51 million between April and December 2014.<sup>83</sup>

### **2.6.2 Health**

In 2013, health services were projected to be provided to refugees in Dadaab, Kakuma, urban areas and host communities with priority given to children, pregnant and lactating women, people living with disability, the chronically ill (including HIV/AIDS) and newly arrived refugees in Kenya. In addition, a new clinic at Kakuma 4 will be constructed so that new arrivals can access health services, and later two clinics will be constructed at a new camp elsewhere in Turkana to ensure sufficient coverage for the new population. The new facilities require incentive and qualified medical staff as well as equipment, medical drugs, and supplies and coverage of running costs.<sup>84</sup>

The regular health programming in the camps focuses on health prevention and promotion through strengthening routine immunization, health outreach programmes and enhancing access to curative services (including referral for secondary and tertiary care) and safe motherhood services. The health sector is aimed at maintaining robust active disease surveillance with special attention to multi-drug resistant tuberculosis (MDR-TB) and diseases of epidemic potential and internationally modifiable diseases. The response seeks to strengthen maternal and child health in

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

order to lower or maintain a low maternal and under five mortality rate. The urban health programme is meant to partner with public health services in areas with significant number of refugees to ensure refugees can access services under the same conditions as nationals. This includes capacity building and outreach activities to help communication, discrimination and movement barriers. Pregnant women and children are supported to access maternity and secondary care. People living with HIV/AIDS are linked to existing care and treatment services in urban areas. The programme is also aimed at supporting Dadaab and Kakuma to enable refugees to access secondary and tertiary healthcare through a referral system. Specialists are also dispatched to Dadaab to review cases in line with the referral procedures.

### **2.6.3 Livelihoods**

In Dadaab, in line with the recently completed Dadaab Livelihoods Strategy, some 2,000 persons of concern are meant to benefit from various professional, technical, vocational and basic life-skills trainings. Some 1,400 refugees have been given an opportunity to access business inputs and cash grants. Of these, 300 are in the process of receiving their microfinance revolving fund loans through a financial institution.<sup>85</sup> The strategy addresses key recommended actions at policy, beneficiary and institutional levels. At the policy level, the key activity is advocacy around refugee livelihoods rights and opportunities. At the beneficiary level, key activities outlined revolve around returns and integration through new livelihoods strategies in the framework of durable solutions. At the institutional level, emphasis will be on building the capacities of implementing partners to implement harmonized and effective livelihoods interventions.

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<sup>85</sup>Ibid.

Community-managed microfinance initiatives (Village Savings and Loans approach) are rolled out in all five refugee camps to assist beneficiaries to mobilise their own financial resources. Value-chain development is also being initiated for specific sectors and the most viable and popular sub-sectors identified. Existing knowledge and skills sharing platform of pregnant and lactating mothers through mother to mother support groups will be used to promote linkages to nutrition sensitive livelihood interventions with the aim to empower women and at the same time increase household diet diversity. In Kakuma, 2,000 vulnerable youths and 1,000 vulnerable refugees including SGBV survivors, women and men at risk, are meant to benefit from targeted livelihood activities including vocational and life skills training enabling them to meet their basic needs through self-empowerment.<sup>86</sup>

In the urban programme, the Nairobi Urban Livelihoods Strategy is being implemented. The four key areas of intervention are safety-net support, skills development, enterprise development and advocacy. Specifically, more viable self-employment options are being created through enhanced enterprise development support with a greater focus on market linkages. Micro-franchising and technology services are being considered for small business interventions; access to financial services are being facilitated through intensified engagement with financial institutions and rolling out of grassroots community managed microfinance (Village Savings and Loans) initiatives, access to self/employment are being improved through increased enrolment of refugees in national training institutes, particularly in high-demand skill areas and through continued advocacy for refugees' rights to access work permits. A total of 2,000 refugees are meant to benefit from this livelihood

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<sup>86</sup>UNHCR, Refugee and Asylum Seekers in Kenya; Statistical Summary, 2013.



support. Target locations comprise refugee populated areas in Nairobi including Eastleigh, Kayole, Kasarani, Githurai, and Kitengela.<sup>87</sup>

#### **2.6.4 Shelter**

Shelter is essential for survival, personal safety, dignity, and protection from disease, physical assault and the harsh climate. In Dadaab, it is estimated that only 12% of the population have adequate shelter. In Kakuma, some 56% are estimated to have adequate access to shelter; however, with the current influx the ratio has dropped significantly. The Government of Kenya's position on a shelter solution in Dadaab specifically prohibits any kind of permanent shelter for Somali refugees. This was further re-enforced by the eventual prospect of returns. It is however planned to continue with a limited T-shelter construction for vulnerable families. The current budgets are being reviewed in light of this situation, and the refugee shelter component has been put on hold.

The infrastructure component remains and provides limited support for road maintenance and construction in Dadaab. Meanwhile, in Kakuma, the focus of the shelter sector is the provision of emergency shelter to newly arrived refugees and the provision of transition shelters to targeted households, as these can be upgraded to more durable shelters if a family requires it on a longer term basis. Refugees that live in mud-brick shelters are provided with corrugated roofing. The shelter sector also support the public infrastructure needs and prioritises community centres, access roads and fire fighting systems.

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<sup>87</sup> Ibid

## 2.7 Perceptions of Refugees

As revealed in the literature of this paper, aid workers and refugees have an intricate relationship which is riddled with accusations and counter-accusations from both sides. Refugees on one hand accuse aid workers of inhumane treatment, corruption and abuse while the aid workers generally view the refugees as ‘a dishonest lot’ out to ‘cheat’ the system. This problematic relationship highlighted by scholars such as Agier reveals that the situation on the ground is quite different than what is ‘sold’ in boardrooms. Aid staff are generally feared and distrusted by the refugees because of the presumed power they wield as well as the lack of accountability when they are accused of committing offences. In particular, aid workers have in the past been accused of sexually exploiting refugees which prompted the UNGA to commission an investigation into alleged sexual exploitation in 2002.<sup>88</sup> In addition, aid has been accused of fuelling conflicts and repression by supporting oppressive governments, feeding warring factions and enabling them to exercise social control over populations as well as producing new kinds of dependence.<sup>89</sup>

Moreover, studies conducted by different scholars have revealed that most refugees suffer a loss of self worth due to the protracted situations that they find themselves in. Some of the responses by refugees in Kenya on how they perceive themselves in relation to their refugee status as revealed by Abdi indicate a degraded sense of self<sup>90</sup>.

Some of these responses include:

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<sup>88</sup> The investigation into allegations of sexual exploitation of refugees by aid workers was pursuant to the General Assembly resolutions 48/218B of 29 July 1994 and 54/244 of 23 December 1999.

<sup>89</sup> Alexander Betts and Gil Loescher. *Refugees in International Relations*. Oxford University Press. 2011 p42

<sup>90</sup> Awa M. Abdi *In Limbo: Dependency, Insecurity, and Identity amongst Somali Refugees in Dadaab camps*, *Bildhaan* Vol 5, p17-34: pp23

“The word ‘refugee’ in our heads means a weak individual; that is how we see ourselves. We ourselves don’t like it when we are called refugees. But what can you do? It means a weak person, a person whose country was destroyed; it means a poor person, who has nothing, who is begging for food that is handed down.”<sup>91</sup>

Also, the fact that:

“Refugee is poverty and hunger. A loser standing around, that is a refugee. I think of poverty, praying to Allah: ‘Allah, take us out of this misery,’ this suffering and hardship, carrying water on your bare back, searching for wood in the bushes, lack of milk for your children, unemployment, that is it.”<sup>92</sup>.

The responses above reveal how refugees view themselves as victims of an unjust society and denote negative connotations to the term ‘refugee’. On the other side, aid workers view refugees as individuals who are out to get the most for themselves and are unnecessary being dependent on aid and lacking initiative towards self-sustenance<sup>93</sup>. This negative perception is further exacerbated by the increased attacks, kidnappings and killings of aid workers around the world.

According to ‘Aid Worker Security Report, 2013’, there were at least 167 incidents of major violence against aid workers in 19 countries in 2012 which resulted in the deaths of 274 aid workers<sup>94</sup>. The report also found that aid worker kidnappings have

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> E. Valentine Daniel and John Knudsen. *Mistrusting Refugees: In Search of the Locus of Trust*. University of California Press. 1995.

<sup>94</sup> Adele Harmer, Abby Stoddard and Kate Toth. *Aid Worker Security Report, 2013. The New Normal: Coping with the Kidnapping Threat*.

quadrupled over the past decade with more aid workers being victims of kidnapping than of any other form of attack since 2009.

The structure of the humanitarian regime is seemingly predicated on the exercise of a type of authority which is itself maintained and legitimized by the absence of trust between the givers and the recipients. In fact, the whole structure of the humanitarian regime is fraught with competition, suspicion and mistrust.<sup>95</sup>

## **2.8 Conclusion**

From the discussion above, it is evident that Kenya is dealing with a complex refugee problem. Aid groups are involved in every aspect of life in the refugee camps, providing education, healthcare, water and sanitation each year with UNHCR overseeing operations at the camps along with the Kenyan government. Kenyan law however makes it difficult for refugees to obtain jobs, which means the vast majority have to rely on aid creating dependence. The law also restricts their movements outside the camps, constraints that have tightened amid a government crackdown on Kenya's refugee community since a deadly West Gate attack in Nairobi in 2013.

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<sup>95</sup>Ibid, p.219.

## **CHAPTER THREE**

### **THE ROLE OF AID IN THE PROTRACTED REFUGEE SITUATIONS: THE CASE OF KENYA, 1991-2013**

#### **3.1 Introduction**

From the preceding chapters it is clear that the refugee problem has continued to pose a major challenge to the Government of Kenya as well as the UN and other INGOs. Furthermore, the involvement of UNHCR in providing aid and assistance to the refugees is increasingly becoming difficult as the number of refugees continue to rise due to a number of push and pull factors in the International Refugee Regime.

This chapter critically analyses the role of aid in the protracted refugee situation in Kenya. The camps vs. settlement debate that has been ongoing in the refugee regime for decades is examined as well as other aspects emanating from this debate such as security issues for the host country vis a vis human rights and legal standards for the refugees. It also looks at elements of dependency within the refugee population and the coping mechanisms to this. The chapter concludes by critically analysing the Refugee Aid and Development (RAD) approach to managing protracted refugee situations and whether this is an approach that Kenya can adopt.

#### **3.2 The Role of Aid in Protracted Refugee Situations**

Human settlements appear as a relatively natural form of human life, both during peacetime and war. The origins of (refugee) camps are more difficult to trace. Some scholars for instance have traced their lineage within the international refugee regime to the very origins of the latter that is the camps for the displaced in post-war

Europe.<sup>96</sup> In Africa, where the debate between proponents of self-settlement and planned settlements as well as relief-type camps has been most vocal in the past, historical debates about the mechanisms and methods of refugee assistance can be traced through a number of landmark conferences and events.

Many observers credit the 1967 conference on the Legal, Economic, and Social Aspects of the African Refugee Problems, which was convened in Addis Ababa under the auspices of the UN Economic Commission for Africa, the Organization for African Unity (OAU, now the African Union or AU), the UNHCR, and the Dag Hammarskjöld Foundation, with providing the first big step towards an integrated approach to refugee assistance.<sup>97</sup> The desire to link refugee assistance to the development needs of the host country was implicit in the final recommendation, which called for a zonal development approach based on the sharing of responsibility by host governments, UNHCR, UNPD, and non-governmental organizations(NGOs).

However, Integrated Rural Development (IRD) as a model for refugee assistance preceded Addis Ababa: Similar projects were set up in Kivu, Zaire, and Burundi, which were based on close cooperation between the UNHCR and the International Labour Office (ILO) and, in Burundi, the League of the Red Cross and the Food and Agriculture Organization of the United Nations (FAO).<sup>98</sup> The Zairan project was administered as a joint initiative of UNHCR and ILO, as the main agency showed some signs of economic success, but fell prey to political disturbances that caused the death of the two main administrators. In Burundi the lack of expertise that was

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<sup>96</sup>Malkki, L., *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania*. University of Chicago Press, 1995.

<sup>97</sup> *Ibid.*

<sup>98</sup> Betts, Tristram F., 'Documentary Note: Rural Refugees in Africa,' *International Migration Review*, Vol. 15, no. 53/54, 1981.

required for long-term planning as opposed to emergency relief posed problems. Overall, these early attempts at IRD failed because of poor definition of ultimate objectives, general project mismanagement, discontinuity created by rotation of personnel, and the deteriorating political situation in 1972.<sup>99</sup>

Whatever the reasoning, it is at this stage that some scholars observed a more fundamental move in UNHCR's budget, from an emphasis on rural settlements to emergency relief.<sup>100</sup> Despite setbacks, the idea of linking refugee relief explicitly with the overall social and economic dynamics of the host countries survived in small circles and was to become an issue again. In line with the recommendation of an internal UNHCR Seminar held in 1976, the Pan-African Conference on the Situation of Refugees in Africa, held in Arusha, Tanzania, in 1979, reiterated the themes evoked in Addis Ababa and came out in favour of spontaneous rather than formal settlement.

The first International Conference on Refugees in Africa (ICARA I) was eventually convened in 1981 by UNHCR, the UN Economic Commission for Africa and the OAU Committee of Fifteen on Refugees. However, only with ICARA II in 1984 were integrationist projects given something of a new boost. ICARA II was called for partly because ICARA I had not raised enough funds for infrastructure projects.<sup>101</sup> Its purposes were defined as threefold: to thoroughly review the results of ICARA I; to consider providing additional international assistance to refugees and returnees in Africa for relief, rehabilitation, and resettlement; and to consider the impact imposed

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<sup>99</sup> Ibid.

<sup>100</sup> Pitterman, S., 'A comparative survey of two decades of international assistance to refugees in Africa', *Africa Today*, Vol. 31:25-54, 1984.

<sup>101</sup> Kibreab, G., *The State of the Art Review of Refugee Studies in Africa*; Uppsala Papers in Economic History, Research Report No. 26, 1991.

upon the national economies of the concerned countries and to provide assistance to strengthen their social and economic infrastructure to cope with the burden of refugees and returnees.

All these attempts were based on the belief that the provision of relief based on large-scale administration to refugees in camps or settlements isolated from the host societies was an inappropriate form of assistance, and that refugees could serve as resources of development. At ICARA II, 128 different RAD project proposals were presented, requesting a total amount of US\$362 million. Most project proposals focused on large infrastructure projects.<sup>102</sup> However, issues that loom high in the camp–settlement debate today, such as the rights to employment, security of status, and other socio-economic and political rights, were not discussed. ICARA II stands as the last large and visible attempt to organize concerted action for RAA. Among the reasons for its failure, was that the actors' divergent interpretations of the ultimate aim of developmental refugee assistance and a failure to guarantee the principle of additionality - where 'additionality' refers to the idea that any investment in RAD should be supplementary instead of substituting for development aid) as guidelines for pledges made for ICARA II projects. Furthermore, divisions and rivalries among the assistance agencies, NGOs, and host-government departments, as well as a failure to set out a framework for their co-ordination, played a role.<sup>103</sup> Consequently, great famine in sub-Saharan Africa converged to focus donor and media attention on emergency relief.<sup>104</sup>

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<sup>102</sup> Clark, L., and Stein, B., *Older Refugee Settlements in Africa*. Washington, DC: Refugee Policy Group, 1985.

<sup>103</sup> Kibreab, G., *The State of the Art Review of Refugee Studies in Africa*; Uppsala Papers in Economic History, Research Report No. 26, 1991.

<sup>104</sup> Gorman, R., *Coping with Africa's Refugee Burden*, UNITAR, 1987.



### 3.2.1 Camps vs. Settlements Debates

Though there is a debate about the alternatives of camps and organized and self-settlement, two different sets of debates are often mixed. One concentrates on the causal effect of different settlement patterns measured by a variety of social and economic indicators. The second is concerned with the factors that cause different settlement patterns. Few texts have systematically compared the effects of camp and settlement situations on refugee welfare, host economies, and political structures, or general levels of security and conflict. This is partially due to both a lack of available research and its relatively slow consolidation. Another reason is the general tendency within refugee studies to shun potentially problematic comparisons in favour of in-depth case studies.<sup>105</sup>

While this has much to do with refugee studies' disciplinary origins in anthropology, there are other methodological issues that make structured comparison between camp and settlement situations difficult.<sup>106</sup> These include, among others: differences in population-it is repeatedly the case that the most vulnerable and weakest stay within the camps and the more able refugees avoid them; third variables- the success or failure of planned or self-settlement may be contingent on a variety of variables, such as familiarity with the host country and its population, the degree of hospitality encountered, and the economic resources and land generally available. Increasingly, scholars that focus on refugee impact on local communities emphasize the importance of local context for success and failure of the pursuit of an ever-wider range of (refugee) policy aims; interdependence of cases- in many cases, refugees may live in

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<sup>105</sup> Purity and Exile (1995).

<sup>106</sup> Hyndman, M. J, 'Geographies of Displacement: Gender, Culture and Power in UNHCR Refugee Camps, Kenya', Geography. Vancouver: University of British Columbia, 1996.

different settlement patterns co-existing in the same host country, and linkages may exist between them. In such instances, refugees might be doubly based, using both the camp and the outside to ensure their personal or family livelihoods and/or survival.<sup>107</sup> There is indeed consistent evidence of this phenomenon even though its significance is understandably difficult to gauge. Despite these limitations, the debate has continued.<sup>108</sup>

The opponents of camp-based solutions have based their arguments either on emphasis of the questions of economic or social development.<sup>109</sup> These are rooted in rights-based critiques which take as a starting point the many restrictions on socio-economic and political freedoms that accompany camp-based refugee assistance. These debates focus on questions of development or resource management, proponents of various forms of planned or self-settlement emphasize participatory approaches and call for a capacity-based developmental model to replace the traditional 'relief model' (seen to underlie camps) which is said to encourage passivity and hopelessness. Although the welfare model has long been discredited as paternalistic and self-serving in the context of development, it's still dominant in the ethos and practice of emergency relief.<sup>110</sup>

In the past, concern with integrationist approaches to refugee assistance had this clear developmental focus.<sup>111</sup> Rights-based critiques tend to focus on the breaches of refugee rights, both political and socio-economic that accompanies various assistance

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<sup>107</sup> Ibid.

<sup>108</sup> Kibreab, G., *The State of the Art Review of Refugee Studies in Africa*; Uppsala Papers in Economic History, Research Report No. 26, 1991.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Betts, Tristram F., 'Documentary Note: Rural Refugees in Africa,' *International Migration Review*, Vol. 15, no. 53/54, 1981.

methods and generally concludes that camp-based solutions undermine the rights refugees are supposed to enjoy as both refugees and as human beings. In sum, camp critiques point to the way camp settings prevent integration of refugees and host populations, increase dependency on relief aid, and ignore the resources and capacities of refugees themselves, as well as neglecting the repercussions of a refugee influx on the host populations.

The proponents of camps emphasize their advantages in facilitating organized repatriation of refugees, attracting international assistance due to the higher visibility of impact, and their superior ability to monitor and target recipients and distribute aid faster and more effectively, especially in the short-run and in immediate emergency situations.<sup>112</sup> They point out that in many refugee-hosting countries; international standards of assistance are most easily upheld in a controlled setting. This is in particular the case for curative health care and (primary) education facilities. However, 'in principle' some basic agreement exists among both policy-makers and academics about the frequent undesirability of refugee camps.<sup>113</sup>

The core of the debate is therefore about two questions: how to evaluate the trade-offs between the recognized negative effects of camps and their advantages under a range of financial, political, and time constraints that prevent the pursuit of an ideal assistance programme; and the degree to which alternatives to camps are politically and financially feasible. Here the debate about camp or settlement solutions frequently ends in a common agreement on the undesirability of camp approaches,

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<sup>112</sup> Ibid.

<sup>113</sup> UNREF, 'Survey of the NON-Settled Refugee Population in Various Countries', A/AC.79/111, 28 April 1958.

only to usher in a debate about their necessity for political and logistical reasons. This second aspect deals no longer with the effects of settlement patterns, but concentrates on the factors that initially cause and later sustain them.

### **3.2.2 Rights and Legal Standards**

As far as legal aspects are concerned, scholars have focused on the way in which camp settings themselves are conducive, or not, to the maintenance of refugee rights. Some scholars have maintained that camps can provide both security and effective material assistance to refugees, thereby not only assuring the most basic of rights, the right to life, but also facilitating the monitoring of protection issues.<sup>114</sup> Jamal in particular has made a strong argument that ‘camps strengthen asylum by encouraging hosts to accept the presence of refugees.’<sup>115</sup> This argument is based on the belief that ‘host fatigue’ in many refugee-hosting countries is only held in check through the material presence of refugee camps. Camps are thus part of international ‘burden sharing’.

Critics argue that the maintenance of camps does not only involve direct breaches of basic human and refugee rights, but also creates situations in which other rights are more likely to be endangered. For instance, in its campaign on refugees launched in 1997, Amnesty International (AI) attacks primarily the restrictions on freedom of movement that some camps represent (Amnesty International 1997). Human Rights Watch (HRW), on the other hand, has written on the problems emerging especially for women in refugee camps. A more recent topic concerns the ways in which a variety of different and often parallel legal systems inter-relate in camp settings.

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<sup>114</sup> Jacobsen, K., ‘Refugees’ Environmental Impact: The Effect of Patterns of Settlement,’ *Journal of Refugee Studies*, 1997.

<sup>115</sup> Jamal, A. ‘Camps and freedoms: long-term refugee situations in Africa’, *FMR* Vol. 16, January 2003.

These include so-called traditional courts and conflict-resolution mechanisms inside camps, the legal system of the host country, and lastly the international legal framework of the refugee, which is the frame of reference for UNHCR protection officers. Such debates are of course closely linked to debates about the protection mandate of the UNHCR and its relationship to the provision of material assistance.<sup>116</sup>

### **3.2.3 Security**

A common argument in favour of camp-based assistance is that it serves to contain the security problems introduced by refugees, to reduce conflict between host and refugees, and/or to control the potential of refugees from civil war to use their host country as a sanctuary from attack.<sup>117</sup> Other security issues also include raids by rebel groups, pursuit of refugees by military forces of the country of origin, the importation of small arms, and generally increasing levels of ‘banditry’ and crime that are related to the current condition of refugee populations. In Africa, many host states therefore justify control on the movement of refugees by citing Article 2(6) of the OAU Convention, which is interpreted as giving states full rights to decide on refugee settlement and the settlement patterns of the refugees. The article essentially states that ‘for reasons of security countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin’. This contrast with Article 26 of the Convention: ‘each state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens in the same circumstances’.

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<sup>116</sup>Karadawi, A, ‘Constraints on the Assistance to Refugees, Some Observations from the Sudan’, World Development, Vol.11 (6), 1983.p.537-547.

<sup>117</sup>Ibid.

Since the 1990s, security-based arguments for encampment have been viewed with more scepticism. Jacobsen puts it that camps do not solve security problems, and that they are in fact added sources of instability and insecurity because they aggravate existing security problems and create new ones.<sup>118</sup> These arguments hold that camps may create conflict between refugees and their hosts where refugees are perceived as privileged by the members of the host population, which is sometimes as poor as or poorer than the refugees. They also provide fertile ground for recruitment of young men and woman for military activities by rebel groups.<sup>119</sup> Bulcha (1988) shows moreover that more often the conflict within the refugee populations exceeds the potential conflict between them and their hosts. He specifies that, whilst differences of religion, ethnicity, and politics partially account for the latter conflicts, the most frequent causes are 'relief-induced', arising from frustration and idleness.

### **3.2.4 Social Aspects of Debates**

With a large-scale refugee influx, camps provide life-saving services, most clearly in terms of health care and food but also by focusing attention on a crisis situation. Consequently, where the goals of refugee assistance in camps are defined by 'minimum standards', larger questions of needs and freedoms' may be ignored.<sup>120</sup> The wider social and socio-economic consequences of different types of settlement have increasingly been the focus of concerns by academics and practitioners alike. In

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<sup>118</sup>Jacobsen, K., 'Refugees' Environmental Impact: The Effect of Patterns of Settlement,' *Journal of Refugee Studies*, 1997.

<sup>119</sup>Durieux, J. F., 'Preserving the Civilian character of Refugee Camps – Lessons from the Kigoma Refugee Programme in Tanzania,' *Track Two*, Vol. 9 (3): p.25-35, 2000.

<sup>120</sup>Jamal, A. 'Camps and freedoms: long-term refugee situations in Africa', *FMR* Vol. 16, January 2003.

operational terms they have tended to be put under the somewhat uneasy label (and frequently vaguely defined sector) ‘community services’.<sup>121</sup>

### **3.2.5 Dependency and Coping Mechanisms**

In Somalia, Waldron observed that ‘almost every functional prerequisite of society is defined radically differently in the refugee camp as compared with the self-sustaining, kinship-based rural communities of the Somali and Oromo refugees’.<sup>122</sup> Pushing this argument further, Ryle,<sup>123</sup> in his observation of Somali Refugees in Ethiopian Camps, observes how ‘in compensation for the loss of skills as farmers and stockmen they have become skilled manipulators of the international welfare system’. Success of refugee assistance and protection, especially in protracted refugee situations, encompasses at least the facilitation of ‘functioning communities’ and livelihoods. In this respect, two problems are often discussed in the debate about settlement patterns, that of dependency and the issue of ‘negative’ and ‘positive’ coping mechanisms.

The creation of passive dependency among refugees is often perceived as the real spectre of camps. In his well-documented State of the Art Review of Refugee Studies in Africa, Kibreab notes the ‘general consensus in the literature that prolonged residence in camps fosters “dependency syndrome” among refugees’. From another angle, this has been echoed in arguments to move away from a provision of ‘minimum (emergency) standards’ towards the broader notion of ‘basic needs’ in protracted refugee situations. Both emphasize the need to expand the social and economic capacities of refugees in an assistance setting after the immediate

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<sup>121</sup>Bakewell, O., ‘Repatriation and Self-Settled Refugees in Zambia: Bringing Solutions to the Wrong Problems’ *Journal of Refugee Studies* Vol. 13(4):356-73, 2000.

<sup>122</sup>Waldron, S., Food for thought: refugee survival strategies & administrative control in organized settlements. Conference ‘Population Movements, Food Crises & Community Response’, Centre for Study of Administration of Relief (CSAR), Delhi: 11-13 Jan. 1992.

<sup>123</sup>Ryle, J., ‘Notes on the Repatriation of Somali Refugees from Ethiopia’, *Disasters*, Vol. 16:160-8, 1992.

emergency phase.<sup>124</sup> This latter point is frequently taken up in the debate about ‘coping mechanisms’, a term that is used to refer to all and any ways in which refugees organize themselves to sustain their livelihoods.

Consequently, restriction associated with camp settings may foreclose economic opportunities for refugees. They may also lead to so-called ‘negative coping mechanisms’ such as prostitution or theft. One of the most obvious cases between ‘coping mechanisms’ and the logic of emergency assistance is that of food aid. The mainly illicit attempts by refugees to acquire second or increased rations are a frequent problem for the equitable distribution of resources, not to speak of accounting issues. Similarly, agencies often see the sale and export of food aid as sign of excess when further study has frequently shown it to be a coping strategy to accommodate other material, cultural, or micronutrient needs that may come at a high cost to the energy content of their diet.<sup>125</sup>

### **3.2.6 Economic Impact and Development**

Scholars have argued that the question of the economic impact of refugee populations on their hosts is deserving of a separate guide on its own, and it is very difficult to parse out the independent effect of settlement patterns in this respect.<sup>126</sup> There is evidence that both camps and settlements have provided benefits as well as costs to their host countries. However, Landau argue that whether the aggregate effects on host populations and land are positive and negative is next to impossible and would

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<sup>124</sup> UNHCR 2000

<sup>125</sup> Rogge, J. R., ‘When is self-sufficiency achieved? The case of rural settlements in Sudan’, in Rogge, J. (ed.), *Refugees, A Third World Dilemma*. New Jersey: Rowman and Littlefield, 1987.

<sup>126</sup> Ibid.



require an elaborate indices of gains and losses and considerable more longitudinal data than are typically available for the areas involved.<sup>127</sup>

It is useful moreover to distinguish between short-term economic impact and long-term transformatory effect of the presence of both refugees and relief.<sup>128</sup> Camps, which generally restrict the exercise of economic activities much more than self- or planned settlement options, tend to benefit host countries primarily through the temporary capital influx that comes from relief agencies running the camps. Some scholars have argued that the direct and indirect impact of this financial impact has remained largely unexplored.<sup>129</sup> They hold that one of the reasons for this is doubtlessly the difficulties in tracing both material input and impact. Where refugee assistance is camp-based, a smaller economic impact is also felt through those refugees who manage to circumvent the restrictions placed upon them and engage in trading or work in the surrounding communities.

As far as the overall costs of refugee programmes are concerned (which are, at least in cash terms, mainly carried by the ‘international community’), the biggest costs of camps probably lie in the large funds that are required for food aid. Proponents of self-settlement schemes hold that these costs far exceed the funds needed for a regional economic stimulus package in refugee-affected areas that would increase local absorption capacity as well as benefit the hosts. Self-settlement or more open planned settlement, the argument goes, allow for a more long-term developmental,

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<sup>127</sup> Landau, L., ‘Challenge without transformation: Changing Material Practices in Refugee-Affected Tanzania’, *Journal of Modern African Studies*, Vol. 42(1), 2003.

<sup>128</sup> *Ibid.*

<sup>129</sup> Toole, M. J., and Waldman, R. J., ‘Refugees and Displaced Persons. War, Hunger, and Public Health’, *Journal of the American Medical Association*, Vol. 270:600-5, 1993.

multiplier effect on the local economy.<sup>130</sup> Some planned settlements have in the past been significant economic centres for surrounding villages, when they were integrated into a larger economic development strategy of the host country and when the economic potential of refugees was tapped into.

Some scholars have argued that self-settled refugees have positively impacted on sectors of the local economy range from the Afghan case to Zambia and Honduras. Often a positive economic impact is only acknowledged after refugees leave an area. While Afghan refugees were seen by many as a burden on the economy, their rapid repatriation from Pakistan, particularly from NWFP has caused a sharp downturn in the local economy, with many businesses recording severe losses and facing possible closure after the massive exodus.<sup>131</sup> This is echoed in parts of Tanzania as well as in other refugee hosting regions. It indicates the way in which an accurate assessment of the refugee impact is frequently complicated by the political and economic stakes of the actors involved.

### **3.2.7 Self- or Spontaneous Settlements**

Despite the frequent absence of assistance for them, proponents of spontaneous settlement for refugees have claimed that self-settlement is the preferable option if long-term dynamics are taken into consideration.<sup>132</sup> Moreover, they hold, self-settlements constitute the preferred option of refugees themselves, and that this is proven by the fact that most refugees self-settle. It may well be impossible to reach overarching conclusions about refugee choice in regards to their accommodation, and

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<sup>130</sup>Pitterman, S., 'A comparative survey of two decades of international assistance to refugees in Africa', *Africa Today*, Vol. 31:25-54, 1984.

<sup>131</sup>*Ibid.*

<sup>132</sup>UNREF, 'Survey of the NON-Settled Refugee Population in Various Countries', A/AC.79/111, 28 April 1958.

in some cases self-settled refugees (predominantly men) have expressed a greater feeling of insecurity than those in camps. Kaiser<sup>133</sup> has documented the way in which refugees in Uganda have resisted the handover of a refugee settlement to local authorities as they feared the loss of both protection and assistance.

Other authors, however, document widespread resistance to camps and settlements.<sup>134</sup>This may be based on a variety of factors such as the reputation of camp administration, prior experience in settlements, and generalized fear to be forced to adapt to a camp lifestyle has closely related ‘maladjustment’ to a new situation with the loss of power and control expressed in refugee camps.<sup>135</sup>This is often expressed through feelings such as paranoia, anxiety, suspicion, guilt, or general anxiety. A study of Angolan refugees in Zambia implicitly confirms these findings when observing that generally camps were avoided due to ‘a reputation for disease and death, the fear of forced repatriation, and restrictions on social and residential patterns and mobility’.<sup>136</sup>

Currently, only some host countries officially condone refugee self-settlement, whether in rural or urban areas. Among recent examples is the Ivory Coast (until recently ‘Guinea’). Many more do not enforce official restrictions on refugee movement. A question that has attracted some attention is whether settlement patterns influence refugees’ reluctance (or desire) to eventually repatriate. Current evidence, while largely inconclusive, shows at a minimum that settlement patterns do not seem to be independent factors in this decision.

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<sup>133</sup>Keen, D. P., *Refugees: Rationing the Right to Life- The Crisis in Emergency Relief*. London: Zed Books, 1992.

<sup>134</sup>Hansen 1992; HRW 1999; Baker and Zetter 1995.

<sup>135</sup>Harrell-Bond, B., and Voutira, E., ‘In Search of the Locus of Trust’, in Daniel, E. V. and Knudsen, J. C. (eds.), *Mistrusting Refugees*. Berkeley: University of California Press, 1995.p.207-24.

<sup>136</sup>*Ibid.*

The fate of self-settled refugees is in many ways at the very heart of our understanding of the international refugee regime and its fundamental purpose. In the case of Guatemala, Cheng and Chuloba<sup>137</sup> argue that the neglect of self-settled refugees was ‘one of the most striking shortfalls of the UNHCR response’. They added that an organization cannot hope to effectively respond to a crisis without knowing with whom it is dealing. The shortfall undermines the agency’s credibility vis-à-vis the refugees, the host and the home governments, and the donors. In addition, it leads to the problem of adverse selection because the five per cent of the displaced population that ends up in the camps is probably the least mobile, the least skilled, and possibly also the least able to actively. Their position challenges both the current logic of refugee relief and those views that in extremis hold that refugees who avoid the purview of relief agencies and the frequently associated ‘encampment’ are actually better off than those who do not.

### **3.3 The Refugee Aid and Development (RAD) Approach**

The RAD approach has been defined as a form of assistance for refugees who have found asylum in developing countries that recognises the often long-term nature of this asylum due to limitations in finding durable solutions in such contexts, therefore taking a developmental approach to refugee aid and policy.<sup>138</sup> This approach is based on achieving self-reliance for refugees, while simultaneously addressing the burden of refugees on developing host countries. For example, UNHCR has suggested that the challenges of protracted refugee situations could be tackled if refugees were given the chance to make a positive contribution to their host country during their enforced

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<sup>137</sup> Cheng, C., and Chudoba, J., ‘Moving beyond long-term refugee situations: the case of Guatemala’, *New Issues in Refugee Research*, Working Paper No. 86, March 2003.

<sup>138</sup> Bakewell, Oliver, “Returning Refugees or Migrating Villagers? Voluntary Repatriation Programmes in Africa Reconsidered,” *Refugee Survey Quarterly*, (2000a), Vol 21, No 1 and 2, p.42-73.

exile, an objective that could be achieved through a new strategy to shift the focus from provision of care and maintenance assistance to empowerment of refugees to attain self-reliance.<sup>139</sup>

### **3.3.1 Self-Reliance Strategy (SRS)**

As a policy and process, the SRS has been identified by many policy actors as an example of a successful RAD approach. A report written for UNHCR states that the SRS clearly represents one of the best attempts by UNHCR to put in place a comprehensive and multi-sectoral approach to refugee economic self-reliance.<sup>140</sup> The policy is understood as a success, such that the subsequent policy in nations such as in Uganda – Development Assistance for Refugee-Hosting Areas (DAR) – is seen by most policy actors as building on the successes of the SRS and shifting the program into a new phase. A recent UNHCR report highlights the program’s potential for replication in other refugee situations.<sup>141</sup>

Proponents of Self-reliance argued that to a considerable degree it underpins the other two elements; that is, refugees can shift from being ‘burdens’ to ‘benefits’ through being self-reliant, and self-reliance is at the centre of a ‘developmental’ approach designed to bridge the ‘gap’.<sup>142</sup> Self-reliance also forms the cornerstone of the assertion that RAD approaches are in the interests of refugee welfare. As Collinson sees it, self-reliance models should be advanced, on the basis of evidence that refugees and internally displaced persons who have been able to lead a productive

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<sup>139</sup>UNHCR, *Addressing Protracted Refugee Situations in Africa, Informal Consultations, New Approaches and Partnerships for Protection and Solutions in Africa*, (2001a).

<sup>140</sup>CASA Consulting “The community services function in UNHCR: An independent evaluation,” UNHCR Evaluation and Policy Analysis Unit: Geneva, 2003.

<sup>141</sup>UNHCR, *Helping Refugees: An Introduction to UNHCR*, 2005b.

<sup>142</sup>Collinson, Sarah, *Thematic Paper V: Lessons Learned from Specific Emergency Situations: a synthesis*,” in *Developing DFID’s Policy Approach to Refugees and Internally Displaced Persons*, Volume II, Commissioned Papers, Queen Elizabeth House: Oxford, 2005.

life, receive an education, develop skills and accumulate resources are usually better prepared and equipped to return home than those who have been confined for long periods of time in camps surviving only on minimum levels of humanitarian assistance.<sup>143</sup> While this may indeed be accurate, some scholars have asserted that the way that self-reliance is presented in the RAD literature is as a way to mitigate refugee ‘dependency’ on relief. This creates the paradox evident in the SRS, that self-reliance is therefore defined as a process of reduction of external inputs and support for refugees.<sup>144</sup>

In contrasting self-reliance to dependency, this approach fails to analyse the conditions for refugee self-reliance, or what this would mean in practice. A consultancy report prepared for UNHCR states that self-reliance is positioned as the opposite of dependency, which is seen to be a tendency inherent in refugees. The report continues that this approach is “singularly unhelpful because it repeatedly ‘problematizes’ the refugee, rather than focusing on the role that UNHCR’s own management and operating procedures play in creating ‘dependency’ and narrowing the scope of refugee self-sufficiency and self-reliance”. The report suggests that the focus of much analysis has been on combating dependency, rather than creating appropriate conditions for refugee self-sufficiency.<sup>145</sup>

The RAD approach presupposes that dependency is an aberrant behaviour exhibited by refugees, and self-reliance policy can mitigate this behaviour. However, opponents of the idea of dependency syndrome see the observed behaviour as a greater reflection

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<sup>143</sup>Ibid.

<sup>144</sup>Ibid.

<sup>145</sup>CASA Consulting, *The community services function in UNHCR: An independent evaluation*, UNHCR Evaluation and Policy Analysis Unit: Geneva, 2003.

on the aid agencies than the refugees.<sup>146</sup> For example, refugees that claimed that they needed a full food ration to survive were often characterised as evidence of dependency syndrome. However, refugees that had stopped receiving non-food items and other essentials due to the implementation of the SRS explained that they have been therefore forced to sell food rations for soap, medicine and school supplies. This demonstrates the argument that actions that are defined as dependency may often actually be resourcefulness and livelihoods strategies shaped by aid interventions and responses to the inadequate provisions of the aid system overall.<sup>147</sup>

In RAD literature, self-reliance is seen as a way to end refugee dependency. ‘Refugee dependency’ is in policy and practice commonly accepted as an incontrovertible outcome of refugees’ interactions with aid resources, yet empirical research does not bear out viewing it as such, and, moreover, such a perception does not link to appropriate policy interventions. Despite this, refugee dependency which, as a way of describing restrictions on livelihoods and related refugee responses, may be a useful analytical tool and is more often used as a justification for policy approaches that refugees may not discern to be in their ‘best interests,’ as was the case in the SRS.

Scholars have noted that the focus on refugee empowerment in the Self Reliance Strategy (SRS) has been more rhetorical than practical.<sup>148</sup> Some scholars have argued that one of the underpinnings of the RAD approach, self-reliance, can in fact

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<sup>146</sup>Bakewell, Oliver, Community services in refugee aid programmes: a critical analysis, *New Issues in Refugee Research, Working Paper No. 82*, UNHCR Evaluation and Policy Analysis Unit: Geneva, 2003.

<sup>147</sup>Kibreab, Gaim, *The State of the Art Review of Refugee Studies in Africa*, Uppsala Papers in Economic History, Research Report No 26, Uppsala University: Uppsala, 1991.

<sup>148</sup>Hovil, Lucy and Lomo, Zachary, *Negotiating Peace: Resolutions of Conflict in Uganda’s West Nile Region*, *Refugee Law Project, Working Paper No. 12*, Refugee Law Project: Kampala, 2003.

undermine refugee protection and create obstacles to refugee empowerment.<sup>149</sup> It has largely been assumed that the outcomes of a RAD approach will necessarily be to the benefit of refugees. While the SRS purport to allow refugees to act as ‘agents of development’ it does not address the more fundamental obstacles to achieving what would be a radical change in the relationship between refugees, the international refugee regime and host governments.<sup>150</sup> Academicians have alleged that the outcomes of the SRS must be examined, revealing the significant limitations of shifting to a developmental approach and achieving self-reliance for refugees when self-reliance is decontextualized, externally defined and disconnected from constraints on refugees’ lives.

### **3.3.2 Refugee Aid and Development**

Debates on RAD policy approaches draw upon a number of themes evident in the RAD literature, from the 1980s to 1990s.<sup>151</sup> The RAD debates have engaged with a macro-level, institutional focus on how to achieve a RAD approach, including issues of co-ordination between donors and institutions, and host states’ agreement to facilitate such an approach. However, it has neglected a more contextual and micro-level focus on the obstacles to implementing a RAD approach and the implications for refugees in varying contexts. References to ‘refugee empowerment’ have increased in the current incarnation of RAD approaches, yet ‘empowerment’ is never defined or adequately explained.

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<sup>149</sup>Hyndman, Jennifer, *Managing Displacement: Refugees and the Politics of Humanitarianism*, University of Minnesota Press: Minneapolis, 2003.

<sup>150</sup>*Ibid*

<sup>151</sup>Gorman, Robert F, *Coping with Africa’s Refugee Burden: A Time for Solutions*, Martinus Nijhoff Publishers: Dordrecht, 1987



The key aspects of the RAD debates are threefold. First, the debates portrays refugees as ‘burdens,’ and proposes RAD approaches as a way to shift refugees from being a ‘burden’ to ‘benefit’ to host states and communities.<sup>152</sup> Secondly, there is the suggestion that the RAD approach can bridge the gap between relief and development paradigms in protracted refugee situations. Finally, the concept of self-reliance is central, positioned as the polar opposite to refugee dependency. These aspects of the arguments can be seen in the UNHCR’s definition of RAD as assistance that is development oriented from the start; enables refugees to move towards self-reliance and self-sufficiency from the outset and helps least developed countries to cope with the burden that refugees place on their social and economic structures.<sup>153</sup> Historical and current RAD approaches draw upon these themes, and there is a remarkable consistency between the themes in the literature and the concepts in the actual policy processes.<sup>154</sup>

### **3.3.3 The Burden Paradigm**

A central reason for the emergence of the RAD approach is the perception by developing host states of refugees as a ‘burden’.<sup>155</sup> The International Conference on Assistance to Refugees in Africa (ICARA) conferences in the early 1980s, which were an impetus to much of the RAD debates explicitly sought to address the burden of refugees on host-states, in the interests of ‘burden-sharing’. The RAD approach has been described as a way to counter the perception of refugees as ‘burdens’ and ensure

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<sup>152</sup>Kibreab, Gaim, *The State of the Art Review of Refugee Studies in Africa*, Uppsala Papers in Economic History, Research Report No 26, Uppsala University: Uppsala, 1991

<sup>153</sup>Sterkenburg, John, Kirby, John and O’Keefe, Phil, *Refugees and Rural Development: A Comparative Analysis of Project Aid in Sudan and Tanzania*, in Adelman, Howard and Sorenson, John (eds.), *African Refugees: Development Aid and Repatriation*, Westview Press: Boulder, 1994, p.191-208.

<sup>154</sup>Sorenson, John, *An Overview: Refugees and Development*, in Adelman, Howard and Sorenson, John (eds.), *African Refugees: Development Aid and Repatriation*, Westview Press: Boulder, 1994, p.175-190.

<sup>155</sup>*Ibid.*

recognition of refugees as potential ‘benefits’. However, the RAD literature in fact reinforces the view of refugees as a ‘burden’. Given the rudimentary and limited resources these governments (of developing host countries) have to provide their own people with health, education and agricultural development programs, it is reasonable to assume that sudden and large influxes of refugees can overwhelm their capacities to respond.

Many of Africa’s refugees impose a direct burden on host country infrastructure.<sup>156</sup> The proponents of RAD simply assume that refugees are burdens in resource-constrained areas and propose that implementing RAD approaches can ensure that refugees transform from being a ‘burden’ to a ‘benefit’.<sup>157</sup> However, a significant body of literature argues that the polarisation of the debate, regarding refugees in developing host countries and the need for burden-sharing, into ‘burden’ or ‘benefit’ fails to see the complexities of social change that refugees bring to an area. The assumption that refugees are a burden on host communities is not based on empirical data but abstract preconceptions. Regarding the contention that refugees are a burden, buried under such seemingly straightforward assertions are a myriad of theoretical assumptions, all of which must be tested for the case to stand.<sup>158</sup>

Consequently, a number of studies have shown that the impact on differing sectors of the host population and spheres of government, as well as differing elements of this impact for example, on security, the environment or infrastructure precludes any generalisation regarding the ‘burden’ or ‘benefit’ of refugee-hosting on local

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<sup>156</sup>Gorman, Robert F, *Coping with Africa’s Refugee Burden: A Time for Solutions*, Martinus Nijhoff Publishers: Dordrecht, 1987

<sup>157</sup>Kibreab, Gaim, *The State of the Art Review of Refugee Studies in Africa*, Uppsala Papers in Economic History, Research Report No 26, Uppsala University: Uppsala, 1991

<sup>158</sup>Ibid.

communities and host states.<sup>159</sup> In fact, in some spheres, refugee influx can create opportunities and broader social, political and economic development in the area. Contrary to popular readings of refugee situations, the potential for refugees to present a ‘burden’ is often due to host government restrictions on livelihood opportunities.

Scholars argued that the binary polarisation between ‘burden’ and ‘benefit’ can and should be broken down to better understand the obstacles and opportunities of refugee-presence for developing host countries, yet this sharp distinction is actually perpetuated through the RAD literature.<sup>160</sup> It is assumed that the RAD approach itself will transform this, ‘empowering’ refugees to act as a ‘benefit’ rather than a ‘burden’, despite a lack of engagement or analysis of the conditions that determine refugees’ presence as a burden. Moreover, these scholars argued that the SRS is built on vague notions of transforming the presence of refugees from a ‘burden’ to a ‘benefit’, without examination of conditions under which such a shift could be achieved.<sup>161</sup>

### **3.3.4 The Relief-Development Gap**

The RAD approach is also presented as an effort to link the relief and development paradigms. This is due to the fact that in protracted refugee situations, refugees’ needs are no longer strictly relief-related, and yet are often not addressed through a

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<sup>159</sup>Whitaker, Beth Elise, Refugees in Western Tanzania: The Distribution of Burdens and Benefits among Local Hosts, *Journal of Refugee Studies*, Vol 15, No 4, 2002, p.339-358.

<sup>160</sup>Landau, Loren B, Beyond the losers: Transforming Governmental Practice in Refugee-Affected Tanzania, *Journal of Refugee Studies*, Vol 16, No 1, 2003, p.19-43.

<sup>161</sup>Ibid

developmental outlook, funding or institutional support. The RAD approach proposes bridging the ‘gap’ by addressing refugee issues through a development paradigm.<sup>162</sup>

Theorists contrast the two paradigms, emphasising the participatory element of developmental approaches. For example, they argue that the ‘development’ paradigm “refers to a type of self-reliance, which can be measured by the ability of the relief agencies to allow the refugees to manage programmes and resources on their own.”<sup>163</sup>

This element of the RAD literature suggests that in achieving a shift from a relief to a developmental outlook, refugee policies and programs will be inherently more empowering and participatory.<sup>164</sup> In being connected to the broader effort to bridge relief and development approaches, the RAD approach has also become linked to ideas such as participation and empowerment.

Frerks, however, points to the inherent ‘structural discontinuities’ of interventions seeking to bridge the relief-development gap, and argues that in light of these, it seems that it is easy to underrate the difficulties that are involved in this linking exercise.<sup>165</sup> Whereas the agencies limit their discussions mainly to the policy level, the problem merits a more critical theoretical, analytical and empirical approach. Frerks draws attention to the fact that ‘the problem’ referred to in bridging the relief-development gap is not simply institutional, necessitating better funding agreements or planning processes. Rather, the ‘gap’ experienced by the “programme

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<sup>162</sup>Macrae, Joanna, *Aiding peace...and war: UNHCR, returnee reintegration and the relief-development debate*, *New Issues in Refugee Research, Working Paper No. 14*, UNHCR Evaluation and Policy Analysis Unit: Geneva, 1999

<sup>163</sup>Demusz, Kerry, *From Relief to Development: Negotiating the Continuum on the Thai-Burmese Border*, *Journal of Refugee Studies*, Vol 11, No 3, 1998, p.231-244.

<sup>164</sup>Ibid

<sup>165</sup>Frerks, George, *Refugees between relief and development*, in Essed, Philomena, Frerks, Georg and Schrijvers, Joke (eds.), *Refugees and the Transformation of Societies: Agency, policies, ethics and politics*, Berghahn Books: Oxford, 20004, p.167-178.

beneficiaries” is often due to lack of attention to their own identified needs.<sup>166</sup> That is, a problem lies within this institutional focus, which often comes at the expense of actually accounting for the ‘gap’ as experienced by refugees.

Therefore, Frerks continues that there is a need to “incorporate the views and interests of other actors such as the programme beneficiaries: the refugees, the stayees, the internally displaced or the hosts.”<sup>167</sup> However, analysis within the RAD framework regarding this issue is itself embedded in an outlook that primarily engages with institutional challenges to bridging this gap. The complexities of interventions that aim to achieve a smooth transition from relief to development are consequently overlooked, and the actual outcomes judged primarily from the perspective of ‘success’ for institutions, without interrogating what this means for the subjects of the interventions.

### **3.3.5 Central Critiques of the RAD Approach**

The supporting notions in the RAD debates are inextricably linked to empowerment. Empowerment is presented as a necessary process for shifting refugees from constituting a ‘burden’ to host countries to being a ‘benefit’. Empowerment is taken to be a constitutive element of the development paradigm that the approach advocates, and the means towards achieving refugee self-reliance. Refugee empowerment can hence be seen as both the tool for achieving the objectives of the RAD approach, and the objective itself. It is assumed that empowerment will lead to self-reliance, and that

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<sup>166</sup> Kaiser, Tania, Participatory and beneficiary-based approaches to the evaluation of humanitarian programmes,” *New Issues in Refugee Research, Working Paper No. 51*, UNHCR Evaluation and Policy Analysis Unit: Geneva, 2002.

<sup>167</sup> Ibid.

self-reliance, in and of itself, is empowering for refugees.<sup>168</sup> Despite this, the debates focuses on macro-level obstacles to RAD approaches, focusing on institutional and state-level agreement to designing, funding and implementing RAD approaches, for example, co-ordination between the United Nations Development Program (UNDP) and UNHCR. This focus comes at the expense of examining the underpinning notion of empowerment of refugees, and critically analysing the benefits of the RAD approach for refugees.

The real difficulties with the RAD approach are more significant than institutional agreement, and require a deeper critique to get to the heart of the question of what self-reliance entails for refugees. Empowerment of refugees is understood throughout the literature as an inevitable outcome of implementation of the approach, however, the link between self-reliance and empowerment is assumed, rather than proven. The concept of ‘empowerment towards self-reliance’ that the RAD approach suggests presupposes that self-reliance and empowerment are mutually reinforcing and inextricably linked, rather than in tension and contradictory, as the case of the SRS showed.

The conceptual flaws in the RAD debates examined above are not simply the result of theoretical failings. They are also reflective of the agendas, interests and politics encapsulated in the RAD approach. The current incarnation of the RAD approach appeals to a range of interests of a number of actors - UNHCR, refugee-hosting governments and donor countries. UNHCR wishes to maintain or increase funding for its programs and renew commitment from donors and host governments for improved

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<sup>168</sup>Kaiser, Tania, Participating in Development? Refugee protection, politics and developmental approaches to refugee management in Uganda, *Third World Quarterly*, Vol 26, No 2, 2005, p.351-367.

refugee protection. The ambiguity of protracted refugee situations has meant that host governments are increasingly reluctant to host large refugee populations, creating a context in which the norm of non-refoulement of refugees has been violated (for example, in the case of Rwandese refugees from Tanzania in 1996).<sup>169</sup> Donors are increasingly unwilling to fund care and maintenance operations. Given that the UNHCR relies on yearly donations from donor states, rather than guaranteed assessed contributions from the United Nations as is the case for many other UN agencies, there is an institutional imperative to appeal to donors. The UNHCR's dependence on voluntary contributions forces it to adopt policies that reflect the interests and priorities of the major donor countries.<sup>170</sup> The central elements of the RAD approach reflect these interests. The emphasis on transforming refugees from a 'burden' to a 'benefit' is a way to appeal to both host governments and donors. If refugees can be transformed into 'agents of development,' host governments will be more willing to host them for longer and donors will not be expected to contribute to protracted care and maintenance situations.

The emphasis on the relief-development gap also speaks to an institutional imperative, of UNHCR accessing increased development funding to address refugee situations. Moreover, for UNHCR, RAD is a way to increase refugee protection in regions of origin, while simultaneously proving the continuing relevance of UNHCR as an organisation in protecting refugees' rights and providing for their needs. A senior UNHCR manager in Geneva noted that the current focus on RAD approaches within UNHCR should be analysed through an understanding of the political pressures faced

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<sup>169</sup> Chaulia, Sreeram Sundar, The Politics of Refugee Hosting in Tanzania: From Open Door to Unsustainability, Insecurity and Receding Receptivity, *Journal of Refugee Studies*, Vol 16, No 2, 2003, p.147-166.

<sup>170</sup> Loescher, Gil, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, Oxford University Press: New York, 1993.

by UNHCR when other UN agencies gained prominence in the humanitarian sphere in the late 1990s, the consequence being that UNHCR loses its crown and has to cling to being the lead agency.<sup>171</sup> Current RAD processes can be interpreted, therefore, as an effort to emphasise UNHCR's importance in solving current refugee problems. In this light, a high-level UNHCR Geneva official commented on the SRS, indicating recognising the institutional need for a successful RAD program.<sup>172</sup>

In the context of the SRS, the significant interests tied up in the 'success' of the program has entailed that, self-reliance can only be successful in certain hosting environments with conducive host government policies, and material conditions.<sup>173</sup>

UNHCR has not fully engaged with or recognised these issues in the case of the SRS. The conceptual flaws in the RAD approach reflect the political underpinnings of support for the process. In the case of self-reliance, the expanded focus on self-reliance within UNHCR thinking and research is due to declining levels of relief available to refugees in many parts of the world, especially Africa, making it increasingly clear the UNHCR cannot meet minimum humanitarian standards by means of long-term assistance programmes.<sup>174</sup> At the same time, donor states and other actors have become increasingly interested in strategies that might in the long term lead to a reduction in the levels of relief expenditure.<sup>175</sup> While framed as a way to empower refugees and release productive potential, self-reliance has also emerged for instrumental reasons including lack of donor willingness to continue to fund care and maintenance programs. In many ways, then, UNHCR's hands are tied on this

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<sup>171</sup>Ibid.

<sup>172</sup>Ibid.

<sup>173</sup>UNHCR (2002e). "Local Integration,"

<sup>174</sup>Crisp, Jeff, UNHCR, refugee livelihoods and self-reliance: a brief history, 2003b.

<sup>175</sup>UNHCR, "Local Integration," EC/GC/02/6, 2002e.



issue, and attempting to implement a self-reliance policy within this context is an understandable, while flawed, response to an impossible situation. In the case of the SRS, and the current focus of the international refugee regime on RAD approaches, these issues are often masked in an ‘empowerment’ discourse. This discourse presents the interests and agendas of a wide range of actors as concerned primarily with promoting refugee empowerment towards the outcome of self-reliance.

### **3.4 Conclusion**

The RAD approach has led to the notion that a convergence of interests amongst stakeholders is possible. For example, UNHCR proposes a range of interests that a self-reliance approach can address: self-reliance brings benefits to all stakeholders. For host states, self-reliant refugees contribute to the sustainable social and economic development of the country and have the potential to attract additional resources which also benefit host communities. For the international and donor community, the achievement of self-reliance reduces the need for open-ended relief assistance. For refugees, it helps them regain better control of their lives, provides greater stability and dignity, and may help them become agents of development.

**CHAPTER FOUR**

**THE ROLE OF AID IN THE PROTRACTED REFUGEE SITUATION IN**

**KENYA: CRITICAL ANALYSIS**

**4.1 Introduction**

The earlier chapters lay a good platform for the discussion in this chapter. It is evident that there is a common agreement on the undesirability of camp approaches in dealing with refugee populations, however, there is also consensus that there needs to be a logistical and politically sustainable approach in dealing with the same which makes it a ‘catch 22’ situation. Critics argue that the maintenance of camps does not only involve direct breaches of basic human and refugee rights, but also creates situations in which other rights are more likely to be endangered. A delicate balance seems to be in the RAD approach which is based on achieving self reliance for refugees while simultaneously addressing the burden of refugees on developing host countries

This section of the study discusses the research objectives and emerging issues from earlier discussions in relation to the role of aid in the protracted refugee situations, with a view of testing the research hypothesis. It analyses the protracted refugee crisis in Kenya and explores whether aid has played a role in perpetuating the protracted refugee situation as well as analysing the correlation between the increase in aid behaviour and the protracted refugee situation in Kenya.

## 4.2 Emerging Issues

### 4.2.1 The Protracted Refugee Situation in Kenya

Since the early 1990s, the international community's engagement with refugees has focused largely on mass influx situations and refugee emergencies, delivering humanitarian assistance to refugees and war-affected populations, and encouraging large-scale repatriation programmes in high-profile regions.<sup>176</sup> In stark contrast, over two-thirds of refugees in the world today are not in emergency situations, but instead trapped in protracted refugee situations (PRS). Millions of refugees struggle to survive in camps and urban communities in remote and insecure parts of the world, and the vast majority of these refugees have been in exile for many years. Such situations constitute a growing challenge for the international refugee protection regime and the international community. While global refugee populations are at their lowest now for many years, the number of protracted refugee situations and their duration continue to increase.

There are now well over 30 protracted refugee situations in the world, and the average duration of these refugee situations has nearly doubled over the past decade.<sup>177</sup> The overwhelming majority of these situations are found in some of the world's poorest and most unstable regions, and originate from some of the world's most fragile states, including Afghanistan, Burundi, Liberia, Myanmar, Sierra Leone, Somalia and Sudan. Refugees trapped in these situations often face significant restrictions on a wide range of rights, while the continuation of these chronic refugee problems frequently gives rise to a number of political and security concerns for host states and states in the

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<sup>176</sup> Crisp, Jeff. "No solution in sight: the problem of protracted refugee situations in Africa." *Centre for Comparative Immigration Studies* (2003).

<sup>177</sup> Jamal, Arafat. *Minimum standards and essential needs in a protracted refugee situation: A review of the UNHCR programme in Kakuma, Kenya*. UNHCR, 2000.

region. In this way, protracted refugee situations represent a significant challenge to both human rights and security and, in turn, pose a challenge to refugee and security studies.

Despite the growing significance of the problem, protracted refugee situations have yet to feature prominently on the international political agenda or in mainstream security studies. Humanitarian agencies, such as the United Nations High Commissioner for Refugees (UNHCR), have been left to cope with caring for these forgotten populations and attempt to mitigate the negative implications of prolonged exile. These actions do not, however, constitute a durable solution for protracted refugee situations. Such a response also fails to address the security implications associated with prolonged exile, with the potential consequence of undermining stability in the regions where PRS are found and peace building efforts in the countries of origin.

The European Union (EU) is the largest donor of humanitarian aid in the world. The European Commission in Brussels, together with the 27 EU Member States fund more than half of the world's humanitarian aid work.<sup>178</sup> The European Commission Humanitarian Aid department (ECHO) is responsible for funding humanitarian work throughout the world. In 2009, it provided over €931.6 million (US\$1.172 billion) for humanitarian aid programmes in over 70 countries. This does not include the aid given separately by EU Member States.<sup>179</sup>

Funds are spent on goods and services such as food, clothing, shelter, medical provisions, water supplies, sanitation, emergency rehabilitation as well as the

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<sup>178</sup> Ibid

<sup>179</sup> Ibid

clearance of unexploded ordinance and awareness-raising. The Commission, also funds disaster preparedness and mitigation projects in regions prone to natural disasters. To boost its presence in the field, ECHO has established regional offices in six capitals around the world: Dakar (Senegal), Nairobi (Kenya), Amman (Jordan), New Delhi (India), Bangkok (Thailand) and Managua (Nicaragua). It also has around 30 field offices in crisis zones.

There are around 170 European-based non-governmental organizations (NGOs) as well as United Nations humanitarian agencies and the organizations of the Red Cross family which receive ECHO funding.<sup>180</sup> These partners run projects which help the victims of conflicts and natural disasters. This humanitarian aid is provided to victims of crises on a needs basis, regardless of their race, religion or political affiliations. The European Commission's humanitarian support helps around 20 million people each year.<sup>181</sup>

The European Commission Humanitarian Aid has delivered humanitarian assistance to war-affected populations and supported large-scale repatriation programmes in high-profile areas such as the Balkans, the Great Lakes region of Africa and, more recently, Darfur (Sudan) and Chad.<sup>182</sup> Unfortunately, more than 60 per cent of today's refugees are trapped in situations far from the international spotlight. Often characterized by long periods of exile stretching to decades for some groups these situations occur on most continents in a range of environments including camps, rural settlements and urban centres. The vast majority are found in the world's poorest and

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<sup>180</sup> Crisp, Jeff. "No solution in sight: the problem of protracted refugee situations in Africa." *Centre for Comparative Immigration Studies* (2003).

<sup>181</sup> Ibid

<sup>182</sup> Horst, C. M. A. "Vital links in social security: Somali refugees in the Dadaab camps, Kenya." (2001).

most unstable regions, and are frequently the result of neglect by regional and international actors.

The Commission continues to be one of the biggest donors to the care and maintenance of refugees in Kenya. The ongoing conflict in Somalia has led to a regular influx of refugees from Somalia into Dadaab camp, which, according to the UN's refugee agency, is the world's largest refugee camp. In 2010, ECHO funded an expansion of the Ifo site at Dadaab to accommodate an additional 80,000 people.

The aid package for Kenya includes 8 million Euros in food assistance, for refugees and people living in the arid lands of northern Kenya.<sup>183</sup> Kenya also benefits from a share of a regional drought fund of 20 million Euros, a cross-border programme which includes Ethiopia, Uganda and Somalia and which focuses on supporting vulnerable local communities affected by the impact of recurrent drought cycles. The European Commission operates a direct air service to northern Kenya to facilitate access to remote areas by ECHO partners and other humanitarian agencies. At a cost of €1 million in 2010, ECHO Flight provides logistical support to humanitarian and transitional projects funded by the European Commission and many other donors.<sup>184</sup>

Chronic and stagnating refugee situations have been a long-standing challenge to the international community over the past six decades.<sup>185</sup> At the time of its creation, UNHCR was given the task of protecting and finding solutions for the tens of thousands of people. UNHCR and other members of the humanitarian community have a natural tendency to concentrate their attention on situations where major

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<sup>183</sup> Horst, Cindy. *Transnational Nomads: How Somalis Cope with Refugee Life in the Dadaab Camps of Kenya*. New York: Berghahn Books, 2006

<sup>184</sup> Ibid

<sup>185</sup> Horst, Cindy. *Transnational nomads: how Somalis cope with refugee life in the Dadaab camps of Kenya*. Vol. 19. Berghahn Books, 2007.

changes and population movements are taking place: new refugee emergencies and large-scale repatriation programmes. But the majority of UNHCR's beneficiaries find themselves trapped in protracted refugee situations, unable to go home and without the prospect of a solution in the country where they have found asylum. Such situations, which are often characterized by long-term care and maintenance programmes and the confinement of refugees to camps, are not in the interest of the refugees, local populations, host governments or donor states.

Humanitarian assistance for Kenyan protracted refugee situation is of two main types: food aid, and non-food aid which includes material and personnel resources intended to provide for the medical, shelter, security, educational, repatriation and resettlement needs of refugees. International refugee assistance is provided in three ways: on a bilateral (intergovernmental) basis; through international organisations (primarily UNHCR); and by non-governmental organisations. Most assistance is channelled through UNHCR which makes arrangements with the host government and with implementing NGOs to provide for the refugees. It takes the form of in-kind contributions (food, medicine, tools, logistical personnel, aircraft etc.), or funds made available to purchase goods and services.

The highly selective nature of most donors funding for refugee situations requires dramatic correction. A recent study of the behaviour of donor governments argues that funding for humanitarian programmes largely reflects the foreign and domestic policies of donor governments.<sup>186</sup> Such behaviour does not provide a coherent or effective system for financing international humanitarian activities. Donor governments give vastly disproportionate amounts of aid to a few well-known cases

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<sup>186</sup> Jensen Newby, Tina Maria. *Unintended Effects of Development Aid: A Brief Overview*. Copenhagen: CDR, 2010.

and far less aid to dozens of other less well-publicised refugee caseloads. The absence of an autonomous and government-assessed resource base for UNHCR in Kenya, for example, continues to limit the response to present and future crises. While UNHCR has recently tried to overcome these financial constraints by accessing development funds to finance unmet needs, the results are not yet clear. Consequently, donor governments need to work towards a strengthened multilateral regime which has the mandate, capacity and resources to meet refugee needs in a more impartial and effective manner.

Over the years, and with growing cases of protracted refugee stays, it has increasingly become clear that the operations of UNHCR and other refugee-supporting agencies need to change. In many of these situations, the international community has been unable to offer effective solutions and, with longer displacement, there has been a tendency for funding levels to gradually reduce after the initial period of emergency. The donor community tends to focus on high profile, emerging humanitarian emergencies. In Dadaab, UNHCR and other agencies are currently experiencing this challenge.

The UNHCR and other funding agencies are experiencing significant funding shortfalls for their operations in Dadaab.<sup>187</sup> UNHCR is increasingly encouraging the self-reliance of refugees, and in 2013 it adopted a prioritised set of objectives to improve self-reliance and increase livelihood opportunities for refugees. With the issue of return high on the Kenyan Government's agenda, the agency is urging its partners to be proactive and to prepare refugees in self-sustenance strategies that they

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<sup>187</sup>Ibid.



could use to boost their ability to make a living, whether in Kenya, back in Somalia, or in cases of resettlement to the West and elsewhere.

#### **4.2.2 The Role of Aid in Protracted Refugee Situations**

The refugee condition in Kenya has undergone significant changes in the last 20 years. Confronted with the refugee crisis of the early 1990s, there was a major shift away from an earlier Government-led, open, and laissez-faire approach to refugees. The Government's evolving strategy was clear: offer temporary protection, delegate dealing with the refugees to UNHCR, and contain them in remote areas of the country.<sup>188</sup> At the Government's appeal, in the early 1990s UNHCR rapidly went from assisting a relatively small number of urban-based refugees to handling large camp operations. Primarily, large amounts of donor funding flooded in to deal with the high-profile humanitarian emergency.

By 1993, this had assisted to stabilise morbidity and mortality rates among the refugees, and there was a dramatic fall in new displacement, so that UNHCR declared that the emergency was over.<sup>189</sup> The state turned into a phase of "care and maintenance" and as time went on acquired the character of a protracted refugee situation: large numbers of refugees in long-term exile with no access to durable solutions to their loss of citizenship. Consequently, as donor fatigue set in, from the late 1990s, there were dramatic and recurring shortfalls in refugee funding, with UNHCR still struggling to maintain minimum humanitarian standards a decade after it declared that the emergency was over.

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<sup>188</sup> IDMC, Norwegian Refugee Council (NRC), Internal Displacement: Global Overview of Trends and Development in 2010, Geneva, IDMC/NRC Report, 2011.

<sup>189</sup> Ibid.

The Government policy was to try to contain the refugees in Dadaab camps (Ifo, Hagadera, and Dhagahaley) of the North Eastern Province (NEP) close to Somalia, and to a lesser extent in Kakuma camp in the north west. During the 1990s many refugees were transferred to these camps from other locations where they had originally settled. The decision to locate the major camps in Dadaab is significant: the NEP has a substantial indigenous Somali Kenyan population and a troubled history of marginalisation, repression, and violence under both colonial and independent rule. The province benefited from little development intervention and there is still a considerable economic gulf between the NEP and the rest of Kenya.<sup>190</sup> In this environment, many refugees voted with their feet, gravitating towards urban areas, in order to avoid the harsh camp conditions (heat, scarce rations, recurrent sickness among children, insecurity); to access better educational opportunities and health facilities; to find work and build a different future for oneself and one's family; to get in contact with relatives abroad with a view to arranging onward migration to other countries; or simply because they preferred city life.

Greater Government participation in refugee affairs began with the Refugees Act, which was finally passed in 2006, after an earlier bill was stalled by the first Somali refugee crisis in the early 1990s. Accompanying Refugee Regulations entered into force in 2009 and a Department of Refugee Affairs (DRA) was established within the Ministry of State for Immigration and Registration of Persons. As part of a three-year plan to assume from UNHCR the responsibility for key areas of refugee policy implementation, the DRA took over the reception and registration of refugees in

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<sup>190</sup> UNHCR Dadaab, Briefing Note on Dadaab Refugee Camp – 21st of July, Briefing Note, Kenya, UNHCR Sub Office Dadaab, 21 Jul.2011.

March 2011. The DRA also chairs an active cross-governmental Refugee Affairs Committee, engaging officials from Foreign Affairs, Internal Security, Local Government, Public Health, and the National Registration bureau in regular discussions of refugee issues. Key legal and policy frameworks are currently undergoing (re)development, posing both risks and opportunities for refugees, and with the outcomes still uncertain. A new Refugees Bill and Citizenship and Immigration Bill have been drafted as part of the review of all legislation prompted by the passing of a new Constitution in 2010.

Several lines of tension between policy actors exist both in the context of this significant institutional changes and in the longer term. First, while it is no secret that the DRA is dissatisfied with levels of support from donors, donors and UNHCR are reluctant to be party to the creation of an externally funded public refugee bureaucracy, with fears of unsustainability and corruption. There was established a single bilateral agreement exists between Kenya and Denmark, a 3.5-year capacity-building project, with USD 3.8 million from the Danish Government and USD 1.1 million from the Kenyan Government, including the secondment of a migration management specialist.<sup>191</sup> In this background, donor States' economic leverage to influence refugee issues, without a substantial additional investment of government-channelled funding seems limited. They are also seen as having little moral authority (given their own counter-terror policies and immigration restrictions) to pressure the Kenyan authorities on refugee issues.

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<sup>191</sup>DRA-DANIDA, 2009.

Secondly, tensions have arisen between UNHCR and the DRA on the handover of responsibilities.<sup>192</sup> UNHCR is concerned about protection and the establishment of reliable systems. This situation has been interpreted and often is by government actors as a reluctance to relinquish control, rooted in the organization's institutional self-interest. Thirdly, UNHCR has been criticized by refugees and a range of civil society actors and NGOs for emphasising "soft diplomacy" in the face of "hard" human rights concerns regarding border closure, refoulement, and the massive congestion of Dadaab, for fear of jeopardising relationships with the Government. As the organization took on the major operational responsibilities of running large refugee camps, the organization's ability to hold the Kenyan and donor Governments to account on protection issues has been widely perceived as having diminished, as it depends on those same Governments for access and funding for the camp operations respectively.

Another key shift in the refugee situation in Kenya is the mass influx of displaced people from Somalia since 2007 caused by the transformations of political violence in the context of the war on terror.<sup>193</sup> This accelerated in 2011 as political violence began to mix with acute environmental pressures. Some 142,000 people arrived in the first seven and a half months of 2011. The Government is quick to point out to the international community that the scale of new arrivals, combined with domestic economic and political tensions in Kenya, make international support essential and should also focus greater international attention on addressing the causes of displacement inside Somalia.

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<sup>192</sup>Ibid.

<sup>193</sup> J. Milner, *Refugees, the State and the Politics of Asylum in Africa*, Basingstoke, Palgrave Macmillan, 2009.

State security concerns now represent a major driver of central Government policy in relation to refugees.<sup>194</sup> Recent concerns about Al-Shabaab becoming a “pan-East African entity”, following its bombing of a World Cup celebration in neighbouring Uganda, meld with older tendencies to criminalise refugees and the long-standing securitisation of the NEP. Specific perceived threats include: the conflict spilling over the border; Shabaab’s quiet presence and recruitment efforts and wider concerns about religious extremism in Kenya; the (apparently as yet unsubstantiated) fear of a potential marriage of grievances of Somali Kenyans in the NEP; and some specific incidents of social unrest among Muslim minorities.<sup>195</sup> These security concerns contributed to push for more active Government involvement in the reception and registration of refugees to keep track of who enters Kenyan territory. The growing food insecurity across Kenya adds another dimension to the Government’s concerns about the arrival of large numbers of refugees. Refugee issues are now a matter of high politics, with the Ministries of Interior and Foreign Affairs deeply involved.

#### **4.2.3 The Linkage between Aid and the Protracted Refugee Situations**

UNHCR identifies ‘durable solutions’ to the ‘refugee problem’ as local integration, voluntary repatriation and resettlement.<sup>196</sup> In Kenya, opportunities for durable solutions are limited. The country’s encampment policy and measures to restrict refugees’ movements significantly curtails opportunities for local integration. Consequently, refugees have faced harassment and discrimination in urban centres, especially those who have a distinctive appearance, such as South Sudanese, Somalis and Ethiopians. Furthermore, local integration appears not to be an envisaged or

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<sup>194</sup> E. Lochery, *Aliens in their Own Land: The Kenyan Government and its Somali Citizens*, draft paper, 2011.

<sup>195</sup> *Ibid.*

<sup>196</sup> UNHCR, *Dadaab Camp, Kenya, Briefing Notes – 5 May 2005*, Briefing Note, Kenya, 5 May 2011

desirable solution for the Government of Kenya, which regularly makes statements about the burden its Somali refugee population places on the country, and has made it clear that the only opportunity it sees for them is repatriation.

UNHCR have since facilitated the voluntary repatriation of southern Sudanese refugees from Kakuma following the signing of the 2005 CPA between the Sudan's, but this has largely been unsuccessful, and has since been halted due to large numbers of new arrivals from South Sudan flowing into the camp fleeing ethnic violence.<sup>197</sup> Rwandan refugees in Kenya faced the proposals of repatriation, since the country was deemed by the international community to now be safe, and the Rwandan government requested their return from neighbouring countries and for UNHCR to invoke the cessation clauses for Rwandan refugees.<sup>198</sup> However, very few of Kenya's refugees are actually able to return to their country of origin; especially it's predominantly Somali population. Of the three durable solutions, resettlement is often the only real option for refugees in Kenya, yet, it is an opportunity limited to just a fraction of Kenya's refugees less than one per cent.

While resettlement to a third country is generally highly desired by refugees, for many it only remains a dream. This dream has been fostered and nurtured by resettlement programmes in the camps, through which resettlement becomes something tangible and consequently perceived as attainable. This environment encourages refugees to perform vulnerability in order to show their eligibility for resettlement to UNHCR, and to make projects out of resettlement seeking, which are actively worked on through certain practices or methods, such as regular visits to UNHCR and

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<sup>197</sup> Ibid

<sup>198</sup> J. Kirby, T. Kleist, G. Frerks, W. Flikkema, & P. O'Keefe, "UNHCR's Cross-border Operation in Somalia: The Value of Quick Impact Projects for Refugee Resettlement", *Journal of Refugee Studies*, 10, 1997, p.181-198.

implementing partners, writing letters to submit to UNHCR offices and collecting papers documenting their suffering, mistreatment or the unfairness of UNHCR's policies and practices.

For refugees in camps especially who may have little control over their lives, daily engagement with such a project may be one of few ways they feel able to gain some agency and autonomy, and maintain some hope in an otherwise bleak situation. Agencies are constantly navigating this environment, trying to uphold their credibility with UNHCR or resettlement countries by identifying which refugees are indeed the most vulnerable. The result is a palpable culture of disbelief or doubt, whereby refugees are often assumed to be strategically bending the truth in order to be resettled. This is strongly felt by refugees, who can feel that they are constantly suspected of lying or cheating, and that agencies are trying to catch them out so as to dismiss their claims.

#### **4.2.4 Other Issues**

##### **i) Return/Voluntary Repatriation**

Voluntary repatriation is regarded as a durable solution to displacement because it encompasses the restoration of citizenship in the country of origin.<sup>199</sup> It is often a common goal both among refugees and the international community. Between 1990 and 2005, it is estimated that there were over one million returnees to Somalia from the region, half of whom were assisted by UNHCR. While the majority went back to Somaliland and Puntland, still some 150 000 are thought to have returned to south-central Somalia, as the situation stabilised in some areas.<sup>200</sup>

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<sup>199</sup> UNHCR, Handbook on Voluntary Repatriation: International Protection, Geneva, UNHCR, 1996.

<sup>200</sup>Ibid

Much return by refugees was “spontaneous” individually or family-instigated return. As telephone contact and general circulation of businesspeople and family and educational visits between Kenya and Somalia increased, some people came to the conclusion that it was safe to return or worthwhile, weighing opportunities against risks. Sometimes the decision to return was made after an initial visit by a family or clansperson. Sometimes returnees took with them a repatriation package of basic necessities from UNHCR but received little assistance reintegrating into a changed and still violent society. Others registered for return primarily in order to obtain the UNHCR package, subsequently reappearing in the Kenyan camps.

Decisions to return have often been highly individualised, because of the dynamic and localised nature of the conflict between the mid-1990s and the mid-2000s.<sup>201</sup> Indeed, some refugees have been returning even at times of mass influx to the camps. Moreover in contrast to the taken-for-granted sedentary notions of “home” embedded in the prioritisation of return, many Somalis did not return to their place of former residence, but rather made their way towards major urban centres or areas considered to be clan homelands.<sup>202</sup>

Return has not always end in success and many refugees can recall people who had gone back and were subsequently killed, or displaced again, pointing to the importance of monitoring the situation of returnees and their reintegration, rather than assuming that return automatically represents a durable solution.<sup>203</sup> Meanwhile, large numbers remained in protracted exile in Kenya. Barriers to voluntary return included

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<sup>201</sup>Ibid

<sup>202</sup> UNHCR, Framework Document for the Comprehensive Plan of Action (CPA) for Somali Refugees, Geneva, UNHCR, 2005.

<sup>203</sup> L. Hammond, *This Place Will Become Home: Refugee Repatriation to Ethiopia*, New York, Cornell University Press, 2006.



fear of generalised insecurity and violence in home areas; inability to reclaim land and property or access social protection in the home area because of reconfigurations of the ethno-political map of south-central Somalia; and a lack of confidence in the durability of the stability achieved in pockets of south-central Somalia. In recent past, the vast majority of refugees have been unwilling to contemplate return, due to the recent violence (followed through mobile phone contact with relatives in Somalia and conversations with newly arrived refugees, as well as radio, TV, and internet news); fear of association with the enemy if returning to Shabaab-held areas; and still dim hopes for peace in south-central Somalia.

While very small numbers of Somali businesspeople, NGO workers, politicians and military recruits continue to return, visit or circulate, weighing the major risks against specific ambitions and opportunities, the vast majority of refugees have no interest in returning to any part of south-central Somalia. Official efforts to support return have been met with limited success. The success of the “Cross Border Operation” of 1993 in attracting returnees is disputed.<sup>204</sup> While some refugees have returned with UNHCR’s help to the preventive zone, the vast majority remain in Kenya, unconvinced rightly as it turned out that humanitarian agencies’ presence alone would be enough to protect them.

The Kenyan Government’s aspiration to return refugees to Juba land should be moderated by awareness of the issues outlined in the previous section, and a clear understanding that refugees are unlikely to return voluntarily and certainly should not be returned forcibly without evidence of durable stability. Similar to other refugee settings, concerns have been voiced that the aspiration to return refugees too easily

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<sup>204</sup>Ibid.

becomes a rationale for the Government to avoid implementing measures to improve the protection and integration of refugees inside Kenya.<sup>205</sup> Specifically, hopes regarding return to Juba land seem to have contributed to the Government's caution regarding authorising extensions to Dadaab. Meanwhile, it is of significance to note that despite the repatriation-oriented stances of policy actors, there has been little or no investment in the capabilities of refugees specifically with a view to eventual return. Bearing in mind the obstacles to training in Somalia, a cadre of Kenyan-trained refugees could provide a valuable source of recruits for a future Somali civil service and public sector.

A further, related step apparently long-discussed but slow in materialising could be to involve refugees more thoroughly in the administration and management of services in the camps, through the establishment of more municipal style structures: "to run the camps more like cities", as one official put it.<sup>206</sup> Finally, beyond physical return, refugees in Kenya and elsewhere have over the years contributed to shaping the situation in the Somali regions in a wide range of ways. Economically, some refugees are able to send money home to support relatives and community members in need or look after assets left behind; others engage in cross-border trade in livestock and goods.

Efforts by policy-makers to engage with the Somali Diaspora(s) have tended to focus on those elite segments of it with financial clout and political voice, particularly people living in the global North. But some of the most constructive forms of

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<sup>205</sup>UNHCR, Framework Document for the Comprehensive Plan of Action (CPA) for Somali Refugees, Geneva, UNHCR, 2005.

<sup>206</sup> J. Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*, Minneapolis, University of Minnesota Press, 2000.

transnational engagements by Somali refugees in Kenya might quite easily be facilitated or at least not hindered by policy makers. For example, the readier supply of movement passes would allow enthusiastic young educated camp residents to observe and participate in Somali political and peace meetings in Nairobi.

Encouraging open political debate in which many stakeholders are empowered to participate would seem to be particularly important in the light of evidence of fear, intimidation, and self-censorship among refugees in the latest phase of the conflict.<sup>207</sup> Thus, earlier voluntary return to Somalia has been limited, often disaggregated and informal in nature; it has, unsurprisingly, all but ceased in the current context. Closely related to efforts to prevent displacement, efforts to secure “spaces for voluntary return” provoke difficult political and moral issues. There is, however, considerable potential to invest in refugees’ capabilities in a way that could lay foundations for eventual return and reintegration and to facilitate constructive transnationalism.

## **ii) Local Integration**

In the international refugee regime, integration describes the legal process by which a refugee becomes a full member of a new national community.<sup>208</sup> More generally, the term is used to describe the changing relationship between migrants and the host society, expressed through formal status and rights and through other forms of social, political and economic participation. In protracted refugee situations, where there is no access to the durable solutions of full legal integration, recent discussions have focused on notions of localised integration, de facto informal processes of integration, integration in the intermediate term, and secure settlement or accommodation.

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<sup>207</sup>Ibid.

<sup>208</sup> Milner, J. B. Harrell-Bond & G. Verdirame, *Janus-Faced Humanitarianism*, Oxford, Berghahn Books, 2005.

### **iii) Legal Status and Documentation**

The chances of upgrading one's legal status from prima facie refugee to citizen are slim. While obtaining citizenship through marriage is possible, legal specialists report that it is not an easy process.<sup>209</sup> There are also constitutional provisions for people who have resided in Kenya for a number of years, can speak Kiswahili, and are economically self-reliant, to become a citizen. But a further condition is that the person must have entered Kenya legally, and this has been used as a reason to refuse refugees naturalisation. Although it is legally debatable, given that refugees have a right to seek asylum under international law, this position seems unlikely to change, given the large numbers of Somalis who would otherwise be eligible to become citizens and State and public resistance to that prospect.

Meanwhile, however, some refugees have informally "bought" legal status obtaining Kenyan national ID cards from corrupt officials. Others took up IDs offered by corrupt MPs who wanted their vote. This allowed the refugee to move more freely within Kenya, to live where they preferred, and to start businesses and access education and health services more easily. However, draw-backs emerged for some refugees who were recently excluded from resettlement processing because they hold a Kenyan ID.

While offering citizenship or more secure resident status to large numbers of Somali refugees is politically unfeasible for the Kenyan Government, particularly in the current situation of mass influx. Integration has since remained a politically sensitive term. Since many refugees have spent two decades in Kenya and are unlikely to return

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<sup>209</sup>Konzolo, Crompton & Cechvala, An Overview; S. Pavanello, S. Elhawary & S. Pantuliano, Hidden and Exposed: Urban Refugees in Nairobi, Kenya, Humanitarian Policy Group Working Paper, London, Overseas Development Institute, 2010.

in the absence of durable stability in Somalia, if ever, it would be advisable for Government actors to recognize this and formulate more proactive policy responses. The choice regarding integration is too often presented as an all-or-nothing one. Options for piecemeal approaches (i.e. identifying eligible subgroups such as very long-term refugees/qualified professionals) or gradual approaches to integration (i.e. identifying progressive pathways to fuller legal status contingent on the fulfilment of particular conditions) merit exploration.

### **4.3 Conclusion**

The current protracted refugee problem in Kenya continues to be a ‘thorn in the flesh’ of the Government of Kenya. The Kenya Government has not to date developed very clear guidelines and policies on how to deal with the refugees in Kenya. Moreover, The Kenya government does not have any clear policies regulating the status of refugees who have stayed in the country for long periods of time or for children of refugees born in Kenya who have now attained the age of majority. There is no policy in place to allow for the acquisition of citizenship or residence status by refugees regardless of their length of stay. In general the situation remains vague, haphazard, ad hoc and unplanned. Civil society groups, NGOs and UNHCR should encourage the Government to keep integration on the agenda in policy discussions and engage in long-term thinking around policy options. A rather modest example would be the easing of work permit requirements for refugees, reportedly under discussion in relation to the formulation of the national refugee policy. Under the Refugee Regulations, Somali refugees should be eligible for “Class M” work permits to allow them to work in formal employment since only a few have managed to obtain these. Improved access to work permits could facilitate refugee labour mobility, for refugees

willing to work in particular locations or qualified in particular sectors where there are shortages.

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary

Protracted refugee situations hold significant implications for asylum debates, international peace and security, peace building and security studies. The existence of protracted refugee situations is most directly a symptom of conflict and persecution: push factors associated with armed violence and state failure, which force large numbers of people to flee their homes. This is compounded by the challenges inherent in stabilizing conflict-prone regions and societies which have experienced violent conflict.<sup>210</sup>

Many such situations are essentially ignored by the international community. Frequently when ceasefires and peace agreements are achieved, they are unsuccessful or give way to renewed, and often escalated, violence. Progress is often incremental, in some cases spanning decades. Many peace processes become interminably protracted: lengthy and circular negotiations in which concessions are rare, and, even if fragile agreements have been reached, they have stumbled at the implementation phase.

Protracted situations of violence, which thwart efforts at stabilization, continue to obstruct the return of forcibly displaced people. Protracted refugee situations are therefore indicative of broader challenges regarding civil war and peace building.

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<sup>210</sup>Gill Loescher and James Miller. *The Long Road Home: Protracted Refugee Situations in Africa, Survival: Global Politics and Strategy*, 2005, 47:2, 153-174

However, protracted refugee situations also reflect pathologies inherent in attitudes towards asylum in policy circles, in both the developed and developing worlds.<sup>211</sup>

Refugees, asylum seekers and displaced people especially in situations of mass influx are universally regarded with negativity as a strain upon resources and a potential threat to stability identity and social cohesion. Protracted refugee situations stretch the original assumptions which underpinned the international legal regime on refugee protection. They are also indicative of the marginalization of refugee communities in policy circles and, above all, the reluctance on the part of governments to undertake serious remedial action, especially if that might include local integration.<sup>212</sup> Protracted refugees situations are, therefore, the most acute test of refugee and asylum policy, and one that is indicative of broader challenges in this field.

Protracted refugee situations also demand new analytical thinking as well as new policy in the area of conflict and security. Conventional policy analysis and scholarship in the area of national and international security privilege the defence of territory and the state against external military threats. These external military threats are generally embodied in adversarial states. According to this, forced human displacement is a consequence of armed conflict, to be approached as an essentially secondary humanitarian challenge

Protracted Refugee Situations are indicative of the complex nature of contemporary conflict, which defies conventional state-centric modelling. All refugee situations are, above all, humanitarian emergencies and human rights must remain the overriding

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<sup>211</sup>UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc.EC/54/SC/CRP.14, 10 June 2004, p.2.

<sup>212</sup> Ibid.



rationale for generating durable solutions. The security challenges of protracted refugee situations must not form a pretext for even greater cantonment and warehousing of refugees. Nevertheless, the security implications of leaving PRS unresolved suggest that greater efforts are essential.

## **5.2 Key Findings**

First, the prevention of displacement is a common goal for both Somali citizens who often go to great lengths to avoid leaving their country, and policy-makers who have experimented with “preventive zones” to contain displacement. However, the causes of displacement lie in recent intransigent strategies pursued by a range of domestic and international actors in relation to Somalia, which have resulted in persecution, widespread civilian insecurity and suffering, governance failure and aid restrictions that have allowed drought to burgeon unchecked into a humanitarian disaster. To really address the intolerable situations in which many refugees have found themselves, different, broad-based political and humanitarian approaches are needed.

Despite some significant areas of progress over the years, there are many basic protection concerns regarding refugees in Kenya that urgently need to be addressed. Efforts should focus on improving DRA’s refugee protection capacity by drawing on the expertise in Kenyan civil society; and UNHCR taking on a more robust watchdog role regarding refugees’ rights, alongside the on-going challenges of camp management.

The return of refugees may be the preferred option for State actors, but it strikes fear into the hearts of the majority of refugees. Forcible returns to south-central Somalia in its current State of violence, political flux, persecution, and drought whether from

Punt land, Kenya, or Europe are indefensible, and the all actors should take a firm stand on this. As the situation develops in Somalia, should it prove possible to support the voluntary return of some groups to particular locations, their situation should be carefully monitored. Meanwhile, there is considerable potential to invest in the refugee population with a view to eventual return and reintegration, as well as to support constructive transnational engagement in Somali society.

Consequently, with pathways to naturalisation in Kenya blocked, and a working policy of encampment since 1991, most integration of Somali refugees has been of the de facto, informal variety. Earlier refugees have spent many years or their whole lives in Kenya and are there to stay. Exploring gradual or piecemeal approaches to fuller legal membership, and embedding support to refugees within wider public services and urban and rural development efforts appear to be the most fruitful and conflict-mitigating way forward.

### **5.3 Recommendations**

The resettlement is effectively the only durable solution in terms of restoring citizenship currently on offer to Somali refugees in Kenya. It also functions indirectly as a form of crowd control by means of hope, behavioural incentives and remittances. In light of the flaws in protection and risks faced by refugees in Kenya, and the pressures and constraints that this host country faces, it is vital that foreign states maintain and as necessary expand resettlement places and offer opportunities for “spontaneous arrivals” to seek asylum.

Moreover, the remittances from resettled refugees are a major component of many refugees’ livelihoods. As many use the money to move to urban areas, this means that

they no longer draw on international aid, demonstrating that international aid agencies certainly do not have a “monopoly on assistance”. Moreover, remittances can facilitate informal processes of integration by allowing people to access documents, invest in businesses and education.

Wherever possible, policy actors should seek to work in harmony with, rather than against, refugees’ efforts to become more productive and empowered members of society. It is important to remember that the ability to use such informal strategies for self-betterment is highly differentiated by age, physical ability, gender, economic resources, and personal qualities. While the informal strategies of displaced people can be effective in securing better protection and livelihoods for some individuals, refugees cannot themselves resolve their crisis of citizenship and access to rights this remains the pressing responsibility of political actors and the international community. This of course requires host states to reclaim their legal duty to protect the human rights of refugees and to meet their obligations under international law. The Kenyan Refugee Act is considered a step in the right direction.

Another recommendation is to promote self reliance and ensure the protection of human rights as stipulated in international refugee law. The UNHCR has observed that self-reliance can act as a precursor to the three durable solutions. It has been noted in this study that the current restrictions imposed by long-term encampment make self-reliance impossible. In the last decade, the UNHCR has established Self-Reliance Strategy (SRS) programmes in several countries. Such an approach recognises the long-term nature of asylum and links development with aid and refugee policy. While Uganda has allotted spaces to refugees that are more akin to settlements, the differences between refugee camps and refugee settlements lay on a

broad spectrum, thus making it possible to alter the more restrictive conditions found in refugee camps closer to acceptable human rights standards. This includes implementing measures that improve the self-reliance of encamped refugees.

In the course of this study, two areas in need of further research have emerged; (i) the contribution of resettled refugees in curtailing dependence on aid and (ii) the significance of self reliance strategies in combating protracted refugee situations. This paper has highlighted the need to employ self reliance strategies for refugees as a possible durable solution an area that is ripe for further scholarly research.

#### **5.4 Areas for Further Studies**

Two areas have emerged for further studies in respect to refugees in protracted situations namely; (i) the contribution of resettled refugees in curtailing dependence on aid and (ii) the significance of self-reliance strategies in combating protracted refugee situations.

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