

**TOWARDS A DURABLE SOLUTION TO REFUGEE
CRISIS IN KENYA: A CRITICAL ANALYSIS OF
REFUGEE RESETTLEMENT (PROGRAMME)**

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Declaration

This dissertation is my original work and has not been presented for a degree in any other university.

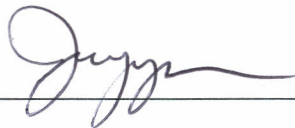
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Abstract

This study sets out to explain the causes and consequences of the refugee crisis in Kenya and the impact of the resettlement programme of these refugees in Europe. It examines the three durable solutions to the refugee crisis, resettlement in third countries, local integration in the country of asylum and voluntary repatriation and emphasizes that they are regarded as durable because they promise an end to refugees' suffering.

The study finds out that the plight of refugees is becoming more prevalent in Africa with the intensification of conflicts in most African countries especially in the Great Lakes region. It then establishes that resettlement offers lasting protection to refugees, particularly those unable to pursue either of the two other recognized durable solutions.

The study further determines that the most significant problem faced in refugee assistance in Kenya is the lack of a clear refugee law governing procedures and policies relating to this group of people. Despite this lack, the dissertation holds that resettlement provides international protection and meets the needs of refugees whose life, liberty, health, safety or other fundamental human rights are at risk. Therefore, it has an upper hand as a durable solution to the plight of refugees in Kenya.

List of Acronyms

UNHCR	United Nations High Commissioner for Refugees
EU	European Union
OAU	Organization of African Unity
AU	African Union
USAID	United States Agency for International Development
DRC	Democratic Republic of the Congo
GSU	General Service Unit
NGOs	Non-Governmental Organizations
U.S	United States
4Rs	Repatriation, Reintegration, Rehabilitation and Reconstruction
ELF	Eritrean Liberation Front
EPLF	Eritrean People's Liberation Front
TPLF	Tigray People's Liberation Front
OLF	Oromo Liberation Front
SALF	Somali Abo Liberation Front
ALF	Afar Liberation Front
ICCPR	International Covenant on Civil and Political Rights
ARA	Aliens Restriction Act
WFP	World Food Programme's
PRM	U.S. State Department's Bureau of Population, Refugees and Migration
LWF	Lutheran World Federation

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CHAPTER ONE

REFUGEE CRISIS

Introduction

Throughout history, people have fled their homes to escape persecution. In the aftermath of World War II, the international community included the right to asylum in the 1948 Universal Declaration of Human Rights. In 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR) was created to protect and assist refugees, and, in 1951, the United Nations adopted the Convention Relating to the Status of Refugees, a legally binding treaty that, by February 2002, had been ratified by 140 countries.¹

Violence and instability in Africa has been a major cause of refugee crisis. “The arc of instability in Africa is linked together. The violence is interwoven”, an analyst for an international humanitarian organization explained. The effect of this on civilians and the populace has been devastating. Fourteen years of warfare and pervasive human rights abuse against civilian populations throughout the West African region alone have cost up to a quarter million lives and left at least 1.1 million people living as refugees or internally displaced persons. In a separate report by UNHCR, more than 3 million Africans were refugees at the end of 1999-about 200,000 more than that the previous year. Approximately, 10.6 million were internally displaced all over Africa.²

The global refugee crisis affects every continent and almost every country. In 2001, 78 percent of all refugees came from 10 countries: Afghanistan, Angola, Burma, Burundi, Congo-Kinshasa, Eritrea, Iraq, the Palestinian territories, Somalia and Sudan. Palestinians

¹ Loescher G., *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993) p. 52

² See <http://www.refugee.org/news/factsheets/refugeestate.html>

are the world's oldest and largest refugee population, and make up more than one fourth of all refugees. Asia hosts 45 percent of all refugees, followed by Africa (30 percent), Europe (19 percent) and North America (5 percent).³

Refugee resettlement is one of three durable solutions advocated by the office of the UNHCR, and a means of addressing the special needs of refugees. It involves an assessment by the resettlement state against specific criteria, leading to permanent resettlement if accepted. It can be a long and difficult process for the refugees, ultimately leading to full integration into a new community. Some countries have long-established resettlement programmes. Those with the largest quotas in 2001 were the United States (80,000 refugees), Canada (11,000), and Australia (10,000). The other durable solutions advocated by UNHCR are voluntary repatriation and local integration.⁴

UNHCR refers applications for resettlement to the Home Office (the office of the country where the refugees come from). The Home Office interviews all principal applicants and their dependants. Cases are assessed and decisions made by the Home Office individually on their merits. Individuals referred to the different countries for resettlement are considered by UNHCR to be eligible for recognition as refugees according to the 1951 Refugee Convention. Their life, liberty, safety, health, or other fundamental human rights must also be at risk in the country where they have sought refuge; or, they must be facing no possibility of long-term security in that country.

Background to the Problem

Most refugees flee to countries close to their countries of origin, namely regions of origin. All regions are, to a greater or lesser extent, regions of origin, as refugees come

³ M John, *Africa's Refugee Crisis: What's To Be Done* (London: Zed Books, 2001) p. 73

⁴ See <http://refugee.unhcr.org>

from all over the world, including Europe. But the majority of refugees are in that are struggling to provide them with adequate protection. Living in extremely precarious conditions, without access to adequate food, shelter, security or access to the range of social, economic, cultural, civil, political and legal rights they are entitled to, many refugees remain without a solution in sight. Such protracted refugee situations can continue for many years and even run into decades. The scale and impact of this grim reality demands an urgent global response.

While continuing poverty, political instability, conflict and human rights violations in countries of origin are among the root causes of refugee flows and protracted refugee situations, the international community's lack of sufficient positive engagement, in both countries of origin and countries hosting refugees, are also to blame.⁵ Development efforts to effectively tackle root causes must be strengthened and coupled with concerted action to improve the protection environment in regions of origin, to develop and implement comprehensive strategies for solutions to refugees' plight and to promote greater responsibility-sharing and international solidarity between states.

Developing countries already host the majority of the world's refugees. Actions that would shift more responsibility to the already over-stretched countries, only risk further destabilising the international refugee protection system. International and European cooperation should lead to greater responsibility-sharing and go beyond its current overwhelming focus on the strengthening of border controls. Responsibility-sharing should also concretely contribute to the greater provision of durable solutions to refugees. Resettlement, for example, can have a positive impact on the protection

⁵ V.T. Patil and P.R. Trivedi, *Migration, Refugees and Security in the 21st Century* (Delhi: Authors Press, 2000) p. 43

environment for those refugees who remain in a host country. Development assistance can contribute to improving the prospects of integration into the host society and to increasing refugees' self-reliance while they await a solution.

In the European Union, where there are ongoing efforts to harmonize asylum policies, media reports and public debates quite often blurred the distinction between issues such as asylum, economic migration and terrorism. These developments prompted UNHCR to list ten areas of 'most concern'. Among them were the threat of increased xenophobia and racism, and the possibility that governments would introduce legislation that would discriminate against refugees from particular religious, ethnic, national or political backgrounds. In late 2001, UNHCR expressed deep concern about xenophobia and discrimination against Muslims, and urged 'governments and politicians to avoid falling into the trap of making unwarranted linkages between refugees and terrorism.' It also asserted that 'genuine refugees are themselves the victims of terrorism and persecution, not its perpetrators.' Similar concerns were echoed by the UN High Commissioner for Human Rights, emphasizing the need to combat xenophobia and cautioning against weakening the international refugee protection regime.

Statement of the Problem

The plight of refugees is becoming more prevalent in Africa with the intensification of conflicts in most countries in Africa especially in the Great Lakes region. Moreover, the majority of refugees are living in extremely precarious conditions, without access to adequate food, shelter, security or access to the range of social, economic, cultural, civil, political and legal rights they are entitled to, many refugees

remain without a solution in sight. This study analyzes the durable solutions to the refugee problem in Kenya with a major focus to resettlement in third countries.

Each day about one hundred new refugees arrive by boat in the small Kenyan coastal town of Shimoni. They come over the water from the island of Zanzibar and its neighbour to the north, Pemba, part of Tanzania but with a degree of self-government.⁶ As reported in 2005 by the UNHCR, Kenya plays host to over 200,000 refugees - the majority of these come from Somalia, Sudan, Ethiopia Uganda, Rwanda, Burundi and Democratic Republic of Congo.

For those who cannot return to their home countries, UN refugee workers are supposed to try to attempt resettlement in other nations, based on the merits of individual cases. Every year the UN resettles between 8,000 to 11,000 refugees, once it has become clear that they will not be able to return home at any point in the foreseeable future. Specifically, the UNHCR office in Nairobi has handled the resettlement of more than 9,000 refugees displaced by Africa's wars in the 1990s. The European Refugee Resettlement Programme is a critical tool for refugee protection, providing tens of thousands of refugees each year with the opportunity to settle permanently in Europe. Nevertheless, Kenya has faced allegations since December, 1999 that its UN staff has been demanding bribes from refugees in return for re-settling them in Europe or North America.⁷ Given the number of challenges arising from the treatment of refugees in Kenya such as the lack of legal procedure and a government department to deal with the issue, this study seeks to explain the causes and consequences of the refugee crisis in Kenya and the impact of the resettlement programme of these refugees in Europe.

⁶ See <http://www.europaworld.org/issue23/newrefugeecrisiserupts23201.htm>

⁷ Human Rights Watch World Report 2002

Objectives

This study has as its main objective the analysis of the refugee crisis in Kenya and their resettlement in Europe. Specifically, this study seeks to:

1. Evaluate the three durable solutions to the refugee crisis proposed by the UNHCR.
2. Examine the challenges facing Kenya in its role of resettling refugees in Europe.
3. Identify policy implications to the Kenyan government of refugee resettlement.

Justification

This paper has both policy and academic justifications.

In the past 50 years, states have largely regressed in their commitment to protect refugees, with the wealthy industrialized states of Europe, North America and Australia - which first established the international refugee protection system - adopting particularly hostile and restrictive policies. Governments have subjected refugees to arbitrary arrest, detention, denial of social and economic rights and closed borders. In the worst cases, the most fundamental principle of refugee protection, *nonrefoulement*, is violated, and refugees are forcibly returned to countries where they face persecution. Since September 11, many countries have pushed through emergency anti-terrorism legislation that curtails the rights of refugees.

From the literature review, it is apparent that scholars have researched on the causes and implications of the refugee crisis, refugee protection in Africa and lightly on the treatment of refugees in Kenya. Although various scholars have covered these areas, evidence indicates the absence of a comprehensive detailed analysis on the refugee crisis

in Kenya and their resettlement in Europe. The study is therefore justified by the existence of this lacuna, which it intends to fill. Consequently, the study will contribute to the literature and data that will be useful for researchers, students and implementers and will form a basis for future studies of a similar nature.

Literature Review

Introduction

This section reviews the literature relevant to this study. It is divided into three sections; the first section examines the refugee crisis on three levels: the global, the regional and the national level. The second section evaluates the treatment of refugees and the refugee policy in Kenya and the final section turns to the protection of refugees under international law in the world.

The Refugee Crisis

The refugee problem is a global phenomenon and no region in the world can boast of being 'refugee free'. Large-scale population displacements pose a threat to regional, continental and global peace and security. Kahler notes that unresolved refugee problems become a source of instability, violence and further population displacements. Most of the Refugee flows and forced population displacements are caused by armed conflicts, civil strife, ethnic, religious and political intolerance, abuse of human rights, non respect for democratic principles, poverty, natural and man-made disasters and external interference.⁸

⁸ Kahler M., *Refugees* (Oxford: Oxford University Press, 1979) p. 183

There are a number of domestic concerns, which make the refugee crisis global, for countries that host refugees. The first of these as Holborn⁹ puts it, is internal security. Many refugees come from situations of civil war and bring their weapons with them. These are then used by some for crimes, which include armed robbery and poaching. Large influxes can also place serious strains on the environment and social infrastructure. On the other hand, the competition of refugees with locals for water, firewood, and other resources poses strain in relationship not only between the refugees and the locals but also between the host country and the source country of refugees. This is in line with Mwangiri's¹⁰ argument since he mentions refugees as one of the major agents of internationalisation of conflict. These problems become more severe where burden sharing through international assistance is (or becomes) limited. For example, it was the lack of sustained cooperation from the international community that contributed in large part to Tanzania's drastic decision to close its borders at a point during the Great Lakes crisis.

David¹¹ argues that the world refugee problem has remained acute. When the Indian subcontinent was partitioned in 1947, millions of people were forced to migrate. Steady streams of refugees left China and East Germany, especially in the 1950s. The Korean War produced some 9 million refugees. Other major refugee-creating events of the 1950s include the Hungarian Revolution (1956) and the uprising in Tibet (1958–59). He also notes that in Africa, the boundaries fixed by 19th-century colonial powers often cut across tribal areas, resulting particularly after independence, in mass movements of

⁹ Louis Holborn, *Refugees: A Problem of our Time* (New Jersey: The Scarecrow Press, 1975) p 106

¹⁰ Mwangiri, Makumi, *Conflict: Theory, Processes and Institutions of Management* (Nairobi: Watermark, 2000) p. 72

¹¹ David Martin, *The New Asylum Seekers* (Dodrecht: Martinus Nijhoff Publishers, 1980) pp 45-47

refugees across national borders. By the early 1990s there were close to 7 million refugees in Africa, including 4.5 million displaced Sudanese. The Arab-Israeli War of 1967 expanded an already swollen refugee population in the Middle East (now estimated at 3.2 million). The Vietnam War and Cambodian civil war created large numbers of Southeast Asian refugees; the India-Pakistan War of 1971 produced about 10 million refugees, most repatriated to newly created Bangladesh.

Africa began to face refugee crises in the 1970s mainly as a result of violent resistance to colonial rule. Some colonial powers, like Portugal, vigorously opposed the granting of political independence to its African colonies and the armed repression it inflicted on its colonial subjects resulted in masses of refugees, especially from Angola and Mozambique. Under similar circumstances, anti-colonialism in Guinea-Bissau also generated refugees who fled to Senegal and Equatorial Guinea. As early as 1963, the refugee problem prompted the O.A.U. leaders to see a growing need for a more liberal asylum policy and in 1969 adopted the O.A.U. Convention Governing the Specific Aspects of Refugee Problems in Africa.

Refugees are also a regional phenomenon since the conflicts in a region are interrelated and interconnected. Mwagiru advances the notion of conflict systems, which champions the belief that every conflict has intimate relationships regionally, and that what might at first appear as individualized conflicts in fact are parts of wider pattern of conflict regionally. It rejects the idea that conflicts do not have trans-border realities, and instead perceives individual conflicts as an integral part of a wider conflict system.¹² For instance, continuing insecurity in the Great Lakes region, which was responsible for large

¹² Makumi Mwagiru, 'The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies, and Management Practices', USAID project on Conflict and Conflict Management in the Greater Horn of Africa, September 1997

scale and volatile mass movements of refugees across borders, is all interconnected. The roots of the Great Lakes crisis may be traced back over decades. However, in 1993 the murder of Burundi's first democratically elected president led to the flight of some 700 000 Hutus into Rwanda, Tanzania and Zaire to escape army-led revenge killings. Thereafter events in the region unfolded in rapid and startling succession. By April of 1994 Rwanda lay witness to the human catastrophe of a large-scale organised genocide. Perpetrators of the genocide soon fled alongside innocent civilians into Tanzania and Zaire leading to not only the largest and fastest movement of refugees in modern history, but also one of the most complex movements. Well over two million persons fled Rwanda in the months after the genocide.

Schnurr¹³ observed that regional insecurity in the Great Lakes exacerbated by the sheer magnitude of the refugee problem and was deepened as international organizations and host governments were unable to institute many of the fundamental principles of international refugee law in the huge refugee settlements. In many of the camps, influence and control was maintained by *Interahamwe* and the former Rwandan army members responsible for the genocide. Civilians in the camps were held hostage as human shields against attempts to separate the *genocidaires* from the true refugees. Meanwhile, the camps, perilously close to the Rwandan border were increasingly used as bases to launch raids back into Rwanda by these same forces. The instability caused by the magnitude and nature of refugee populations in the Great Lakes region played a major role in a complex of regional interventions, which precipitated first the overthrow of the

¹³ Schnurr D., *The Refugees of the Great Lakes Region of Africa* (Washington D. C.: Catholic News Service, 1997) p. 85

Mobutu Sese Seko regime and eventually the conflict in the Democratic Republic of Congo.

Treatment of Refugees and the Refugee Policy in Kenya

Mandela contended that as long as armed conflict persists, Africa will need to formulate progressive and humanitarian refugee policies to deal with the crisis. Africa hosts a staggering three million refugees. Nearly a third of these are hosted by just three countries in East Africa; Kenya, Uganda and Tanzania. The large number of refugees has strained the limited resources of countries in the region. As a result, refugees often face impoverished conditions and strained relations with host communities who see them as competition for scarce resources. The East Africa's refugee experience dates back to the Second World War, during which the three countries hosted about 14,000 Polish refugees. Refugee flows to the region, however, peaked in 1994 following the genocide in Rwanda, producing refugees in addition to those fleeing conflict in Sudan, Somalia, Ethiopia and Eritrea, the Democratic Republic of the Congo and Burundi.

Gill asserts that among the reasons given for refugee's impoverished conditions is the lack a legal and procedural framework within which to adequately protect the rights of the fleeing populations in host nations receiving refugees.¹⁴ As a result, refugees are forced to live in squalid camps in insecure areas with inadequate access to food and other basic necessities. Refugees are often viewed with suspicion by host populations who view refugees as competition for resources and worry that camps will become magnets for crime and insecurity. Despite the fact that Kenya is a signatory to the major international instruments relating to the protection of refugees, notes that it has not

¹⁴ Gill Goodwin, *The Refugee in International Law* 2nd ed. (New York: Clarendon Press, 1996) p. 97

enacted national legislation reflecting the obligations articulated in those treaties and has not set up procedures for the processing of asylum claims.

Refugees international¹⁵ spotlights the problem of gender violence in the Kenyan camps, and thus advocates for measures such as safe houses for threatened women. It suggests that Kenya should adopt a proposed refugee law, create a refugee office in the government, and develop a national refugee policy in accordance with international law. As one of the more stable countries in an unstable region Kenya is likely to remain a host country for refugees.

Lomo¹⁶ posits that although the East African region has had a decades-long experience of hosting refugees, it remains desperately in need of positive and progressive laws to adequately guarantee protection of their rights. Obviously, lack of security and a policy framework on which refugee issues can be addressed has compounded refugee problems in East Africa. Although the three East African countries, Kenya, Uganda and Tanzania, were together hosting several hundred thousand refugees from conflict-prone countries in the region, governments deal with refugee issues on an *ad hoc* basis. The lack of comprehensive policies addressing refugee problems has also meant that the protection of refugees largely depends on the goodwill of their host governments, thereby rendering refugees vulnerable to violations.

In Kenya, many refugees are confined within the perimeters of camps, where they are prevented from holding jobs, leading to recurring cycles of loss, displacement and despair. Kakuma camp in Kenya is one of the oldest and largest refugee camps in the world. The inhabitants of the camp suffer from poor relations with the local population, a

¹⁵ See <http://www.refugeesinternational.org>

¹⁶ Lomo Zachary, 'Refugees in Eastern Africa: Agents of Insecurity or Agents of Development' Faculty of Law Makerere University, 1998

near total lack of economic opportunity, frequent instances of gender-based violence, crime, and recurrent food shortages.¹⁷

According to a study done by Refugees International¹⁷, residents of Kakuma were nearly unanimous in asserting that the biggest problem of the camp is security. In June 2005, a conflict between Turkanas and the refugees left about a dozen people dead. The Kenyan government reinforced police forces in the camp with the feared General Service Unit (GSU), a paramilitary police force, which managed to halt the conflict, but relations between the locals and the refugees remain strained. Many refugees complained that Turkanas enter the camp at night to rob and rape. Turkanas, for their part, claim that refugees compete with them for water, firewood, and other resources and that the standard of living of the refugees is higher than their own. Within the refugee community, sexual and domestic violence is common. Security is sufficiently poor that relief workers are warned to be out of the camp before nightfall.

With the exception of providing security for the residents of the camp, the government of Kenya has not provided much help to the refugees, leaving the management of the camp to international aid agencies, specifically UNHCR, and NGOs. The government has not permitted any serious efforts to integrate the refugees into the local economy and thus most of the refugees have been idle for years. A draft Refugee Bill, however, is coming before the Kenyan parliament and may be adopted this year. The law, as presently drafted, provides for the creation of a Refugee Department and foresees a more active role for the government in the future.

¹⁷ See <http://www.refugeesinternational.org>

Refugee Protection

When people flee their homelands, they evade immediate danger only to find new vulnerabilities in their places of refuge. Once the refugee - receiving country has granted refugees the fundamental right to gain asylum and not be returned to face persecution, another set of issues determines the quality of their asylum—their lives in exile.

Physical safety is one such issue. Zolberg and others assert that even after refugees are safely across the border from the war and repression they experienced back home, they are still often subjected to banditry, sexual violence, and other forms of abuse. While states playing host to refugees have the primary responsibility for ensuring public order and security (for both refugee and host communities), in many situations resource limitations and political instability render this task extremely difficult. Mechanisms need to be developed whereby host governments can request and obtain international support in responding to situations that threaten law and order and public security particularly if they need to stabilize a humanitarian emergency.¹⁸

The access of refugees to participation in the local economy is another question with a substantial impact on their dignity and the sustainability of their situation. There is a lively debate in the refugee policy community over the importance of allowing refugees to “self settle” in places of their own choosing versus some governments’ claims that they feel compelled to concentrate refugees into camps or settlements. But even when camps or settlements are deemed necessary by host governments, there are important policy decisions that affect refugees’ economic participation; for example, the ability to seek

¹⁸ Zolberg A., Suhrke A. and Aguayo S., *Escape From Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989) p. 81

employment or even bring products to market. The discussion noted that refugees are human beings endowed with dignity and that their welfare and recovery in exile should be in line with international human rights instruments that have set standards that must be the basis for practices and programmes for refugee protection. Unfortunately, a combination of factors—from insufficient responsibility sharing to massive refugee caseloads to the sometime abuse of asylum by refugees—have put severe stress on refugee protection in Africa and contributed to “hospitality fatigue.”¹⁹ Political leadership is a key factor, for better or for worse. While some leaders in Africa have set a tone of hospitality and welcome, others have used refugees for their own purposes, either as targets of xenophobia or illegally as voters.

Lomo²⁰ holds that the nature of refugee flows and how refugees are received in countries of refuge in Africa are changing as a new restrictionism sweeps through policy debates. This shift in the readiness of host populations in Africa to receive refugees is not only a factor of the fading solidarity associated with the anti-colonial struggle, continued economic and environmental degradation, and a refocus on consolidating national identity, it is also a question being increasingly posed in terms of national security. Refugees are perceived not simply as victims of conflict and deserving of refuge but as bearers of direct threats to security as complex internal and transnational conflict becomes the norm. This characterization of the refugee as a “threat” or as undeserving of welcome has been exacerbated by the fact that often among those arriving at the border alongside refugee populations are armed elements, mercenaries, and combatants as well as ordinary migrants simply in search of a better life. The protracted nature of many

¹⁹ Humes Gregory, *Erosion of Refugee Rights in Africa* (New York: St. Martins Press, 1997) p 19

²⁰ Lomo Zachary, ‘Refugees in Eastern Africa: Agents of Insecurity or Agents of Development’ Faculty of Law Makerere University, op. cit

refugee situations in Africa has also contributed to “compassion fatigue” in host populations.

An effective response to refugee protection in the context of the changing economic and political environment demands a new conceptual and institutional architecture. First, it must be accepted that as a result of the persistent problems of governance and violations of human rights on the continent, those suffering persecution and caught up in violent conflict will continue to seek refuge abroad. Durable solutions for refugee situations must therefore be sought in tandem with long-term development planning for refugee and host populations. Moreover, Ayiamba and others note that refugee protection in the context of conflict and insecurity must not be viewed as an isolated and purely humanitarian task. No single agency or institution possesses the mandate or resources to respond adequately to the many issues that arise in the context of complex emergencies.²¹

Conclusion

From the literature review above, scholars have researched on the causes and implications of the refugee crisis, refugee protection in Africa and lightly on the treatment of refugees in Kenya. Others have analyzed the three durable solutions; reintegration, resettlement and voluntary repatriation. However, scholars have not given a comprehensive detailed analysis on the refugee crisis in Kenya and their resettlement in Europe. This study therefore seeks to fill this lacuna.

²¹ Ayiamba E. and Oucho J., *The Refugee Crisis in Sub-Saharan Africa: What are the Solutions?* (Nairobi: African Population Association, 1995) p. 23

Theoretical Framework

This study adopts a theory that will try to address the various dimensions of the problem under investigation. The main theory employed is pluralism. This theory is relevant to this study because its assumptions concur with the operation of refugee legislation on various issues as identified below.

Pluralism views the world as being complex, and begins by underlining the fact that states are no longer the only actors in the global process. Instead it argues that there is now a vast array of non-territorially based actors: governmental organizations, non-governmental organizations, multi national enterprises, political parties, political orders, terrorist groups and gangs, and above all individuals increasingly acting transnationally.²² This concurs with the process pertaining refugees since the UNHCR, a branch of the UN, is an institution formed by states and is the major actor in the issue of refugee protection in the world today.

Moreover, it asserts that although there exists in the world diverse systems of public order each of which embody and demand values of human dignity in different degrees, they all proclaim the dignity of the human individual and the ideal of a world-wide public order which is authoritatively pursued and effectively approximated. And thus there is in existence a world social process, which aims at maximizing values such as:

“... health, safety, and comfort (well being) ...affection, respect skill, enlightenment, rectitude, wealth and power. Human beings the world over devote their lives to the incessant shaping and sharing of values.”²³

²² Hedley Bull, *The Anarchical Society: A study of Order in World Politics* (London: Columbia University Press, 1977) p. 53

²³ Lloyd L. and Freeman M. D. A., *Introduction to Jurisprudence* (New York: Stevens & Sons, 1985) p. 574

Refugee law promotes such values not only for refugees but also for internally displaced persons. That is why refugees cannot be refouled or expelled from the host country. In addition, refugees should be protected from the threat they are running away from primarily focusing on their value of safety. Other than safety, the host state has an obligation under refugee law to ensure efficient access of the refugee to education, health services, employment, housing and other social services.

This definition values the role of the individual, and sees the purpose of international law as being to search for the expression of human dignity which itself is a social process in which values are widely and not narrowly shared, and in which private choice rather than coercion, is emphasized as the predominant modality of power.²⁴ Arnaut asserts that law is a very powerful, positive force in the international protection of refugees, but that experience shows that the potential also exists for its negative application and that law has always had the potential of being turned to the disadvantage of those it was designed to protect. He further argues that law is evidently not the only answer and that particularly refugee protection ultimately depends on the morality of nations and on the political will on the part of the states to treat refugees properly through development and application of humane and socially responsible practices.²⁵

McDougal holds that decisions in regard to human rights, as well as to all areas of public order must inevitably involve a careful balancing of legitimately complementary interests, the total value welfare of other individuals both taken alone and as components of groups. For better securing the destinies of a world community process centered upon

²⁴ Makumi Mwagiru, 'A Critical Comparison of the Analytical Frameworks of International Relations and International Law' *Dissertation for M. A. in Conflict Analysis at the University of Kent at Canterbury*, 1991 p. 88

²⁵ Ghasan Arnaut, 'International Protection and Refugee Law', in *Refugees* (UNHCR Public Information Service, 1988) p. 63

man, it is, therefore crucial that the basic policies of a public order of human dignity be more appropriately articulated and applied. This balancing of interests is based on the thinking that law and policy are not distinct, and that the application of a law of human dignity is a function of authoritative decision-making about policy choices.²⁶

In the pluralist approach, international law is not merely a body of doctrines and rules divorced from power and social processes, but rather a result of the interacting responses to problems by decision-makers who are attempting to deal with concrete questions in a setting where many political and other variables must be taken into account. In this sense the decisions taken by leaders in various countries form a repertoire of actions and claims, which form the essence, and substance of international law.

Hypotheses

The study will be guided by the following hypotheses:-

1. Lack of a legal and procedural framework impedes the protection of refugees.
2. Refugees in Kenya contribute to insecurity.
3. Resettlement of refugees is a protective measure of their dignity as human beings.

Definition of Terms

Refugee - someone with a well-founded fear of persecution on the basis of his or her race, religion, nationality, membership in a particular social group or political opinion, who is outside of his or her country of nationality and unable or unwilling to return. Refugees

²⁶ Malcolm Shaw, *International Law* 4th ed. (Cambridge: Cambridge University Press, 1997) p. 27

are forced from their countries by war, civil conflict, political strife or gross human rights abuses.

Asylum Seeker: An asylum seeker is defined as any person who is outside of his country of nationality, or if he has no nationality, the country of his former habitual residence, claiming to have or had a well founded fear of persecution by reason of his race, religion, nationality, membership to a particular social group or political opinion and who is unable or because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or if he has no nationality to return to the country of his former habitual residence. This is a person whose refugee status has not been determined.

Returnees are refugees who return voluntarily to their countries of origin or cease to be refugees as soon as they cross the border.²⁷

Refoulement refers to the forcible return of asylum seekers or refugees to a country where they may have reason to fear persecution

Administration of Justice: Refugee rights and those of citizens of the host countries are taken care of in an efficient manner and sorting out genuine refugees and sending away criminals pretending to be refugees.

Durable Solution: Durable solutions is a concept that was forged by the United Nations to refer to permanent solutions for the problem of refugees' by facilitating 'the voluntary

²⁷ An Introduction to The International Protection of Refugees, Training Module RLD 1 Geneva, June 1992

repatriation of such refugees, or their assimilation within new national communities'.²⁸ Solutions of the refugee problem were conceived in terms of refugees re-gaining their nationality (or the exercise of it), or acquiring a new nationality – that of the country of refuge. In the latter case there are two possibilities, usually termed integration into the country of first asylum, or resettlement in a third country. Once nationality is acquired, or re-gained, refugee status comes to an end.

Research Methodology

This section discusses the research methodology to be used in this study. It will present the research design, population, and sample, data collection methods, research procedures and data analysis methods to be followed in the research process. The main purpose of this study is to analyze the durable solutions to refugee crisis with a specific focus on Kenya. It is specifically intended to investigate the impact of resettlement as one of the durable solutions to refugee crisis. Such issues are best investigated through a case study research design which in this case is the resettlement process in Kenya. The design will enable the researcher to analyze smaller samples, be concrete and contextual. The case study research design generally entails intensive, descriptive and holistic analysis of a single entity otherwise known as the bounded case.²⁹ Although the design may suffer from lack of representation, this is insignificant compared to its contributions to this study.

This study will rely on both primary and secondary sources of data. Most of the information, however, will be obtained from secondary sources. Being qualitative, this

²⁸ UN General Assembly 1950

²⁹ C. Frankfort-Nachmias and D. Nachmias, *Research Methods in the Social Sciences* 5th ed. (London: St. Martins Press, 1996) p. 173

study will rely on secondary data although it will seek primary data as a guide to an in-depth understanding of the issue under study.

Primary data will involve interviews guided by structured questionnaires with officers involved in refugee departments both in the UNHCR and the government of Kenya. Random sampling will be used to choose the officers with about five from each department. These departments include the ministry of immigration, the ministry of foreign affairs and the following UNHCR sections; the section that processes refugee cards, the section that deals with resettlement and the one that deals with repatriation.

Published books, papers, journals, internet and unpublished works will be used as secondary data sources. Other secondary sources will include UN documents, Treaties and Conventions, Refugee Resettlement Acts and so on. This will be with particular reference to the European Resettlement Act and the agreement between Kenya the UNHCR on the processing of resettlement of refugees from Kenya to third countries.

Data will be edited, coded and entered into SPSS where the researcher will have to use descriptive statistics to analyze the data. This will ensure the accuracy of results. The result will be presented in the form of frequency tables and charts for purposes of easier understanding and interpretation.

Chapter Outline

Chapter One: Refugee Crisis

This chapter provides an insight into the structure of the dissertation. It lays the background in which the introduction, statement of the problem, objectives, hypotheses, justification, literature review, theoretical framework, research methodology and chapter outline are discussed.

Chapter Two: Durable Solutions: The UNHCR's Perspective

This chapter evaluates the durable solutions as proposed by the UNHCR, the body put in place to take care of refugees in the world. It will also analyze the recommendations from other scholars on the UNHCR's opinion about the importance. It overemphasizes resettlement as a strategy of attaining durable solutions to the refugee problem. It highlights the strengths and weaknesses of resettlement.

Chapter Three: Rethinking Refugee Policy in Kenya

This chapter amasses the itinerary of Kenya's policy making concerning refugees and asylum since independence. It also probes the recent decision to found a legal framework on refugees as an East African Block which comprises Kenya, Tanzania and Uganda. This chapter also looks at the resettlement of refugees from Kenya to various third countries such as the United States, Europe and others.

Chapter Four: An Analysis of the Refugee Crisis in Kenya and their Resettlement in The United States

This chapter maps the position of Kenyan refugees and their improving protection indexes. The chapter also unveils the implications of durable solutions of the refugee problem in Kenya but focuses on the resettlement of these refugees.

Chapter Five: Summary, Conclusions and Recommendations

Following the findings in the previous chapter, this chapter offers a conclusion. After assessing the very findings, it also proffers recommendations concerning the institution of a credible refugee policy framework in Kenya towards durable solutions to the refugee problem.

CHAPTER TWO

DURABLE SOLUTIONS: THE UNHCR'S PERSPECTIVE

Introduction

This study acknowledges that there are a number of challenges arising from the treatment of refugees in Kenya such as the lack of legal procedure and a government department to deal with the issue. It therefore seeks to explain the causes and consequences of the refugee crisis in Kenya and the impact of the resettlement programme of these refugees in Europe. This chapter evaluates the durable solutions as proposed by the UNHCR, the body put in place to take care of refugees in the world. It will also analyze the recommendations from other scholars on the UNHCR's opinion about the importance of these durable solutions. It however overemphasizes resettlement as a strategy of attaining durable solutions to the refugee problem.

The Search for Durable Solutions

The genocide in Rwanda and the flight of over 2 million Rwandan nationals into neighboring countries in the Great Lakes region of Africa was one of the darkest episodes in African history and one that posed an unprecedented challenge for the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian agencies.³⁰ Other regions, including the former Yugoslavia, south-west Asia, the Horn of Africa and parts of western Africa, have also continued to suffer from massive population displacements, while a major new crisis erupted in the northern Caucasus in December 1994.

³⁰ Kushner Tony and Katharine Knox, *Refugees in an Age of Genocide* (Britain: Routledge, 1999) p. 8

Although the refugee population worldwide had decreased to 14.5 million in the early 90's because of repatriation solutions in various parts of the world, the total number of people of concern to the UNHCR had risen to some 27.4 million. This included 5.4 million internally displaced persons, 3.5 million others of humanitarian concern, predominantly populations affected by conflict, and some 4 million returnees requiring assistance to re-establish sustainable reintegration in their countries of origin. In 1994, UNHCR provided material assistance to a total of 17.6 million people, as compared to 13.8 million in 1993. This included 8.9 million in Africa, 5 million in Asia, 3.5 million in Europe and 115,000 in Latin America.³¹

The present period of volatility and readjustment in world affairs has been characterized by increasing levels of human displacement. In the face of this reality, UNHCR has continued to hone its emergency response capacity and to pursue preventive and solution-oriented approaches. It has aimed to assure a high level of emergency preparedness, to provide assistance and protection in such a way as to avert, where possible, the occurrence of new refugee flows and to promote concerted efforts to achieve durable solutions, notably voluntary repatriation. In so doing, it has collaborated increasingly closely with political, peace-keeping and development initiatives and organs of the United Nations, with other intergovernmental and regional bodies and with a wide range of non-governmental organizations.³²

Different periods have known the use of various strategies in order to curb this problem of refugee creation in the world. Finally, the époque saw the culmination of a

³¹ United Nations High Commissioner for Refugees, *The State of the World's Refugees* (Oxford, UK: Oxford University Press, 1997) p. 54

³² Gallagher Dennis, (1992) 'Durable Solutions in a New Political Era', *Journal of International Affairs* vol. 47, pp. 95-107:98

cycle of reflection within the UNHCR on the use of durable solutions, with the debate reinvigorated by new initiatives. The Global Consultations on International Protection with states, academics, NGOs and refugees resulted in the publication of an 'Agenda for Protection' which stressed the need to redouble the search for durable solutions. To further these aspirations, the UNHCR and partner states published a Framework for Durable Solutions for Refugees and Persons of Concern.

In refugee studies literature, three so-called durable solutions have been identified. These are resettlement in third countries, local integration in the country of asylum and voluntary repatriation.³³ All three are regarded as durable because they promise an end to refugees' suffering and their need for international protection and dependence on humanitarian assistance. The search for durable solutions has been a central part of UNHCR's mandate since its inception. The organization's statute commands the High Commissioner to seek 'permanent solutions for the problem of refugees by assisting Governments . . . to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities'.³⁴ As part of its duty to ensure that voluntary repatriation schemes are sustainable, UNHCR has also become involved in assisting and protecting returnees in their home countries.

One would find it imperative to define what is meant by durable solutions within the context of the refugee problem. According to Goodwin-Gill, 'a durable solution entails a process of integration into a society; it will be successful and lasting only if it allows the refugee to attain a degree of self sufficiency, to participate in the social and economic life of the community and to retain what might be described, too summarily, as

³³ Chimni B. S., *International Refugee Law: A Reader* (New Delhi: Sage Publishers, 2000) p. 73

³⁴ Statute of the Office of the United Nations High Commissioner for Refugees, Chapter 1, para. 1, General Assembly Resolution 428, December 1950

a degree of personal identity and integrity'.³⁵ What this means is that integration, and in the case of returnees, reintegration, is at the core of whatever can be referred to as a durable solution. This seem to be a departure from conventional wisdom which would have us believe that durable solutions to the refugee problem lies in putting an end to the causes of refugee flows. The former seems to be more in line with the human rights approach while the latter is in line with the policy of containment.

Local Integration

Research into the experiences of refugees has shown that many encounter high levels of unemployment, have poor housing and health, and achieve limited access to welfare services. In addition, many suffer social isolation, discrimination and marginalization. The existence of poor and excluded refugee communities can be threatening to community relations. Social justice and human rights concerns demand that refugees should be able to live in dignity while receiving the surrogate protection of and being in a position to contribute to the host country. Once a refugee is granted permission to stay, there is a need to invest early in integration to promote a quick move from dependency to self-value and sufficiency through work and inclusion in community and society. The aim of integration policy, in its broadest sense, involves refugees being "included" in society and obtaining the same status as other members of the community. The way this aim can be met is for refugees to maximize their potential and obtain jobs,

³⁵ Goodwin-Gill G., 'Refugee or Asylum: International Law and the search for solutions to the Refugee problem' in H. Alderman and C.M. Lanphier (eds) *Refuge or Asylum: A Choice for Canada* (Toronto, York Lane Press,1990) p. 38

housing, education and other services to a standard as high as those obtained by other members of the community.

Rhetorically, integration has always been a guiding principle of refugee programs in countries of the global South. According to the 1951 UN Refugee Convention, restoring refugees to dignity and ensuring the provision of human rights includes an approach that would lead to their integration in the host society.³⁶ Indeed the Convention uses the word “assimilation,” which implies the disappearance of differences between refugees and their hosts as well as permanence within the host society. Recent thinking, however, emphasizes both the importance of maintaining individual identity and the possibility of “promoting self-reliance pending voluntary return,” whereby local integration could be temporary.³⁷

The possibility of integration of refugees and their hosts is a question of concern for the international community and host governments, especially in the context of protracted refugee situations. Barbara Harrell-Bond outlines a simple definition of integration in a refugee context that is useful to employ as a guide for the purposes of this discussion: “a situation in which host and refugee communities are able to co-exist, sharing the same resources – both economic and social –with no greater mutual conflict than that which exists within the host community.”³⁸ Tom Kuhlman makes this definition more explicit in outlining indices that can be used to gauge refugee integration to a host community. Among others, he identifies the following characteristics of successful integration:

³⁶ Article 34, Convention relating to the Status of Refugees, 28 July 1951

³⁷ Tom Kuhlman, “The Economic Integration of Refugees in Developing Countries: A Research Model,” in *Economic Integration of Refugees* (London: Oxford University Press, 1991) p. 129

³⁸ B.E. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (Oxford: Oxford University Press, 1986) p. 7

- the socio-cultural change they undergo permits them to maintain an identity of their own and to adjust psychologically to their new situation
- friction between host populations and refugees is not worse than within the host population itself
- refugees do not encounter more discrimination than exists between groups previously settled within the host society.³⁹

The economic and social factors of integration embodied in these definitions of integration are crucial to the examination of policies that foster or prevent local integration. In countries of the global South, areas that host refugees are themselves plagued with poverty, characterized by a lack of resources and infrastructure for social services and by corresponding difficulties in accessing economic markets. A sudden influx of refugees in such countries can therefore disrupt the economy exacerbate unemployment, and heighten ethnic tensions. Most countries of first asylum are unwilling to settle refugees close to border areas if their presence is likely to raise diplomatic or security problems or provoke popular resentment and domestic conflict. Few countries are willing to offer citizenship to refugees, although this would facilitate their long-term integration into the host society'.⁴⁰

In this context, analysis of the costs and benefits of local integration to host communities are critical in policy formation. As Kibreab asks,

Given the severity of the economic crises and the environmental degradation facing many of the major African refugee hosting countries, the basic issue that emerges is, can these countries be able or be expected to establish policies, legal frameworks and institutions which could allow the absorption of hundreds of thousands of refugees living within their territories into their societies permanently?⁴¹

³⁹ Tom Kuhlman, "The Economic Integration of Refugees in Developing Countries: A Research Model," in *Economic Integration of Refugees* op. cit., p. 129

⁴⁰ Gill Loescher, *Beyond Charity: International Co-operation and the Global Refugee Crises* (New York, Oxford University Press, 1993) pp. 148-9

⁴¹ Gain Kibreab, "Local Settlements in Africa: A Misconceived Option?" (1989) 2 *Journal of Refugee Studies* p. 473

Kibreab then argues that in fact host governments in Africa could not be expected to carry this burden, and he proposes local settlement structures – spatially segregated sites that could be supported by international donors – as the optimal solution. Many countries have adopted this strategy. More recent literature, however, suggests that the benefits to host communities of hosting refugees can outweigh the costs, if structures are set up in such a way as to promote joint development.⁴²

Voluntary Repatriation

Repatriation is currently viewed by most host states and other institutions and organizations involved in humanitarian work as the most desirable solution in the post cold war era.⁴³ It is ironic to note that the position, which was previously embraced by the eastern block, albeit with different motivations, has won the day. There is little question that since the 1970s the preferred durable solution has shifted from asylum and third country resettlement to repatriation. An increasing percentage of UNHCR's budget has been consumed by repatriation activities. There are more repatriation exercises than ever. The percentage of refugee flows that eventually lead toward a repatriation exercise has increased. The amount of time devoted by the Executive Committee of the UNHCR to repatriation issues has increased significantly over the last two decades. High Commissioners have stated boldly that the organization will marshal its energies and resources in favor of repatriation, with Ogata famously declaring the 1990s the decade of repatriation.

⁴² See, among others, Karen Jacobsen, *supra* note ; Tania Kaiser, *supra* note ; Jeff Crisp, *supra* note ; and Barbara Harrell-Bond *supra* note

⁴³ Chimni B. S., *International Refugee Law: A Reader op. cit.*, p. 331

Secondly, it is important to note that the core ethics of repatriation contend that refugees cannot be returned against their will to their home country that in their subjective assessment has not appreciably changed for the better and therefore, still resembles the situation that triggered their flight.⁴⁴ In other words, refugees should voluntarily make the decision whether or not to repatriate. It is sad to note that the UNHCR and many host countries have eroded this categorical imperative by promoting new concepts such as voluntariness and safe return which make repatriation under less than ideal conditions possible.⁴⁵ Promoting repatriation under such conditions has a danger of eroding the traditional protection guarantees and rights given to refugees. Under such circumstances, it can be seen as a policy of deterrent and containment and not a viable solution. For UNHCR, the question is whether or not the refugees would be safer in their home country than in the host country. Indeed, refugees should be allowed to make the decision by providing them with necessary information. Furthermore, the ability of refugees to take matters into their own hands and organize repatriation is a hopeful sign. Unfortunately, they are often forced into this position by hopelessness, danger and lack of assistance.

According to Chimni,⁴⁶ voluntary repatriation is recommended as the best solution from two different perspectives. The first is the statist perspective - particularly that of the industrialized countries which have dropped their exile bias in their approach and replaced it with non-entree policies. This may be explained by the fact that in the post cold war era, not only has the refugee increasingly become different, but also, he has

⁴⁴ Barnett Michael (2001) 'UNHCR and The Ethics of Repatriation' *Forced Migration Review*, vol. 10, pp. 31-34:31

⁴⁵ Ibid, P. 32

⁴⁶ Chimni B. S., *International Refugee Law: A Reader* op. cit.

lost his ideological and, to a certain extent, economic importance to the host-state. Given this scenario, one can safely argue that host countries' preference for repatriation is in their own interest and not that of the refugees. That is, they are not driven by a need to guarantee the human rights of refugees and ensure sufficient opportunities to rebuild their lives.⁴⁷ The imposition of closed door policies by most Western liberal democratic States has nothing to do with escalating numbers of refugees but could be seen to have 'racial connotations'. They are as such not only amoral and ethically incorrect, but also a relegation of obligations on part of these states.

The second perspective is the liberal approach, which contends that the exile bias in the traditional western thinking is not only unrealistic but also inhumane considering the realities of the modern refugee problem which is characterized by massive flows often restricted to neighboring countries. It is worth to note that following the massive inflows of asylum seekers from Eastern Europe, most Western European states not only imposed strict restrictions in Schengen and Dublin Accords (such as carrier sanctions and visas) but there was also a shift from asylum and protection to containment and deterrent. It is also important to note that the UNHCR for the first time proposed in its seven-point humanitarian response plan that repatriation should be considered when conditions in the country of origin permit. It is important to emphasize the point 'when conditions at home permit' because repatriation can never be a durable solution unless the conditions which created the conflict are resolved in the first place. Otherwise, the repatriation process may only contribute to increased violence as the case of the deportation of Serbs,

⁴⁷ Ibid, p. 353

Roma/Ashkalija families and other minority groups and individuals to Kosovo has shown.⁴⁸

Thirdly, the change in approach may also be explained by the realities of the modern refugee problem or more specifically by the shift in the factors causing flight from religious and racial persecution to civil conflict, and to a certain extent, natural disasters. Gervase Coles explains, 'normally, displacements as a result of civil armed conflict or natural disaster are of a relatively short duration. Return in these circumstances is usually the solution and it would be inappropriate, therefore, to postulate external settlement as the solution for such displacements'.⁴⁹

Furthermore, flight resulting from such catastrophes often involves mass exodus, which makes the solution of resettlement undesirable if not unattainable. However, it is important to note that this is not always the case. There are certain situations like in Mozambique, Sierra Leone, Liberia, Angola and Sudan where protracted conflicts have been going on for decades. In most of these cases refugees have been languishing in camps in neighboring countries without having their status determined for many years. Under such circumstances, repatriation cannot be said to be a durable solution. In fact, granting citizenship and local integration are more suitable under those conditions.

Fourth, the substandard conditions under which most refugees live today, especially in third world countries, can be viewed as another reason why the solution of repatriation has become favorable. It is nowadays-common practice to keep refugees under prison-like conditions in so-called detention and refugee camps. It is important to note that in some situations the conditions in host countries tend to be worse than at

⁴⁸ Waringo K., 'Kosovo: The Rush to Repatriate' *Transitions Online* Issue No. 7/12, 2005 p. 21

⁴⁹ Gervase Coles, 'Approaching the Refugee Problem Today' in Gill Loescher and Laila Monahan (eds) *Refugees and International Relations*, (Oxford, Clarendon Press, 1989) p. 403-4:3

home. According to Gervase, 'refugees are detained in camps or treated as irregular aliens, forced to live in make shift accommodation or wherever a roof can be found. They are under constant fear of expulsion or refoulement, dependant on hand-outs or the sale of tourist artifacts for survival, separated from friends and families ... for many of these people, exile is a painful trial'.⁵⁰ One would be tempted to think that the reason camps are being set up in this way is a result of a deliberate policy to manipulate and encourage people to return. Indeed Refugee camps, even with improved conditions, can never be a durable solution to the refugee problem. However, in situations where repatriation is not feasible, asylum States need to consider local integration and resettlement as viable solutions. In this case there is a great need for advocacy to ensure that states honour their international obligations to refugees as enshrined in international law and treaties.⁵¹

It is important to note that repatriation and sequentially, reintegration can not be durable solutions without addressing the conditions that led to refugee flight in the first instance. Advocating repatriation at all costs without putting in consideration all other factors can be seen to be unethical to the practice of international legal norms and morally incorrect.

Resettlement

Despite the best efforts of countries of asylum to help people who have fled their homes and country, the trauma and suffering of refugees does not simply disappear. They are rarely able to pick up everyday activities in a new setting and live and work as they did before. Sometimes the threats that caused refugees to leave their homes in the first

⁵⁰ Ibid, p. 403

⁵¹ Chimni B. S., *International Refugee Law: A Reader* op. cit. p. 357

place are present also in the country of refuge. There may be a risk that refugees be forced to repatriate before they're willing to, or new sources of danger for individuals with special needs or parts of the refugee community.

When individual refugees are at risk, or when there are other reasons to help them leave the region, UNHCR attempts to resettle them in safe third countries. With voluntary repatriation and local integration, resettlement is one of the three long-term solutions UNHCR works for on behalf of refugees.⁵² Through resettlement, refugees gain legal protection – residency and often eventually citizenship – from governments who agree, on a case-by-case basis, to open up their communities to new members. The task of receiving and settling refugees requires that UNHCR works closely with central and local authorities, non-governmental organizations (NGOs) and religious and social welfare groups. It is often through the efforts of NGOs that the public in resettlement countries is made aware of the plight of needy refugees.

The UNHCR is constantly working to improve its ability to identify refugees who need to be resettled through intensive training of staff and partners. NGOs operating in coordination with UNHCR can provide essential support in the identification and the referral of potential resettlement cases. The newly revised Resettlement Handbook sets clear standards for referring individuals to prospective countries. States may accept or reject cases referred by UNHCR, and may also decide to admit refugees under resettlement programmes who have not been referred by UNHCR. Once a refugee arrives in a resettlement country, it is that government which takes him or her in hand.

⁵² Gervase Coles, 'Approaching the Refugee Problem Today' in Gill Loescher and Laila Monahan (eds) *Refugees and International Relations*, op. cit., p. 403

During the cold war period, most western democratic states advocated resettlement of dissidents, especially from the former Soviet Union, as the most viable and favourable solution, which, in the words of Chimni, 'introduced a bias in international refugee law'.⁵³ Although the word "resettlement" is much used, not everyone knows what it is – or means the same thing when they use the term. According to Goodwin-Gill, 'resettlement is about refugees moving from a transit, or, country of first asylum to another, or third state'.⁵⁴ According to Ropert Colville, 'resettlement is geared to the special needs of an individual whose life, liberty, health or fundamental human rights are in jeopardy in the country where he or she first sought asylum. It is a highly complex, organized process that involves identifying those in urgent need and finding a suitable country for them'.⁵⁵

In the broadest policy sense, resettlement involves the selection and transfer of refugees from a state in which they have initially sought protection to a third state which has agreed to admit them with permanent residence status. Resettlement can be used when refugees can neither return to their country of origin, nor be protected effectively and integrate in their country of first asylum. There are three traditional and equal goals of resettlement: protection, provision of durable solutions, and burden sharing with host countries.

The UNHCR asserted that resettlement "is of equal importance with the other solutions" and that 'the three solutions are complementary in nature and can function simultaneously. However, too often, resettlement is in fact viewed as the least favored option for refugees and is considered only when there are no possibilities for either

⁵³ Chimni B. S., *International Refugee Law: A Reader* op. cit. p. 356

⁵⁴ Goodwin Gill, *The Refugee in International Law* (Oxford, Clarendon Press, 1996) p. 276

⁵⁵ Colville Ropert, (1993) 'Resettlement: Still vital After All These Years' *Refugees*, 94, pp. 4-8: 4

repatriation or local integration.⁵⁶ Most affluent countries are unwilling to accept and resettle more refugees. They advance such reasons as security considerations, growing unemployment, preservation of culture etc as rationale for their stand.⁵⁷ In the case of less developed countries, most first asylum countries are very poor and unstable.

But in many situations, resettlement may be either the only or the most appropriate solution. While resettlement will probably never meet the needs of more than a small percentage of the world's refugees, it should not be considered as the least favored option. In recent years, states, NGOs, and UNHCR, working together, have diversified resettlement efforts worldwide while promoting consistent resettlement criteria, as embodied by the UNHCR Resettlement Handbook. Through this partnership, resettlement has become a more effective tool of protection, durable solution, and instrument of responsibility sharing. As the UNHCR paper on the issue acknowledges, however, the tripartite partnership needs even more vigor, resources, and creativity in approaching the dilemmas, challenges, and opportunities which resettlement presents. By sharing responsibilities with countries of first asylum, the resettlement countries not only take refugees out of harms way and allow them to start a new life, but also re-enforce the viability of the other durable solutions.

The UNHCR also emphasizes the complementary and strategic role of resettlement in the troika of durable solutions. Most countries may not choose resettlement as an "orderly" alternative to asylum which is a legal obligation, and cannot be traded for resettlement. Resettlement, however, is an essential tool for promoting

⁵⁶ Chinni B. S., *International Refugee Law: A Reader* op. cit. p. 331

⁵⁷ Carens J. H. (1983) 'Aliens and Citizens: The Case for Open Borders', *Review of Politics*, 49, 1987 pp. 251-273:269

responsibility sharing with countries of first asylum. It is also a critical human rights tool when countries of first asylum are unwilling or unable to live up to international legal obligations to protect some of the refugees within their borders. Resettlement is therefore a complement - and not a replacement - for the other durable solutions.⁵⁸

Richard has offered the following principles with regard to resettlement and its relationship to the other durable solutions:

- Resettlement should not be used as a fig leaf for policies of migration control to enable states to sidestep international legal obligations to people in need of protection by preventing them from setting foot on their territory
- Resettlement must be additional to states' obligations under the 1951 Convention towards refugees who make their own way.
- Resettlement should be used to foster public support for all refugees.
- The number and type of refugees resettled must demonstrate a real commitment to sharing a global responsibility that falls disproportionately on the shoulders of developing countries.
- Resettlement programmes must be conducted in close partnership with UNHCR, in accordance with its Resettlement Handbook and must be founded wholly on the principle of resettling those in greatest need of protection and those in protracted situations in need of a durable solution.
- Recognizing that resettlement is resource-intensive, resettlement programmes must be properly funded at all stages.⁵⁹

Turning to resettlement capacity, UNHCR notes, "There are clearly more refugees in need of resettlement than there are places or resources available." This is the truth, but not the whole truth. First, in spite of there being more refugees in need of resettlement than there are places or resources available, there are more than 10,000 resettlement slots worldwide which remain unfilled, year after year. This means that, over the last decade, more than 100,000 refugees in need of resettlement could have been rescued from danger, or been given an opportunity to lead productive fulfilling lives, rather than live

⁵⁸ UNHCR, *International Refugee Protection* (Geneva: UNHCR, 1997) p. 105

⁵⁹ Richard Williams, *Principles for a UK Resettlement Programme* (Britain: Refugee Council, 2002)

off handouts in squalid camps.⁶⁰ These shortfalls would be met if states, UNHCR, and NGOs made more of an effort strategize together to identify and address major inefficiencies in the system to ensure that there are not any empty seats on the lifeboat.

How Resettlement Works

Selection for resettlement is not easy. The process requires criteria to establish which of the many refugees need resettlement (who cannot return, and are unable to integrate locally) and who among them might fit well with the domestic and foreign policy agendas of the receiving government. These agendas may have little impact on resettlement policies – it might be a matter of giving the destination state a humanitarian profile through the resettlement of the very vulnerable, for example. But the larger the resettlement program, the more various interests and needs must be addressed. The U.S. has the most sophisticated resettlement system, with three active priority categories for selection. These are:

- those referred by UNHCR
- those falling within designated groups of ethnic origin and/or country of first asylum and
- family members of people already in the U.S. from specified countries and who are refugees⁶¹

For all three categories, the refugee definition of the Protocol applies, modified to say that they should be outside the United States, rather than outside their country of origin. The second category is the most-used route. Its groups are designated annually, through consultation by the State Department with other government departments, UNHCR, and NGOs. The individuals to be resettled within these groups have assistance in preparing

⁶⁰ UNHCR, Resettlement Handbook, UNHCR, Geneva, Chapter 7, www.unhcr.ch, 2004

⁶¹ <http://www.yorku.ca/crs/Refuge/Abstracts%20and%20Articles/Vol%2022%20No%201/vanselm.pdf>

their cases from NGOs. The role of the UNHCR is limited to consultation during the group designation process. UNHCR has no central role in the third category either.

However, its role is key to the first priority. Until 2003 these referrals were only of individuals. In an effort to fill a significant shortfall in U.S. arrivals, an agreement was reached in 2003 for the UNHCR to refer a group—some 7,000 refugees in Cote d'Ivoire. As is usually the case, the paperwork for all of these refugees was to be completed by a contracted NGO acting as an Overseas Processing Entity prior to U.S. Immigration Service interviews with the candidates. Nonetheless, as always, the U.S. would not necessarily accept all UNHCR referrals: it is possible that the Immigration Service staff do not find a given individual to be a refugee according to their definition, especially since the UNHCR employs its Mandate definition, which covers those fleeing conflict, for example. Indeed, the U.S. is striving to accept 50 per cent of UNHCR referrals, a clear indication that more than half have been rejected in recent years.

Since 2002, Canada has moved to limit applications for resettlement made directly by refugees to Canadian embassies, and has placed a much greater emphasis on referrals, chiefly from UNHCR. The Immigration and Refugee Protection Regulations require that applications for refugee resettlement be accompanied by a referral from a “referral organization” or from a private sponsor.⁶² The Regulations also clarify that “referral organization” means the UNHCR or another organization with which the Department of Citizenship and Immigration has concluded a Memorandum of Understanding.⁶³ Canada relies currently on UNHCR referrals and private sponsors to identify refugees for resettlement, and has not yet concluded agreements with any NGOs

⁶² The Immigration and Refugee Protection Regulations June 2002, Section 150

⁶³ Ibid, section 143

or other agencies. The EU Member States with resettlement programs, and Norway, rely exclusively on UNHCR referrals for selection. The process is cumbersome, and some, most especially the Netherlands, also refuse some 50 per cent of the referred cases on the grounds that their Immigration Service finds the candidates not to be refugees according to the Dutch Aliens Act.

The UNHCR is currently charged with referring some 50,000 refugees per year worldwide to all programs, including the U.S. and Canada. With relatively high rejection rates in some states, based not only on definitional differences but also on what they view as incomplete information on the referral forms, UNHCR is putting a lot of resources into resettlement. For the Europeans this includes a whole system of clarifying claims and funneling referrals from the field through Geneva headquarters to the capitals (the U.S. and Canada receive referrals directly in the field, including through a new “hub” system in west and east Africa). All in all, it is resource intensive, and not clear that UNHCR either can or should be performing some of the functions, beyond identifying people as refugees.⁶⁴

Durable Solutions in Practice

During the Cold War and the national-liberation struggles of the 1960s and 1970s, those who fled communist regimes and colonial oppression were granted refugee status by the United Nations on the assumption that repatriation was not an option. Resettlement and local integration were generally regarded as the most viable and strategically desirable durable solutions. With the demise of communism and colonialism, however, repatriation became more realistic and attractive for states. Furthermore, the increase

⁶⁴ <http://www.yorku.ca/crs/Refuge/Abstracts%20and%20Articles/Vol%2022%20No%201/vanselm.pdf>

since the 1980s in migration from poor to rich countries and the growing association of refugees with migrants fleeing poverty have added to the reluctance of wealthy nations to offer resettlement.⁶⁵ As for the southern states, in the aftermath of economic adjustment and democratization most of them have been less willing to support local integration. This is in contrast to the situation in the 1960s and 1970s when, in Africa, for instance, rural refugees were allowed a high level of *de facto* local integration.

Consequently, repatriation is now often regarded as the most desirable durable solution, provided that return is genuinely voluntary and sustainable. The 1990s became the decade of repatriation: more than 9 million refugees returned home between 1991 and 1996. However, returns under pressure from host governments, particularly the 1996 return of Rwandan refugees hosted by Zaire (now the Democratic Republic of Congo, or DRC) and Tanzania have raised fresh questions about the degree of voluntariness and the role of compulsion in 'imposed return'. Moreover, arguably premature repatriations to the former Yugoslav republics and Afghanistan in the early 2000s have renewed debate on sustainable reintegration and its relationship to post-conflict reconstruction.

The recognition, on the one hand, that voluntary repatriation is not always possible and, on the other, that indefinite encampment is unacceptable has led to a profound review of the three durable solutions and how they relate to one another. The need to avoid human degradation while simultaneously safeguarding voluntariness has spurred the development of new methods and approaches.

The UNHCR reflected on the use of durable solutions which reinvigorated the debate by new initiatives. The Global Consultations on International Protection with

⁶⁵ B. S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems', *New Issues in Refugee Research*, Working Paper No. 2, (UNHCR, Geneva, 1999)

states, academics, NGOs and refugees resulted in the publication of an Agenda for Protection⁶⁶ which stressed the need to redouble the search for durable solutions. To further these aspirations, UNHCR and partner states published a Framework for Durable Solutions for Refugees and Persons of Concern (hereafter referred to as the Framework for Durable Solutions). This elaborated the '4Rs': Repatriation, Reintegration, Rehabilitation and Reconstruction, as a process that would bridge the gap between relief and development. It also emphasized the two related concepts of Development Assistance for Refugees and Development through Local Integration. Subsequently, durable solutions were placed within the context of a multilateral dialogue, which is referred to as the Convention Plus initiative. This led, most notably, to agreement by a range of resettlement and host states on a Multilateral Framework of Understandings on Resettlement. In light of these innovations, this chapter explains UNHCR's new approaches to durable solutions in three areas: first, the targeting of development assistance; second, migratory movements; and third, resettlement. It concludes by discussing the multilateral and political context in which UNHCR has tried to facilitate international cooperation to improve access to durable solutions.

Conclusion

Political conflicts in various parts of the world are, more and more often, of an extended duration. This means that return to home countries for refugees is increasingly delayed. At the same time, global terrorism and concerns about security have slowed processes of resettlement in traditional resettlement countries and, in some cases, the

⁶⁶ This Agenda is available online at www.unhcr.org/PUBL/3e9699e94.pdf

number of refugees who can be resettled has fallen and their countries of origin have been restricted. The increasing size of refugee population influxes to countries of first asylum has meant that host governments have been reluctant to facilitate local integration; indeed, local integration carries with it a connotation of permanence as well as security problems and resource burdens. Failure to find acceptable durable solutions among these three options has resulted in increasing numbers of refugee situations worldwide that can be described as “protracted.”

Crisp asserts that refugees can be regarded as being in a protracted situation when they have lived in exile for more than five years, and when they still have no immediate prospect of finding a durable solution to their plight by means of voluntary repatriation, local integration, or resettlement.⁶⁷ Due to the proliferation of situations that can be described as such, the many stakeholders – including host governments, the United Nations High Commissioner for Refugees (UNHCR), local communities, and refugees – need to come together to further explore the three possibilities for durable solutions and their applicability in given situations.

In conclusion, solutions to complex, refugee-producing emergencies require concerted efforts whereby humanitarian activities are complemented by both political initiatives to resolve conflict and development efforts to ensure a sustainable livelihood for the most severely affected areas and people. Some have held the contention that there is no single durable solution to the refugee problem but a combination of different approaches can approximate the desired goals. This study reviews the implication of resettlement, one of the durable solutions to refugees in Kenya.

⁶⁷ Crisp Jeff, *Who has Counted the Refugees: UNHCR and the Politics of Numbers* (UNHCR, 1999) p. 15

CHAPTER THREE

RETHINKING REFUGEE POLICY IN KENYA: FROM VERBAL TO WRITTEN

Introduction

Most refugees flee to countries close to their countries of origin, namely regions of origin. All regions are, to a greater or lesser extent, regions of origin, as refugees come from all over the world including the part considered the richest. But the majority of refugees are in developing countries that are struggling to provide them with adequate protection. Although developed countries contribute most of the funding to assist refugees, developing countries host the vast majority of the world's refugees. Combined, nations with per capita incomes of less than \$2,000 host more than two-thirds of all refugees. Nations with per capita income over \$10,000 hosted four percent of the world's refugees. In many developing countries, refugees are a large portion of the total population.⁶⁸

Refugees in the developing world are living in extremely precarious conditions, without access to adequate food, shelter, security or access to the range of social, economic, cultural, civil, political and legal rights they are entitled to, many refugees remain without a solution in sight. Such protracted refugee situations can continue for many years and even run into decades.⁶⁹ This study however examines the impact of resettlement as one of the durable solutions offered by the UNHCR to the refugee crisis. This chapter evaluates refugee law in Kenya. It also looks at the real situation of refugees and the treatment they are accorded as they search for a way out of their problem.

⁶⁸ US Committee for Refugees and Immigrants, *World Refugee Survey 2006* (Washington D.C.: US Committee for Refugees and Immigrants, 2006) p. 13

⁶⁹ Schneider J., 'The Refugee Crisis in Southern and Central Africa' *International Affairs Review* Vol 4, 1 April 1999 pp. 37-42:39

Refugees in Kenya

Kenya hosts over 200,000 refugees including about 150,000 from Somalia, 60,000 from the Sudan, 10,000 from Ethiopia, and 9,000 from other countries. Kenyan authorities have required most of these refugees to live in three designated camps near the village of Dadaab (Ifo, Hagadera and Dagahaley) in the country's remote east (about 140,000 refugees), and in three camps known as Kakuma in northwest Kenya (about 90,000 refugees). Tens of thousands of additional refugees live without refugee status recognition or humanitarian assistance in urban areas, particularly in the capital, Nairobi. The conditions in the refugee camps and in the refugee-congested areas of the capital are very crowded which has led to the easy spread of diseases (malaria, chickenpox, and measles) and the potential of deadly fires burning out whole sections of the camp or area. Additionally, the camps are notorious for bandit attacks. Life as a refugee in Kenya is very hard.⁷⁰

In Somalia, the anti-colonial pro-Soviet civilian government formed at independence was toppled in a coup led by General Mohammed Siad Barre in 1969. While popular at first, Barre's regime became increasingly oppressive and autocratic, leading to the birth of clan-based opposition militias. The central government of Somalia was overthrown by rebel factions in January 1991, following years of a civil war that culminated with the fall of Mogadishu. What began as a general uprising against an unpopular dictatorship, then evolved into violent anarchy. Instead of forming a governing coalition, the many Somali liberation movements turned their arms against each other in

⁷⁰ Bascom J., *Losing Place: Refugee Populations and Rural Transformations in East Africa* (Oxford: Oxford University Press, 1998) p. 27

what became an endless struggle for the control of land and resources.⁷¹ About three quarters of the population of Somalia were affected by the conflict and hundreds of thousands have died. Famine and persisting insecurity led to the displacement of millions of people inside Somalia as well as to refugee flight neighboring countries. In 1991 and 1992 many refugees crossed the borders from Somalia at Liboi into Kenya. In early 1992, fighting between major factions spread out into the Gedo region. Members of the deposed President's clan who had sought refuge in Gedo, and scores of local residents fled to other parts of the country or crossed the border into the Northeast Province of Kenya. Most of the refugees who were part of this second influx settled in sites around the Kenyan towns of Mandera and EL-Wak, located on or near the border with Somalia. By mid-year, more than 300,000 Somali refugees had entered Kenya and their number increased assistance the rate of 1,000 per day.⁷² Conflict in Somalia has since drifted towards armed confrontation between two major antagonists: The Islamic Courts Council which aims at establishing an Islamic regime in the stateless country and Ethiopia which is determined to prevent that outcome. Up to date, Somalis still flee their country due to fear of insecurity.

Most refugees in Dadaab (located another 30 miles west of Liboi) today were received at Liboi, which also served as the original United Nations High Commission for Refugees (UNHCR) camp in this area. As Liboi grew to over 40,000 refugees, the UNHCR established additional camps: First Ifo, then Dagahaley, and, lastly, Hagadera, all of which are located in the Dadaab Division of Garissa District in Northeastern

⁷¹ Besteman C., *Unraveling Somalia: Race, Violence and the Legacy of Slavery* (Philadelphia, 1999) p. 35

⁷² Cassanelli Lee, *Victims and Vulnerable Groups in Southern Somalia* (Ottawa: Immigration and Refugee Board, 1995) p. 7

Province. The three camps are situated within 10 miles of the Dadaab Division town center, which is also called Dadaab. At their height, the four refugee camps in Kenya held over 160,000 refugees. With the closing of Liboi, the UNHCR estimates in 2002 that approximately 135,000 refugees remain in the three Dadaab camps.

Within the same period in 1992, the Government of Kenya agreed to open a camp for the South Sudanese Refugees in North Western Province of Kenya. The Transit camp is at the border town of Lokichogio while the camp site is at Kakuma town 100 Km from the Kenya-Sudan Border. Civil war had been ongoing in the Sudan since 1983 between the Muslim Khartoum Government in the north and the non-Muslim Sudan Peoples' Liberation Army (SPLA) in the south. The war is usually characterized as a fight between the southern, non-Arab populations against the northern, Arab-dominated government. When the British ran Sudan as a colony they administered the northern and southern provinces separately. Northerners were prevented from holding positions of power in the south, and trade was discouraged between the two areas. However, in 1946 the British gave in to northern pressure to integrate the two areas. After decolonization, most power was given to the northern elites based in Khartoum, causing unrest in the south. In 1955, southern resentment of northern Muslim Arab domination culminated in a mutiny among southern troops in Equatoria Province. These troops were upset that the Khartoum government had failed to deliver on its promises to Britain that it would create a federal system. For the next 17 years, the southern region experienced civil strife, and various southern leaders agitated for regional autonomy or outright secession. The ongoing civil war displaced more than 4 million southerners. Some fled into southern cities, such as

Juba; others trekked as far north as Khartoum and even into Ethiopia, Kenya, Uganda, Egypt, and other neighboring countries.⁷³

After 1974, insurgencies appeared in Ethiopia, the most important of which were centered in Eritrea and Tigray. The Eritrean problem, inherited from Haile Selassie's regime, was a matter of extensive debate within the Derg. It was a dispute over policy toward Eritrea that resulted in the death of General Aman, an Eritrean, on November 23, 1974. Hereafter, the Derg decided to impose a military settlement on the Eritrean Liberation Front (ELF) and the Eritrean People's Liberation Front (EPLF). By 1975 the EPLF had more than 10,000 members in the field. Attempts to invade rebel-held Eritrea failed repeatedly, and by mid-1978 the insurgent groups controlled most of the countryside but not major towns such as Keren, Mitsiwa, Aseb, and a few other places. Despite large commitments of arms and training from communist countries, the Derg failed to suppress the Eritrean rebellion.

In 1976 Osman broke with the EPLF and formed the Eritrean Liberation Front-Popular Liberation Front (ELF-PLF), a division that reflected differences between combatants in Eritrea and representatives abroad as well as personal rivalries and basic ideological differences, factors important in earlier splits within the Eritrean separatist movement. Encouraged by the imperial regime's collapse and attendant confusion, the guerrillas extended their control over the whole region by 1977. Ethiopian forces were largely confined to urban centers and controlled the major roads only by day. By the end of 1976, insurgencies existed in all of the country's fourteen administrative regions. In addition to the Eritrean secessionists, rebels were highly active in Tigray, where the

⁷³ Moro Nelson, *Coping with dynamics of culture and change: Sudanese refugees in East Africa and internally displaced persons in southern Sudan* (Office of African Studies, 1998) p. 11

Tigray People's Liberation Front (TPLF), formed in 1975, was demanding social justice and self-determination for all Ethiopians. In the southern regions of Bale, Sidamo, and Arsi, the Oromo Liberation Front (OLF) and the Somali Abo Liberation Front (SALF), active since 1975, had gained control of parts of the countryside, and the WSLF was active in the Ogaden. Under Ali Mirah's leadership, the Afar Liberation Front (ALF) began armed operations in March 1975, and in 1976 it coordinated some actions with the EPLF and the TPLF. In the long run, the EPLF took control of Eritrea, which later gained full independence (May 3, 1993), leaving Ethiopia a landlocked country.⁷⁴ More than 250,000 persons died in the 31-year-long war, aggravated by drought and famine coupled with a massive outflow of people from the country to neighboring countries such as Kenya.

In Kenya, other camps had been established at the Coast – Utange, Marafa, Swale Nguru, Jomvu and Hatimi. Another Urban based camp was opened at the Thika Municipality 60 Km from the Capital City Nairobi. All the six Urban camps were closed between March 1995 and February 1999 the refugees transferred to either Dadaab complex or Kakuma Camps.

Refugee Legislation in Kenya

International Instruments

For Kenya, the relevant international law applicable to refugees can be found in the 1951 Geneva Convention Relating to the Status of Refugees and its Protocol which it accessed in 1996 and 1981 respectively, the International Covenant on Civil and Political

⁷⁴ Jalata A., *Oromia and Ethiopia: State Formation and Ethno National Conflict, 1868-1992* (Boulder CO.: Lynne Rienner Publishers, 1993) p. 72

Rights which it ratified on 1 May 1972, but not its First or Second Optional Protocols and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which Kenya ratified June 1992.⁷⁵ Kenya has however ignored some instrumental treaties that ensure the protection of refugees at international level. These include the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

The 1951 Geneva Convention Relating to the Status of Refugees defines the term refugee in general terms and does not limit it to specific national groups as was the case in the period prior to its enactment. According to the Convention, a refugee is a person who as a result of events occurring before 1st January 1951 is outside his or her former home country due to a well founded fear of persecution for reasons of race, religion, nationality or political opinion, and who is unable or unwilling to avail himself or herself of the protection of that country or to return there for reasons of fear of persecution.⁷⁶ The Convention defines the refugee narrowly and fails to address and recognize present day refugee movements that may be a result of economic disasters, break down of state machinery, and persecution on account of gender. The 1951 Convention in its narrowly defined approach, covers civil and political rights, and ignores economic, social and cultural rights.⁷⁷ However, with the passage of time and the emergence of new refugee situations it became clear that the 1951 convention needed to provide for these new situations, hence the introduction of the 1967 protocol. The protocol dispensed with the date as provided in the 1951 convention making the convention applicable to refugees

⁷⁵ Bascom J., *Losing Place: Refugee Populations and Rural Transformations in East Africa* op. cit. p. 16

⁷⁶ *The UN Convention Relating to the Status of Refugees*, July 28, 1951, Article 1(2)

⁷⁷ Sushil Raj, 'The Gender Element in International Refugee Law' *International Organizations Journal*, 2001, also available at <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/9.html>

coming after 1st January 1951. It also dispensed with geographic limitations from Europe hence making the convention applicable to refugees from other parts of the world.

The convention also establishes the principle of non-refoulement which states that no person may be returned to a country or territory where she or he may be exposed to persecution against his or her own will save on grounds of security or public order.⁷⁸ Further the convention sets out standards for the treatment of refugees including their legal status, employment and welfare. The legal status of the refugee is dealt with in Article 12 of the convention, which says that the status of a refugee shall be governed by the law of the country of domicile or if he has no domicile by the law of the country of residence. It further states that rights previously acquired by a refugee and more particularly those attaching to marriage should be respected by the contracting state subject if necessary, with the formalities required by the law of that state, provided that the right in question is one which would have been recognized by the law of that state had he/she not become a refugee.

The 1969 OAU convention is a regional complement of the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. It was promulgated in part to cater for the specific aspects of refugee problems in Africa. The concerns of the OAU member states were reflected in the 1969 convention which has been praised for its contribution to the development of international refugee law. While most of the provisions of this convention reflect those of the 1951 convention, there are other provisions that can be considered an improvement to the already existing international law on refugees.

⁷⁸ *The UN Convention Relating to the Status of Refugees*, July 28, 1951, Article 33

The convention for example introduced a substantial improvement to the concept of asylum. Although article 14 of the Universal Human Rights had earlier given an individual the right to seek asylum, the decision to grant asylum remained the prerogative of the host country. However, the 1969 convention without being unrealistic went further by requiring signatories to the convention to undertake to use “their best endeavours, consistent with their respective legislations, to receive refugees and secure their settlement.”⁷⁹

Further the convention provided that the grant of asylum to refugees was a peaceful and humanitarian act and should not be regarded as an unfriendly act by any members of state.⁸⁰ In addition the 1969 OAU convention provided a positive and generous interpretation of the principle of non refoulement. Article II paragraph 5 of the convention states that;

“any refugee who has not received the right to reside in any country of asylum may be granted temporary residence in any country of asylum. This provision was meant to make the refugees feel that they could seek refuge in any state that was a member of the OAU.”

In the definition of the term refugee the convention adopted the 1951 convention’s definition but went a step further to state that the term “refugee” would apply under other circumstances such as situations of aggression, occupation or foreign domination or events disturbing public order in the asylum seeker’s country of origin. This broadened and flexible definition of the term refugee while offering a response to obvious humanitarian concerns provided a satisfactory solution to the problem of

⁷⁹ *The OAU Convention Governing Specific aspects of Refugee Problems in Africa* September 10, 1969, Article 2(1)

⁸⁰ *Ibid*, Article 2 (2)

determining refugee status in the massive movements that took place in Africa.⁸¹ It is also based on objective criteria, that is, the conditions in the country of origin. Considering that most refugee movements in Africa have been mass movements, it would be difficult in such cases to apply the subjective test requiring individual screening.⁸² The 1994 OAU/UNHCR Symposium noted that the root causes of mass movements in Africa are as a result of armed conflicts and civil strife, ethnic intolerance, the abuse of human rights on a massive scale, the monopolization of political and economic power, refusal to respect democracy or the results of free and fair elections, resistance to popular participation in governance and poor management of public affairs. It also enumerated a number of external factors that have led to forced displacements in Africa. These include colonialism, international economic forces which have contributed to the widespread poverty in Africa and to the widening gap between the poor and the rich, competition over scarce resources, and the degradation of the human and physical environment.⁸³ This provision addressed situations of mass displacement and influx which became a distinguishing African characteristic of refugee flows, making it possible for persons fleeing such situations to claim refugee status without having to establish direct persecution.

The Convention emphasizes non discrimination and provides that no refugee may be refused recognition on account of religious racial or political affiliations.⁸⁴ Hence all individuals fleeing from war, civil disturbance or violence of any kind in Africa are

⁸¹ Micah Bond Ranking, *Extending the Limits or Narrowing the Scope* (Geneva: UNHCR, 2005) p. 5

⁸² Goodwin-Gill Guy S., *The Refugee in International Law* (Oxford: Clarendon Press, 1983) p. 158

⁸³ 'The Addis Ababa Document on Refugees and Forced Population Displacements in Africa' Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa 8 - 10 Sept 1994, Addis Ababa, Ethiopia para 8

⁸⁴ *The OAU Convention Governing Specific aspects of Refugee Problems in Africa* September 10, 1969, Article 4

recognized as refugees. The convention also calls for the adoption of measures of amnesty and clemency, implementation of national reconciliation policies and peaceful settlement of disputes and further sets out the principle of burden sharing of the refugee crisis in the spirit of African solidarity and international cooperation.⁸⁵

Assistance may also be gained from the International Covenant on Civil and Political Rights (ICCPR), which clearly applies to refugees. The Covenant was adopted in 1966, giving force to the civil and political rights outlined in the Universal Declaration of Human Rights. Human rights are not solely the rights of citizens or nationals. Refugees, too, are entitled to the protections offered by human rights law.

General Comment 15 of the Human Rights Committee deals specifically with the position of non nationals: It states that each State party to the ICCPR must ensure the rights in the Covenant to all individuals within its territory and subject to its jurisdiction (ICCPR art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. General Comment 20 of the Human Rights Committee also refers to non nationals, stating that article 7 of the ICCPR prohibits states parties from exposing persons “to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.”

Thus, the general rule is that each one of the rights of the ICCPR must be guaranteed without discrimination between citizens and aliens. However, some of the rights recognized in the Covenant are expressly applicable only to citizens (e.g., art. 25), while some apply only to aliens (e.g., art. 13).

⁸⁵ Loescher Gill and Laila Monahan, *Refugees and International Relations* (New York: Oxford University Press, 1989) p. 103

Domestic Legislation of Refugees in Kenya

Kenya, like every state Party to the 1951 Refugee Convention and the OAU Refugee Convention, is bound to uphold both treaties. Governments usually accomplish this task by setting up a domestic legal framework-such as domestic legislation that implements their treaty obligations. It is of little use to proclaim principles of refugee protection at the international level unless they can be meaningfully realized and enforced domestically. Louis Henkin observed that 'International law parallels and supplements national law... but it does not replace and indeed depends on national institutions.'⁸⁶ Thus, it is up to the various organs of state and local government to bring international commitments to fruition. Kenya has some law that is applicable to asylum seekers and refugees, but nothing that fully implements its treaty obligations. And, since 1991 Kenya has failed to fully implement the domestic laws that do exist except for their most restrictive aspects.

In fact it has been noted that the most significant problem faced in refugee assistance in Kenya is the lack of a clear refugee law governing procedures and policies relating to this group of people. This lack of a legal framework in which refugee issues can be addressed effectively means that refugees continue to be caught in a policy vacuum. It is not even clear who is responsible for refugees: the government, UNHCR or humanitarian/rights organizations. Refugees are unable to lay claim to any rights in Kenya under the current legal regime and there is therefore no effective redress for denial

⁸⁶ Louis Henkin, *International Law: Politics and Values* (Dordrecht: Martinus Nijhoff Publishers, 1995) p. 51

of rights of refugees. This section identifies the domestic legislation that refugees can resort to in times of trouble and evaluates its practice on the ground.⁸⁷

The constitution of any country symbolizes the hopes, values and aspirations of the people of that particular country. The current constitution of Kenya makes no direct reference to the issue of refugees and this would perhaps mean that the drafters of the constitution did not address themselves to the issue of refugees. This could be due to the fact that at independence, when the current constitution was drawn up, Kenya had negligible numbers of refugees. The only section in the current constitution that one may consider to indirectly relate to the issue of refugees, would be Chapter V relating to the Protection of Fundamental rights and freedoms of the individual.

Section 70 of the Constitution states that “every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex, subject to the respect for the rights and freedoms of others and for the public interest to each and all of the following namely:-

- (a) Life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, of expression and of assembly and association;
and
- (c) Protection for the privacy of his home and other property”⁸⁸

Being in Kenya, it is expected that a refugee would be afforded protection under this section in terms of the rights mentioned. However, full enjoyment of these rights is hampered by the absence of a national legal framework that specifies their rights,

⁸⁷ Guglielmo Verdirame, ‘Human Rights and Refugees: The Case of Kenya’ *Journal of Refugee Studies* Vol 12 no. 1, 1999 p. 57

⁸⁸ Government of Kenya, The Constitution of Kenya section 70

responsibilities and entitlements. Had Kenya adopted the Proposed New Constitution that was put to the referendum in November 2005, then refugee protection would have taken a big step forward as the draft constitution recognized the right to asylum and the right of non-refoulement. Further, the Proposed Constitution also stated that the Refugee Act would be enacted within a year of the New Constitution becoming law.⁸⁹ The New Constitution would have put Kenya ahead of her East African sisters having recognized refugee matters in her highest law.

Although Kenya is a signatory to international instruments regarding refugees, it lacks domestic refugee specific laws. Kenya's parliament has been debating a draft Refugee Bill since 1990. The latest version of the Bill obtained by Human Rights Watch is from 1994. The draft Bill falls short of international standards since it affords unfettered discretion to a single "Minister" in charge of refugee matters to receive recommendations for refugee status from an eligibility committee, to make the final decision on refugee status, and to hear appeals. The Bill requires asylum seekers to apply for status within seven days of their arrival, a limitation that is unreasonable. UNHCR has stated that "failure to submit an asylum request within a specified period should not lead to the exclusion of the request from consideration."⁹⁰ The draft Bill also requires refugees to live in refugee camps, without enacting exceptions to that policy in law. Other provisions of the draft Bill, such as the definitional sections, are unobjectionable and would implement Kenya's obligations under international law. Finally, the draft Bill does envisage establishing "transit centers" for asylum seekers while their applications are being considered. This provision, if implemented in accordance with human rights

⁸⁹ The Wako Draft, Chapter V

⁹⁰ UNHCR, Sub-Committee on International Protection, *Note on Asylum*, August 30, 1979, para. 16.

standards, might help to alleviate the incidents of rape and other abuses that have been shown here to occur during the first weeks an asylum seeker is in Kenya.

In the absence of refugee specific laws, the country resorts to the Immigration Act, Cap 172, Laws of Kenya and the Aliens Restriction Act Cap 173, Laws of Kenya in matters concerning refugees. The Immigration Act on its part deals with the issuing of entry permits or passes to people who wish to enter Kenya and also has provision for the deportation of persons found in the country illegally.⁹¹ The Act gives the Minister and Immigration Officers wide powers in dealing with applicants whether in the granting or denial of the permits or passes. This Act is unsuitable in the handling of refugee matters considering the circumstances under which refugees enter the country. There is usually no time to make applications and neither are there immigration officers at points of entry to ensure compliance with the Act. Further, even if there were officers at the borders it would be impossible to cope with applications from the large numbers that usually descend on the borders. The Act however, does recognize refugees as persons who are entitled to an entry permit but it does not provide for their rights and obligations within the country and hence is not suitable for their management. While the Immigration Act is meant to keep unauthorized persons from entering Kenya, the Aliens Restriction Act is supposed to do exactly what its title suggests, that is to "restrict" non citizens from entering Kenya.

As aliens, asylum seekers and refugees are also subject to the provisions of the Aliens Restriction Act (ARA). The ARA sets out to accomplish what its title implies-to restrict the presence and rights of aliens in Kenya. The Act gives "the Minister," during "times of war or imminent danger" the power to impose several types of restrictions on

⁹¹ The Government of Kenya, 'The Immigration Act' Sections 5, Chapter 172, Laws of Kenya

aliens.⁹² These include prohibitions on the entry of aliens to Kenya and requirements that aliens reside in designated areas.⁹³ Although the ARA was passed after Kenya became party to the Refugee Convention, there are no specific provisions for the status and rights of asylum seekers and refugees. The recent registration of non-citizens ordered by the Ministry of Immigration may be seen to be in line with the Aliens Act, which provides for the registration of Aliens in Section 3 (2). The ARA is supposed to take effect when there is a state of war between Kenya and another country or when an emergency situation or imminent danger arises.⁹⁴

Kenya's Immigration Act applies to all non-citizens, including refugees. The Act provides that all non-citizens who enter Kenya without a valid entry permit or pass are unlawfully present and subject to arrest and detention by immigration officers.⁹⁵ The Act describes a class of entry permit for individuals generally fulfilling the Refugee Convention definition (though not the OAU Refugee Convention definition) of a refugee.

A person who is a refugee, that is to say, is, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, unwilling to avail himself of the protection of the country of his nationality or who, not having a nationality and being outside the country of his former habitual residence for any particular reason, is unable or, owing to such fear, is unwilling to return to such country, and any wife or child over the age of thirteen years of such a refugee.

⁹² The Government of Kenya, The Aliens Restriction Act, Article 3, para. 1

⁹³ *Ibid.*, Article 3, para.1 (a), (c), (d)

⁹⁴ The Government of Kenya, The Aliens Restriction Act, Section 3

⁹⁵ The Government of Kenya, The Immigration Act, Para. 8, Para. 12

This provision, if administrative procedures were in place to implement it, would allow asylum seekers to apply for Class M entry permits from Kenyan immigration officers at entry points. However, there are no Kenyan immigration officers available to receive such applications either at the border or after an individual enters the country, even if she enters lawfully, for example with a tourist visa. As a result, regardless of what the law says, there is no way for a genuine refugee to ask for legal permission to enter or remain in Kenya as a refugee through the use of an entry permit. And, practically speaking, asylum seekers report to UNHCR in order to receive refugee status. Consequently, asylum seekers simply enter the country-at which point they are "unlawfully present" under the Immigration Act, and subject to arrest and detention.

Many are the times that refugees find themselves on the wrong side of these two Acts either because they lack Entry Permits as per the Immigration Act or are not within the camps as provided by Section 3 (c) of the Aliens Act which is what the government uses to restrict refugees to designated areas. Aliens who violate such orders are subject to a fine of Ksh.3,000 [U.S.\$38] and imprisonment not exceeding six months.⁹⁶ After being arrested, they can only be released upon the intervention of the UNHCR. The UNHCR's view is that the government should make the management of refugees more predictable and easier by passing the Refugee Bill (2003) which is before parliament. If enacted into law, the Refugee Bill will consolidate the management of refugee affairs under one Act.

Unlike the current non-refugee specific Acts that are used to manage refugees, the Bill defines a refugee broadly, incorporating both the 1951 and 1969 Convention definitions.⁹⁷ Further, the Bill gives the Minister in charge of refugees, the discretion to

⁹⁶ Ibid, Article 3, para. 3.

⁹⁷ Sections 3 (a) & (b)

declare other persons to be refugees⁹⁸ and also states that even persons who have entered the country illegally but wish to be recognized as refugees, may make their intentions known through an application to an authorized officer.⁹⁹

The Bill also establishes the Office of Commissioner for Refugees whose duties amongst others will be to recognize persons as refugees and to coordinate all matters relating to the welfare of refugees.¹⁰⁰ However, in all his activities, the Commissioner will be answerable to the Minister in Charge of Refugee affairs. The Bill further provides for the rights and duties of refugees¹⁰¹ and states that refugees shall be entitled to and be subject to the obligations contained in the 1951 and 1969 Conventions which would include freedom of movement, employment, non refoulement etc and be obliged to conform to the laws of the country of asylum and abstain from activities that would cause tension amongst member states of the OAU (now AU).

Pre-1991 Refugee Status Determination in Kenya

Before 1991, the Kenyan government used an ad hoc administrative refugee status determination (RSD) system to recognize refugees, despite the fact that it lacked domestic laws providing for their rights and status. Asylum seekers were interviewed by an Eligibility Committee, made up of representatives from the Ministry of Home Affairs, the Immigration Department, and UNHCR observers. The Committee usually heard individual cases and applied the Refugee Convention definition, as provided for in the Class M Entry Permit category, but the Committee did not apply the OAU definition.

⁹⁸ Section 3 (e)

⁹⁹ Section 3 (d)

¹⁰⁰ Section 7 of the Bill

¹⁰¹ Section 15 of the Bill

Most newly arriving refugees were processed through a reception center established in October 1981 at Thika,¹⁰² a town near Nairobi.¹⁰³

Conflict in Uganda, Somalia and Sudan brought large numbers of refugees to Kenya in the early 1990s. Kenya hosted 14,400 refugees in 1990, but as a result of the increase in regional conflicts, the number had risen to 120,000 by 1991. Just one year later, in 1992, 401,000 refugees were living in Kenya.¹⁰⁴ The large numbers overburdened the Eligibility Committee, causing Kenya to ask UNHCR to set up refugee camps. UNHCR and international NGOs were needed at the time since the large numbers of arrivals far outstripped the government's ability to ensure their well being. While there was an obvious need for an emergency response from the international community, the agencies involved usurped Kenya's refugee administration almost completely. This all-or-nothing approach scrapped the positive aspects of Kenya's pre-1991 refugee policy, including, for example, the laissez-faire approach by which refugees were allowed to locally integrate, and enjoy rights to work, education and freedom of movement.¹⁰⁵ Most fundamentally, the Kenyan government's pre-1991 role in refugee status determination was surrendered to UNHCR and quickly forgotten.

Post-1991 Refugee Status Determination in Kenya

Once UNHCR took over status determinations in Kenya in 1991, the entire system changed. UNHCR contracted with its then implementing partner, Jesuit Refugee

¹⁰² The reception center was used by the Kenya government from 1981 until April 1995. Afterwards in 1996, it was briefly re-opened to screen refugees and asylum seekers arrested during an immigration swoop in Nairobi

¹⁰³ *Report of the United Nations High Commissioner for Refugees*, General Assembly Official Records: Thirty-seventh Session Supplement No. 12 (A/37/12), United Nations, New York, 1982, para. 114.

¹⁰⁴ UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (Oxford: Oxford University Press, 2000) pp. 311-313

¹⁰⁵ Guglielmo Verdirame, 'Human Rights and Refugees: The Case of Kenya' op. cit., p. 57

Service (JRS), to create a status determination center in Nairobi. After the status determination interview, each asylum seeker would either receive refugee status and be directed to a camp, or in exceptional cases receive permission to remain in Nairobi. Alternatively, the asylum seeker would be rejected and instructed to depart from the country.

The status determinations run by JRS were a problematic delegation of the responsibilities of Kenya and UNHCR to an NGO. The process was also criticized by refugees. However, the most problematic aspect of the system was that the government of Kenya ceased to be actively involved in recognizing and protecting refugees in its own territory. The government's acknowledgement of its duties towards refugees was eroded to the point that in 1998 it refused to recognize the UNHCR protection letters issued by JRS.¹⁰⁶ Thereafter, the government has engaged in an alternating policy of benign neglect and open hostility towards refugees and the documents recognizing their status, granted under the authority of UNHCR.

In December 1998, JRS determined that it was unable to follow its mission statement while running status determinations. The NGO also decided that it would no longer perform a function that was, in fact, the responsibility of the Kenyan government and of UNHCR. In the absence of governmental willingness to take over, UNHCR began running the determinations in January 1999.

In summary, Kenya hosted approximately 245,000 refugees at the end of 2001. It has no refugee law and consequently, no formal asylum procedure. The detention of asylum seekers occurs on an *ad hoc* and incidental basis, and is common. The detention of asylum seekers takes place at two levels. First, detention occurs at the border points,

¹⁰⁶ Ibid, p. 58

including airports, when asylum seekers are physically crossing the Kenyan border into the country. Second, detention occurs when asylum seekers are arrested within the country, especially in urban areas, for lack of documentation declaring their status. Periods of detention vary greatly. Before they are formally charged in court, asylum seekers are detained at police stations for periods of between one day to a couple of months. This detention is for any charge, mostly illegal presence in Kenya as a result of a lack of documentation. After trial and conviction, asylum seekers can be imprisoned for one to twelve months. As with the decision to detain, the periods of detention are determined ad hoc and are not based on any particular set of factors.¹⁰⁷

However, as a Kenyan NGO explained, because the government does not actually issue any documents, there is no basis for this type of arrest. When arrested, asylum seekers are usually brought before the courts and formally charged with immigration offenses. More often than not, they are sentenced to short periods of imprisonment and thereafter, deported to their home countries. There is an independent review of the decision to detain but only at the intervention of NGOs. At both levels of detention, the decision to detain is made by the Kenyan police and Immigration officials, and is not based on any particular set of factors. An appeal of the decision to detain can only happen at the intervention of lawyers, which NGOs, such as the Refugee Consortium of Kenya (RCK), are able to do if information regarding the arraignment is timely received.¹⁰⁸

The Consequences of Lacking Refugee Policy in Kenya

Despite having no refugee specific legislation, Kenya continues to welcome refugees into its territory and to follow the provisions of the 1951 and 1969 conventions

¹⁰⁷ Guglielmo Verdirame, 'Human Rights and Refugees: The Case of Kenya' op. cit., p. 57

¹⁰⁸ Kenya Report of the Refugee Consortium of Kenya available at http://www.humanrightsfirst.org/refugees/reports/cntry_rev_02/Kenya.pdf

particularly with regard to non-refoulement and the granting of asylum.¹⁰⁹ Kenya doesn't have a "very old" refugee history and the first flow of refugees is officially reported to have arrived in Kenya in or about 1969 fleeing the Sudanese civil war. This coincided with the opening of the Nairobi UNHCR office. However, this was only an official acknowledgement of the presence of refugees, as there existed some Rwandese and South African refugees.¹¹⁰

In the years before 1991 when large influxes of refugees descended on the country from Somalia and Ethiopia, the number of refugees was relatively few and the policy of the government then encouraged integration thus allowing refugees to move from place to place in search of employment.¹¹¹ However, with the increase of refugees in the country, the government's policy of integration was changed to encampment and thus most refugees today are hosted in camps which of course limits their freedom of movement and other rights like looking for employment.

The location of the camps and the situation in the camps themselves have been criticized by Human Rights Watch for being in the most inhospitable desert areas of the country and of being notorious for extreme heat, lack of vegetation, scorpion infested and their close proximity to Somalia and Ethiopia from where most refugees in the camps emanate from. The rations in the camps are also said to have fallen below UNHCR's and World Food Programme (WFP) recommendations.¹¹² Perhaps this critic should encourage the Kenya government to think of an alternative camping site for the refugees where they can engage in subsistence agricultural activities like happens in Uganda and

¹⁰⁹ Nkere Ntanda Nkingi: *The United Nations High Commissioner for Refugees & The Refugee Problem in Africa; A Case Study for Kenya* (Dissertation) UON. 1985-86

¹¹⁰ Ibid

¹¹¹ During this time a number of refugees were allowed to work as teachers, doctors etc

¹¹² See Human Rights Watch article on "*Why Refugees leave Kenya's Refugee Camps*"

Tanzanian camps. This is not to say that this study supports the encampment policy which it is admitted breaches the basic rights of refugees in terms of freedom of movement and providing opportunities to look for jobs but since the government policy appears to be to stick to the camp policy, then it would be a way of making the best out of a bad situation especially in terms of helping the refugees to become more self reliant. The other reasons why the government should relocate the camp is in consideration of the security of the Ethiopian and Somali refugees who continue to be easy prey to their rivals across the border.¹¹³

The Kenyan refugee camp system has also been criticized for compromising refugee rights.¹¹⁴ Jennifer Hyndman & B.O. Victor Nylund are of the view that the human rights of refugees are being exchanged for their temporary asylum in camps. The writers' argument is that suspension of the convention requirements may be forgiven in cases of temporary asylum but how temporary is temporary when refugees lounge in camps for periods in excess of five years. They argue that the suspension of certain human rights of refugees such as the freedom of movement, right to employment and the right to education cannot continue indefinitely. The writers further say that Kenya has chosen not to process convention refugees, as they would then compete with Kenyans on the job market.

It has also been reported that Kenya has on one occasion rejected refugees at its border contrary to its commitment under the OAU Convention. The above writers say that former Kenyan Head of State, President Daniel Arap Moi's government in 1996

¹¹³ See report on attacks and deaths of refugees in the Kakuma and Dadaab camps in the above referenced article by Human Rights Watch

¹¹⁴ See Jennifer Hyndman & Bo Victor Nylund in their article entitled *UNHCR and the States of Prima Facie Refugees in Kenya* Vol. 10 No. 1/2 1998 International Journal of Refugee Law Pg. 38

stopped several thousand potential asylum seekers from Somalia at the border insisting that the UNHCR should assist those persons as internally displaced persons.¹¹⁵

The security situation in the camps has also been criticized as being deplorable with reports of banditry, rape and violence almost on a daily basis.¹¹⁶ UNHCR has had to make security arrangements within the camps by paying policemen to boost security.¹¹⁷

¹¹⁵ Ibid p. 37

¹¹⁶ Ibid p. 41

¹¹⁷ Interview with UNHCR Public Information Officer, E. Nyabera, on 14/7/06

CHAPTER FOUR

AN ANALYSIS OF THE REFUGEE CRISIS IN KENYA AND THEIR RESETTLEMENT IN EUROPE

Introduction

Kenya is situated in a region where several conflicts have led to the highest number of uprooted people in the world. Some estimates speak of around 10 million displaced people; in Kenya alone there are 250.000 refugees from other countries like Somalia, Sudan, Ethiopia and the Great Lakes Region. The conflicts are looming in neighboring countries such as Sudan, Somalia, Rwanda, Democratic Republic of Congo, Ethiopia and so on.¹¹⁸ Due to the high number of refugees, the Kenyan government decided to have them in camps and not to offer them a possibility of local integration. As a consequence, thousands of people have lived in camps for more than 15 years. The Dadaab camp at the border to Somalia in a semi-arid area, was established in 1991 hosting 130 000 refugees, mainly Somalis. According to the United Nations High Commission for Refugees (UNHCR), the lack of employment possibilities leads also to psychosocial stress and high numbers of suicides.¹¹⁹ Instability and ongoing conflicts in Somalia make it impossible for Somali refugees to return. Since a change in the situation is not to be foreseen, the only durable solution for these refugees is resettlement to third countries.

This chapter begins by examining the demerits of flocking refugees in refugee camps. Then it looks at the process of resettlement in Kenya, and critically unveils the

¹¹⁸ Bascom J., *Losing Place: Refugee Populations and Rural Transformations in East Africa* (Oxford: Oxford University Press, 1998) p. 62

¹¹⁹ UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (Oxford: Oxford University Press, 2000) p. 47

implications of durable solutions of the refugee problem in Kenya but focuses on the resettlement of these refugees to third countries.

Implications of Camp Confinement Policies in Kenya

As earlier noted, with very high populations of displaced people from other countries resorting to Kenya, Kenya adopted policies that require most refugees to live in refugee camps. These policies are decided and implemented by the Government in collaboration with the UNHCR. Refugees living in urban areas are violating this requirement. As a result, such refugees are vulnerable to human rights abuse such as police harassment, arrest, detention, and even refoulement after being charged with illegal entry. On the other hand, the camps succumb to dangerous conditions that risk the lives of the refugees living there. This section identifies the demerits of camps and suggests that resettlement is the key remedy to refugees living in refugee camps in Kenya.

Kenya's refugee camps are located in some of the most inhospitable desert areas of the country. The camps are notorious for their extreme heat, lack of vegetation, scorpion infestation, and proximity to Kenya's borders with Somalia and Sudan. In addition, rations in Kenya's two camps-Dadaab and Kakuma-have fallen well below UNHCR's and the World Food Programme's (WFP) recommendations. WFP and UNHCR recommend that refugees should receive 2,100 kilocalories per day, although this amount may be reduced when refugees have access to other means of survival.¹²⁰ WFP was distributing between 1,400 and 1,600 kilocalories in Kakuma camp and 1,400

¹²⁰ WFP/UNHCR, *Guidelines for Estimating Food and Nutritional Needs in Emergencies* (Geneva: UNHCR, 1997) p. 86

in Dadaab in the first four months of 2002.¹²¹ In February 2002, the WFP lacked the funds and food donations necessary to meet the nutritional requirements of refugees. This lack of food or money to buy it caused the WFP to warn that ‘almost 220,000 refugees in Kakuma and Dadaab refugee camps in Kenya face malnutrition and a wider humanitarian crisis unless urgent contributions are received.’¹²²

Refugees in both Kakuma and Dadaab have a difficult time finding enough firewood for their cooking and sanitary needs. UNHCR has put innovative programs in place to try to supply the needed wood for refugees first in Dadaab and later in Kakuma camp, but they are falling far short of their targets.¹²³ In early 2002, the UNHCR was only able to supply 30 percent of the refugees' firewood requirements, causing refugee women and girls to walk long distances to secure the necessary wood.¹²⁴ The need to travel such long distances alone or in small groups puts women and girls at great risk of sexual violence.¹²⁵ The collection of wood has also caused numerous conflicts with the communities surrounding the refugee camps¹²⁶ which led to a court injunction barring the UNHCR and NGOs operating in Dadaab camp from collecting firewood in Kenya's Garissa district.

Both Kakuma and Dadaab camps have serious law and order problems, with incidences of violence occurring regularly in and near to the camps.¹²⁷ In fact, one paper

¹²¹ BBC Monitoring International Reports, ‘Kenya: About 220,000 Refugees Face Malnutrition Threat’ February 23, 2002

¹²² Ibid

¹²³ UNHCR Evaluation and Policy Analysis Unit, *Evaluation of the Dadaab Firewood Project*, (Kenya: UNHCR, 2001) p. 7

¹²⁴ Kenya Television Network, Interview with NGO personnel, Kakuma camp, Kenya, April 23, 2002

¹²⁵ Friedman A., *Rape and Domestic Violence: The Experience of Refugee Women* (USA: Haworth Press, 1992) p. 79

¹²⁶ UNHCR, ‘UNHCR deplores killing of four Somali refugees in Mandera’ UNHCR Press Release, May 16, 2002

¹²⁷ U.S. Department of State, *Country Reports on Human Rights Practices*, 2001 para 16

in UNHCR's *New Issues in Refugee Research* states that it is impossible to quantify the amount of violence which takes place in and around Kenya's refugee camps. But that incidents involving death and serious injury take place on a daily basis.¹²⁸ The Sudanese rebel group the SPLA influences the governance of Kenya's camp, and was known to operate in Kakuma. The presence of SPLA leaders in the camps may at times be linked to camp violence. In 1999 for instance, the murder of an SPLA commander in Chukudum, Eastern Equatoria, southern Sudan, spurred riots in Kakuma that left five refugees dead and two hundred injured.¹²⁹

On the other hand, the presence of Ethiopian security and former Derg officers in Kenya's refugee camps is another source of fear. It is suspected that some people disappear after they are being taken from Nairobi and from the Kakuma camp by Ethiopian security. This may be due to political reasons where a refugee is taken back to his country to face charges that facilitated his flight in the first place. In both places, Kakuma and Dadaab, there are soldiers and security agents. However, these security agents are not effective since they take care of other security matters such as cattle raiding instead of tending to refugees.

The location of the camp is very insecure. It is close to three borders. Ethiopian government forces have been present in the camp. Many former Ethiopian officers are vulnerable. The SPLA also enters the camp. There are noticeable changes in the camp composition based on how the fighting is going in the south in Sudan. New refugee arrivals from Somalia were encamped so near to the Somali border that two women and two children were killed when fighting broke out in Bulo Hawa, Somalia in 2002. The

¹²⁸ Jeff Crisp, 'A State of Insecurity: the Political Economy of Violence in Refugee-Populated Areas of Kenya' *Working Paper No. 16*, December 1999 p. 2

¹²⁹ BBC Monitoring Service, 'Rival Groups Turn Refugee Camps into Battleground' February 1, 1999

insecurity in Kenya's camps does not only come from proximity to the border, rebel groups and the work of security agents-ordinary crime also takes its toll. Banditry, property destruction, and violent clashes between the local population and refugees are common, and UN and government sources allege that small arms traffickers operate in Dadaab camp.¹³⁰ In addition, sexual violence is an ongoing problem. Refugee women reported seventy incidents of rape in Dadaab in the first eleven months of 2001, according to UNHCR. In Kakuma, nineteen cases were reported in the first six months of 2001.

While some refugees are afraid of conditions in the camps because of generalized insecurity, others have individual reasons for fearing the camps because of their ethnicity or their previous political or religious affiliations, or those of family members, make them targets for ongoing persecution. The story of one refugee who had been plagued with insecurity in the camp illustrates how the presence of arms, politically- and ethnically-based hostility, and inadequate law enforcement can create a deadly combination for some refugees:

‘We came to Dadaab camp in 1992, but we faced the same problem there as we did in Somalia. We come from a minority tribe called the Geri tribe. My father was a leader for our tribe and was always working for the rights of the Geri. In 1999 my father and uncle were shot and killed in Dadaab camp. Two others were seriously wounded. We were always reporting on our security problems before this happened, and after it happened they finally believed us. Because of these problems, they transferred us to Nairobi where the UNHCR looked at our situation and they decided to send us to Kakuma camp. However, the same people have come after us here. I was attacked first in 2000 and most recently when I went to get medical treatment at the clinic in June 2001 I was attacked again. After these incidents, every time I need to pass out of the protection area for medical treatment I worry . . . will I come back to my family? We have recently had news that another of our relatives was attacked and shot in Dadaab. They have started to hunt us down wherever we are in Kenya. I am not a free person

¹³⁰ Horst Cindy, ‘Vital Links in Social Security: Somali Refugees in the Dadaab Camps, Kenya’ *New Issues in Refugee Research*, No. 38

here. All the time, I just sit here. It is not good for your health; it is like someone in prison.'¹³¹

Refugees often bring the prejudices and conflict plaguing their home countries with them to refugee camps. The resulting violence and discrimination can sometimes make life in the camps unbearable for at-risk or minority groups. Sudanese who are aligned to the "Arab" population [referring to northern Muslim Arabic-speaking Sudanese who control the government of Sudan] are assaulted for being anti-SPLA. Those [southern Sudanese] believed to be against the SPLA are attacked and some have even been killed. Young Sudanese girls who refuse arranged marriages are also at risk of violence and shunning. Rwandan refugees, particularly the Tutsi, have suffered from harassment and stonings in Kakuma camp. Any refugees with mixed marriages suffer a lot of problems, especially Rwandan Hutu with Tutsi. There are inter-clan tensions and violence amongst the Somalis, and the Banyamulenge face discrimination from other Congolese.

Interviews with refugees demonstrate the accuracy of this assessment. For example, discrimination against Banyamulenge and between Hutu and Tutsi were often mentioned. A Congolese man from the Banyamulenge ethnic group had been placed in the protection area of Kakuma camp because he had been violently attacked by other Congolese living there.¹³²

As mentioned above, Sudanese girls who refuse familial instructions to marry are often at risk in Kenya's refugee camps, where they can be easily found and abducted or otherwise forced to go through with the marriage. Awut, a sixteen-year-old Sudanese girl

¹³¹ Kenya Television Network, Interview with one of the Refugees at the Kakuma Camp, December 15, 2005

¹³² Interviews carried out with refugees living in Kakuma camp as respondents on 16-20 January 2007.

fled Sudan in 1992. Awut was placed in the protection area of Kakuma when she refused to marry a man in Sudan who paid 150 cows to her uncle who moves between Kakuma and Sudan, for her dowry. She said,

I don't want to get married. I don't have money. We just have nothing. I have been in this place [Kakuma protection area] since May 10, 2000. My uncle is so angry with me he beat Mom until she was admitted to the hospital [in Kakuma camp]. He tried to catch me when I went to school. I am staying here because I have no place to go. I cannot go to school when I am here. I am missing my school so much. I cannot ever leave this place to go to school because my uncle is looking for me. I cannot walk outside the fence. He does not know that I am here.

Finally, refugees known to be or suspected of being homosexual are also at particular risk of physical and sexual assault. In Kenya, secondary education is provided in the camps.¹³³ However, refugee youth in Kenya who fled from the Great Lakes region are reluctant to move to the camps because they want to continue their education in French. In addition, Ethiopian refugees in Kenya who were university students in Addis Ababa were distressed by the fact that they had missed at least a year of their university education while living in the camp. Most of the Ethiopian university students had been informed by UNHCR that they had been accepted to study at the University of Nairobi and were waiting to leave to take up their places.

Some refugees with medical problems never consider going to a camp, as they believe they must live close to hospitals and that access to medicines is only available in the city. This is true for many HIV-positive refugees, and for refugees with other serious conditions such as physical handicaps, tuberculosis, or heart disease.

UNHCR and camp authorities sometimes send refugees in need of medical care to Nairobi. When a particular refugee cannot be adequately treated in one of the camps,

¹³³ Zimmerman W., 'Migrants and Refugees: A Threat to Security?' in M. Teitelbaum, and M. Weiner (eds), *Threatened Peoples, Threatened Borders: World Migration and U.S. Policy* (New York: W.W. Norton, 1995) p. 13

UNHCR and the Kenyan governments officially recognize that this is a legitimate reason for a refugee to leave the camps and seek treatment in the city. Some refugees believe that their health is so much at risk in the camps that they find a way to leave without permission.¹³⁴

Resettlement in Kenya

Resettlement offers a solution to immediate protection concerns in the country of first asylum. It is meant to offer lasting protection to refugees, particularly those unable to pursue either of the two other recognized “durable solutions:” local integration or voluntary repatriation. Many resettlement countries have special categories used specifically for emergency cases or particularly vulnerable persons, Refugee resettlement, is an important component of European foreign and domestic policy. This tradition effectively began when those who came to the British colonies fled England seeking a safe haven from religious persecution. Since then, the United States has been involved in a number of major affirmative resettlement efforts. These efforts predate not only the Refugee Act of 1980 but also both World Wars. Over the last fifty years, resettlement efforts have focused on those fleeing Communism, but even in a post-Cold War era, refugee crises will continue to produce individuals in need of relocation.¹³⁵

The number of refugees and displaced persons requiring international assistance and protection are higher today than ever before, demonstrating the need for a continued, generous humanitarian policy. The UNHCR estimates that in 2006, there were approximately 29 million people worldwide to whom the agency provided assistance.

¹³⁴ Interviews carried out with refugees living in Kakuma camp as respondents on 16-20 January 2007

¹³⁵ Louis Holborn, *Refugees: A Problem of our Time* (New Jersey: The Scarecrow Press, 1975) p. 9

These included about 16 million refugees who had fled their home countries because of a well-founded fear of persecution.¹³⁶

Also included are others in their home country who were assisted and protected under the good offices of UNHCR. These estimates do not include numerous individuals who have left their countries because of other reasons natural disasters or severe economic deprivation, for example. Also not counted are millions of internally displaced persons who do not receive assistance from UNHCR.

International crises requiring large-scale resettlement are episodic in nature, and not all crises require third-country resettlement. There is no direct relationship between the number of refugees who require resettlement and the total number of worldwide refugees. Most refugees today remain in their own country, in a neighboring country, or, after some period of time, can return to their countries of origin. In 1980, for example, a far higher percentage of refugees worldwide required resettlement than today because of the reluctance of Southeast Asian countries to receive refugees for first asylum without a pledge of future resettlement.¹³⁷

In Kenya, a person gets referred for resettlement after he is recognized as a refugee under UNHCR mandate. Secondly, the person must be found being in need of resettlement under UNHCR criteria. If these two conditions are met, UNHCR will then refer the refugee to an appropriate country for resettlement consideration. According to UNHCR Kenya, the term "refugee" applies to any person who has fled his/her country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is unable or,

¹³⁶ UNHCR 2006

¹³⁷ Humes Gregory, *Erosion of Refugee Rights in Africa* (New York: St. Martins Press, 1997) p. 104

owing to such fear, is unwilling to return to that country. In addition, any person who meets the definition of the OAU (current AU) convention may be of concern to UNHCR under its mandate. The OAU convention defines a refugee as a 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 habitual place of residence in order to seek refuge in another place outside his country of origin or nationality".¹³⁸

Although the government of Kenya has yet to enact national refugee legislation, Somalis and Sudanese refugees are granted prima facie refugee status, and can turn directly to the camps for protection and assistance. For all other nationalities, UNHCR officers must examine refugee claims individually. Individuals not in camps can register for an interview at UNHCR Nairobi. Persons identified as refugees receive a refugee document and are referred to a camp (unless this is likely to result in security/protection problems). A person who wants to appeal the decision should contact the local UNHCR office.¹³⁹

Only refugees with special needs who meet UNHCR resettlement criteria will be considered for resettlement. UNHCR's focus is on identifying cases facing exceptional security concerns in Kenya (threats to life, detention, deportation), persons with special needs (women-at-risk, victims of torture, disabled refugees and certain medical cases), and family reunification (spouses, minor children and other persons directly depending on the principal applicant). While a refugee may fall under one of these categories, it is often possible and preferable to resolve the refugee's problem by means other than

¹³⁸ *The OAU Convention Governing Specific aspects of Refugee Problems in Africa* September 10, 1969

¹³⁹ Cindy Horst, *Transnational Nomads How Somalis Cope With Refugee Life in the Dadaab Camps of Kenya* (New York: Berghahn Books, 2006) p. 17

resettlement such as voluntary repatriation or local integration. UNHCR refers individuals for third country resettlement on an exceptional basis only. Less than 1 % of the refugee population is referred for resettlement. The decision about the referral is made by the local UNHCR office and UNHCR Washington has no authority over the decisions rendered.¹⁴⁰

There is no application process for resettlement. In order to qualify for a UNHCR referral, individuals must be determined to be in need of resettlement. A refugee who has urgent protection needs should meet with local UNHCR staff to discuss his/her situation. UNHCR staff will then review the case and if no other durable solution can be found, the case will be assessed for resettlement referral. The refugee will be informed in writing about the decision. There is no formal appeal process for a negative assessment. However, if the refugee's situation changes he/she may bring the new facts to the attention of UNHCR officers who may again review the case. UNHCR will refer eligible persons to one of several resettlement countries (Australia, Canada, Finland, USA, etc). Each country of resettlement has its own policies, criteria and practices that a refugee must follow before he or she can be resettled. The final decision on resettlement will be made by a resettlement country, not by UNHCR.¹⁴¹

The total number of refugees in the four camps in Kenya is more than 250,000. Of these, nearly half would be prospective candidates for resettlement because they either have no prospects for other durable solutions and/or are in need of protection that the resettlement option offers. Yet, the international community's resettlement efforts, as currently constructed, are designed to consider no more than about 25,000 of these

¹⁴⁰ UNHCR, Resettlement Handbook, UNHCR, Geneva, Chapter 7, www.unhcr.ch, 2004

¹⁴¹ Cindy Horst, *Transnational Nomads How Somalis Cope With Refugee Life in the Dadaab Camps of Kenya* (New York: Berghahn Books, 2006) p. 17

refugees, including the approximately 12,000 Somali Bantu in Kakuma, Kenya.¹⁴² There were encouraging indications that the U.S. State Department's Bureau of Population, Refugees and Migration (PRM) is investing in and otherwise providing leadership in the development of expanded capacity in East and West Africa to identify and process refugees in need of resettlement. Increased funding has been provided by PRM to UNHCR, earmarked for resettlement. Additionally, PRM staff in the regions visited are encouraging UNHCR to more aggressively pursue the resettlement option for more refugees. Also, PRM plans to convene a training program in East Africa targeting NGOs, which will focus on resettlement, with a view to developing additional referrals from the NGO community. There were indications, too, that UNHCR recognizes the need for expanded resettlement-related infrastructure in East and West Africa.

UNHCR plans to create regional resettlement hubs in Nairobi and Accra, for instance, to provide guidance and support to UNHCR protection and resettlement staff in countries of asylum. However, the initiatives planned and underway to increase resettlement opportunities are proceeding at a very slow pace. On the ground, in the camps, there was little or no evidence of expanded capacity or infrastructure for identifying and processing refugees for resettlement.

One exception to this was the effort underway on behalf of the Somali Bantu, an operation that is financed largely by PRM. UNHCR personnel in Kenya characterized the Bantu resettlement effort as being on a "fast track." Even the Somali Bantu resettlement effort, though, has been inflicted with inordinate delays in implementation. This group was first considered for resettlement more than two years ago, but processing was

¹⁴² Bijleveld A., *Displacement in Africa: Refuge, Relief and Return* (Oxford: Oxford University Press, 2002) p. 90

originally put on hold in order to more expeditiously process the Sudanese youth. This was a clear indication that the infrastructure necessary to meet demands was inadequate at that time. Most recently, processing of the Bantu was suspended due to threats by anonymous sources against American workers in Kakuma.¹⁴³

PRM's more recent earmarking of increased funds to support resettlement efforts in East and West Africa are not having the desired effect, largely due to UNHCR budget cutbacks and inconsistent implementation of UNHCR resettlement objectives. For instance, since the original UNHCR Nairobi budget for 2003 provided for the resettlement of 10,000 refugees. Later, UNHCR imposed cuts to Nairobi's budget, resulting in a scaling back of resettlement plans to just 4,000 refugees. Then, with the infusion of additional PRM funds earmarked for resettlement, UNHCR Nairobi adjusted its resettlement plans back to the original goal of 10,000.

Consequently, whereas PRM's intention was to invest in expanded resettlement capacity in Kenya, UNHCR budget cuts meant that PRM's funding only allowed UNHCR to maintain previous resettlement objectives. Some UNHCR personnel or its implementing partners are not conversant with resettlement guidelines and implementing partners are operating on the assumption that resettlement is not even an option for whole groups of refugees, even those who are considered at-risk and/or have been in camps for ten years and more without prospects for other durable solutions. Referrals of compelling, at-risk cases have been made to UNHCR for resettlement consideration, but that no follow up was evident. There are no UNHCR resettlement officers in any of the camps.¹⁴⁴

¹⁴³ Ibid., p. 91

¹⁴⁴ Agier, M., 'Between War and City: Towards an Anthropology of refugee Camps' *Ethnography* Vol. 3, no. 3, 2002 pp. 317-342: 325

The lack of adequate registration of refugees is another barrier to expanded use of resettlement observed in the camps. There are indications that UNHCR recognizes this deficiency and is taking steps to implement viable registration systems. In the current absence of adequate registration systems, comprehensive pursuit of resettlement consideration for more refugees is limited. Security-related protocols and procedures have created significant delays and have further eroded responsiveness in addressing the needs of the relatively few refugees in East and West Africa currently being considered for resettlement in the United States. Background checks conducted by the U.S. government have been inordinately slow, and for some refugees no disposition is received.

Unaccompanied refugee minors are not being considered for resettlement, even when tracing efforts are exhausted and there are no prospects for repatriation or local integration. Unaccompanied minors (commonly referred to as “separated” minors) identified by UNHCR are not being considered for resettlement instead the UNHCR has focused its efforts primarily in two areas: developing and monitoring “foster care” arrangements with refugee families in the camps and pursuing tracing for relatives in the country of origin and country of asylum. Resettlement to a third country has not been considered, even for those separated minors for whom tracing efforts are either exhausted or are inconclusive after two years and have no prospects of returning to their home countries.¹⁴⁵ The UNHCR and implementing partners at the local and camps are not only limiting the pursuit of durable solutions to repatriation, but also determine that “foster care” arrangements in the camp are a viable and durable solution. Various program

¹⁴⁵ Jill Rutter, *Supporting Refugee Children in 21st-Century Britain: a Compendium of Essential Information* (Trent: Trentham Books, 2002) p. 8

administrators and line staff are unaware that the resettlement option is applicable and available to separated minors or that they do not understand how resettlement could be in the best interest of the minor.

In the Kakuma camp, also home to thousands of separated minors, Lutheran World Federation (LWF) is the UNHCR implementing partner for services and programs for separated minors. LWF staff in the camp focus primarily on developing and monitoring “foster care” arrangements in the camp and attempting to facilitate tracing of relatives. LWF staff are familiar with the resettlement option, having fairly recently experienced the resettlement efforts targeting the Sudanese youth. Consideration for resettlement for other minors in the camp, however, has been limited to minors who have identified relatives in a third country.

Best interests assessments of separated minors (unaccompanied refugee minors) are either not being conducted at all or are limited in scope. In Kakuma, best interests assessments are being conducted by the implementing partner, the staff of which are in regular communication with UNHCR protection staff. However, the scope of these assessments limit consideration of durable solutions to repatriation if tracing of a relative is successful and to resettlement only in circumstances involving a known relative in a third country.

The quality of life for refugees in camps is deteriorating and a growing sense of hopelessness is taking hold, especially among refugees who have languished in these camps for years and see no alternative prospects on the horizon. In each of the camps visited, there are adverse effects of budget cuts recently implemented by UNHCR. In the Kakuma camp, for instance, these cuts have resulted in food rations being scaled back

from the previous quantity of 2100 calories per day per refugee to 1400 calories per day. Likewise, water rations in the camp have been reduced by more than 20%. These conditions are made worse when refugees are unable to engage in self-supporting efforts, such as growing crops or running small businesses. This was the case in Kakuma. In Guinea, UNHCR budget cuts resulted recently in a temporary moratorium on repatriation efforts on behalf of Sierra Leonean refugees. Many of the refugees encountered by the delegation in each camp visited expressed apprehension about the deteriorating conditions of camp life. The effects of the deteriorating quality of life were exacerbated for some refugees by the perceived lack of durable solutions. Many of the refugees have been in camps for many years and felt that as the years wore on, their prospects for a durable solution faded. There are those who had attempted to return home, believing that changed conditions would allow for their safe return, only to be forced to flee again. These refugees were very skeptical about future repatriation prospects. In the Kakuma camp a number of refugees who had been there for many years voiced bewilderment over their own lack of resettlement opportunities, while they saw others in perceived similar circumstances had been resettled.

Protective services and specialized programs in the camps are available for vulnerable refugees, yet these are limited in scope and capacity. UNHCR and NGOs are supporting and operating programs for refugees in need of protective services, refugees with mental health problems, separated minors, women-at-risk, and others. The refugees in these programs expressed gratitude for the services and indicated that the programs provide them a place of refuge and support in their times of crises. Yet, there are indications that these programs are limited in their attempts to fully meet the refugees'

needs. The apparent capacity limits in the programs by the providers resulted in delays in service delivery or no services at all. Also, some of the refugees participating in these programs voiced concern about their future once the services were no longer available. Additionally, there are cases of particularly vulnerable refugees in need of resettlement that are referred for consideration by protective services staff, only to be told that such an option was not available or heard nothing.¹⁴⁶

Impact of Refugee Resettlement

When resettlement efforts are undertaken as part of a comprehensive protection and durable solutions strategy, a number of benefits are to be gained. This is what is referred to as the strategic use of resettlement. In other words, the use of resettlement fosters benefits, directly or indirectly, to the refugees being resettled.¹⁴⁷ This is particularly relevant in protracted refugee situations where resettlement could be used to enhance opportunities for other durable solutions. So too, benefits may accrue to the host State, other States or the international protection regime in general. This allows for the use of resettlement as a solution for some refugees, while at the same time – for instance – encouraging host countries to provide protection space for a larger number of refugees or improve the asylum conditions and opportunities for local integration, or achieving more equitable responsibility sharing and improving the system of refugee protection in general. On a regional basis, another consideration is to explore ways to harmonize durable solutions strategies and the role of resettlement, as well as resettlement policies

¹⁴⁶ Interviews carried out with refugees living in Kakuma camp as respondents on 16-20 January 2007

¹⁴⁷ B. S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems', *New Issues in Refugee Research*, Working Paper No. 2, (UNHCR, Geneva, 1999) p. 2

for similar refugee populations, as means to mitigate any negative impact (e.g. secondary movements) that resettlement might otherwise have.¹⁴⁸

While the strategic use of resettlement can be promoted by a single resettlement State, coordination with a number of resettlement countries is likely to maximize benefits. Such coordination may involve negotiation of mutually agreeable arrangements between the international community and the State of asylum, possibly requiring a multi-year commitment by the international community to sustain the burden-sharing, as well as possible assistance to further local integration or enhance the livelihood of refugees in asylum countries. Hence, resettlement can have a direct and positive impact on the quality of asylum and prospects for other solutions. Of course, the challenge remains how to conduct resettlement without increasing the risk that other potential solutions will be undermined.

Resettlement involves the selection and transfer of refugees from a state in which they have initially sought protection to a third state which has agreed to admit them with permanent residence status. Resettlement can be used when refugees can neither return to their country of origin, nor be protected effectively and integrate in their country of first asylum. There are three traditional and equal goals of resettlement: protection, provision of durable solutions, and burden sharing with host countries. While these three goals remain paramount, resettlement programmes are often shaped by other functions. Some states use resettlement to reflect certain foreign policy goals, or to demonstrate support to domestic ethnic communities formed by earlier arrivals. In the debate about resettlement in Europe, the role it can play in managing refugees' arrival in an orderly fashion has

¹⁴⁸ Gervase Coles, 'Approaching the Refugee Problem Today' in Gill Loescher and Laila Monahan (eds) *Refugees and International Relations*, (Oxford, Clarendon Press, 1989) p. 403-4:3

become prominent, and is seen as one facet of the potential strategic use of this refugee protection tool. Regardless of the functions attributed to resettlement, the motives behind its successful use remain humanitarian in nature. Both resettlement and asylum can offer humanitarian protection and may form complementary elements in an overall refugee protection framework.¹⁴⁹ However, the starting points of the processes are different. Resettlement is a programme through which states decide in advance who they can help, and select individuals whose protection they can guarantee after arrival. Resettlement can offer a durable solution in protracted refugee situations and can be a tool for the managed arrival of refugees whose status is determined in advance of their travel. Domestic asylum systems, in contrast, should be maintained for people who have sought and requested, by their own means, the protection of a safe and rights-respecting state. Countries with resettlement programmes still see asylum arrivals.

These uses of resettlement show how it can be effectively used as one of three durable solutions in a comprehensive approach. In any refugee crisis, there are some refugees who can return home in the short- to medium-term; there are some who can integrate locally in their country of initial protection and there are others who need protection further away. Resettlement should target the latter group, but can most effectively be used as part of a comprehensive package that includes pragmatic and supportive measures for voluntary return and for local integration where the individuals and states concerned would most benefit from those solutions.¹⁵⁰ There will always be individuals who seek their own durable solution through asylum before such a package is in place – or in spite of such a package. They do not negate the obligation of *non-*

¹⁴⁹ Abbott M., *Refugee Resettlement and Wellbeing* (Auckland: Mental Health Foundation, 1989) p. 73

¹⁵⁰ Zeager Lester, *The Role of Threat Power in Refugee Resettlement: The Indochinese Crisis of 1979* (USA: Sage Publications, 2002) p. 41

refoulement contained in the 1951 Convention by doing so. Those who need to seek asylum in Europe in order to escape from a dangerous or hopeless situation may have little choice but to use the services of smugglers to escape or to negotiate a journey to a place where they feel best able to integrate – for example, because a family member is already present – even if a resettlement programme is in operation. No resettlement programme can always successfully meet the challenge of targeting all individuals who need long-term protection in a third country. A comprehensive approach to refugee protection, and indeed a Common European International Protection System, should therefore involve admission for protection in the EU through both resettlement and asylum.

A fourth significant function of resettlement was flagged by NGOs: resettlement raises the consciousness of the general population to the plight of refugees. One of the main reasons that refugee resettlement has been so well supported in some of the traditional resettlement countries is that local communities have become directly involved in the reception and integration of refugees through resettlement programmes. This reduces the vilification so often seen in some media and resorted to by political figures. As only 1% of refugees currently benefit from resettlement, we hope that more governments will offer new or expanded resettlement places, especially in Western Europe.¹⁵¹ Resettlement, however, is an essential tool for promoting responsibility sharing with countries of first asylum. It is also a critical human rights tool when countries of first asylum are unwilling or unable to live up to international legal

¹⁵¹ *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003, p. 3, para. 6

obligations to protect some of the refugees within their borders. Resettlement is therefore a complement – and not a replacement – for the other durable solutions.¹⁵²

Resettlement also can be harmful if it serves as a magnet attracting people who do not have substantial claims to refugee status and, therefore, little chance of actual admission to a third country. For instance, although many Vietnamese boat people initially did qualify as refugees, the knowledge in Vietnam about third-country resettlement programs, particularly in the United States, later became a magnet for many Vietnamese who did not qualify as refugees but who simply wanted to leave Vietnam and viewed the resettlement situation as an opportunity.¹⁵³

Notwithstanding these concerns, resettlement still represents essential protection for a very small percentage of refugees who could not otherwise remain in a country of asylum or who, if forced to remain in their home countries, would face serious harm. UNHCR and its Executive Committee of governments strongly support refugee resettlement under certain limited circumstances: when it provides protection to refugees who would otherwise face *refoulement* (forced return to a country in which they may face persecution) or other endangerment; and when no other solution is possible.

Needless to say, problems will arise if resettlement is poorly conceived and managed. A ‘resettlement only’ approach to durable solutions, regardless of the resettlement processing location, may have a concomitant negative impact (e.g., secondary movements and pull-factor from country of origin) and that any such impacts can be difficult to manage.¹⁵⁴ Yet, with proper management and oversight, resettlement can be expanded to benefit greater numbers of refugees and the risks mitigated. Hence it

¹⁵² UNHCR, *International Refugee Protection* (Geneva: UNHCR, 1997) p. 105

¹⁵³ Louis Holborn, *Refugees: A Problem of our Time* (New Jersey: The Scarecrow Press, 1975) p. 16

¹⁵⁴ Richard Williams, *Principles for a UK Resettlement Programme* (Britain: Refugee Council, 2002) p. 29

is important to ensure measures are in place to ensure integrity and procedural compliance. The continuous development of policy and procedural guidelines and systems to register refugees, protect data integrity and prevent fraud will enhance the scope and flexibility of resettlement, including identification and processing methods. So too, active and timely case identification based on a fair, consistent and transparent application of the UNHCR resettlement criteria is imperative.¹⁵⁵ This way, opportunities for resettlement can be expanded and effectively managed in concert with other durable solutions.

It follows that resettlement should be used in a flexible manner and with the necessary reconfigurations in different refugee situations, that is, the initial period after refugee flight, in urban and camp settings and protracted refugee situations, during the repatriation phase and after concerted repatriation efforts. Additionally, resettlement may in certain instances be utilized in the context of protecting refugees and others of concern within broader migration movements.

Conclusions

Although beneficial, there are a lot of challenges as mentioned above that encumber resettlement efforts in many countries. The following chapter, Summary, Conclusions and Recommendations will give suggestions on how to best counter these challenges and how to foster the three durable solutions so that they can complement each other efficiently.

¹⁵⁵ UNHCR, Resettlement Handbook, UNHCR, Geneva, Chapter 7, www.unhcr.ch, 2004

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

Throughout history, people have fled their homes to escape persecution. Violence and instability in Africa has been a major cause of refugee crisis. Refugee resettlement is one of three durable solutions advocated by the office of the UNHCR, and a means of addressing the special needs of refugees. Kenya is ploughing this initiative but it has to tackle a few challenges such as the lack of legal procedure to address the plight of refugees. The first chapter lays out the main objectives of this study as the analysis of the refugee crisis in Kenya and their resettlement in Europe. Specifically, this study sought to evaluate the three durable solutions to the refugee crisis proposed by the UNHCR, to examine the challenges facing Kenya in its role of resettling refugees in Europe and to identify policy implications to the Kenyan government of refugee resettlement.

On the other hand chapter two evaluates the durable solutions as proposed by the UNHCR, the body put in place to take care of refugees in the world. Chapter two regarded durable solutions as those entailing a process of integration into a society and they can only be successful and lasting if they allow the refugee to attain a degree of self sufficiency, to participate in the social and economic life of the community and to retain what might be described, too summarily, as a degree of personal identity and integrity.¹⁵⁶ In this case, the chapter departed from conventional wisdom which holds that durable solutions to the refugee problem lies in putting an end to the causes of refugee flows and

¹⁵⁶ Goodwin-Gill G., 'Refugee or Asylum: International Law and the search for solutions to the Refugee problem' in H. Alderman and C.M. Lanphier (eds) *Refuge or Asylum: A Choice for Canada* (Toronto, York Lane Press, 1990) p. 38

adopts the argument that integration, and in the case of returnees, reintegration, is at the core of whatever can be referred to as a durable solution. The UNHCR asserted that resettlement "is of equal importance with the other solutions" and that 'the three solutions are complementary in nature and can function simultaneously. However, too often, resettlement is in fact viewed as the least favored option for refugees and is considered only when there are no possibilities for either repatriation or local integration.¹⁵⁷ It is no wonder that only 1% of the refugees are usually resettled. The chapter also analyzes the recommendations from other scholars on the UNHCR's opinion about the importance of these durable solutions. It however overemphasizes resettlement as a strategy of attaining durable solutions to the refugee problem.

Chapter three evaluates refugee law in Kenya. It also looks at the real situation of refugees and the treatment they are accorded as they search for a way out of their problem. It gives a historical trajectory of refugees in Kenya and the role of the UNHCR in solving the crisis of refugees in the country. It also examines the international and local refugee legislation in Kenya. For Kenya, the relevant international law applicable to refugees can be found in the 1951 Geneva Convention Relating to the Status of Refugees and its Protocol which it accessed in 1996 and 1981 respectively, the International Covenant on Civil and Political Rights which it ratified on 1 May 1972, but not its First or Second Optional Protocols and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which Kenya ratified June 1992. Despite having no refugee specific legislation, Kenya continues to welcome refugees into its

¹⁵⁷ Chimni B. S., *International Refugee Law: A Reader* op. cit. p. 331

territory and to follow the provisions of the 1951 and 1969 conventions particularly with regard to non-refoulement and the granting of asylum.¹⁵⁸

Chapter four begins by examining the demerits of flocking refugees in refugee camps. Then it looks at the process of resettlement in Kenya, and critically unveils the implications of durable solutions of the refugee problem in Kenya but focuses on the resettlement of these refugees to third countries. Specifically, implications of camp confinement in some places in the country are explored.

Conclusions

The plight of refugees is becoming more prevalent in Africa with the intensification of conflicts in most African countries especially in the Great Lakes region. Most refugees flee to countries close to their countries of origin, namely regions of origin. Kenya plays host to over 200,000 refugees - the majority of these come from Somalia, Sudan, Ethiopia Uganda, Rwanda, Burundi and Democratic Republic of Congo. Different periods have known the use of various strategies in order to curb this problem of refugee creation in the world. In refugee studies literature, three so-called durable solutions have been identified. These are resettlement in third countries, local integration in the country of asylum and voluntary repatriation.¹⁵⁹ All three are regarded as durable because they promise an end to refugees' suffering and their need for international protection and dependence on humanitarian assistance. The search for durable solutions has been a central part of UNHCR's mandate since its inception. The organization's statute commands the High Commissioner to seek 'permanent solutions for the problem

¹⁵⁸ Nkere Ntanda Nkingi: *The United Nations High Commissioner for Refugees & The Refugee Problem in Africa; A Case Study for Kenya* (Dissertation) UON. 1985-86

¹⁵⁹ Chimni B. S., *International Refugee Law: A Reader* (New Delhi: Sage Publishers, 2000) p. 73

of refugees by assisting Governments . . . to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities'.¹⁶⁰

Resettlement is meant to offer lasting protection to refugees, particularly those unable to pursue either of the two other recognized “durable solutions:” local integration or voluntary repatriation. Every year the UN resettles between 8,000 and 11,000 of them, once it has become clear that they will not be able to return home at any point in the foreseeable future. Specifically, the UNHCR office in Nairobi, Kenya has handled the resettlement of more than 9,000 refugees displaced by Africa's wars in the 1990s most of who have ended up in Europe. The European Refugee Resettlement Program is a critical tool for refugee protection, providing tens of thousands of refugees each year with the opportunity to settle permanently in Europe. Given the number of challenges arising from the treatment of refugees in Kenya such as the lack of legal procedure and a government department to deal with the issue, this study sought to analyze the refugee crisis in Kenya and the impact of the resettlement programme of these refugees in Europe.

For Kenya, the relevant international law applicable to refugees can be found in the 1951 Geneva Convention Relating to the Status of Refugees and its Protocol which it accessed in 1996 and 1981 respectively, the International Covenant on Civil and Political Rights which it ratified on 1 May 1972, but not its First or Second Optional Protocols and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which Kenya ratified June 1992.¹⁶¹ Kenya has however ignored some instrumental treaties that ensure the protection of refugees at international level. These include the Convention

¹⁶⁰ Statute of the Office of the United Nations High Commissioner for Refugees, Chapter 1, para. 1, General

Assembly Resolution 428, December 1950

¹⁶¹ Bascom J., *Losing Place: Refugee Populations and Rural Transformations in East Africa* (Oxford: Oxford University Press, 1998) p. 16

on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

Besides, it has been noted that the most significant problem faced in refugee assistance in Kenya is the lack of a clear refugee law governing procedures and policies relating to this group of people. This lack of a legal framework in which refugee issues can be addressed effectively means that refugees continue to be caught in a policy vacuum. It is not even clear who is responsible for refugees: the government, UNHCR or humanitarian/rights organizations. Refugees are unable to lay claim to any rights in Kenya under the current legal regime and there is therefore no effective redress for denial of rights of refugees. The constitution, the Immigration Act and the Aliens Restriction Act scantily address the treatment of refugees in Kenya.

Despite the lack of clear law and legal procedure in this regard, a person who is recognized as a refugee and who is found to be in need of resettlement under UNHCR criteria is referred by the UN body to an appropriate country for resettlement consideration. UNHCR refers individuals for third country resettlement on an exceptional basis only. The decision about the referral is made by the local UNHCR office and UNHCR Washington has no authority over the decisions rendered.¹⁶² In Kenya, the UNHCR refers eligible persons to one of several resettlement countries (Australia, Canada, Finland, USA, etc). Each country of resettlement has its own policies, criteria and practices that a refugee must follow before he or she can be resettled. The final decision on resettlement is made by a resettlement country, not by UNHCR.¹⁶³

¹⁶² UNHCR, Resettlement Handbook, UNHCR, Geneva, Chapter 7, www.unhcr.ch, 2004

¹⁶³ Cindy Horst, *Transnational Nomads How Somalis Cope With Refugee Life in the Dadaab Camps of Kenya* (New York: Berghahn Books, 2006) p. 17

The policy of resettlement, however, has three core functions, all linked to UNHCR's protection mandate and the obligations of states in this area: to provide international protection and meet the needs of refugees whose life, liberty, health, safety or other fundamental human rights are at risk; to be a durable solution to the plight of refugees; and to be an instrument of international responsibility sharing. Thus, while resettlement is part of the global migration phenomena, its distinct features and characteristics are anchored in the international refugee regime and human rights law, setting it apart from all other facets of international migration. Some states use resettlement to reflect certain foreign policy goals, or to demonstrate support to domestic ethnic communities formed by earlier arrivals. In the debate about resettlement in Europe, the role it can play in managing refugees' arrival in an orderly fashion has become prominent, and is seen as one facet of the potential strategic use of this refugee protection tool. Regardless of the functions attributed to resettlement, the motives behind its successful use remain humanitarian in nature. A fourth significant function of resettlement as was flagged by NGOs is that resettlement raises the consciousness of the general population to the plight of refugees in the course of integrating the refugees to the local population. Resettlement, however, is an essential tool for promoting responsibility sharing with countries of first asylum. It is also a critical human rights tool when countries of first asylum are unwilling or unable to live up to international legal obligations to protect some of the refugees within their borders. Resettlement is therefore a complement - and not a replacement - for the other durable solutions.¹⁶⁴

¹⁶⁴ UNHCR, *International Refugee Protection* (Geneva: UNHCR, 1997) p. 105

Although beneficial, resettlement can be harmful if it serves as a magnet by attracting people who do not have substantial claims to refugee status and, therefore, little chance of actual admission to a third country.

Recommendations

Since the days of the South East Asian programme, resettlement has been a low priority activity for many organizations and bureaucracies. This lack of attention has had unfortunate outcomes. UNHCR itself has been rocked by a scandal of fraud and corruption in the Nairobi branch office, involving UNHCR staff extorting bribes from refugees seeking to be put on the resettlement list. UNHCR has proactively addressed the deficiencies in the resettlement operation in Kenya, beginning long before the release of a UN investigative report. Measures undertaken include strengthening staff resources, designing new oversight mechanisms and instituting case management and quality assurance procedures. Similar measures should be taken on a global basis, to ensure that resettlement processing in other sites is not vulnerable to this type of corruption. Particularly in light of new and heightened security concerns, resettlement processing must be done to the highest standards and professionalism in order to ensure integrity in the process and not undermine the will to use resettlement as a protection measure.

Resettlement is very staff intensive. It is true that any process that entails assessment of need, case identification, validation of identity and adjudication of status requires an adequate level of staff and operational resources. At the same time, many of the activities commonly linked to resettlement, such as needs assessment, refugee registration, case management and individual counseling, are necessary and helpful for

all other facets of refugee assistance and protection activities at the field level. Most importantly, they are essential elements in the design of strategies for repatriation and local integration, helping refugees make informed decisions. When refugee registration and assessments are done in the exclusive context of resettlement they become onerous, difficult to implement and, in some cases, subject to fraud and corruption. For UNHCR, the role and function of resettlement within the organization needs to be examined and strengthened. If resettlement is to become more important and involve many more states as partners, more staff and resources will be required. Furthermore, the way resettlement is managed should be reviewed, in order to strengthen management accountability, focusing on outcomes and results.

In recent years, states, NGOs, and UNHCR, working together, have diversified resettlement efforts worldwide while promoting consistent resettlement criteria, as embodied by the UNHCR Resettlement Handbook. Through this partnership, resettlement has become a more effective tool of protection, durable solution, and instrument of responsibility sharing. As the UNHCR paper on the issue acknowledges, however, the tripartite partnership needs even more vigor, resources, and creativity in approaching the dilemmas, challenges, and opportunities which resettlement presents. By sharing responsibilities with countries of first asylum, the resettlement countries not only take refugees out of harms way and allow them to start a new life, but also re-enforce the viability of the other durable solutions.

Recognizing that resettlement is resource-intensive, resettlement programmes must be properly funded at all stages. However, funds must not be diverted from the

system of determination and support of asylum seekers and refugees in resettlement countries or from the protection of refugees in countries of first asylum.

Priority should be assigned to the admission of vulnerable populations whom the UNHCR cannot, or governments will not, safe guard adequately. These include women refugees who are at risk of rape or other abuse; handicapped refugees who are unable to fend for themselves in refugee camps; political prisoners whose release could be negotiated only with a promise of resettlement; and other similar populations.

In the same vein, strong connections to the resettlement country rather than an explicit protection or solution focus continue to be the guide for prioritizing admissions (e.g., family reunification, foreign policy concerns, domestic pressures). Within the worldwide refugee population are groups with ties or of foreign policy interest to the resettlement country. Giving priority to these individuals serves to build domestic support including financial and political for the resettlement program. The interests of the resettlement country govern decisions on refugee admissions in much the same way that they do in regular immigrant admissions. However, refugee programs should not use explicit immigration criteria because the use of such criteria undermines the unique humanitarian component of refugee admissions. Even though a country can give priority to individuals with connection to it from among those most needing protection, such connections should not themselves be used as the sole factor in determining admissibility.

While the strategic use of resettlement can be promoted by a single resettlement State, coordination with a number of resettlement countries is likely to maximize benefits. Such coordination may involve negotiation of mutually agreeable arrangements between the international community and the State of asylum, possibly requiring a multi-

year commitment by the international community to sustain the burden-sharing, as well as possible assistance to further local integration or enhance the livelihood of refugees in asylum countries.

Moreover, it should be emphasized that resettlement can still be considered in a larger context to advance definitive comprehensive solutions. Resettlement could thus be strategically and carefully resorted to –even for groups of refugees – in the manner in which it has been used in some regions in a post-repatriation context for a residual population without viable options for local solutions. However, priority should be placed on maximizing complementarities while minimizing possible discord with other solutions, above all the willingness of refugees to repatriate. Moreover, such a strategic use of resettlement, if resorted to, will be successful only if the host country is willing to promote local integration of a proportion of the residual refugee population.

Because of the relative peace enjoyed in Kenya and the conflicts that continue to hamper its neighboring countries, the country will continue to attract refugees. It is therefore necessary now than ever before for the country to institute laws and regulations that govern the treatment of refugees. Refugee problems are no longer temporary and Kenya needs to give refugee issues priority. It was also observed that the issue of small arms is becoming a problem in the country and that some of the refugees are trafficking arms from their country of origin. It is therefore necessary that such laws or regulations state how refugees found carrying small arms will be dealt with.

Kenya should also come up with legislation on terrorism. This is because the global threat on terrorism needs to be taken seriously as several countries in the world including some of the Kenya have suffered loss of life and property through terrorism.

Through this law, the country should ensure that their immigration and asylum laws are not abused by terrorists masquerading as asylum seekers.

This study further proposed the need to address the main causes of conflict in the neighbouring countries and while it does so, it should make Somalia one of their priorities. This is because despite there being a government in place in the country, its effectiveness is yet to be felt because the Islamist courts have taken control of most of the country. Countries like Kenya and Uganda, being members of the Intergovernmental Authority on Development (IGAD) were involved in the conflict resolution in Sudan and their efforts were rewarded with a ceasefire being declared by the Sudanese Peoples' Liberation Army and the Sudanese government.

While the need to look for durable solutions in the countries of origin cannot be over emphasized, there is also a need to come up with early warning mechanisms so that the countries in the region are not taken by surprise when conflicts arise and more importantly so that they can have time to nip the conflict in the bud before it explodes. In this way, the countries in the region will not only have helped in averting bloodshed and loss of life but will also have helped in stopping causes of flight for refugees. The African Union already has such a mechanism in place but it would not do any harm to have assistance from countries in the region some of who are immediate neighbours to countries experiencing conflict.

This study sought to prove the hypothesis that the adoption of refugee laws in national legislations guarantees the protection of refugees. However, it has been noted that within the region, it is only Tanzania which has adopted a refugee specific law that is up to date with international standards of refugees. However, the Tanzanian refugee law

still falls short of international standards of refugee protection because it is very frugal in its provision of rights for refugees. Thus, within the East African region, refugee rights are not adequately guaranteed even by the countries that have adopted a domestic refugee law. This conclusion therefore proves the above hypothesis that it is only through adoption of refugee laws that are up to date with international standards of refugee protection that will guarantee refugee rights in the region.

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