Building a Bureaucracy:
The Transfer of Responsibility for Refugee Affairs from United Nations Refugee Agency to Government of Kenya

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CONTENTS

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For the refugees in Kenya

who go through this bureaucracy

and receive so little in return.

Abstract

This thesis explores the role of Refugee Affairs Secretariat (RAS) as the sole body responsible for the management of refugee affairs in Kenya. It seeks to understand the state through the everyday practices of its street-level bureaucrats and realities of its institutional decision-making. It focuses on RAS' role in refugee registration and refugee status determination (RSD) - the consecutive bureaucratic and legal procedures by which a state comes to 'see' the individuals on its territory and determine who is eligible for refugee status.

My first argument is that registration and RSD do not have the same role for the Kenyan state as suggested by the theories of state power outlined by Foucault, Scott and Torpey and, developed from this, universalised understandings of the state. While these authors argue that state power is achieved through the administrative penetration and embrace of society, I argue that the Kenyan state's engagement with these bureaucratic practices was marked by a procedural indifference – defined as a lack of interest or concern. It carried out registration but did so in a way that did not achieve its ostensive purpose; it carried out registration not for it to work, but for it just to exist. Likewise, senior government officers let UNHCR continue to play a significant role in RSD and actions by the Ministry undermined the ability of cases to be both accepted or rejected. I argue that this seeming paradox can be productively interrogated with insights drawn from African Studies about the historical development of the African state. Through this, it is possible to rethink the importance of registration and RSD and the bureaucratic knowledge it makes available in the exercise of state power. I offer two empirical critiques of the existing theory. I firstly argue that the Kenyan state, and the African state more broadly, developed without a reliance on bureaucratic knowledge. I secondly argue that registration grants rights to refugees and offers a form of legal inclusion which can make states resistant to using it. This shows that the state's indifference is embedded in a complex historical and political landscape and is best understood by questioning normative ideas of statehood and their idealised notions of surveillance. This thesis thus also shows

the historical and political contingency of these central components of the so-called 'international' refugee regime.

My second argument explores a capacity building project by UNHCR to facilitate the full transfer of RSD to RAS and unify registration (previously done by both UNHCR and RAS in parallel). I explore the empirical dynamics of how the development project played out, whose interests it served and theoretically consider how power was exercised. I show that capacity building was oriented around deliberately maintaining UNHCR's control over RAS. I argue this was done by UNHCR to resolve its own institutional tension between demands to carry out the transfer and concerns about how this could jeopardise refugee protection. This control however fitted well with RAS's indifference and their desire for the financial incentives offered by the project. I therefore argue that the official aims were not achieved because of how both partners designed the project. This case highlights the intriguing ways in which competing agendas of development partners can come together to facilitate a project but not achieve its official aims. I also show how these competing agendas – common to many development projects - resulted in fractured and piecemeal changes that ultimately contributed to state weakness.

Acronyms and Terminology

BIMS	Biometric Identity Management System (linked to the proGres database)
CIB	Criminal Investigation Bureau, Government of Kenya
DANIDA	Danish International Development Agency
DPSM	Department of Personnel Service Management, Government of Kenya
DRA	Department of Refugee Affairs (disbanded in May 2016)
EXCOM	Executive Committee of UNHCR
Government officer	Permanent government employee whose position is integrated into the civil service and who has a permanent contract.
IOM	International Organisation for Migration
IRC	International Rescue Committee
LWF	Lutheran World Foundation
MP	Member of Parliament
NGO	Non-Government Organisation
NMART	National Multi-Agency Repatriation Team
NRB	National Registration Bureau, Government of Kenya
ORRT	Operational Refugee Repatriation Team
ProGres database	A database of refugees' personal details, used across UNHCR global operations, including for registration and refugee status determination.
Project officer	Government employee on a one-year renewable contract and whose wages are funded by UNHCR but released by the government.
RAB	Refugee Appeals Board, Government of Kenya
RAS	Refugee Affairs Secretariat, Government of Kenya (opened in September 2016)
RCK	Refugee Consortium of Kenya
RSD	Refugee Status Determination
SOP	Standard Operating Procedure
TAC	Technical Advisory Committee (part of the RSD process)
UNHCR	Office of the United Nations High Commissioner for Refugees / United Nations Refugee Agency
UNHCR PDES	Office of the United Nations High Commissioner for Refugees / United Nations Refugee Agency, Policy Development and Evaluation Service

1 Chapter One: Introduction

On Friday 6th May 2016, the Principal Secretary of the Ministry of the Interior issued a statement announcing that due to 'national security interests … the Government of Kenya has disbanded the Department of Refugee Affairs (DRA)' (Republic of Kenya, 2016). The Department had been legally established in 2006 and was slowly increasing its ability to take on responsibility from the United Nations Refugee Agency (UNHCR) for managing the 500,000 refugees on its territory. The disbandment of the Department meant that registration and refugee status determination (RSD) - the consecutive bureaucratic and legal procedures by which a state manages refugee affairs and determines who is eligible for refugee status – stopped. As bureaucratic surveillance of refugees increases globally, and ever more sophisticated technology is used to detect and identify who has crossed a nation's border, here was a government willingly dismantling its bureaucratic apparatus and its ability to know the individuals on its territory.

A few months later the Department of Refugee Affairs reopened as the Refugee Affairs Secretariat (RAS). This thesis explores how the new body engaged in the management of refugee affairs, examining the norms, interests and relationships that shaped both its street-level practices and managerial decision-making. It looks at the challenges of adopting the bureaucratic model of refugee affairs, inherent in the international refugee regime and promoted by UNHCR, and how these were rooted in the often-divergent understandings between UNHCR and the government about how to manage refugee affairs.

Registration and RSD together form part of this bureaucratic model. They allow states to reliably and consistently identify one member of the population from another, which Caplan and Torpey describe as constituting a 'hallmark of statehood' (Caplan & Torpey, 2001). This ability allowed pre-modern states to extract taxes and raise an army. Today, many states engage in forms of registration, and use the bureaucratic knowledge it makes available, to biopolitically act upon their populations and engage in surveillance in the interest of national security. This is significant for

citizens but also for refugees who, as non-citizens, are 'unknown' to the state and thus often particularly policed and surveyed.

This thesis however shows the political contestation surrounding the adoption of this seemingly central mechanism of state power by the Kenyan state. It shows that registration and RSD were not as important to the Kenyan state as theorists such as Foucault, Torpey and Scott suggest. I argue that this is not purely because of a lack of capacity or state weakness. Instead, it is embedded in a complex historical and political landscape which means registration was not valued by the state; it is therefore better understood by questioning normative ideas of statehood and their idealised notions of state surveillance (Weitzberg, 2015).

Registration and RSD are central components of the international refugee regime and widely accepted by donor states and UNHCR as crucial to the management of refugee affairs. RAS was therefore under pressure from UNHCR to develop its registration practices and take on responsibility for RSD. This thesis, tracks a capacity building project by UNHCR to facilitate this. It explores the diverse interests and power dynamics contained within this development project, justified under a technical language of capacity building and partnership.

Studies of bureaucracy, and the African state more specifically, are often associated with political science (Bierschenk & Olivier de Sardan, 2014, p. 35; Hoag, 2011, p. 81). This thesis however joins a growing field of researchers who use methods drawn from anthropology to approach these topics. The research therefore uses participant observation, as well as semi-structured interviews, to unearth the mundane and quotidian practices of street-level bureaucrats. This lens reveals the norms and often complex practices that shape how the state 'really' works and that often diverge from the official or publically expressed interests of the state (Olivier de Sardan, 2008).

Although the focus of this thesis is on refugee affairs, it is not about refugee themselves. The opinions and experiences of refugees are noticeably absent. This was a deliberate decision in order to focus on the elite realm of decision-making and the practices of bureaucrats themselves. The emphasis within refugee studies on the experience or interaction of refugees with powerful actors, such as UNHCR and states, has left a significant void in understanding how these actors make and implement decisions which so significantly shape the lives of refugees. This is not to deny that refugees often attempt to resist such actors and use their agency to subvert UNHCR and others' power but, in this particular context, the opportunities for such acts were significantly curtailed. This decision was also rooted in ethical considerations about the high frequency with which refugees, particularly in Kenya, are asked to participate in research (see Section 2.3). My research therefore focused on the work of UNHCR and RAS bureaucrats; it consisted of ten months of semi-structured interviews, informal conversations and participant observation with these organisations in the three major refugee hosting areas of Kenya – Nairobi, Kakuma refugee camp and Dadaab refugee camp.

1.1 Background and Research Questions

This thesis is structured around two sets of research questions. The first is rooted in a methodological commitment to understanding the state through its everyday practices, including those of 'street-level' bureaucrats – public servants who deal directly with the public (Bierschenk & Olivier de Sardan, 2014, p. 36; Lipsky, 1980). These questions are inspired by ethnographies that aim to understand the African state on its own terms through the 'practical norms' that shape the practices of bureaucrats, rather than in relation to normative assumptions and categories about how sovereignty should be exercised, as it has tended to be approached (Olivier de Sardan, 2008).

Through this lens, these questions focus, firstly, on how RAS engages in the management of refugee affairs, in particular the bureaucratic model of managing refugee affairs promoted by UNHCR, as part of the international refugee regime, including registration and RSD. Secondly, the questions

explore how the state's engagement in refugee affairs was shaped by international donors, including a UNHCR-led capacity building project which promoted this bureaucratic model. Thirdly, in documenting RAS' challenges in adopting, and resisting, this model, it seeks to understand and contextualise this position through political and historical analysis and, from this, draw theoretical implications about the importance of bureaucratic knowledge in the exercise of state power.

The first set of research questions are:

1. How does DRA/RAS engage in the management of refugee affairs? How is this shaped by international donors? How can this be understood and contextualised and what are its implications for understanding how power is exercised by the Kenyan state?

The second set of research questions is rooted in an empirical interest in how UNHCR managed capacity building to facilitate the full transfer of registration and RSD to RAS and the nature of their relationship. By way of background, the transfer process aimed to reverse the handover of these functions to UNHCR in early 1990s when Kenya faced a mass influx of around 400,000 refugees from Somalia and later Southern Sudan, as well as Burundi, Rwanda and Democratic Republic of Congo.[1] The government lacked the legal and technical infrastructure to respond which, combined with UNHCR's policy at the time for refugee encampment, meant UNHCR set up and managed refugee camps and, within a short period, all aspects of refugee affairs (UNHCR, 1997). UNHCR in Kenya became an archetypical example of the situation, to use Slaughter and Crisp's often cited phrase, a 'surrogate state' (Slaughter & Crisp, 2009). Prior to the early 1990s, Kenya managed the few thousand refugees it hosted largely independently.

[1] In October 2016, during the time of fieldwork, Kenya hosted approximately 502,000 refugees who were legally required to live in the 'designated areas' of Kakuma refugee camp in Turkana County, in the Northwest of the country, or Dadaab refugee complex in Garissa County, to the East. Despite this legal designation, approximately 63,000 refugees were registered by the government in the capital city of Nairobi and thus had identity documents indicating their legal right to live outside the camps (UNHCR, 2016 Gazette No. 1927, 2014). This contradiction reflects the complex politics surrounding encampment, discussed further in Chapter 4 and 7.

In 2006 the Government of Kenya passed the 2006 Refugee Act which established a legal infrastructure for the government to become actively engaged in refugee affairs, importantly establishing RAS' predecessor, DRA, and its responsibility for registration and RSD. In 2009, a project by the Danish International Development Agency commenced which engaged in a range of capacity building and, importantly, saw DRA start carrying out registration. In around 2011, UNHCR started training some RSD officers, which was on-going at the time of fieldwork.

The term 'transfer' is used here as shorthand as during the time of fieldwork, and since 2011, RAS was carrying out registration in parallel to UNHCR. This contrasted with RSD which RAS had not been involved with since UNHCR took over in early 1990s. Capacity building therefore took the form of unifying registration (rather than transferring) although, because both involved capacity building and significant donor involvement, the processes were very similar.

UNHCR engaged in the transfer because, although UNHCR has increasingly taken on RSD and registration globally, the organisation was not set up to be a 'surrogate state'. Chapter I of UNHCR's statute and Article 35 of the 1951 *Convention Relating to the Status of Refugees* make clear that UNHCR's role is to *assist* states to fulfil their obligation to protect refugees. Moreover, Conclusion No. 8 (1997) of UNHCR's Executive Committee states that 'refugee protection is primarily the responsibility of states and that UNHCR's mandated role in this regard cannot substitute for effective action, political will and full cooperation on the part of states' (UNHCR Executive Committee, 2017).[2] The need for state engagement is because refugees' rights can only be secured through the legal force of a state. The difference between states and UNHCR is set out clearly by the UNHCR Assistant High Commissioner:

[2] The Executive Committee (ExCom) is UNHCR's governing body. It meets in Geneva annually to review and approve the agency's programmes and budget, advise on international protection and discuss a range of other issues with UNHCR and intergovernmental and non-governmental partners.

… it is important to refrain from putting UNHCR on par with states … because this ignores the important distinction between international organizations and states. The latter, in the exercise of sovereignty, provide a safe, secure and stable environment, guarantee the functioning of basic services and protect human rights. The effective exercise of state power and corresponding state responsibilities are, along with people and territory, core defining features of statehood. Such are however not the characteristics of an international organization, such as UNHCR (Türk & Eyster, 2009, p. 5).

The need for state engagement is particularly acute regarding registration and RSD. Several Conclusions of UNHCR's Executive Committee and operational Handbooks encourage the involvement of states in RSD and registration.[3] UNHCR can and does issue its own documents to indicate that a refugee is registered or that refugee status has been granted under UNHCR's mandate.[4] UNHCR however argues that such documents, although issued with the permission of the government, often do not confer the same level of recognition as government-issued documents. UNHCR argues that governments are more likely to enforce rights when they have ownership over the bureaucratic process that grant them. Increased state engagement in refugee affairs is therefore seen to *increase* refugee protection.

Importantly however this model does not always work in practice. In Kenya, because of the actions by the Government of Kenya to the *detriment* of refugee protection, the above rationale is difficult

[3] Conclusion No. 8 (1977) on 'Determination of Refugee Status,' expressed the hope that 'all States parties to the 1951 Convention and the 1967 protocol that had not yet done so would take appropriate steps to establish such RSD procedures in the near future' (UNHCR Executive Committee, 2017). Paragraph 189 of UNHCR's *Handbook and guidelines on procedures and criteria for determining refugee status* states that 'it is left to each contracting state to establish the RSD procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure' (UNHCR, 2011). UNHCR's *Handbook for Registration* similarly states that 'registration remains the responsibility of states' (UNHCR, 2003, p. 5)

[4] UNHCR may conduct RSD under its mandate when a state is not a party to the 1951 Refugee Convention and/or does not have a fair and efficient national asylum procedure in place. UNHCR conducts RSD under its mandate in between 50-60 countries (UNHCR, 2019d). I refer to all asylum-seekers, new arrivals and refugees throughout this thesis as 'refugees'. This is for linguistic simplicity as the individuals discussed are often in the process of moving between these legal statuses. It is not intended as a judgement on the validity of their claim for refugee status.

to realise. Instead, UNHCR is in the position of transferring power to a government it fears will reduce refugee protection – an outcome which is contrary to UNHCR's core protection mandate. The Government of Kenya has, for example, repeatedly called for the return of refugees to Somalia, including incidents of refoulement, threatened to forcefully close Dadaab refugee camp and engaged in violent police round-ups and harassment of refugees in Nairobi (see Section 4.4). This is alongside widespread concerns about corruption, inefficiencies and poor standards of protection within the government (Garlick, Guild, Procter, & Salomons, 2015).

Pursuing the transfer in Kenya therefore created an institutional tension for UNHCR between the policy and legal rationale for transfers and its mandate for refugee protection. Pressure to engage in transfers is further enforced by institutional interests; UNHCR itself states the need to transfer RSD in order to save resources. As the UNHCR Director of International Protection stated: 'One thing is clear: without more robust state engagement, resources, and alternatives to individual processing, dealing with such a high number of individual RSD applications registered by UNHCR is not sustainable' (Türk, 2014).

In this research, I do not assess the validity or accuracy of UNHCR's protection concerns arising from government engagement. Nor do I impose benchmarks for standards of acceptable government action, against which a transfer would go ahead without this tension. Instead, I am interested in how this tension is understood by and responded to by UNHCR staff – as a central tension in much of their work - and how it fundamentally shaped UNHCR's engagement with RAS.

UNHCR, in official terms, responds to this tension by indicating that states may require support to take up these bureaucratic functions and fulfil its protection responsibilities. It therefore has a well-established mandate to engage in capacity building. This thesis explores the extent to which, and in what ways, capacity building was a way to resolve this institutional tension. It also focuses on how UNHCR and RAS worked together during the capacity building process. As is common with

development projects, the process was codified through a series of work plans and officially agreed to with a partnership agreement. The thesis explores the nature of this relationship and focuses on how power was negotiated within it.

The second set of research questions are:

2. How does UNHCR engage in the transfer of responsibility for refugee affairs to RAS and respond to the tension between demands to carry it out and protection concerns? What role does capacity building play in responding to this tension? How do UNHCR and RAS work together as part of the capacity building project and what does this reveal about how power is exercised in development projects?

Transfers and capacity building take place around the world but I focus on Kenya because the transfer has received particular attention from UNHCR. In other countries, it is described by UNHCR as happening more organically or at the clear instigation of the government. Kenya instead saw a more deliberate and concerted attempt by UNHCR to transfer responsibilities to the government.[5] There have also been public actions by the government to the detriment of refugee protection which means UNHCR's institutional tension is particularly acute in this context – only added to by the fact that in 2011, when the transfer started, the country hosted one of the largest refugee caseloads in the world (van Hovell, Hruschka, Morris, & Salomons, 2014).

1.2 Definition of Terms: Registration and Refugee Status Determination

This thesis focuses on refugee registration and refugee status determination (RSD). It is therefore important to understand the meaning and significance of these functions in the management of refugee affairs. What are they and why do they matter?

[5] Senior UNHCR Officer, UNHCR, Nairobi, October 2016.

Registration is fundamentally about being able to identify one person from another in a reliable and consistent manner, most commonly for purposes of population management or surveillance. This is most commonly done by creating a written or electronic record of the biographical and often biometric details of the individual. UNHCR defines it as 'the process of recording, verifying and updating information' about refugees (UNHCR, 2019c).

RSD follows registration and is the legal process of determining who falls under the legal definition of a refugee and thus is eligible for refugee status.[6] It typically involves an interview to gather refugees' personal accounts of why they fled their country of origin and assessment of this against other available evidence. Individuals who are not found to be legally eligible for refugee status are expected to find another means of legalising their stay or return to their country of origin. Those granted refugee status, on the other hand, receive the substantive range of refugee rights available under law and the right to remain in the country of asylum until a durable solution is found or cessation of refugee status is invoked.[7]

In Kenya, registration and RSD are closely linked. Refugees are registered before RSD takes place as the refugee must be known to the authorities before their status can be determined. During registration, individuals receive an asylum-seeker pass from RAS and after RSD, if eligible, they receive a refugee identity card from RAS, often referred to as an 'alien card'. If the refugee is recognised on a *prima facie* basis then they do not have to go through individual RSD and can

[6] The legal grounds for refugee status in Kenyan law is outlined in Section (1)(a) of the 2006 Refugee Act, which closely mirrors the definition given in the 1951 Convention Relating to the Status of Refugees. It states: (1) A person…(a) owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or (b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to a well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.

[7] There are widely considered to be three main durable solutions, which are also promoted by UNHCR. These are voluntary repatriation, local integration into the host country on a de jure basis and resettlement to a third country, typically countries in the Global North. Cessation of refugee status applies when the refugee, having secured or being able to secure national protection, either of the country of origin or of another country, no longer needs international protection, for example because there has been an objective change in circumstance in their country of origin which means the refugee no longer has a well-founded fear of persecution.

apply for refugee documentation at the time of registration or soon after.[8] Together they are used to demarcate and legally categorise and document individuals.

Importantly, registration and RSD are essential for a state to gain information from individuals who have entered their territory. The information gathered can be used to survey the population for a range of monitoring purposes, including security measures. It is therefore widely interpreted to be important to the exercise of state power over the individuals on its territory, which requires a basic level of information about them. This notion is discussed by Foucault, Torpey, Scott and others, as part of a universalised understanding of the state. I outline and critique their theoretical ideas about state power in Chapter 3.

These theoretical ideas, interestingly, have a renewed empirical significance as UNHCR shares the importance placed on registration and RSD in the exercise of their own power and operations generally. UNHCR has a comprehensive database of the information collected from all individuals it considers to be under its mandate. This data is used to plan for the distribution of aid, accurately identify intended beneficiaries and plan its operations.

The significance given to registration and RSD by UNHCR, other international agencies and many states lies in the important role they play in the management of refugee affairs and international refugee regime – defined as the institutions, legal instruments and norms composing the institutional framework which regulates the management of refugees – of which UNHCR is the 'guardian' (Loescher, Betts, & Milner, 2012, p. 2; Scalettaris, 2007). Registration and RSD are foundational to the international refugee regime as they are the often consecutive steps by which

[8] *Prima facie* status is a mechanism for recognising refugees on the basis of 'readily apparent, objective circumstances in the country of origin' (UNHCR, 2015b, p. 3). It is typically used on a group basis according to nationality. It is widely used by both UNHCR and governments in the context of mass influxes of refugees. *Prima facie*, in the context of Kenya, is discussed in Chapter 8.

an individual legally becomes a refugee.[9] Although refugee status is declaratory, registration and RSD remain central mechanisms by which a state recognises and acknowledges its responsibility for protection. The form of state engagement in these processes varies but their centrality in legally establishing refugee status – in allowing the state to 'see' these individuals as refugees - means they are hard to substantially reimagine. Registration and RSD are therefore widely interpreted to not just be a policy or agenda promoted by an international organisation but simply *the* way to manage refugee affairs.

Relatedly, registration and RSD are important to the protection of refugees. The protection benefits of RSD are highly pronounced as it is the mechanism by which all rights are legally granted. UNHCR however also stresses the protection role of registration, in addition to allowing refugees to access assistance, for example food rations. For example, Conclusion 91 (2001) of UNHCR's Executive Committee:

Acknowledges the importance of registration as a tool of protection, including protection against refoulement, protection against forcible recruitment, protection of access to basic rights, family reunification of refugees and identification of those in need of special assistance, and as a means to enable the quantification and assessment of needs and to implement appropriate durable solutions (UNHCR Executive Committee, 2017).

Although registration and RSD are legally important to refugee protection, I do not assess whether they achieve this in practice. For example, although refugee registration promises to protect refugees from refoulement, I do not assess if this is actually achieved. This research therefore risks uncritically reproducing the importance placed on registration and RSD by researchers and practitioners alike. Scaletarris notes that this is an issue within Refugee Studies as its close

[9] Registration and RSD may not always be consecutive steps as national procedures vary. Registration is also not always linked to applying for RSD – although this was the case in Kenya – but any refugee going through RSD would typically be registered.

relationship with the international refugee regime risks compromising academic 'analytical independence' and the adoption of terms which are 'policy related labels' that should be subject to empirical and critical inquiry (Bakewell, 2008b; Scalettaris, 2007, p. 36). This has pertinence in this context because there is evidence that refugee documents in Nairobi cannot and are not used according to their officially designated role. Balakian describes how refugees in Nairobi cannot use identity documents alone to avoid arrest by police and instead rely on money to bribe officers (Balakian, 2016). Similarly, Rasmussen and Wafer argue that documents cannot confer 'absolute identity and credibility of their bearer', but notes they do 'provide a means for performing a relative identity and credibility in more uncertain and ambiguous circumstances' (Rasmussen & Wafer, 2019, p. 76). More broadly, there is important work to be done in questioning the significance of refugee status for refugees and instances when refugees express a clear preference to avoid it (Cole, 2018); and liberal and legalistic interpretations of rights, inclusion and belonging (Balaton-Chrimes, 2015). Nonetheless, I focus on registration and RSD because of the importance given to them by UNHCR– because UNHCR focus on them as part of the transfer and capacity building process. Importantly however I *do* question the meaning and significance of registration and RSD for state power; as stated above, the object of study is the state, not refugees.

In what follows, I discuss registration and RSD as forming part of the *bureaucratic* management of refugee affairs. By bureaucratic I am referring to Weberian ratio-legal bureaucracy (Weber, 1978). This model reflects the so-called 'international' model promoted by UNHCR and the international community. It is based on compliance to international law which guarantees refugees the right to claim asylum and to protection, defined broadly as compliance to human rights law (Hathaway & Foster, 2014). Its 'rational' component comes from the consistent, rule-bound and objective way in which these rights are distributed and the use of written documentation to enact these rights. Whether this model is ever fully complied with is, of course, a subject of debate but it is important to note that it is the 'ideal type' that is codified in international law and UNHCR's policies and standards.

1.3 Literature

This section outlines the two main bodies of literature this thesis speaks to, which broadly map onto the two research questions outlined above. The first body of literature is centred on a methodological critique of how the African state has been studied. I firstly outline the current literature on the African state's engagement with refugee affairs, secondly, set up the alternative methodological lens that will be used in this thesis and, thirdly, review literature on registration and RSD specifically. Regarding the second body of literature, I firstly outline literature on UNHCR, transfer processes and UNHCR's recognised status as a political actor. Secondly, I explore literature on the politics of capacity building projects and the partnerships on which they rely.

1.3.1 The African State and Refugee Affairs

The first body of literature this thesis draws upon is concerned with the African state and its engagement in refugee affairs. It responds to the first set of research questions about how DRA/RAS engages in the management of refugee affairs. The questions are rooted in a dissatisfaction with the methodological approach taken by the existing literature to understanding the African state's engagement in refugee affairs. This section outlines the current approach and shows how this can be rethought in light of the growing ethnographic research on the African state, largely outside of Refugee Studies.

The current literature which engages with the African state's role in refugee affairs primarily understands the African state through a rationalist lens which sees its actions as determined by macro-level interests such as national security (Betts, 2013; Milner, 2009; Veney, 2007). This is in contrast to rich ethnographic research on state immigration and asylum procedures in Europe which reveals the complexity and nuance of even seemingly objective and routine practices (Cabot, 2014; Fassin, 2005; Good, 2004; Ticktin, 2011; Tuckett, 2018). This disparity in the literature is part of

wider trend in which ‘public services, public policies and public servants have been extensively studied in countries of the Global North’ but not received the same level of ethnographic research in Africa (Bierschenk & Olivier de Sardan, 2014, p. 35). This is despite potentially significant empirical overlap; Tuckett for example describes how migrants’ encounters with the immigration bureaucracy in Italy ‘are characterised by frequently changing laws, discretionary implementation, and unlawful practice’ (Tuckett, 2018, p. 5).

The macro-interests identified as determining African state behaviour in the existing literature are nonetheless relevant to this discussion. Democratisation and structural adjustments, for example, are described by Milner and Veney as meaning African states prioritize citizens over refugees because of reduced resources for public services and increased pressure to attract votes (Milner, 2009; Veney, 2007). Other, more meso-level interests typically identified as variables explaining the response of African states are: the availability of arable land; levels of donor funding; the length of refugees’ exile; and the host community’s prior experience of displacement (Jacobsen, 2002; Whitaker, 1999). These factors are all relevant in the Kenyan context. Taking each of these four in turn: arable land is limited in Kenya, as demonstrated by the history of violence over land in the lush rift valley since independence (Anderson & Lochery, 2008); levels of donor funding have reduced and are consistently below the amount UNHCR indicates to donors it requires for its operations - the importance of which is demonstrated by the Government of Kenya retreating from its statement about closing Dadaab refugee camp in 2015 in response to additional aid (Morello, 2015); and Kenya has hosted a large refugee population for over 25 years and, as Branch argues, ‘Kenyans and their leaders have often represented the history of the country since independence as being characterized by peace and stability’ in direct contrast to its violent neighbours (Branch, 2012, p. 18). A particularly important interest that is widely discussed in the Kenyan literature on refugees is national security concerns (Loescher et al., 2012; Milner, 2009; Veney, 2007). This material has particular poignancy in Kenya because the continued violent attacks by Al Shabaab means security is very high on the popular and political agenda.

This literature does not however explain *how* these interests influence state decision-making and their impact on the everyday realities of the management of refugee affairs. Currently, there is only one ethnographic study of an African state's bureaucratic involvement in refugee affairs, which is Hoag's study of the Department of Home Affairs in South Africa (Hoag, 2010, 2014). There has been some limited engagement with custom authorities and border authorities, notably Chaflin's ethnography of Ghana's Customs Service (Bako-Arifari, 2006; Chaflin, 2010). However, as Tuckett point out, there is a disproportionate focus, by migration scholars particularly, on the state's role at the physical border, instead of the regulatory infrastructure within a state's boundaries (Tuckett, 2018, p. 15). Moreover, despite the significant literature on refugees in Kenya, there are only a few lines on DRA, most of which rely exclusively on interviews with the Commissioner of Refugee Affairs, rather than in-depth analysis (Betts, 2013; Campbell, 2015; Campbell, Crisp, & Kiragu, 2011; Human Rights Watch, 2009; Moret, Baglioni, & Efionayi-Mäder, 2006; Wood, 2014).

It is important to analyse why the literature has taken on this particular trajectory. I attribute it to a continued hesitancy in anthropology to 'study up' in relation to refugees (Nader, 1972). Ethnographic studies in Kenya focus on the lived experiences of refugees (Abdi, 2005; Bartolomei, Pittaway, & Pittaway, 2003; Horn, 2010b, 2010a; Horst, 2006; Jaji, 2009, 2014) or on organisations directly interacting with refugees in camp environments (Hyndman, 2000; Verdirame, Harrell-Bond, Lomo, & Garry, 2005). Ethnographic studies have not reached 'up' high enough into the elite, bureaucratic interactions taking place in Nairobi or the functioning of these institutions as an object of analysis in itself.

The current literature's seeming reluctance to engage in a deep contextual analysis also reflects a wider trend in Refugee Studies which often works with or in close relation to humanitarian agencies (Scalettaris, 2007). Through this relationship and often professional experience, some researchers

have adopted the view from humanitarianism that there is a certain similarity across operations in different settings that mean contextual analysis is not always necessary or that themes across refugee contexts, such as registration, can be discussed in abstraction from that context. This is perhaps partly because of the thematic focus of Refugee Studies which tends to privilege aspects of social phenomena most closely related to refugees which makes it less likely to situate refugee registration within a history of the country's civil registration, as is done here.

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The limited number of ethnographic studies of the state also reflects trends within anthropology, which historically did not consider the state an appropriate object of study; indeed, Bierschenk and Oliver de Sardan note that it is only in the 'last two decades' that an interest has emerged in 'more empirically grounded analyses of statehood in Africa' (Bierschenk & Olivier de Sardan, 2014, p. 54).

Literature on the anthropology of the state has focused on experiences, encounters and popular representations or discourses of the state; it studies the state through how it is 'imagined' by citizens; (Das & Poole, 2004; Gupta, 1995; Hansen & Stepputat, 2001; Sharma & Gupta, 2006; Trouillot, 2001); or how its affective registers shape the subjective experience of state power and the 'affective intensities through which the state is reproduced in the everyday' (Aretxaga, 2003; Laszczkowski & Reeves, 2015, p. 1). It ignores the internal functioning and practices *inside* the state and the role of bureaucrats themselves, creating the impression that this is as Copans suggests, a 'state without civil servants' (Anders, 2009, pp. 4–5; Bierschenk & Olivier de Sardan, 2014, pp. 39, 52–54; Blundo & Le Meur, 2009, p. 18; Copans, 2001). This research is therefore an endeavour to bring bureaucracy back into the study of the African states; it is 'not about keeping society out, but a purposeful attempt to capture the sociality - ordinary and extraordinary - of the modern state's fundamentally bureaucratic project' (Chaflin, 2010, p. 51).

The state in Africa has, until recently, not been the subject of extensive ethnographic study because it is assumed to not contain the normative complexity that would make it an interesting subject of study.[10] The state has often been presented as devoid of meaningful function or a 'shadow state' that feeds a parallel patrimonial system, based on the use of public resources for private and clientelistic ends (Reno, 1995). In a similar vein, the state has often been seen as having little impact or penetration into the daily lives of Africans; Beek et al describe how the state is seen as 'a silent 'offstage' other, assumed to be either barely present or not relevant' (Beek, Göpfert, Owen, & Steinberg, 2017, p. 4).

Despite these tendencies, in recent years there has emerged a growing field of ethnographic research on the African state, which has significantly shaped this thesis (J. Alexander, 2013; Beek et al., 2017; Bierschenk & Olivier de Sardan, 2014; Blundo & Le Meur, 2009; Olivier de Sardan, 2008).[11] Such scholarship 'has begun to grasp the powerful presence of state institutions in everyday life, the purposes that animate them and the people that staff them' and delights in the everyday 'rhythms and mentalities' of state bureaucrats and their quotidian work (Beek et al., 2017, pp. 3–4). Among this literature, this thesis has been particularly shaped by the research paradigm set out by Bierschenk and Olivier de Sardan in their edited volume *States at Work: Dynamics of African Bureaucracies* which they summarise as follows:

What we are interested in are the apparatuses of states, the practices of public bureaucrats and their emic perspectives, and the implementation of public policies ... how public bureaucrats see their world … and how they deal on a routine basis with their hierarchy, their colleagues, other non-state institutions and the users of their services (Bierschenk & Olivier de Sardan, 2014, p. 55).

[10] A clearer linguistic distinction between this literature and the anthropology of the state literature could be achieved through labelling the former as 'anthropology of the state' - to highlight its theoretical and methodological approach - and the later as 'ethnographies of the state' which highlight its empirical focus.
[11] This literature is influenced by, and draws upon, a rich ethnographic literature on the state in South Asia (Gupta, 2012; Hull, 2012; Mathur, 2016).

Such literature focuses on individual bureaucrats and their encounters with the public, but my work differs slightly in taking a stronger focus on the functioning of the bureaucracy itself; how work is structured and organised in ways that is socially constituted but nonetheless exists in ways that are largely beyond the influence of individual officers. I am interested in how bureaucracies function (what they do), in reference to their own stated purpose, although without being functionalist.

The approach taken here attempts to understand the state on its own term, refusing to understand it solely in reference to idealised Weberian and invariably Western categories and assumptions of how a state should function and using this as a 'norm against which other states are judged' (Olivier de Sardan, 2008, p. 5; Sharma & Gupta, 2006, pp. 10–11). Anders argues that seminal works on the African state, such as Chabal and Doloz (1999), Bayart (1993) and Mbembe (2001), focus on the ethnic and clientelistic networks which they describe as usurping state institutions but 'do not differentiate between these clientelistic relationships' and thus 'unwittingly reproduce the *dualism* between the Weberian legal-rational order and African society, lumping all types of social relations, from kinship to various voluntary forms of association, under the latter' (Anders, 2009, p. 4 emphasis added). Likewise, Olivier de Sardan argues that characterising the divergence between official norms and actual practice with terms such as neopatrimonialism and clientelism are 'too sweeping, too general and too partial'; they oversimplify, rely on predetermined typologies and deny the multi-faceted dimensions of the realities of state practice (Olivier de Sardan, 2008, p. 6).

Olivier de Sardan sets out an alternative analytical framework, arguing that the divergence between official norms and actual or 'real' practice should be understood through the concept of 'practical norms'; the practices of state officials which break with 'official norms … are not associated with anomie, chaos or chance; rather, they are regulated, organized and structured' (Olivier de Sardan, 2008, p. 7). It is the task of researchers, he argues, to identify these practical norms through empirical investigation and understand how they relate to and interact with 'official norms'. This

helps to captures the ‘complexity, variety, ambiguity’ of the behaviour of state agents (Olivier de Sardan, 2008, p. 1). A highly illustrative example is Anders’ research with one senior civil servant in Malawi where he illustrates the wide range of norms affecting his behaviour. These include obligation to kin and clients - which are hard to resist because such individuals often do not fully adhere to the separation of the public and the private sphere - and concerns about ‘the threat of witchcraft, *utafiti* and social isolation’ (Anders, 2002, p. 15). He therefore shows how emic perspectives transcend simple dichotomies of public/private, legal/illegal, selfish/altruistic (Anders, 2002, p. 15). This non-normative approach has also been applied by Bear and Mathur to bureaucracies. They argue that bureaucracies are complex and varied sites of political contestation which require empirical scrutiny; they are not ‘disenchanted iron cages of modernity’ without ‘ethical and affective politics’ or to be viewed in normative terms, as other have done, as sites of structural violence or violent simplifications (Bear & Mathur, 2015, p. 19, quoting Gupta (2012) and Graeber (2015)).

Questioning the boundaries of the state in terms of the separation of the public and private sphere is also particularly important in considering the relationship between non-state actors and the state. Reified notions of the state portray it as existing ‘above’ society, but the anthropology of the state literature critiques this at length, particularly in relation to globalisation which has been interpreted as challenging the nation state (Sharma & Gupta, 2006; Trouillot, 2001). However, as Bierschenk and Olivier de Sardan argue, this literature ‘appear[s] to conclude that there are no borders at all’ and thus focuses on ‘an anthropology of governing processes in general’ (Bierschenk & Olivier de Sardan, 2014, p. 52). I hold that a distinction or boundary between civil society and the state can be made but the configuration of this relationship varies. Blundo and Le Meur, for example, describe the wide range of non-state actors involved in public service delivery in Africa; they argue that it is important to engage in empirical descriptions of ‘everyday governance’ as it enables researchers to identify ‘configurations which render obsolete and inoperative – if they ever were relevant in the first place – the distinctions between state and civil society or the public and private

sphere, on the other' (Blundo & Le Meur, 2009, p. 14). This thesis argues that globalisation, and the close partnerships with international organisations of which this is part, do not necessarily negate the power of the state but are actually premised on the importance of and continued legitimacy of the state. As Brown argues, it is not the case that the state is 'shrinking or vanishing' but rather that 'new forms of statehood and governance are emerging' (Brown, 2015, p. 342). It is the nature of this partnership, as part of pluralistic governance, the power at play and its effects on everyday state practice that this thesis explores.

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The above methodological approach is used here to study the state's engagement with refugee registration and RSD. The meaning and definition of these activities was discussed in Section 1.2 above. Here, I discuss the current analytical literature on these topics, within Refugee Studies. I argue there has been insufficient attention to what these bureaucratic functions actually mean to states, the exercise of state power and their part in the 'international' refugee regime. The current literature has focused mostly on how RSD and refugee registration are carried out.

Regarding RSD, it has received a vast amount of attention within Refugee Studies, including in Kenya specifically, because it is seen as a complex legal procedure with crucial implications for refugee protection. The literature focuses on how legal assessments are made; how refugees experience and negotiate the process, particularly in recounting their reasons for fleeing their country of origin; the conduct of RSD officers; and often on the protection failings within the process (On Kenya specifically: Abuya & Wachira, 2006; Hyndman & Nylund, 1998; Jaji, 2018; Odhiambo-Abuya, 2004; Verdirame, 2000; Verdirame et al., 2005; Wood, 2014). The focus here however is not on how RSD is carried out but the state's interest in doing RSD in general.

Refugee registration, in contrast, has received very little attention because it is seen as the straightforward process of data collection or precursor to RSD. Large scale head-counts in refugee camps have received some attention in terms of refugees' rights (Harrell-Bond, Voutira, & Leopold, 1992) and post-colonial critiques of the power and social control exercised by UNHCR over refugees (Hyndman, 2000). The growth of biometric registration has prompted attention in policy circles and political science literature (Aas, 2006; Ajana, 2013; K. L. Jacobsen, 2015; Van der Ploeg, 1999).[12] Other work focuses on how registration impacts refugees' rights; for example, Janmyr's research on UNHCR-government relations regarding registration in Lebanon focuses in normative terms on its effect on refugee protection (Franke, 2009; Janmyr, 2018). These approaches focus on the peripheries of registration – at its most visible or most technologically advanced - or normatively on its effect on refugees. The approach here is on the mundane, everyday practices of registration of the government and, importantly, the complex politics this can reveal about its significance for the state and the operations of state power.

1.3.2 Development Projects, Partnerships and UNHCR

The literature this thesis speaks to on development projects, partnerships and UNHCR aligns with the second set of research question about how UNHCR engages in the transfer process, the role of capacity building within this and the nature of its relationship with RAS. Current literature on transfer processes is very scarce; there is one chapter which looks at the integration of education and health services between UNHCR and the Senegalese state (Fresia & von Känel, 2016) and another on the handover of a refugee camp in Uganda to facilitate the refugees' integration (Kasier, 2000). One article, published in *Forced Migration Review*, provides a brief empirical summary of some of the issues faced by UNHCR in the handover of RSD and registration globally; this thesis shares the findings of the article that transfers have been a means of 'freeing up UNHCR resources' but are faced by challenges on the ground and been hindered by EU countries' focus on capacity

[12] The cited author's initials are included in the in-line reference so as to differentiate her from another author cited in this thesis with the same last name.

building as a means to restrict onward migration to Europe (S. D. Miller & Lehmann, 2016, p. 43). The empirical detail is however very limited and relies on a UNHCR report discussed below.

Literature published by UNHCR's Policy Development and Evaluation Service (PDES) is also limited. This is partly because of the political sensitiveness of UNHCR's often on-going relationship with governments whose support is central to their operations. It also likely to be because UNHCR's approach to transfers relies on its extensive existing documentation about the expected standards and procedures for registration and RSD.[13] There is one 'preliminary review' on the transfer of RSD globally and one report on the transfer in Kenya (Garlick et al., 2015; van Hovell et al., 2014). Both reports contain very useful technical details and descriptions of the transfer process, which are used in this thesis. It however lacks analysis on why the transfer process is happening and the everyday challenges and contestations in implementing it, partly because of the need to protect the fragile working relationship between DRA and UNHCR. It is also narrated very much from the perspective and role of UNHCR, rather than DRA. This is to be expected, given its authorship, but does make it a useful secondary source for understanding how UNHCR views the transfer. The decision by UNHCR PDES to write a report about Kenya, over other transfer processes, reflects the importance given to this transfer compared to others taking place globally; the report states: 'From a country-specific point of view, Kenya illustrates and provides insight into many challenges in the RSD transition process which could potentially be of wider relevance' (Garlick et al., 2015, p. 10).

UNHCR, more broadly, has been the subject of study in the political science and international relations literature. This literature has focused on how UNHCR is situated within international governance mechanisms: it argues that, although UNHCR is dependent, for around 97% of its funding, on voluntary contributions by members states, it is an important, autonomous actor in the

[13] UNHCR is currently working to address this deficit, including through an internal 'tool kit' for transfer processes, based on multiple country analysis, including Kenya. See also Section 7.4.4 .

field of refugee protection (Loescher, 2001b; Loescher et al., 2012; Steiner, Gibney, & Loescher, 2003). Loescher describes how, in much of UNHCR's work, it walks a 'perilous path … between the protection of refugees and sovereign prerogatives and interests of states' (Loescher, 2001b, p. 2). Loescher argues that 'while the UNHCR has been constrained by states, the notion that it is a passive mechanism with no independent agenda of its own is not born out by the empirical evidence of the last 50 years' (Loescher, 2001a, p. 33).

UNHCR's organisational culture has been the subject of another UNHCR PDES report (Wigley, 2005). This research is pragmatically focused on deriving recommendations on how to improve UNHCR's organisational culture. It also, importantly, states that it does not focus on how UNHCR's organisational culture impacts, or is influenced by, its interaction with external agencies. It does however emphasise that 'these are areas worthy of greater depth and investigation' (Wigley, 2005, p. 103). Similarly, Gottwald provides interesting insights into the general organizational culture of UNHCR but is focused on comparing 'UNHCR's decision-making organizational culture with the demands and assumptions of … the Humanitarian Reform processes and the Cluster Approach' which have little relevance to the topics discussed here (Gottwald, 2010, p. 2).

UNHCR's role as a capacity builder of governments in the area of refugee protection is noted in the literature but not explored in-depth (Lewis, 2012; Loescher et al., 2012; Scheel & Ratfisch, 2014). Lewis writes that 'UNHCR considers capacity building activities to be an integral part of its international protection mandate and thus, activities that it has been authorised to carry out since the inception of its Statute' (Lewis, 2012, p. 138). Similarly, Loescher et al describe how 'for much of its history, UNHCR has been a "teacher' of international norms, promoting and disseminating international refugee law, and socializing states into ratifying key conventions and incorporating the main tenets of international refugee law within their domestic legislation and policy frameworks' (Loescher et al., 2012).

This literature however does not critically examine the nature or impact of this capacity building. This is possibly especially acute regarding capacity building because it can appear as a technical operation that is a 'virtually uncontested normative ideal' (Gould, 2005, p. 71). As Douglas-Jones and Shaffner argue, one of the greatest challenges of studying capacity building is 'the way the generic form of capacity building appears self-evident, providing a sense that the forms of change, progress and transformation that it heralds are unremarkable' (Douglas-Jones & Shaffner, 2017, p. 11). While capacity building is a relatively minor aspect of UNHCR's overall work, I show that it has a significant impact on the Kenyan state and reveals a particularly stark form of power. Overall, the focus of the literature on UNHCR has focused on how it wields power in relation to the lives and subjectivities of refugees and donor governments, with very little sustained attention on how it relates to governments in the countries where it works.

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Development Studies engages, at its core, in the deep politics and power at play in development projects, including capacity building. Much of this has come about through what Fechter and Hindman characterise as an 'ethnographic turn in development studies' which challenges the technical and depoliticised way in which development actors, including UNHCR, often present their work (Fechter & Hindman, 2011, p. 12; Ferguson, 1990; Gould, 2005; Li, 2007; Mitchell, 2002; Mosse, 2005b, 2011). This thesis builds on this literature and shows that the depoliticised veneer constructed by UNHCR disguises a complex, fractious and often fraught power play with RAS.

This literature further shows that policy and programmatic guides are just one part of the story and that certain practices are 'concealed rather than produced by policy' (Mosse, 2005b, p. 16); that interventions are not 'the simple outcome of a value-free and linear planning process, but rather the changing and negotiated manifestation of diverse and sometimes competing interests' (Crewe &

Harrison, 1998, p. 19). Development organisations moreover have their own organisational, political and ethical logics, which are shaped by the practices of individual aid workers (Fechter & Hindman, 2011; Hilhorst, 2003; Mosse, 2005b; Stirrat, 2008).

With recognition of the importance of politics and power within development projects comes the debate about who exercises this power, how and to what end. There is wide recognition that development projects often suit the agenda of development actors and/or the donors who fund them (Anders, 2009; Mosse, 2005b; Soederberg, 2003). Gould argues that 'the core point about capacity building is that it is embedded in interventions with specific goals that are almost always about conforming to formal demands or expectations of aid-related actors and processes … Capacity building is not carried out for its own sake, but is linked to specific policy agenda of the aid community' (Gould, 2005, p. 70).

Nonetheless, it is equally recognised that the power of the development actor is far from absolute. Their power is compromised by resistance and 'weapons of the weak' from the implementers and intended beneficiaries of the projects (Scott, 1985). Importantly, the power of donors is also limited by the now widely accepted importance of recipient countries to be 'partners in strategies determined and 'owned' by recipients themselves' (Abrahamsen, 2004, p. 1453). There has been a shift away from economic conditionality and structural adjustment programmes of 1980s and political conditionality in 1990s, which became associated with coercion and imposition. Since mid-1990s, there has been a move towards partnerships which have been adopted in an 'increasingly ubiquitous manner' (Crawford, 2003, p. 140). Rather than hierarchically or coercively constituted, partnerships are intended by development actors to be based on a 'shared sense of purpose, mutual respect and the willingness to negotiate' (Crawford, 2003, p. 142). This change was driven by donors' concerns to address both the practical failures of previous 'top-down' development projects and a need to legitimise projects in response to accusations of imperialism and neo-colonialism (Abrahamsen, 2004).

There is debate about whether this is just a new language or reflective of substantive change. Some commentators are very sceptical; Fowler, for example, calls partnership 'a terminological Trojan Horse that grants greater power to donors through 'appearing to be benign, inclusive, open, all-embracing and harmonious', as it 'precludes other interpretations of reality, options and choices without overtly doing so' (Fowler, 2000, p. 7). Most commentators suggest that partnerships do not achieve the full equality they officially aspire to achieve, particularly because of structural factors such as the financial power inherent in donors, the need for contracts, audits and performance indicators that hierarchically mediate relationships and the challenges of building strong relationships across often long distances (Harrison, 2002; Hoksbergen, 2005; Kayizzi-Mugerwa, 1998; Mawdsley, Townsend, & Porter, 2005). Development projects therefore largely sit in a murky middle ground between coercion and participation, between imposition and ownership. Analysis by Mommers and Wessel of UNHCR's relationship with Non-Government Organisations (NGOs), who act as implementing partners, in Northern Uganda shares many of these findings (Mommers & Wessel, 2009). They discuss how equal partnership was 'impossible' because: NGOs are reliant on UNHCR's funds for their financial viability and not vice versa; UNHCR only consults with NGOs on planning and operational issues rather than on more substantive issues; and because of UNHCR's strict demands and reporting structure that is mediated through a standard partnership agreement (Mommers & Wessel, 2009). RAS and UNHCR's capacity building process is similarly mediated by UNHCR's standard partnership agreement and so we see these issues reoccur, although UNHCR's mechanisms for control extend beyond these official structures. How this control can be understood and conceptualised theoretically is discussed in Chapter 3.

Although the literature on the politics of development is extensive, this research looks at a different kind of project to those discussed in the literature and thus makes an important contribution to understanding how power and control operate in development projects. It is a smaller scale project than most of those in the capacity building literature which focus on large scale projects led by

Bretton Woods institutions, such as Poverty Reduction Strategy Papers (Anders, 2009; Gould, 2005; Lie, 2015). Perhaps the level of influence and control exercised by donors in such globally significant projects is expected but this research shows many of the same issues apply to UNHCR and refugee affairs – areas which have previously received little academic attention. Despite being smaller in scale, it is however more comprehensive as it looks at the entire (albeit relatively short) history of one Department, looking at how donors dominated in its creation and development. This serves to show the power of donors to not just influence existing Ministries – as is a common feature of development actors in sub-Saharan Africa, for example through the placing of international consultants or experts – but to consciously create a whole Department (Bergamaschi, 2014). This thesis also looks at capacity building in the context of a transfer which meant UNHCR was already actively involved in the focus activity of the project - normally the development actor is only the manager of the project. Although making the project more exceptional, it is interesting to explore how this prior involvement configured UNHCR's control over the process.

The current literature also focuses on how development projects fail to achieve their stated aims. Ethnographies of public sector reform in Africa consistently state the challenges, and often failures, of implementation and the need to study the so-called 'policy-implementation gap' (Bierschenk & Olivier de Sardan, 2014, p. 50). Anders' research on 'good governance' reforms in Malawi discusses how the project 'dissolved in the messy practice of policy implementation, provoking unanticipated responses from civil servants who tried to co-opt or adapt to the reorganisation of their workforce' (Anders, 2009, p. 7). The problem is frequently identified as due to donor's failure to achieve true participation or partnership which meant the reality of 'local' conditions were not fully understood (Crewe, 2014; Crook, 2010; Leonard, 2008); governments who have insufficient ownership or political buy-in to the project (Mosse, 2011, p. 6); or donors who were diverted by domestic political interests (Escobar, 1995). This project however saw little resistance or challenges in the implementation phase – following negotiations, it was largely implemented as intended by both organisations. Instead, the transfer was not fully achieved because UNHCR's own internal

tensions, combined with the interests of the government, compromised the design of the project. Although the official aim of capacity building was to facilitate independent government engagement in refugee affairs, the agreed components were deliberately configured to ensure this would not be achieved.

1.4 Central Argument

The first argument in this thesis is that, analysis of the everyday practices of street-level bureaucrats reveals that the Kenyan state's engagement with registration and RSD was marked by a procedural indifference – defined as a lack of interest or concern. It carried out registration but did so in a way that undermined or failed to achieve its ostensive purpose. I argue that registration existed primarily because of donor pressure and influence. Moreover, although RSD was officially a government process it remained almost exclusively managed by UNHCR. I argue that this indifference marks an opportunity to rethink the importance of registration and RSD, and the bureaucratic knowledge it makes available, for states. I thus argue that theories of state power that rely on the idea that state power is achieved by rendering the population legible through the administrative penetration and embrace of society should be questioned in light of this empirical evidence. I present two empirical critiques: firstly, that the Kenyan state, and the African state more broadly, developed without the same reliance on bureaucratic knowledge as suggested in universalised theories of the state. Secondly, that registration and RSD grant rights to refugees and offers a form of legal inclusion to which states can be resistant, especially when bureaucratic knowledge is not valued by the state. I show that the Kenyan state has long expressed its hostility to hosting refugees which is rooted in the construction of Kenyan-Somalis, and by conflation Somali and other refugees, as violent and disloyal to the state. The suspension of registration formed part of a set of actions by the state to enforce their marginalisation and exclusion from the nation. Ultimately, this thesis shows the historical and political contingency of these central components of the so-called 'international' refugee regime.

The government's indifference meant it was not fully responsible for RSD; although it did carry out registration, I argue this was primarily because of donor influence. UNHCR carried out these functions since the early 1990s but was under internal pressure to transfer them to the government. The second argument in this thesis explores a capacity building project by UNHCR to facilitate the full transfer of RSD to RAS and unify registration (previously done by both UNHCR and RAS in parallel). I consider how the project played out at the street-level and whose interests its served. This contributes to discussion about the empirical dynamics of development project and theoretical ideas about how power is exercised. I argue that capacity building did not actually build capacity to instigate independent government operations but was oriented around deliberately maintaining UNHCR's control over RAS which was achieved through instigation of their managerial control, the configuring effect of technology it implemented, construction of their expertise, as well as financial incentive. I argue the project was carried out in this way by UNHCR to resolve its own institutional tension between demands to carry out the transfer and concerns about how this could jeopardise refugee protection. The control UNHCR exercised, and its ability to maintain the status quo, did not however mean the project had been derailed or poorly implemented. Instead, it reflected the agreed project components that were configured in a way that meant the official aim of the project would not be achieved. The project achieved very little because this inertia suited both the institutional interests of UNHCR and the indifference of the government. Pressure from donors and the government's indifference ultimately combined to mean RAS existed but it could not fully function.

1.5 Structure of Thesis

The thesis is structured as follows: Chapter 2 outlines method, methodology and related issues. Chapter 3 sets out the theoretical framework, which has two parts: the first explores theories related to registration and state power. This focuses on the work of Foucault, Scott and Torpey. Foucault discusses the historical shift in how sovereign power is exercised to focus on a productive care and control of population, which required greater interest in and extraction of statistics about the

population. This forms a backdrop for Scott's notion that legibility of populations, which simplifies and standardises complex realities, is required for a state to successfully intervene in society, such as through standardised naming practices. Similarly, Torpey argues that intervention in society requires the embracing of individuals and deciding who belongs and who does not, principally through the monopolisation of the legitimate control of movement. This, importantly, relies on the use of bureaucratic machinery, including the passport. The second part introduces the critique, developed across this thesis, that this body of thought does not take a sufficiently empirical lens to the contestation and challenges of registering a population and rendering it legible. I outline two empirical critiques: firstly, that universalised notions of the state, based on examples from Western Europe, should be questioned in light of the experience of African states which developed without a heavy reliance on bureaucratic knowledge. And, secondly, that some states will want to exclude certain individuals from registration because of the rights and legal inclusion it grants. This critique attempts to open up analytical space for considering the limits of bureaucratic knowledge for the Kenyan state in the coming empirical chapters.

The second body of theory conceptualises how control is exercised in development projects, setting out a theoretical lens to understand how UNHCR exercises control over the RAS through its capacity building project. This draws on a broadly Foucauldian lens to discuss how power is exercised through the construction of expertise, managerial control, the configuring effect of technology, as well as the use of more visible appeals to self-interest and financial reward.

Chapters 4 and 5 are historical chapters – making use of both primary and secondary sources. Chapter 4 firstly explores the weaknesses in the colonial administrative infrastructure, focusing on the *kipande* system of registration generally, before turning to the particularly weak governance and surveillance in the Northern Frontier Province of Kenya specifically. It secondly explores the legacies of these forms of governance in the post-colonial period, showing how access to civil registration remained a challenge for many Kenyan citizens but particularly for Kenyan-Somalis,

who historically inhabited the Northern Frontier Province. This shows that weaknesses in the administrative infrastructure became combined, in the postcolonial era, with the more deliberate use of these weaknesses to enact legal exclusion, based on ethnic discrimination. The third section links this historical background to refugees specifically. I show that refugees have faced similar challenges to accessing registration, as part of a wider project to enforce their exclusion from the nation through encampment and ultimately their return to Somalia. This section also sets out how the government *has* engaged in refugee affairs, arguing that it has focused on collective and often indiscriminative approaches, including police instigated violence.

Chapter 5 sets up a parallel history to that given in Chapter 4 as it focuses on the history of the government's ostensive pursuit of bureaucratic knowledge through registration and RSD, with a particular focus on the historical development of DRA, from 1980s until the time of fieldwork. I argue that there has been a continued indifference by the government to independently and actively engage in the administrative management of refugee affairs and that this pursuit is instead the product of continued engagement and pressure by international donors.

Chapter 6 shifts from a broad historical perspective to a close contemporary one. It brings together these two historical trajectories within the Government of Kenya to look at how commitment to the bureaucratic management of refugee affairs, promoted and facilitated by donors within DRA, co-exists with the limited role that bureaucratic knowledge plays for the central Kenyan state – rooted in both infrastructural weaknesses and a resistance to registration's empowering potential - in the everyday registration practices of the RAS Nairobi and Kakuma Field Office. I argue that these forces come together at the street-level to produce a *procedural indifference* – defined as a lack of interest or concern – to registration. This includes an indifference to the enumerative purpose of registration, as well as its rights-granting purpose as refugees were denied meaningful on-going recognition. I argue that registration largely existed as a means to meet donor pressure to register

refugees; it existed in a detached, mechanised manner, not to work in a meaningful sense but just to exist.

Chapter 7 moves forward in time to describe how this office changed through capacity building by UNHCR as part of the unification of registration and transfer of RSD from UNHCR to RAS. Chapter 6 therefore also functions as a before picture for these changes. The purpose of the capacity building project was to unify government and UNHCR registration, which previously had worked in parallel, to be 'government-led', and improve the protection standards of the government. I argue that UNHCR's belief in the ability of capacity building to address their protection concerns however faltered in practice and instead UNHCR instigated considerable control over the government and increased RAS' reliance on UNHCR, which paradoxically restricted the government's engagement in refugee affairs, in tension with the official purpose of the transfer to empower the government. I argue that the Government agreed to the project because of how it helped to enforce encampment but remained indifferent towards registration, which is why it allowed UNHCR to gain such control.

Chapter 8, the last empirical chapter, shifts sideways to look at concurrent UNHCR capacity building of RSD, where many of the same issues arise. However, whereas DRA had independently carried out registration since 2011, DRA/RAS did not have a similar prior involvement in RSD. UNHCR was therefore capacity building from scratch. I argue that, as with registration, the government was indifferent to taking over responsibility for RSD and that, partly because of this, UNHCR was able to exercise considerable control and influence over the formation of government RSD practices through the guise of capacity building, which saw RAS incorporated into and mirror UNHCR's practices and standards. This again was in conflict with the official aims of the capacity building project to build independent government processes with the active support of the government. Both Chapters 7 and 8 also reveal how UNHCR's control was primarily limited to the

junior ‘project’ officers whose wages it paid, whereas the senior government staff remained largely outside their purview. I thus discuss the parameters of UNHCR’s power and the disjuncture and ultimately weaknesses in the RAS bureaucracy this created.

Chapters 7 and 8 are followed by sections which describe distinct, although closely related, events to those in the preceding chapters. They are included because they closely mirror and reinforce the findings in the chapters. The first outlines a verification exercise, on-going at the time, in Nairobi, which aimed to update a range of information held by UNHCR about refugees. It is very similar to registration and marked another point of engagement between UNHCR and RAS. The second looks at the Refugee Appeals Board – the last stage in the RSD process for those who are found to be ineligible for refugee status. The section shows that the Refugee Appeals Board was not operational because of challenges caused by the wider Ministry and was undergoing similar UNHCR-led capacity building.

Chapter 9 offers an overall analysis and conclusion.

2 Chapter Two: Research Methods

This chapter outlines the methods I used during research – focusing on semi-structured interviews and participation observation - and my reflections on the strengths and limitations of the information I was able to obtain. I also consider issues of access, ethics, positionality, language and methodology.

My research, at its heart, is empirical and inductive; I wanted the information I gathered to shape and drive the research, unhindered by theoretical frameworks or the parameters of an initial research design. I approached fieldwork with an openness, guided by what I found most interesting and shaped in an on-going basis by the responses of my participants. Some of the core ideas in this thesis have remained from the initial research design – most prominently the tension for UNHCR between commitment to the transfer process and refugee protection – but this central paradox found forms I did not anticipate and many other new issues emerged over time.

2.1 Overview and Field Sites

I carried out research from June until December 2016 and April until September 2017. It was conducted in the three major refugee hosting areas of Kenya: Nairobi, Kakuma refugee camp (and the Kaboleyei settlement close by) and Dadaab refugee complex (composed of four camps - Dagahaley, Hagadera, Ifo and Ifo 2). The research used three different principal methods: semi-structured interviews, participant observation and ethnographic interviews.

Across the locations, I carried out formal semi-structured interviews with: 35 UNHCR employees from different departments; ten representatives from NGOs; 15 current and previous RAS/DRA officers involved with RSD; 14 current and previous RAS/DRA mangers; and two current staff members of the Refugee Appeals Board. In addition to this, through participant observation and ethnographic interviews I met with around 90 RAS employees. By the end of fieldwork, I was confident I had talked to all relevant members of UNHCR and RAS.

I also carried out semi-structured interviews with donors. I was given access to a comprehensive list of donors in Kenya through which I identified those who had projects related to RAS and I interviewed one international donor organisation via Skype and one in Nairobi. I also interviewed two consultants from the Danish International Development Agency (DANIDA) via Skype who had worked on a capacity building project with DRA which ran from 2009-2013. I also carried out one in-person interview with a representative from International Organisation for Migration (IOM) who had been involved with a project to increase the human capacity of RAS.

In Nairobi, I carried out nearly two months of participant observation in the RAS Nairobi Field Office. This involved an initial visit for six weeks, followed up by a return visit for four days, four months later, and for two days, another four months after that. I also carried out a range of semi-structured interviews with current and previous staff in RAS' Head Office and UNHCR's Branch Office.

In Nairobi, I also attended a Verification Exercise of refugees, led by UNHCR and RAS, for a week in the Eastleigh neighbourhood of Nairobi, which aimed to check and update the information of all registered refugees in Nairobi. This was another opportunity to see UNHCR and RAS work together and on an issue closely related to registration. I observed the whole process, talked to UNHCR, RAS and other temporary clerks who carried it out, as well as identified more senior UNHCR officials who I interviewed later. In Nairobi, I carried out a group interview with refugee community leaders to gain information about their, and the refugees they represent, experiences of RAS. This was not to gain the perspective of refugees on RAS *per se* (which would have required a far more representative sample) but rather to gather other insights about RAS to follow up on that I might not otherwise have been aware of.

I spent around eight weeks in Kakuma refugee camp, across three trips (two weeks, then a month, then one week). The trips were spread out in order to see how registration changed during the capacity building process. In both camps, I stayed in UNHCR's compound which enabled a greater understanding of UNHCR's general operations and some informal conversations with staff. In Kakuma, I carried out interviews with RAS and UNHCR RSD officers. I also carried out a wide range of shorter interviews with UNHCR employees about how their work related to RAS to identify other links between the organisations and general perspectives of RAS. I also carried out ethnographic interviews and observation for three days with RAS, two days with UNHCR and another day with UNHCR and RAS together after the unification of registration. I joined UNHCR, RAS and other NGOs on a convoy to a reception centre at the Nadapal border point with South Sudan to collect newly arrived refugees and transport them to Kakuma.

I spent three weeks in Dadaab refugee camp. The trip was relatively short because registration and RSD were not on-going at the time, although I met a few members of staff who had previously worked in these roles. During this time, I carried out short interviews with UNHCR staff about how they worked together and spent one day carrying out ethnographic interviews in each of RAS' four field offices.

Outside the camps and Nairobi, RAS has small offices in several towns in Kenya. The number of refugees living there are very low and UNHCR does not have offices there. I did not visit these towns but I interviewed one officer who had previously worked in the Nakuru office but was now based in Nairobi. The officer described the registration practices, which were very similar to those I observed in Kakuma and Nairobi.

Finally, I carried out two skype interviews with senior UNHCR employees at their Headquarters, now split between Geneva and Copenhagen. This took place several months after leaving Kenya. I had offered to carry out these interviews in-person but the interviewees stated a preference for

Skype. I had limited contacts and was given a representative from the RSD and registration departments who indicated that I did not need to interview anyone else and thus there was no 'snow-balling'. I also interviewed five other UNHCR employees with international postings who had undertaken research related to the transfer process in Kenya. Although I think the low number of interviews is a limitation, the policy-making level of UNHCR is well documented through UNHCR's Executive Committee conclusions and other publicly available material, which I have utilised. Moreover, the focus of this research is not the formation of these polices but rather close empirical examination of their implementation and interpretation in Kenya.

2.2 Access

Crucial to the feasibility and demands of this research was being granted permission and access to UNHCR and RAS. The bureaucratic nature of these organisations and their often guarded nature towards researchers meant I spent a lot of time gaining permission to carry out my research. The UN is widely noted to 'have a culture of secrecy' (Autesserre, 2014, p. 275; Harrell-Bond & Voutira, 2007); and governments are often particularly reluctant to open their doors to researchers, which is one of the reasons why ethnographic accounts of states and generally 'studying up' are limited (Hoag, 2014; Nader, 1972). The permissions I needed primarily felt formulaic - proving I had the right documents and had sought permission of more senior officials. It never entailed a restriction on the questions I could ask or the parameters of the research. Only at one point, in relation to RAS registration in Kakuma, did I feel access was deliberately restricted (discussed below). Other limits to access were in response to what felt feasible, based on my perception of the relationship. It did however shape the research as the need to rely on bureaucratic hierarchies meant that many of my interactions were formal and professional; I had been introduced to individuals by their manager and interactions took place in their work environment.

I was granted access to RAS's Field Offices in Nairobi, Dadaab and Kakuma thanks to a letter of introduction I was given by the Deputy Commissioner at RAS, which was addressed to the field

office Manager and asked them to ‘accord’ me ‘every possible assistance’. As perhaps is typical of state bureaucracies, there was a strong deference to formal hierarchies and a penchant for formality and paper (Hull, 2012; Mathur, 2016). This letter of introduction therefore substantially eased access. I have reflected considerably on why I was granted this level of access. Of course, white privilege is a factor across research in post-colonial contexts, as well as speaking English with a British accent. My conversations with older male government employees, as a young woman, also drew attention and intrigue. Beyond this, I was granted access because of the peripheral nature of these government offices, which meant the stakes were low. As I argue in this thesis, these offices were not considered important by the Ministry within which RAS sat and so were less politically sensitive. I was also asking to visit public-facing offices that hundreds of refugees passed through daily, making these already widely accessed. The Deputy Commissioner who wrote the letters of introduction asked me very little about my research, which likely reflected the perceived lack of impact or implication my research could have on his position. He, like the other senior officers within RAS, were also new in post, following the disbandment of DRA, which meant they were possibly less wearied from the frequency with which many actors in the refugee field in Kenya are asked to participate in research.

In Nairobi, I had access to the RAS Field Office for nearly two months. My presence was accepted in the office, following permission from the Manager, and I eventually left of my own accord. Likewise, in Dadaab, a letter of introduction facilitated smooth access. I asked the RAS Camp Manager if I could visit each of the four field offices and he gave me a letter which specified the day I was to visit and staff were told of my forthcoming visit, apparently with no information other than that I was a researcher. I was able to talk freely to all the staff in these offices.

My experience in Kakuma however differed. Although I had a very similar letter of introduction requesting their assistance with my research, my welcome was short lived. I was given permission by the Camp Manager in Kakuma to visit their field offices in the camp itself, where registration

was carried out, but I was only able to spend three days there. When I returned to the main office on the fourth day however I was told sternly that I was not to return to the field office. I had initially only asked to visit for three days, although it had not felt like a firm agreement at the time and it was clear the atmosphere had changed. The reasons for this was not entirely clear, although it later became evident that they thought I worked for UNHCR – despite my spending a long time showing my documents and talking about my research. The suspicion of the RAS managers was also, as I realised through other conversations, because of the number of researchers in Kakuma. The three days I spent in the office had however been unhindered and I was able to observe that many of the practices were similar to that in Nairobi.

Access to UNHCR was initially more challenging. Prior to fieldwork, I had one contact who was the first (and thankfully last) who refused to be interviewed on the grounds that the topic of research was too politically sensitive. After this setback, I decided to ask the advice of a contact in UNHCR Policy Development and Evaluation Service (PDES) in Geneva who had taken a professional interest in my topic. The staff member identified a senior member of UNHCR Kenya to contact and when they did not reply to my initial email, followed up on my behalf, encouraging them to support my research. This was invaluable and opened the door to three key senior members of UNHCR who over time proved supportive of my research and allowed me to interview members of staff they managed. As is common with elite research, where participants can be inaccessible and 'ably protect themselves from outsiders', the use of contacts is often essential (Odendahl & Shaw, 2011). Access to UNHCR was overall more closely regulated and guarded than with RAS. UNHCR also had a clear preference for formal and structured interviews, rather than participant observation, presumably because it permitted greater control over the information I could gather.

Access is widely considered to be a constitutive part of research as it shapes the terms on which research is carried out. The process of gaining access however also provided important information which contributed to the overall findings (as discussed in the relevant chapters but particularly in

Chapter 8). In general, in negotiating access across most of the sites where I carried out research, there was contestation about whether RAS or UNHCR had the right to grant me permission and access; I nearly always approached RAS, as I generally had a better relationship with them, but they would refer me to UNHCR who would refer me back to RAS. UNHCR saw RAS as the *de jure* manager but RAS recognised UNHCR as the *de facto* manager. This highlighted the lack of clarity during capacity building about who was in charge and where decision-making power laid.

2.3 Ethics

A core ethical concern was to ensure informed and on-going consent. Achieving this presented two main challenges. The first was to ensure on-going consent during participant observation where research is prolonged and often without clear boundaries about when research stops. Throughout my observation, although I was primarily in public and professional work spaces, I tried to respect privacy within the office and I did not engage with officers outside of the office and office hours unless clearly invited. At no times was I given the indication that my presence was no longer being consented to; staff seemed happy with my presence and willingly talked with me and included me in the daily workings of the office. This was, of course, a subjective judgement but one that was based on continual reflection and reflexivity on the nature of the relationships I formed. It was based on these relationships that I was able to return to the office several times, after my first prolonged stay, and welcomed back.

More broadly, my ability to 'hang out' with participants and develop more informal and relaxed relationships was challenging in this context. These were professional work environments in which I was asking questions about professional activities and, as a visible outsider, there for a relatively short period of time, the researcher-participant relationship remained clear. This was in some ways a limitation to the nature of data collected as I could not fully situate individual's professional actions within a biographical context and perhaps some more informal practices were not revealed

to me. Nonetheless, I felt more ethically comfortable with this as it ensured research boundaries remained clear and it reduced the level of intrusiveness into individuals' private lives.

The second main ethical challenge was the use of 'gatekeepers' – primarily UNHCR and RAS managers – which raised a range of ethical issues (T. Miller & Bell, 2002). It could have put pressure on individuals to consent to the interview, but I believe this was viewed as permission, rather than pressure. Before most formal interviews, I emailed individuals a participant information sheet, approved as part of the University of Oxford's Research Ethics Committee approval process, and obtained oral consent at the start of the interview. Where possible, I also gave individuals the opportunity to review my notes or interview transcript and make amendments, as part of ensuring on-going consent. The use of gatekeepers had little impact on who I was able to access, as I was able to interview nearly all individuals I deemed relevant to the research, although the form and length of access varied.

Regarding anonymity, the use of gatekeepers meant individuals' participation was visible to their colleagues. Individuals were however aware of this and given the opportunity not to participate. Most individuals have been anonymised although for the organisations and sometimes their location in Kenya, this could not be achieved because of the demands of the research. The small of number of individuals working on specific topics in certain areas meant anonymity could only be achieved by discussing findings in very abstracted and non-specific terms. I gave individuals the opportunity to choose how they were cited in the research, but I realised that many participants did not fully understand the options available to them, despite my attempts to explain this. Most interviewees have therefore been anonymised unless participants demonstrated a clear and full understanding of the consent process. To further achieve anonymity, gendered pronouns have been randomly assigned when referring to an anonymous research participant.

My activities during participant observation raised another set of ethical issues. After a few days in the Nairobi office I was given the task of recording the details of refugees who arrived in the office by copying the details captured by staff from a form into a book and allocating a reference number. This was perceived as my job – to the extent that other staff stopped doing it and would come and find me to fill it in – and in doing so I was perceived as 'helping out' and staff commented that I was good at my 'job'. I was concerned this was an infringement of my role and constituted undue influence on RAS. I however in no way solicited this job but rather was strongly encouraged by staff members. My 'job' was also almost entirely unskilled and did not have a substantive impact on registration, such as eliciting information from refugees, which I refused to do. It also meant I was perceived by some refugees as working for RAS. Although very few refugees interacted with me, the few that did were often frustrated and did not believe me when I said I did not work there. I would explain that I was a researcher and try to refer them to whoever could address their problem. Taking on this 'job' was crucial for rapport with the staff and helped me to understand the everyday realities of their work.

A similar challenge was that I realised some RAS staff – throughout the organisation and across locations - thought I worked for UNHCR. This was partly because I stayed in UNHCR's compound in the camps (this was unavoidable on safety grounds and is the usual arrangement for all staff – both international and national - working in Kakuma) and the perception, I was unaware of, that white people in this field must work for UNHCR. This caused access challenges in Kakuma (discussed above) and possibly made some staff more reluctant to talk openly with me because they thought I was evaluating or investigating their work. This was despite always stating that I was a researcher, but this clearly was insufficient and I started to clarify pre-emptively that I did not work for UNHCR.

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Ethical concerns do not just include those considered in ethical guidelines, as discussed above. There are also important questions about the ethics of who does research and for whom; as Nyabola describes, in reference to Sékou Touré, 'the great battle for Africa' is the 'intellectual push and pull currently in play over who has the right to speak for Africa and what they have a right to say' (Nyabola, 2018, p. xxi).

A core ethical concern is the power imbalances and the colonial histories reproduced as a white British researcher in Africa. My ability to do research in Kenya is based on my British nationality and membership of an elite university both of which are historically funded by the extraction of resources and labour from the country and continent I research (see Chapter 4). The ability of Western researchers to research Africa is therefore not purely based on an ahistorical accident of wealth. It is also due to acts which have deliberately worked to exclude African academics and institutions from African Studies – through making their contributions 'preferably unheard' or derided as subjective and parochial (Allman, 2018; Bhambra, Gebrial, & Nişancıoğlu, 2018; Pailey, 2016). I believe it can be ethical for white researchers to research Africa but it must be within a context of equality - where the ability to do research is truly based on academic merit. The status quo however fails to address the ethical imperative for Africans to have greater opportunity to produce academic knowledge about and for themselves, and not only be written about, and which has resulted in 'misrepresentation, homogenisation and essentialising' (Pailey, 2016).

These are structural issues which this thesis inevitably reflect and reinforce. My attempts to address this as an individual are minimal but I am grateful for the opportunity to have been affiliated to Moi University in Kenya and spent a term at University of the Witwatersrand in South Africa. I have also tried to historically and contextually situate Kenyan political dynamics, and not to use Western normative categories and assumptions that often serve to replicate narratives of Africa as a continent of 'lack', in order to try to represent Kenya on its own terms (Mbembe, 2001; Wainaina, 2005).

Another core ethical concern within this research was the belief that refugees in Kenya, and often more generally, face continual demands for their participation in research, for which they receive little direct benefit (Sukarieh & Tannock, 2013). For example, during the relatively short period I was in Kakuma, I met around six other researchers carrying out research with refugees. My research was therefore deliberately designed around not carrying out research with refugees. I strongly believe that understanding the nature of displacement requires not just understanding experiences of displacement but also the powerful actors who shape it. Refugees often resist such actors and use their agency to subvert these actors' power but political realities mean this is often severely curtailed. To suggest these constraints are not pervasive does not empower refugees but instead adopts the flawed assumptions of neoliberal humanitarianism that has created the expectation that refugees can refashion themselves as 'resilient, entrepreneurial subjects' (Phillips & Ilcan, 2004). As Brankamp puts it, 'in this understanding, refugees should not look to politics or broken asylum regimes for solutions to their displacement and misery; they should look in the mirror' (Brankamp, 2018). I show here that the neoliberal humanitarian narrative also ignores the nature of institutional decision-making and the interests that shape it, which give little space for refugees to assert their interests.

I ethically justify this research as an act of political engagement. It seeks to show how power operates in humanitarian and development contexts and in whose interest; I attempt to lay bare some of the realities of what is justified in technical and depoliticised terms as 'capacity building'. Although I hold a high level of personal privilege relative to most of my research participants, the organisations I research hold immense power over the lives of tens of thousands of refugees and thus should be open to scrutiny and inquiry. Their power affects refugees who are forcibly encamped with minimal food, limited secondary education and few opportunities to make fundamental choices about how they live. This research is an attempt to reveal the interests, norms and logics that guide the decisions of these organisations and how they use their resources. I believe

the picture painted here is 'politically complicated and morally demanding' and I hope the reader will it let it sink 'through the layers of acceptance, complicity and bad faith that allow the suffering … to continue' (Scheper-Hughes, 1995, p. 417).

2.4 Participant Observation

My principle and preferred research method was participant observation. The main period of participant observation was of refugee registration in the RAS Nairobi Field Office – the focus of Chapters 6 and 7 – complemented by observation in Kakuma and wider interviews. In this office, I spent the morning doing my 'job' which allowed me to observe the initial data collection from all refugees arriving in the office. This was 'active participation' whereby the researcher does 'what other people are doing, not merely to gain acceptance, but to more fully learn the rules of behaviour' (Spradley, 1980, p. 60). This first step of the registration process was normally completed by midday and I would spend the afternoon around the rest of the office where I would be a more passive observer of others at work or sit with the staff who were not busy and chat with them. During this time, I normally wrote field notes when I got home in the evening as I was often too busy in the morning to write and I preferred to spend time with participants in a manner that felt more relaxed and natural, than writing notes in front of them.

One of the perceived benefits of participant observation is that the researcher can 'fade into the background' (Autesserre, 2014, p. 278). It is assumed that overtime and through building close relationships, research participants become comfortable with the presence of the researcher and reveal more of themselves. Although some staff did open-up to me more over time and I certainly felt more comfortable, I do not believe I faded into the background. This was important for ensuring on-going consent, as discussed above, as ethically it is highly problematic should a research participant forget they are being researched. I was accepted in the office largely on the basis of the permission I was given from the Manager and from my willingness to do a 'job'. Beyond this however, I think the ease with which I was accepted into the office was not because I blended into

the background but the opposite – because I was 'international'. Staff saw refugees as an 'international' issue, particularly because of the involvement of UNHCR which they recognised as an international organisation. Being foreign and white meant I too was seen as 'international' and thus an accepted participant and member of the sector.

I was not given the opportunity to engage in extended participant observation with UNHCR – apart from two days observing registration practices in Kakuma and another one day after the unification of registration had happened, and at the verification exercise. My time in both refugee camps, where I stayed in UNHCR compounds, presented more opportunity for informal interactions but this was limited because of general suspicion and wariness of researchers. As one UNHCR staff member put it, 'UNHCR is allergic to researchers'. I think staff were generally wary of researchers because of experiences of negative academic and journalistic accounts and concerns that their responses could jeopardize their job security.

My preference for participant observation was based on the belief that the interesting detail of an individual's work can rarely be captured sufficiently in an interview. Interviewees struggle to identify and articulate taken-for-granted norms and practices (Gobo, 2008, p. 6). Autesserre summarises this issue well writing that: 'such knowledge is not easily conveyed through words because it is practical rather than representational - meaning that it is implicit and automatic rather than explicit or deliberate - and because its contents are, in essence, unsaid and unthought' (Autesserre, 2014, p. 275).

I do not believe the transfer process could have been understood through interviews with senior managers alone. DRA, although not the focus of the study, has been frequently cited in the literature through this method, with limited insight on this specific topic (Betts, 2013; Campbell, 2015; Human Rights Watch, 2009). As discussed in Section 1.3.1, on my methodological approach to the African state, common approaches to the state tend to rely on the assumption that states are

monolithic and rationalist and that individuals' behaviour is caused in a mechanical way - amenable to causal analysis and manipulation of variables. Instead, I see behaviour and decision-making as informed by social and cultural meanings – by norms, discourses and values. Ideas, even if codified in policy documents, exist beyond these formal dictates. Policy ideas change, adapt and are reinterpreted as they are shared between individuals and move between places. Institutions exist in contradicting, multiple and fragmented ways. Because of this, comprehensive, explanatory frameworks cannot be given in one interview, for example about why certain actions have been taken. For example, no officer stated the government's reluctance to doing registration – a conclusion of the thesis – and so it could not have come out in an interview. Instead, this was my impression based on many different conversations and experiences. This is not to deride their perspective or suggest my own omniscience, but only that complex and fragmented truths cannot be dictated and pronounced but rather emerge through long-term research and 'being there' (Bradburd, 1998). Participant observation also allows the study of things that can seem 'boring' or otherwise irrelevant, if in a hurry (Mathews & Padwe, 2018). Several participants were confused why I would want to observe registration for more than the few minutes or hours it took to register one refugee. Yet, the unremarkable, quotidian and mundane can also contain complex dynamics that fundamentally shape political dynamics.

My observation and interpretation of events at the street-level also differed from some accounts given to me by senior officials who, although holding a managerial position, had not directly witnessed the same events I had. I also, over time, identified errors or omissions by certain interviewees; it was also a politically fraught situation which meant both organisations at times presented what I interpreted to be official narratives that did not map onto reality, possibly in order to preserve institutional reputation. The ability to 'be there' therefore enabled me to capture what I felt to be the most accurate account of what happened. Nonetheless, what I chose to focus on, what I found interesting, important and worth writing about, and how I interpreted the information, are necessarily partial. No account is complete or unbiased - it remains a matter of interpretation that

is shaped by my own normative perspective, my existing frames of reference, knowledge and experiences; there are multiple narratives possible for the same facts. Other researchers would tell it differently, but I do hold that core aspects of what happened and why would be the same.

Although I hold a strong methodological commitment to participant observation, there were nonetheless practical limitations. Language was a barrier in my communication with some RAS officers. Although degree educated in English, they sometimes struggled to understand me, partly because of my British accent. English was also an uncomfortable language for informal conversations. As the Kenyan political commentator, Nyabola, describes, 'speaking English to familiars is like showing up to a family dinner in a tuxedo' (Githiora, 2018; Nyabola, 2017, p. 3). English is overly formal and a strange language to choose in the contexts I was using it. Realising this, I had further Swahili lessons before returning to the field but I did not gain conversational proficiency. Nonetheless, I was able to understand basic sentences and routine interactions with refugees in Swahili as most were repetitive and short. Some conversations were conducted in English, as the official working language, and all staff spoke to me in English. Not being able to understand the informal conversations among staff in the office was however a significant limitation. It is for this reason that I focus more on how the bureaucracy functioned and how work was carried out – something that was possible to observe in a more muted manner – than the perspective of the bureaucrats themselves.

It goes without saying that there are aspects of an organization which will not be revealed to a researcher, even when based within the office. I saw the 'public face' of RAS (Navaro-Yashin, 2002). I saw a lot of what any refugee arriving in the office would see. I can only speculate but there must be a lot else that happens behind the scenes and in the Head Offices, most likely related to security and intelligence, given the widely noted background of the officers. RAS is however unlikely to be the instigator or main actor given its very small number of senior staff and peripheral role in the government.

During my time in the RAS registration offices, I was aware that my presence might affect the work being done and thus challenge the representativeness of what I observed. In Nairobi, I felt I was there long enough to identify any temporary changes. As I only spent three days in the RAS Kakuma field office, it is harder to assess, although when I arrived on the first day there was a move around of furniture to put wooden panels between the desks where the officers worked and the benches where refugees waited. An officer said this was to give refugees privacy and that the panels had only just arrived. The UNHCR markings on them were identical to the ones in the tent next door where a recent verification exercise had finished several weeks earlier. It seems likely they were quickly moved because of my arrival. Other more significant changes were not however possible as my visit had not been announced.

Despite long-term fieldwork, participant observation in particular can create challenges of representativeness as it relies on what happens while the researcher is there, at one particular temporal moment. It is particularly important to consider here as the process I was studying was not finished and, UNHCR would likely argue, a temporary arrangement. As one UNHCR officer said to me – and I paraphrase – 'RAS will one day suddenly decide to take up responsibility and then it will all work'. There was a continuous sense, particularly among senior UNHCR staff, that the transfer process was about to improve. I shared their anticipation throughout my fieldwork but eventually realized that change was in reality very slow. It was instead characterized by an inertia which, as I argue, was actually a deliberate component of the transfer. I therefore think the 'snapshot' I captured is actually representative of a longer period of time than a moment of transition in a development project. Although not by design, I was glad to have a three-month gap in between my two periods of fieldwork as it extended the period of observation and better enabled me to capture this inertia. More substantially, Chapters 4 and 5, although empirically focused, also function as historical context. They rely on a range of secondary sources – from government press statements, to grey sources and parliamentary debates recorded in Hansard – as well as interviews

as I would also ask participants and ex-employees about past events, although, because of the high turnover of staff, few participants had worked for RAS or UNHCR for more than a few years.

2.5 Ethnographic Interviews

Although my preference was to carry out long-term participant observation, time and access restrictions meant this was not always possible. In Dadaab, I visited each of RAS' four field offices for one day each. Similarly, in Kakuma, I spent only three days observing RAS registration practices, two days observing UNHCR registration and another one day after the unification of registration between UNHCR and RAS. I also spent four days at the Verification Exercise organised by RAS and UNHCR in Nairobi.

On these occasions, I adopted a method I term 'ethnographic interviews'. These were interviews which focused on what the research participant, most commonly a junior RAS officer, was doing at the particular time I met them, complimented with questions typically about their work more generally. Often research participants were handling queries or problems from their refugee clients and I would observe them engage with the client and then ask them short questions to clarify what was happening and their justifications and explanations for their actions. When there was a break in their work, I would also them additional questions, such as about previous jobs they had held, how they came to work there and other activities they typically did at work. I also made notes about the office environment, such as layout, objects, appearance, atmosphere, and general observations about activities in the office, such as where refugee waited and what they were doing.

The use of ethnographic interviews was partly a response to the research questions: I was interested in everyday bureaucratic practices and this method provided a glimpse into this. It was also a response to the methodological limitations of interviews which provide limited space for the reflection required to identify and discuss the practical norms that shape behaviour and that are often too obvious or mundane to be articulated (discussed further in Section 2.6). Longer-term

observation would have enabled me to identify the norms and details of everyday work in greater detail but this was not possible because of the length of my access to these locations was restricted. It was because of these limitations that the empirical chapters focus on the settings where I was able to carry-out longer-term participant observation but are complimented by these shorter ethnographic interviews.

Overall, ethnographic interviews provided an often fascinating glimpse into the everyday activities of junior officers and their work and environment, but also reflect the practical constraints imposed and methodological reflections in light of this.

2.6 Interviews

The vast majority of my time was spent carrying out semi-structured interviews. I approached the interviews as 'guided conversations' (Kvale, 1996). They have the semblance of a normal conversation in everyday life but differ as people do not 'take more or less balanced turns' talking and the 'discussion has to stay on track or follow some theme' (Bernard, 2011, p. 175). I did not develop interview guides because individuals often had very different roles and experiences. I prepared some tailored questions beforehand but I tried to respond and follow-up organically to interviewees' answers. I also asked deliberately open questions to let interviewees respond in ways they saw most fitting, rather than be constrained by an overly structured interview design (Warren, 2001). This allowed participants to discuss issues more easily on their own terms, focus on what they saw as most important, as well as to make me aware of new issues. This varied by participants as some took more control of the interview than others, so the interview varied on a continuum between unstructured and semi-structured (Bernard, 2011, p. 171).

During interviews, I allowed myself to show emotion and have reactions and opinions. This was partly to create a more relaxed atmosphere and encourage participants to share their views but also

in recognition that interviews are never the objective imparting of information but an inter-personal exchange. As part of this, I would also be honest and open about my views, when asked, although this was most often after I had finished asking questions and which often prompted the most fruitful discussion and a chance for me to discuss preliminary conclusions. This was also rooted in the ethical belief that individuals deserve to know and ideally benefit from the findings of the research. As part of this ethical commitment, I also organised two presentations of my research - one with UNHCR in Kakuma and another with British Institute in Eastern Africa in Nairobi (along with two other researchers) and I hope to share other outputs from the research with participants in the future in order to inform and shape institutional policy and practices (Refugee Studies Centre, 2007, sec. III(3)).

Although I approached interviews as a 'guided conversation' and attempted to make the environment more relaxed and an inter-personal exchange, my positionality as a researcher demarcated me as an outsider, reinforced through being white and thus a visible foreigner. As with participant observation, the line between researcher and researched therefore often remained very much in-tact. The responses I received from most interviewees felt professionalised and institutionalised. Indeed, those who broke this trend often did so out of frustration with their work environment and thus wanted to raise their concerns with a researcher because this might instigate a change in the status quo. I received institutional responses particularly from interviews with UNHCR and senior RAS managers who were well-aware of the institutional risks potentially posed by sharing information with an outsider. They were also often the most experienced interviewees and confident articulating mainstream institutional narratives. What participants consider to be an institutional narrative and choose to share with a researcher is however often an important finding (and it should not be assumed that individuals have not internalised these narratives). What any research participant shares is based on their interpretation of the relationship they hold with the researcher. I therefore continually reflected on how research participants perceived me and used this to critically examine the information that was shared with me.

The questions I asked developed over time as I learnt more about the situation and which questions prompted the most interesting responses and generally developed my interviewing skills. Questions tended to focus on what the individual did in their work, primarily in relation to the transfer process and capacity building, and their perception of the process and the challenges or benefits they perceived it would bring to those involved. For managerial staff I asked about how decisions were made. For most of the staff I interviewed, who were not involved in decision-making, I asked them about what they *did* in their work. This was easier for staff to recount in an interview and because of the focus of this research on everyday bureaucratic practices.

I did not treat interviews as a discrete moment or the exclusive time of research. I recorded field notes about observations made while waiting for interviews and around UNHCR's compound, conversations with friends and my own registration as a foreign resident. Although due to the ethical need for consent, this was only used as background and contextual information to inform my interpretation of information gathered in situations where consent had been obtained.

I chose to record very few interviews because of my concerns that this would be off-putting to participants and be perceived as compromising their anonymity (Warren, 2001, pp. 91–93). Instead, I often typed notes directly onto my laptop as they were talking. Although this was possibly itself off-putting, it enabled me to capture their answers almost verbatim and was reasonably in-fitting as participants were often sat at their desk with a computer. I felt at times it added a level of professionalism that was appropriate in the situation (for example, I nearly always wore office-style clothes). For more informal or spontaneous interviews, I wrote notes in a notebook at the time or shortly after. I also recorded notes about interviews regarding the manner of the interviewee, how we had been introduced and often descriptions of their office; as Warren notes 'the social contexts of the interview process are not viewed as something to be controlled, as they are in

standardized survey interviews, but instead are seen as an important part of meaning making in its own right' (Warren, 2001, p. 91).

2.6.1 Senior RAS Officials and UNHCR Officials

Semi-structured interviews were my main method of research with UNHCR officers, across the organisation. These were nearly always organised in advance via email or telephone, with permission from their manager and carried out in their office. They were formal and bounded interactions. Staff were generally open and reflective in their answers – they were willing to answer all my questions in some depth and draw upon their experiences to elaborate their position and views. Some were experienced with being interviewed and comfortable with the format.

A challenge was that the managerial hierarchy in UNHCR was very pointed; decisions seemed to be made by a very small number of individuals. Although I met these managers on several occasions and formally interviewed one twice, I felt limited in the information they were willing to offer. Their responses were professionalised and felt closely shaped by institutional narratives and technical language. Although this was in itself an important part of the story, it felt this was not a full account or reflective of their personal views or role within negotiation processes.

My access to senior RAS officers – the thin managerial strata – was similarly limited to formal visits to their office. The hierarchy of RAS was also very sharp; there were only two senior officers in Kakuma and three in Nairobi. I did interview some of these officers, but they rarely felt fruitful; many were reluctant to share information in this formal setting and often chose to focus on their personal interests rather than address my questions. Especially at the beginning of my fieldwork, when senior officers were new in post, they also simply did not know very much about refugee affairs (which itself was a highly revealing finding).

Government officials were however less versed in technocratic language and some were more willing to state the demands they had made of UNHCR. Ultimately, managers were involved in often tense political negotiations which they were not willing to reveal to a researcher. It felt like looking for the cracks in the narrative to understand what had really happened, often pieced together through my observation of the outcomes of these negotiations at the street-level and working backwards. As discussed in Chapter 7, the empirical focus is on the how decisions played out at the street-level; it is less a study of how policy is made but far more its *outcome*.

I also did not interview members of the Ministry of Interior to whom RAS management report, as part of the highly centralized form of the Kenyan state (Branch & Cheeseman, 2006). This was because of the difficulty of accessing very senior government officials and the limited responses I predicted I would receive. The disbandment of DRA was however widely reported to be at the instigation of the Ministry. I talked to a lot of people about the disbandment and analyse the reasons for it in Section 5.6. This dramatic juncture sheds some light on the relationship between DRA and the Ministry and the perspective of the Ministry towards DRA.

2.6.2 RAS RSD Officers

Refugee registration was primarily studied through participant observation. RSD - the topic of Chapter 8 – however relied solely on interviews with both RAS and UNHCR officers. The restriction to interviews means that, whereas I describe the everyday practice of registering refugees, I cannot provide similar descriptions of how RSD was carried out – which was primarily an interview with refugees to gather information in order to make a legal assessment of their claim for refugee status. This was partly because of my ethical concerns about the impact of my presence on the interview and officers' confidentiality concerns. It was also because other aspects of the officers' work did not have the visibility or audibility required for participant observation as it was primarily solo desk-based work, writing reports on their recommendation for the determination of cases. More visible aspects, such as informal conversations amongst UNHCR and RAS officers,

would likely have been highly illuminating but access was not granted, primarily because RSD is closely managed by UNHCR, who were less open to this method of research.

I do not however consider this to be a major limitation for my first empirical focus which is a meso-level account of how RSD, as an overall process, took place. This could be sufficiently understood through triangulated accounts given to me by officers. It posed greater limitations to my second empirical focus on the experiences and emic perspectives of RAS RSD officers towards their work and work environment which are challenging to reflect upon and synthesise into a single interview. It was also challenging because of the hesitancy, I felt, of some officers to speak openly to me because of the false perception or suspicion by some that I worked for UNHCR. I was however able to have more informal conversations with some RAS RSD officers outside their work environments - upon which this account relies more heavily.

Despite these challenges, Chapter 8 does include more of the voices and perceptions of officers themselves. This is because interviews allowed more structured reflections by officers, compared to participant observation where the business of the office restricted my ability to capture these perspectives and the 'biographical meaning of observed interactions' (Warren, 2001, p. 85). It was also because RSD officers were more fluent and comfortable speaking English and of an educational background that facilitated easier communication of their reflexivity. As shown in Chapter 8, RAS RSD officers also had a more contested role within the transfer which led to stronger opinions and perspectives on the transfer process itself.

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As discussed in the introduction, most studies of the African state's engagement in refugee affairs, and the political science discipline more broadly, tend to rely on semi-structured interviews. This thesis however holds that the state is amenable to in-depth qualitative research and participant

observation. From this deeply empirical approach, it is possible to unpack the complex and nuanced way in which political dynamics really work. States do not function only according to their official statements, in the same way development projects cannot be understood from their policies and work plans alone. Importantly, from this empirical detail, it is possible to rethink theoretical ideas and their often empirically sweeping claims – which I turn to next.

3 Chapter Three: Theory

This chapter outlines the theoretical resources drawn upon in the thesis. It is not an explanatory framework but a way to scale up and make better sense of the coming empirical descriptions. This chapter has two main sections: the first relates to registration, and the significance of the bureaucratic knowledge it makes available, in the exercise of state power. The second relates to how control is exercised, in this case by UNHCR over RAS.

3.1 Registration and Bureaucratic Knowledge

Registration – 'creating a written record' of the details of citizens, refugees or others – is a foundational way in which states gain 'bureaucratic knowledge' about individuals on their territory (K. Breckenridge & Szreter, 2012). It is fundamentally about being able to identify one person from another in a reliable and consistent manner. Techniques for 'reading off the body' have developed over time, from standardised naming practices to photographs, fingerprinting and, more recently, technology such as retina scans (Scott, 1998, p. 17). 'Registration' is used here to refer to the process of both refugee registration and RSD which are the consecutive steps in identifying and documenting refugees.[14]

In what follows, I first outline the *power* of bureaucratic knowledge as discussed in the theories developed by Foucault, Scott and Torpey. I then offer an empirical critique of these theories regarding the *limits* of bureaucratic knowledge. I argue that these theories overstate the case for legibility, as they firstly are based on the example of state development in Western Europe and, from this, universalised notions of the state and, secondly, that they ignore how registration can be legally empowering for individuals, which may make states resistant to it.

[14] The terminology in refugee affairs is a slight reversal of how it is used regarding civil registration. In civil registration, registration is the determining moment of an individual's status, for example as a citizen, with any debate about the validity of such a claim determined beforehand. This contrasts with refugee affairs, where RSD, rather than registration, is the substantive moment in determining a refugee's status. It is because of the usage in the civil registration literature and for linguistic simplicity, that I primarily refer only to registration in this chapter, rather than registration and RSD or just RSD.

The purpose of this discussion is to challenge the importance placed on registration, and legibility more broadly, for states, in order to open up an analytical space to examine the Kenyan state's indifference to carrying out registration. It is interesting to note that theoretical ideas about the power of bureaucratic knowledge, outlined here, also have an empirical significance as it is the rationale adopted by UNHCR and international donors who promote registration and RSD. Therefore, this theoretical debate maps onto the debate and contestation taking place between UNHCR and the Government of Kenya about how to manage refugee affairs.

3.1.1 The power of bureaucratic knowledge

'Knowing' individuals on a state's territory is crucial to the exercise of state power; it enables the state to intervene in the lives of individuals to extract resources, collect taxes, raise an army and mobilise labour. Breckenridge describes how 'The modern state seems almost to have become a registering machine, with the act of registration replacing taxation as the citizen's most common encounter with the state … the raison d'être of the modern state' (K. Breckenridge & Szreter, 2012, p. 1). As Caplan and Torpey write 'Establishing the identity of individual people – as workers, taxpayers, conscripts, travellers, criminal suspects – is increasingly recognised as fundamental to the multiple operations of the state … a hallmark of modern statehood' (Caplan & Torpey, 2001, p. 1). Giddens argues that information has replaced violence as the means of state control – he shows that modern states are more peaceful than traditional class-divided empires because they 'have strong, penetrating administrative organisations, especially the state, that can exercise 'surveillance' over all citizens and most aspects of life' (Giddens, 1981; Skocpol, 1987, p. 295). Although this literature primarily refers to citizens, the administrative 'marking' of individuals as citizens requires the inverse – to mark those who are not citizens. It is the active instigation of boundaries of who belongs to the nation and can access the state's largesse. Registration systems are envisaged by theorists to be comprehensive systems that survey the entire population on the territory.

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States' demand for information has largely increased over time. Foucault describes a historical shift in how sovereignty was exercised by states in Western Europe between the 16th and 17th Century that was made possible, in part, by the extraction of information from the population to be governed.

Foucault saw this information as important for achieving a disciplined society. He describes the heart of the disciplining project as a fear of confusion and disorder. He outlines how plagues in the late 17th Century - which stand as an image against which the idea of discipline was created - were responded to with a range of measures which included:

a system of permanent registration' which inserts an individual 'in a fixed place, in which the slightest movements are supervised, in which all events are recorded, in which an uninterrupted work of writing links the centre and periphery, in which power is exercised without division, according to a continuous hierarchical figure, in which each individual is constantly located (Foucault, 1977a, pp. 196–197).

For Foucault, knowledge is central to the activities of government because it 'is a domain of cognition, calculation, experimentation and evaluation' (Rose & Miller, 1992, p. 175). This knowledge was not however only collected by the state because Foucault conceptualised power as dispersed throughout society and operating 'within everyday relations between people and institutions' (Mills, 2003, p. 34). The knowledge collected is therefore much broader than purely registration or other information directly collected by governments. Rose and Miller, drawing on Foucault, describes the wide range of knowledge collected from the populace and the process of translating this into useable statistics:

the operation of government was to be made possible by the accumulation and tabulation of facts about the domain to be governed. From the statistical project, through the requirements imposed upon firms to keep account books and make tax returns, through censuses and surveys, the investigations of Victorian social reformers, the records kept by the newly formed police forces and the school inspectors, through the calculations of such things as gross national products, growth rates of different economies, rates of inflation and the money supply, government inspires and depends upon a huge labour of inscription which renders reality into a calculable form. Written reports, drawings, pictures, numbers, charts, graphs and statistics are some of the ways in which this is achieved. The 'representation' of that which is to be governed is an active, technical process. Government has inaugurated a huge labour of enquiry to transform events and phenomena into information: births, illnesses and deaths, marriages and divorces, levels of income and types of diet, forms of employment and want of employment (Rose & Miller, 1992, p. 185).

Foucault only briefly discusses types of knowledge that are directly collected through a state administrative apparatus which he describes as developing in the 'late sixteenth century and [which] grew in importance during the seventeenth' (Foucault, 1991, p. 96). He does so in his lecture on 15th March 1978 where he argues the knowledge required of the ruler is no longer just 'the corpus of laws or skill in applying them when necessary, but a set of technical knowledges that describes the reality of the state itself' (Foucault, 1977b, p. 354). Foucault describe how an administrative apparatus makes it possible to:

know exactly what is taking place in the realm at any moment, an administrative apparatus which would not just be the agent for executing the sovereign's orders, or for raising the taxes, wealth, and men needed by the sovereign but one that at the same time would be an apparatus of knowledge, and here again, as an essential dimension of the exercise of power (Foucault, 1977b, p. 355).

Overall, the relevance of Foucault is in identifying the historical shift which led to an increased interest in knowledge about populations by modern states, through visibility and surveillance, to create self-disciplined subjects. Scott and Torpey, discussed next, however delve into how states, in particular, collect information from individuals and the importance of this for state power which may not just be for the subtle biopolitical forms of power that concerned Foucault.

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Scott in *Seeing like a State* develops in much more detail the importance of knowledge about populations to the state specifically and the techniques used to identify individuals. Scott develops the concept of 'legibility' which he uses to describe the process of better knowing, seeing, mapping and controlling nature and society. He describes this pursuit as characteristic of the modern state compared to the pre-modern state which he describes as:

in many crucial respects, partially blind; it knew precious little about its subjects, their wealth, their landholdings and yields, their location, their very identity. It lacked anything like a detailed "map" of its terrain and its people. It lacked, for the most part, a measure, a metric, that would allow it to "translate" what it knew into a common standard necessary for a synoptic view (Scott, 1998, p. 2).

The modern state, as part of the shift in how sovereignty was exercised described by Foucault, thus became interested in intervening in society and enacting 'modernist projects' for the ostensive benefit of populations. The state was no longer just interested in information that was sufficient to 'keep order, extract taxes and raise armies' (Scott, 1998, pp. 51–55). Scott argues however that these more complex interventions in society are difficult to achieve successfully because reality is simply too 'diverse and chaotic' to be 'seen' in its entirety and thus it must be simplified, abstracted and standardised (Scott, 1998, p. 15).

The achievement of legibility requires a remaking of society to be more ordered, rational, measurable and consistent. This applies to nature and space; for example, consistent measurements enable ‘effective monitoring and controlled comparison’ (Scott, 1998, p. 30); maps and a property system enable the state to better collect tax as it means ‘attaching every parcel of taxable property to an individual or an institution responsible for paying the tax on it’ (Scott, 1998, p. 33). Scott also discusses how legibility applies to ‘cities, people and language’. For example, state planners build cities in a grid format with permanent addresses to allow police officers to more easily find individuals and for the state to carry out a census (Scott, 1998, pp. 55–56).

More importantly for this discussion, Scott emphases the importance of standardised naming practices and the adoption of personal surnames for state legibility. He describes how ‘a world without such names is bewildering’ (Scott, 1998, p. 64; Scott, Tehranian, & Mathias, 2002). Along with the development of official documents, naming practices enables the identification of individuals who are not known personally by the authorities. This facilitates state administrative exercises like ‘tracking property ownership and inheritance, collecting taxes, maintaining court records, performing police work, conscripting soldiers, and controlling epidemics’ (Scott, 1998, p. 71). Scott notes that naming practices were just the start of making individual citizens officially legible and which now relies on a wide range of documents and more recently DNA profiles (Scott, 1998, p. 71).

Scott was however aware that, just because the state wanted to render society legible, it did not mean it would be achieved. He notes for example that individuals would be resistant to naming practices that were linked to attempts to increase tax collection and thus that individuals would likely refuse to carry an identity card unless it was linked to benefits for the individual. Compliance therefore depends on the level of state penetration and the relevance of the state for individuals’ lives.

Scott's work is central to understanding the power of bureaucratic knowledge for states as it is through the simplification and legibility that this information, codified through documents and filtered through administrative infrastructures, that a state is able to successfully 'see' the otherwise highly complex nature of society and intervene to change it.

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Torpey's work, which was developed concurrently to Scott's, similarly explores techniques used by the state to identify populations but focuses on the control of movement across borders, which means it is particularly relevant to this discussion. Torpey argues that states' monopolization of the right to authorize and regulate movement has been intrinsic to the very construction of states since the rise of absolutism in early modern Europe' (Torpey, 2000, p. 6). He argues that controlling movement across international borders was important for the formation of states as it facilitates:

the extraction of military service, taxes and labor; the facilitation of law enforcement; the control of "brain drain"; the restriction of access to areas deemed "off-limits" by the state…; the exclusion, surveillance, and containment of "undesirable elements" … and the supervision of growth, spatial distribution, and social composition of populations within their territories (Torpey, 2000, p. 7).

Torpey argues that legibility cannot be achieved purely through state penetration but also the state 'embracing' its populace (Torpey, 2000, p. 10). He argues populations need to be embraced in order to construct and sustain an enduring relationship as a precursor to the state being able to then penetrate societies effectively (Torpey, 2000, pp. 10–11). The act of embracing is selective and therefore 'hold *particular* persons within their grasp, while excluding others' (Torpey, 2000, p. 12 italics in original). The metaphor of penetration suggests the state is 'blind to the peculiarities of

the society that the state invades' when, in fact, it is concerned with 'excluding from among the beneficiaries of state largesse those groups deemed ineligible for benefits' (Torpey, 2000, p. 12). Torpey goes on to emphasise how documents have been central to embracing populations; he argues it is important to note that identities are 'anchored in law and policy' and that 'systems of registration, censuses, and the like – along with documents such as passports and identity cards' are the mechanisms by which states embrace those it has designated as belonging to the nation (Torpey, 2000, p. 13).

This selective embrace threatens to exclude refugees; it was the formation of the system of nation states and their exclusionary borders that arguably created refugees as they became 'individuals between sovereigns' (Haddad, 2008). This did not however mean that refugees would not be registered but rather registered as, or otherwise bureaucratically rendered, 'non-citizens' in order to exclude them from the benefits of citizenship and the state's largesse. Importantly, regulating who may or may not enter a state was achieved through a newfound *reliance on a bureaucratic apparatus* and related documents, like the passport. The Kenyan state however did not rely on such documents in regulating who could cross its borders.

3.1.2 The limits of bureaucratic knowledge

This thesis offers a critical reading of the work of Foucault, Scott and Torpey to point instead to the limits of what bureaucratic knowledge means for states. The purpose of this critique is not to argue that registration does not increase state power but rather that there are forms of state power which do not rely on it, opening up analytical space for alternative ideas and forms of statehood. This critique is primarily an empirical one and, as such, although it is outlined here, it is developed fully across the thesis.

The three theorists above base their arguments on sweeping historical analysis rather than empirical study of the often contested and complex practices involved in trying to differentiate one person

from another. As Li argues ‘studies that draw their inspiration from Foucault tend to be anaemic on the practice of politics’ (Li, 2007). Li makes the important critique that although Foucault’s focus is on the ‘rationale’ of government’, rather than social history, the two should be brought together (Li, 2007, p. 27). She argues that ‘bringing them into dialogue offers insights into how programs of government are constituted and contested’ (Li, 2007, p. 27). Thus, we need to bring together ‘analysis of governmental interventions (their genealogy, their diagnoses and prescriptions, their constitute exclusion)’ with ‘analysis of what happens when those interventions become entangled with the processes they would regulate and improve’ (Li, 2007, p. 27). This critique is mirrored in other works; Bierschenk and Olivier de Sardan similarly argue Foucault was ‘less interested in the state as an ensemble of concrete actors, institutions and practices, however loosely articulated, but instead in broad macro-historical processes’ (Bierschenk & Olivier de Sardan, 2014, p. 53). Moreover, and in relation to registration specifically, Breckenridge and Szreter argue, ‘aside from the very general observations about the importance of registration, Foucault … pays little attention to the actual workings of registration, in any of its forms’ (K. Breckenridge & Szreter, 2012, p. 7). Similarly, the ‘powerful explanatory traction’ of Scott’s work is ‘derived much more from its elegance than his interest in the complexity of the processes of registration he is describing’ (K. Breckenridge & Szreter, 2012, pp. 8–9). Therefore, *empirical study* is needed into not just the rationales of states which aim to render legible, document and register its population, but also – as this thesis aims to achieve - empirical study into how these efforts function and are implemented and enacted in the messy inelegance of state practice.

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This first criticism of these theories is that they overstate the importance of bureaucratic knowledge for states because of their focus on the particular form of state development that occurred in Western Europe. The inapplicability of theories derived from the West to Africa has been widely noted as part of the way in which Western enlightenment thought presented itself as universal and

a normative benchmark against which other countries can be measured (Comaroff & Comaroff, 2012, p. 117). In relation to Foucault specifically, Sherman, for example, discusses how Foucault's ideas in *Discipline and Punish* were not intended to be an applicable model for other contexts: 'Foucault's theory provides not a rigid model into which historians must stuff the facts we find, but a series of questions which can help one to use historical evidence … to define what might be termed a specifically colonial governmentality' (Sharma & Gupta, 2006; Sherman, 2009).

My point is not however simply to show the historical and geographical contingency of these 'Western' theories to African states as to do so would ignore how the importance of bureaucratic knowledge to the state is embedded in *universalized notions of the state* (even if the idea of the state is rooted in the West). For example, in discussing post-colonial states in *States of Imagination*, Hansen and Stepputat argue that although forms of governance vary, 'it is also pertinent to remember that the Western imagination of the state, however traversed by myths and historical fiction, remains the globally most powerful idea or political order in the twentieth century' (Hansen & Stepputat, 2001, p. 9). They thus argue that:

we need to disaggregate and historicize how the idea of the modern state became universalised and how modern forms of governance have proliferated through the world. Instead of talking about the state as an entity that always/already consists of certain features, functions, and forms of governance, let us approach each actual state as a historically specific configuration of a range of languages of stateness (ibid).

Importantly, they single out three practical language of governance, one of which is 'gathering and control of knowledge of the population – its size, occupations, production, and well-being – of this territory'(Hansen & Stepputat, 2001, p. 7). They therefore recognise that forms of governance vary but interpret knowledge about the population as fundamental to governance. It is for similar reasons that the international refugee regime – which is statist in nature - views registration as a universal

way to manage refugee affairs (Haddad, 2008; Mertus, 1998). Therefore, I make a critique, on the basis of the African experience, of the presumed importance of bureaucratic knowledge to universalised understandings of the state.

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Said describes how 'orientalism is absolutely anatomical and enumerative' (quoted in Appadurai, 1993, p. 314). The colonial state, as a reflection of 20th Century modernity, concerned itself with the quantifying of society. Anderson describes how the 'census, the map, and the museum …. profoundly shaped the way in which the colonial state imagined its domination' (B. Anderson, 2006, pp. 163–164). An important part of the literature from African Studies however shows that the colonial state, in reality, only created the *appearance* of a bureaucratic state and did not invest in the administrative infrastructure in the way it had in the metropole. This literature shows that the form of state development in Africa was therefore divergent from that in Western Europe, marked by weaknesses in the administrative structure which meant states developed with the same reliance on information for state control.

There are examples available from across Africa. To pick just two - Weitzberg argues the seemingly improved registration and census efforts during the later periods of colonialism meant 'colonial officials in Kenya *created the appearance* of a bureaucratically efficient panoptic state and *mimicked* the forms of authority that were so central to the modernist conceits of colonialism' (Weitzberg, 2015, p. 411 emphasis added). Likewise, Pierce describes how in Nigeria:

The revenue survey did not work. The extensive documentation of people's farmland did not map onto people's actual farms. The project was an elaborate fantasy. While a (terribly consequential) practice that could be labelled tax collection did go on, what actually happened was anything but the unfortunate implementation of oppressive modernist conceits. Instead of imposing a set of

bureaucratic regularities, the colonial state developed procedures whose utility was appearing to certain observers like a modernist project of classification and categorization, covering over but not destroying the chaotic particularities of local government practices … The history of state formation in northern Nigeria, then, is not one of a government's coming to "see like a state" but rather of a transformation that enabled it to look like one (Pierce, 2006, pp. 909–210).

On the basis of this empirical evidence, scholars of Africa have therefore increasingly pointed to the limits of theories derived from Foucault and Scott for understanding the development of African states (K. Breckenridge & Szreter, 2012; Lee, 2005; Pierce, 2006; Weitzberg, 2015). The colonial state in Africa never approached the ideal-type Weberian state that characterized state formation in parts of Europe in the 19th Century (Rasmussen & Wafer, 2019, p. 78). It did not have the penetration into the daily life of individuals. Ake describes how 'the coercive monolithism of most African political systems readily gives the impression of strong states with immense penetrative capacity, states which are everywhere doing everything. Yet African states are actually very weak' (Ake, 1991, p. 38; Young, 1994).

One of the main reasons for the limited role bureaucratic knowledge played in the development of the African state was the focus of the colonial state on extracting resources and labour, rather than providing services. As Mamdani has argued, the colonial state in Africa was concerned with ensuring a cheap supply of migration labour in order to facilitate an economy of violent extraction, without the attendant responsibility to ensure the reproduction of that labour force (Mamdani, 1996). Instead of maintaining control through the legitimacy and relevance of the state in the eyes of the public, it was through control of the 'gate' – a maritime port or land border – and the movement of resources through it (Cooper, 2002). The post-colonial state also adopted this model and used their monopolisation of the 'gate' to generate rents and to resource patrimonial networks. This distortion towards the extraction of resources is reflected in the poor development of infrastructure and social services (which are not gatekeeping activities). For example, few roads

were built to bring together disparate populations but rather ‘concentrated around the capital’ (Herbst, 2000, pp. 161–170; Rodney, 2012, pp. 208–209).

This distortion is further demonstrated by the poor and uneven development of administrative and registration infrastructures. Cooper argues that African gatekeeper states were built in an information void without the ability to ‘track the individual body or understand the dynamics of the social body’ (Cooper 1996: 335 cited in Breckenridge & Szreter 2012: 10). Breckenridge and Szreter argue that ‘African colonial governments, and their modern heirs, typically lacked the resources, long-term administrative tenacity and local political agents required to make civil registration work outside of the scattered cities on the continent’ (Breckenridge and Szreter 2012: 6). Breckenridge’s work in South Africa demonstrates that the colonial and apartheid state never committed to coherent and systematic enumeration and documentation of black African subjects, beyond the rudimentary requirements of controlling black labour-mobility (K. Breckenridge, 2014). Moreover, Rasmussen and Wafer argue that:

While colonial laws may have demanded the registration of births and deaths, and while colonial archives document the immense, pedantic and fastidious recording of such data in many colonial territories, the majority of colonised populations remained outside of these documentary regimes. Ultimately, neither the will nor the capacity existed in most colonial contexts to extend the documentary and biometric capacities of state through the entire subject population, except for the very scope of controlling labour movement and black urbanisation (Rasmussen & Wafer, 2019, p. 79).

This brief summary of the historical development of the African state shows that it followed a distinctly different trajectory to that of the European state. Despite the, at times, appearance or public commitment to a modernist and rationalist mode of rule by the colonial state, this was frequently a guise for a state that focused on the extraction of resources and labour, both as means

of economic gain for the metropole and to maintain control. The colonial state was therefore diverted from investing in institutions or infrastructure that facilitated the administrative penetration needed to know individuals on the territory. This is therefore, importantly, about not having the will to know individuals on the territory because of the political and economic organisation of society, rather than simply the practical challenges of achieving full registration, which is 'difficult and expensive' to achieve in any context (K. Breckenridge & Szreter, 2012, p. 2). Although registration activities did improve during late colonialism and during the post-colonial period, this highlights the limited role bureaucratic knowledge played in the development of the African state which points to both the administrative weaknesses, and the limited imperative to address this weakness, for post-colonial states today. Forms of administrative weaknesses in Kenya specifically are discussed in Section 4.2.

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My second line of critique of the work is the need to account for situations where states may be resistant to registering individuals *because of the rights and legal recognition it grants to recipients.*

Contestation is recognised regarding civil registration; contestation surrounding who has a right to citizenship, particularly in Africa, has, for example, is noted as a cause of many recent conflicts (Manby, 2009, p. 1). Citizenship law is recognised a weapon that be used to *exclude* individuals and 'as a tool to get at issues of economic and political power' (Manby, 2009, p. 21). As will be discussed in Section 4.3, Kenyan citizens of Somali heritage have faced continued ethnic discrimination in accessing citizenship and national identity cards, rooted in populist political dividends derived from their exclusion and marginalisation,.

There is however also a less noted contestation around who is registered as a refugee and who is left unregistered. With both refugees and citizens, states may refuse to register individuals because

it grants rights and is legally empowering and thus increases recipients' ability to make claims of the state. Although this will depend on the strength of the rule of law and commitment to liberalism, it points again to the potentially limited benefit of bureaucratic knowledge for states. Simply, if registration grants rights and legal recognition, states may sometimes wish to deny registration in order to restrict this, particularly in contexts with weak administrative infrastructures where the information is of reduced utility. As Breckenridge and Szreter argue:

registration … is often more valuable, or at least as useful, to individual citizens, as to the state. It has the potential to provide a legal technology and resource for individuals which strengthens civic society: a strong state which creates a registration system can be legally empowering of its citizens, rather than disempowering (K. Breckenridge & Szreter, 2012, p. 7).

Similarly, Thompson, in his seminal work, *Whigs and hunters: The origin of the Black Act* argued that, although the law is often a tool of the ruling classes to realise their personal interests, the law as ideology, which is based on equality before the law, must by definition allow legal recourse to all, including the powerless (Thompson, 1977). Registration as ideology will mean the granting of rights and legal recognition. As Taylor argues, 'identification and recognition are ineluctably conjoined in the modern world and are the prerequisite for many individual and collective claims against the state and other authorities' (Taylor, 1989 cited in Caplan and Torpey, 2001 p.6).

It is important however not to overstate the legal rights on offer to refugees in Kenya through registration. Registration primarily only conferred the right to non-refoulement, pending determination of refugee status. The registration document issued was however only valid for six months and often did not confer legal identity in interactions with police (Balakian, 2016; Rasmussen & Wafer, 2019). Moreover, refugee status did not usually confer freedom of movement, the right to work or a route to citizenship. RAS also offered little benefit by way of practical assistance to any refugees; refugees were primarily confined to camps and reliant on UNHCR to

meet their basic needs. As discussed in Section 4.4, the periodic suspension of registration was however used as part of a wider set of actions to exclude and marginalise refugees, including the threat of encampment at the geo-political periphery of the country or return altogether. The refusal to register them was therefore part of a wider project which aimed to exclude them from the nation.

Overall, it is easy to assume that states will pursue registration because they require bureaucratic information in order to intervene successfully in society. However, such theories are too sweeping and ignore the politics and contestation regarding how and when registration is carried out and who is registered. This is particularly relevant for the post-colonial African state where states have developed without reliance on this information. Furthermore, when information is not essential to the operation of the state, registration and the rights it grants, may offer more for individuals than it does to states, creating an incentive for states to resist it and leave individuals unregistered.

3.2 Exercising Control

This second body of theory used in this thesis discusses how to make sense of the exercise of control by UNHCR over RAS. I develop this in part through Foucault's writings on governmentality which, although it is far from a systematic theory of how control is exercised, has been developed into an analytical framework for understanding contemporary state practices by other scholars (Dreyfus & Rabinow, 1982; Rose, 1999; Rose & Miller, 1992). It has been adapted further to apply to the power wielded by international donors and dubbed 'developmentality' by Lie (Abrahamsen, 2004; Lie, 2015; Merlingen, 2003). Based on this work, I develop below three different ways that international agencies such as UNHCR can shape the conduct of other actors: *construction of their expertise, the configuring effect of technology and the disciplining effect of management* . I discuss how they guide and shape 'at a distance' to encourage the self-discipline of government employees (Foucault, 1977a).

Foucauldian notions of power however arguably focus too exclusively on invisible and subtle forms of power. Mosse describes how this power is seen to occur 'beyond the intelligibility of the actors' and thus they are the 'duped' victims of partnerships instigated by the 'all-powerful Western development institutions' (Mosse, 2005a, p. 6). Mosse and Lewis argue that although the idea of 'governmentality' 'provides a productive line of thought, it is also a problematic one'; it can be at once 'too precise about the effects and too vague about the location' of this power. It does not map on to realities to suggest that development interventions are 'well-oiled machine of disciplinary and biopower'. Such accounts can appear 'empirically weak and suspiciously functionalist'. Instead, relations are far more complex and 'embedded in organizational and personal relationships' (Mosse, 2005b, pp. 10–14).

I further this critique by arguing that, although aspects of the relationship between RAS and UNHCR did shape conduct through self-discipline, it *also* involved methods to gain control which were not subtle or invisible. This was particularly through the offer of financial reward, which is also discussed below as another way UNHCR gained control. Importantly, these mechanisms of control were used differently with different members of RAS staff. There were therefore parameters and limits to UNHCR's power which meant it did not gain internalised influence over *all* RAS staff members.

RAS had two clearly distinguishable categories of staff. Firstly, there were 'project' staff who were on a one-year renewable contract and whose wages were funded by UNHCR. They were primarily in junior posts and carried out the day-to-day work in registration and RSD. Secondly, there were senior RAS officers who were integrated into the Kenyan civil service, held permanent and primarily managerial posts. The reasons for these different positions is discussed in Section 5.5.2. I argue that managerial control, the configuring effect of technology and UNHCR' expertise were primarily used to gain control over project staff (with the permission of the senior government managers) because UNHCR funded their wages. For senior government officials, UNHCR's

influence relied on more overt and realist appeals of financial incentive. I show in this thesis, that the limited internalisation UNHCR could achieve with the senior government staff was reflective of their limited influence over the wider state infrastructure within which RAS functioned and on which it relied.

3.2.1 Expertise

As I will argue in the coming chapters, UNHCR constructed themselves as experts in the management of refugee affairs with RAS project officers and, on this basis, were accepted as capacity builders and advisors on how registration and RSD should be carried out. UNHCR achieved this control through identifying problems that it alone was able to advise upon and solve. It is therefore as much about the construction of the problems, as much as it is finding solutions, as both are inextricably combined. In Merlingen's terms, they 'objectify reality into a terrain to be governed', they 'discursively constitute phenomena as problems whose solution requires international interventions', they 'delimit a *discursive field* within which [development] activities are made thinkable' (Merlingen, 2003). Ferguson provides a highly developed example of how this is achieved in a development project in Lesotho; he discusses how development projects involve the bounding and characterisation of an 'intelligible field' appropriate for intervention (Ferguson, 1990; Li, 2007). He describes how development is again, not just a material project, but also a discourse – 'a dominant problematic or interpretive grid through which the impoverished regions of the world are known to us' (Ferguson, 1990, p. xiii).

Importantly, this intelligibility anticipates the kind of intervention the development practitioners have to offer; 'The identification of a problem is intimately linked to the availability of a solution' (Li, 2007, p. 7; Mosse, 2011, pp. 8–13). As Ferguson argues, solutions are 'of no use to a 'development agency' unless it provides a place for the agency to plug itself in, unless it provides a charter for the sort of intervention that the agency is set up to do' (Ferguson, 1990, p. 69). And the sort of intervention that international development agencies are set up to do is discrete, technical

and projectised; they are not set up to address political issues. UNHCR's budget alone means it often does not have funding secured for more than one year in advance and must deliver outputs within that time or return the money. Thus, having the ability to address the discursively created problem relies on also *depoliticising* it; wide-reaching structural programmes of change struggle to fit within a working culture that is based around concrete deliverables, log-frames and work plans.

The depoliticising of problems is closely related to how development actors construct their *expertise*. By depoliticising problems, development actors make themselves able to address the problem at hand and, inversely, part of being an expert is to depoliticise issues. Li argues that 'experts are trained to frame problems in technical terms. This is their job. Their claim to expertise depends on their capacity to diagnose problems in ways that match the kinds of solutions that fall within their repertoire' (Li, 2007, p. 7). Dreyfus and Rabinow, among others, argue that expert knowledge takes 'what is essentially a political problem, removing it from the realm of political discourse and recasting it in the neutral language of science' (Dreyfus & Rabinow, 1982 cited in Li, 2007, p.7). Thus, as Rose and Miller argue, 'Experts hold out the hope that problems of regulation can remove themselves from the disputed terrain of politics and relocate onto the tranquil yet seductive territory of truth' (Rose & Miller, 1992, p. 188).

As will be demonstrated in this thesis, UNHCR constructed themselves as experts – a role that is enshrined in their mandate to advise governments and promote adherence to and implementation of the 1951 Refugee Convention. Their expert advice included a series of technical solutions to the discursively created deficiencies of RAS. These solutions saw little negotiation or debate but instead were presented as the obvious and indeed only solution.

Therefore, we see that the rationalities of power are closely related to the technologies of power; power is not something that can purely be achieved through action and material practices – as discussed next - but also requires a discursive component. governmentality requires 'the invention

and deployment of vocabularies to make governance thinkable, the latter concerns the use of techniques to make vocabularies practicable' (Merlingen, 2003, p. 371). In the case of development actors, this requires the depoliticisation and rendering technical of the problems to be addressed, both as part of being experts and to construct problems which, as experts, they can solve.

3.2.2 Technology

Another important aspect of UNHCR's capacity building of RAS was encouraging the adoption of certain technology, prominently their proGres database, as well as other office furniture and infrastructure. Capacity building therefore had a significant material component and the objects involved took on an ontologically significant role in how UNHCR was able to configure the behaviour of the RAS project officers who used it (senior government staff did not use this technology although it was implemented with their permission).

In theorising how control was exercised through the material components of capacity building, this thesis draws on the work of Latour. His work is seminal in enabling objects – which he calls the 'missing masses' - to be included in social analysis (Harman, 2009; Latour, 1992, 1993). Latour argues the world is made up of assemblages or networks of human and non-human actors. This thesis takes from Latour an ontological flattening in social analysis - Latour makes no ontological distinction between humans and nonhumans, between concepts and objects, between, for example, a dream and a pen. He considers everything to be both an actor (which produces an effect) and part of a network of alliances (that work together to produce this effect). Therefore, objects and people are *both* important to events and neither can be understood in isolation. It therefore adds to the Foucauldian analysis, which focuses on discourse, ideas, and social constructions to also look at the role of objects and the material world. Latour does not limit himself to the study of how things are *socially* constructed; he looks more broadly at how they are constructed from material as well as social practices.

The coming chapters discuss in particular the use of UNHCR's proGres database by the government. The power of technology, as part of an assemblage with human actors, is highlighted by many scholars in Science and Technology Studies (STS). Woolgar, for example, describes the effort made by a computer company, developing a new computer to ensure the user uses the computer in the way the company intends. If a computer is intended to offer its users access to the internet, it is important the user is able to use the computer in such a way that they can click the right button to access the internet. Woolgar describes at great length the details of the user trials carried out by the computer company that was developing a new computer and tested it on representative test users. They also developed a user manual to try to 'configure' how the user used the computer. Akrich describes how all technical objects have 'scripts' that anticipate, to a varying degree of accuracy, a particular type of user (Akrich, 1992). They are developed to entail injunctions to act in a particular way. The work of the designer of the technology 'thus goes beyond a merely technical exercise, but instead is based on the social and moral process of developing sociologies that anticipate users' behaviour' (von Schnitzler, 2008; Winner, 1980). Technology can also work to 'elicit particular forms of agency and subjectivity' – not just behaviour but ways of being (von Schnitzler, 2008). In the case discussed here, it was to produce more professional, rationalist and rule-abiding behaviour from government staff when they registered refugees.

The proGres database utilised biometric technology. This has a particularly stringent 'script' which is highly configuring of its user. Biometrics is usually discussed in terms of the effect on the recipient of biometric technology – the one having their fingerprints taken - but it also has an impact on the state agent taking the fingerprint. Biometrics was developed to remove the agency of the subject of biometrics but also to addresses perceived deficiencies in the actions of government officers (K. Breckenridge, 2014). It does this by denying state agents the possibility to selectively or subjectively enter information about individuals. The objectivity this is seen to render is at the heart of all technology, but which has found a particularly acute form in biometrics. As Aas writes: 'certainty of the answers, the exclusion of doubt and the perceived infallibility of technological

systems, are a vital part of their effectiveness' (Aas, 2006, p. 6). Similarly, Ticktin argues that the reliance on biological tests in French immigration is a reflection of the belief in 'biological fixity … [that] biological bodies tell the truth; biology cannot dupe the system' (Ticktin, 2011, p. 212). This biometric database, designed by UNHCR, therefore offered a very precise and exacting form of control over its users.

3.2.3 Management

Another core way in which UNHCR achieved control was through managerial control over RAS project staff. Senior government staff continued with separate tasks they had carried out prior to UNHCR capacity building and largely remained outside of UNHCR's managerial influence. Senior government staff however largely accepted UNHCR's managerial role over project staff – especially with RSD staff where government staff chose to remain in separate offices to the project staff they ostensibly managed. In *Discipline and Punish*, Foucault describes three ways in which governance can instigate the self-disciplining of individuals which he terms 'the means of correct training': hierarchical observation, normalizing judgement and examination (Foucault, 1977a, pp. 170–194).

Hierarchical observation enables involving continual monitoring, ideally to make it possible 'for a single gaze to see everything constantly', to gain knowledge about individuals (Foucault, 1977a, p. 173). Foucault discusses the opening up of the old schema which was based around 'thick walls, a heavy gate that prevents entering or leaving', replaced by 'the calculation of openings, of filled and empty spaces, passages and transparency' (Foucault, 1977a, p. 172). As will be demonstrated, capacity building saw staff become more visible to UNHCR's gaze through working together in designated rooms and desks. This facilitated UNHCR's ability to have oversight of the operations. Merlingen adapts this to international governance organisations to describe how they 'render visible the space brought under their governance by monitoring countries, comparing their behaviour to international institutional standards of normal statehood and developing the meticulous knowledge

through which countries can be corrected and controlled (Merlingen, 2003, p. 369). Development actors utilize their hierarchically constituted position, social distance, oversight, and positions as 'objective experts' to identify and develop methods by which to change the behaviour of their beneficiaries (ibid).

Normalizing judgement refers to the 'micro-penalties' used to discipline individuals and offer corrections (Foucault, 1977a, p. 178). Foucault describes how, whereas judicial forms of punishment are physical, 'the disciplinary systems favour punishments that are exercise – intensified, multiple forms of training, several times repeated' (Foucault, 1977a, p. 179); it focuses on the use of rewards, rather than penalties and ranks individuals in a hierarchy so as to enable 'constant pressure to conform … so they might all be like one another' (Foucault, 1977a, p. 182). In a similar way, development projects uphold certain standards or aims to be achieved by beneficiaries and often carry out trainings, to enforce those standards and identify any deviations.

Together, these two factors combine to allow examination; 'it is a normalizing gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them' (Foucault, 1977a, p. 184). It is the *technique* by which normalizing judgement and hierarchical observation are made into forms of power. Foucault describes how examination is ritualized and permanently woven into the ritual of power; instead of 'emitting the signs of its potency, instead of imposing its mark on its subjects, [it] holds them in a mechanism of objectification … the examination is, as it were, the ceremony of this objectification' (Foucault, 1977a, p. 187).

Therefore, enforcing discipline and control requires regular examination and surveillance of routine practices; surveillance allows the observer to evaluate changes and reward practices that conform with the desired norm and punish those that deviate from it. One of the crucial ways in which

UNHCR achieved this was through instigating their role as managers which facilitated corrective training and supervision of individual staff members.

3.2.4 Finance

Another core means through which UNHCR exercised control was through material and financial incentive and reward. The whole capacity building process was primarily funded by UNHCR – they paid for everything from the office buildings RAS used to staff wages. As Chapter 5 shows, the historical development of DRA/RAS was fundamentally shaped by development projects by international agencies. This meant senior RAS staff only needed to passively acquiesce to the project in order for it to go ahead – they did not need to actively support it or commit any resources to it. Moreover, while these funds were, officially at least, intended for use in the public sphere, staff also personally gained. Senior RAS officers were thus incentivised to support the project because of the financial benefits available. Senior RAS officers received *per diems* for attending training, often in expensive hotels or as part of short-trips outside Nairobi, and top-ups to their salary from UNHCR. This is not however unique to this context as payment, particularly of *per diems*, is a commonly noted feature of many development projects (Charton, 2014; Frowd, 2014; Sandor, 2016).

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This chapter has set up a theoretical framework that provides a way to scale up and make better sense of the coming empirical descriptions. It has, firstly, outlined the empirical critique this thesis aims to make of the importance placed on bureaucratic knowledge in theories of state power. Secondly, it has outlined theoretical ideas about how control is exercised. Although separate bodies of thought, they entwine empirically in this thesis. In exploring how UNHCR aimed to build RAS's capacity to engage in registration and RSD, we see RAS' indifference to this form of state power

and, because and reinforcing of this indifference, the significant level of control UNHCR was able to achieve over RAS.

4 Chapter Four: The Limits of Bureaucratic Knowledge: A History of Bureaucratic Weakness and Exclusion in Kenya

4.1 Introduction

This chapter gives one account of the history of the Government of Kenya's engagement in refugee affairs and the factors that shaped this. The first section explores the weaknesses in the colonial administrative infrastructure, focusing on the *kipande* (meaning 'record card' in Swahili) system of registration generally, before turning to the weak governance in the Northern Frontier Province of Kenya specifically. This shows the weak role that bureaucratic knowledge played in the development of the Kenyan state. The second section of the chapter explores the legacies of these forms of governance in the post-colonial period, showing how access to civil registration remained a challenge for many Kenyan citizens but particularly for Kenyan-Somalis, who historically inhabited the Northern Frontier Province. This shows that weaknesses in the administrative infrastructure became combined, in the postcolonial period, with the more deliberate use of these weaknesses to enact legal exclusion, based on ethnic discrimination. The third section links this historical background to refugees specifically. I argue that attitudes towards Kenyan-Somalis were closely entwined with Somali refugees and refugees more generally. I show that refugees have faced similar challenges to accessing registration, as registration was periodically suspended. I show that this denial of legal rights should be viewed as part of a wider state project to exclude refugees from the nation more broadly. This was pursued through the threat of encampment at the geo-political periphery of the country and ultimately their return to Somalia. This section also sets out how the government *has* engaged in refugee affairs. Instead of the pursuit of bureaucratic knowledge, it has focused on collective and often indiscriminative approaches, including police-led violence. Overall, this builds on the two lines of empirical critique, outlined in Section 3.1.2., about the limits of bureaucratic knowledge and that states may deny registration to restrict legal inclusion and empowerment.

This historical account contrasts with the parallel one told in the next chapter which chronicles the form of management of refugee affairs pursued by the Department of Refugee Affairs, which was marked by the seeming *pursuit* of bureaucratic knowledge. The rest of the thesis shows how these competing *modus operandi* within the Government of Kenya play out in the contemporary, everyday management of refugee affairs.

4.2 Bureaucratic Weakness: Colonial Registration

This section explores the weaknesses in the colonial administrative infrastructure, focusing on the *kipande* system of registration generally, before turning to the weak governance in the Northern Frontier Province of Kenya specifically. This serves to show the limited importance placed on bureaucratic knowledge in the historical development of the Kenyan state and the roots of the continued weak administrative infrastructure today.

The Kenyan colonial state's limited administrative infrastructure was consistent with much of colonial Africa, as discussed at length in Section 3.1.2. In the early Kenyan colonial period there were no censuses which meant population size was simply estimated using data from the 'hut tax' which assumed there were three people in each hut. Kuczynski describes how prior to 1914, such estimates were 'mere guess work' (Kuczynski, 1949, p. 133).[15] This changed however with the Native Registration Ordinance, passed in 1915, which included the *kipande* system of worker registration, introducing registration for all men over the age of 15. The *kipande* system included a registration card, which contained his personal details, fingerprints and name. It also contained, importantly, the address of his last employer, the signature of his employer to indicate when he had started work, if he had been given permission to leave his post and the rate of pay (Van Zwanenberg, 1975, p. 186). The *kipande* card had to be carried at all times by workers when they moved or lived outside of the 'native' reserves, which was usually carried in a metal cylinder hung around the neck.

[15] A census of the 'native' population was not carried out until 1945 (Kuczynski, 1949).

The *kipande* system is often billed as a highly developed registration system that enabled the regulation of labour (Berman & Lonsdale, 1992b; Martin, 1949). Berman and Lonsdale describe how 'the registration system brought virtually the entire adult male African population under much more direct administrative control and made it possible to travel back to the reserves and arrest deserters and other violators who failed to be properly signed off by an employer' (Berman & Lonsdale, 1980, p. 71). It did have an impact on the control of labour; 'There were 2,220 successful prosecutions of African labourers under the Registration Ordinance in 1921, representing 62% of the 3,595 desertions reported during the year. By the following year reported desertions had fallen to fewer than three per thousand labourers' (Anderson, 2000, p. 465). Anderson does however make clear that 'most infractions … did not come to court at all; partly because of the perceived slow court process, 'the vast majority of incidents were settled with 'rough justice' on the farm' (D. Anderson, 2000, p. 483).

The *kipande* system however was far from comprehensive and had limited demographic utility - it primarily only included men over the age of 15 who worked outside the designated 'native' reserves i.e. migrant labourers (Van Zwanenberg, 1975, p. 187).[16] It also produced inaccurate population figures because of highly limited death registration which meant workers who had died were included (Kuczynski, 1949). Kuczynski notes that another weakness was the inclusion of individuals from Uganda and Tanzania – demonstrating that although this literature implicitly refers to citizens, the weakness of the administrative infrastructure itself means the distinction between citizens and non-citizens often struggled to be made (Kuczynski, 1949).

The limited demographic utility was because the system was primarily driven by the economic interests of the white settlers and colonial state who used the *kipande* system as a way to 'enforce

[16] There were other documents/passes available with similar mechanisms to regulate labour. *The Registration of Domestic Servants Ordinance* (1926) 'regulated the movement of servants between employers, ensuring that those lacking satisfactory references of employments would be denied labour permits and forced to return to their home areas'(D. Anderson, 2000, p. 466).

a contract of service' in the context of labour shortage and address resistance to wage labour (Van Zwanenberg 1975; Anderson 2000; Berman and Lonsdale 1992). It was instigated primarily to deter the desertion of workers as, if a worker was not signed off from his current work on the *kipande*, he could not be employed elsewhere. It also kept wages low 'by restricting both a man's freedom to leave his work and his freedom to bargain with an employer for a wage not necessarily related to that of his previous employment' (Berman & Lonsdale, 1992a, p. 113). As was a central feature of the colonial state, it was biased towards the extraction of domestic labour and resources, rather than investment in infrastructure for the public good (Cooper, 2002; see also Section 3.2.2.).

The weaknesses of the colonial administrative infrastructure were most strongly evident in the Northern Frontier Province of Kenya.[17] This vast, semi-arid, primarily nomadic area is home to mostly Kenyans of Somali heritage (hereafter Kenyan-Somalis). Today, it hosts Dadaab refugee camp today. The reach of the state to manage or know this vast area was limited. Lonsdale and Berman describe how the resources of the colonial state were often stretched thin (Berman & Lonsdale, 1992b, pp. 77–92). The 1915 Native Registration Ordinance, as discussed above, was not even applied to this area (Kuczynski, 1949, p. 142) as 'the tribes of the northern frontier refused to have anything to do with it' (Clayton & Savage, 1974, p. 135). Weitzberg explores the use of censuses in Northern Frontier Province area in detail and argues that:

During the first three decades of the twentieth century, protectorate and colonial officials were incapable (and frequently disinterested) in obtaining a reliable count of the number of people living within the colony of Kenya. Even after the Second World War, when the colonial state was at the height of its surveillance capacity, government officials never knew with any certainty how many Somalis (or, for that matter, many other communities) resided within the country … Attempting to closely regulate Somali immigration or attain precise census data would have been expensive,

[17]This area was initially called the called Northern Frontier District. In 1925 it was renamed Northern Province and in 1947 it was renamed Northern Frontier Province (Weitzberg, 2017, p. 183). It was again renamed Garissa County in 2013. For simplicity, I will refer to it as Northern Frontier Province throughout this thesis.

provoked significant resistance, and, ultimately, served few administrative needs… in practice, Kenyan administrators could only loosely enforce the concept of a permanent population (Weitzberg, 2015, p. 411).

There were several reasons for the colonial state's neglect of the region. The state was keen to establish a 'buffer zone' between 'Italian Somaliland and Ethiopia on the one side, and the East African railway and the white settlers in the highlands on the other' (Otunnu, 1992, p. 21; Whittaker, 2015b). Shadle describes how officials 'feared that Italian aggression in the north could not be contained. The only real defence, in fact, was simply geography, vast waterless plains which might slow an invading army before reaching the highlands' (Shadle, 2019, p. 175). Its uses as a buffer zone did not mean it had particular strategic importance or attracted particular state interest; instead, it was a largely abandoned space that, due to its harsh climate and size, helped to protect the highlands which were constructed as at the heart of the country.

Related to this, the colonial government attempted to restrict movement out of the area, as part of the 'sedentary bias' of colonialism which saw nomadism as threatening and, as discussed below, the population as violent (Bakewell, 2008a; Whittaker, 2015a). In 1926 it declared, through its Outlying District Ordinance, the Northern Frontier Province to be a closed district which gave 'sweeping powers to deal with any form of dissent or resistance'; this was followed by the 'Special District Ordinance', which imposed severe restriction on movement to or from it (Otunnu, 1992, p. 21). Weitzberg describes how these legal demarcations meant 'Protectorate and colonial officials came to see northern nomads as part of a physical and metaphorical frontier, on the margins of 'civilization' (Weitzberg, 2017, p. 51).

Apart from acting as a geographical buffer to external threats, the Northern Frontier Province also received minimal state attention or investment because it offered little economic opportunities due its lack of mineral or agricultural resources. Whittaker describes how:

This was an area that was without the potential for economic development and could therefore be largely ignored until its pacification could be paid for. As such, and beyond individual garrisons and police posts, British authority was precarious and contested. (Whittaker, 2015b, p. 644).

The state's engagement with the area was primarily through violent intervention and a system of military administration that Anderson says can best be described as a 'garrison government' with collective violence a common approach to incidents of disorder (D. Anderson, 2014, p. 660). Whitaker describes how inter-clan violence and resistance to British rule earned Kenyan-Somalis a 'damaging reputation';

As early as 1928, the governor of Kenya remarked that "the Somali tribesmen have always adopted an independent and truculent attitude … they defy our laws and they pay no tax". On the eve of Kenyan independence, a British government report on the NFD [Northern Frontier District] similarly stated that "the volatile character of the Somali leads them to be easily excited and roused to violence". The report concluded that no spectacular progress was made in the region due to Somali hostility to control and to the 'tribal feuds and internecine strife; the unsettled frontier lines and constant raids (Whittaker, 2015b, pp. 645–646).

Weitzberg however argues that the construction of the area as 'ungovernable' and violent 'enabled colonial officials to justify the financial and administrative neglect of the region and naturalise its isolation from the rest of the colony' (Weitzberg, 2015, p. 417).

Overall, this meant the Northern Frontier Province was governed as a 'region distinct from the rest of Kenya' (Weitzberg, 2015, p. 414). This had the effect of annexing the area from the political centre and marginalising its predominantly ethnic Somali inhabitants. Otunnu argues that 'no serious attempt was made by the colonial regime to foster the socio-economic and political

integration of this area into the rest of the country' (Otunnu, 1992, p. 21). The Northern Frontier Province was therefore administratively, as well as politically and economically, excluded from the geo-political centre of the country. It created a particular construction of Kenyan-Somalis and the region as violent and ungovernable that would take on a renewed force at independence.

4.3 Bureaucratic Exclusion: Post-Colonial Registration

The legacies of the above forms of governance continued into the post-colonial era, although the coverage and availability of registration did improve during the late colonial period. In 1947, the *Registration of Persons Ordinance* made registration compulsory for men of all ages and a census was finally carried out in the Northern Frontier Province in 1956 (Weitzberg, 2015, p. 425). In 1978 registration was extended to women and in 1980 the compulsory age was raised from 16 to 18. At the time of fieldwork, all Kenyan citizens were required by law to acquire an identity card within 90 days of turning 18 years old and electronic biometrics was used largely successfully in voter registration for the 2017 general election (K. Breckenridge, 2019; Nyabola, 2018). Nyabola tracks the development of 'digital politics' in Kenya and argues that the Government of Kenya is collecting ever more information from its citizens (Nyabola, 2018, p. 71). This forms part of a wider

trend towards greater state surveillance through the collection of data in Africa (Donovan, Frowd, & Martin, 2016).[18]

The legacy of this weak administrative infrastructure is evident today in the continued low rates of birth and death registration in Kenya which are 63% and 45% respectively (World Bank, 2016, p. 2). It is particularly acute in Northern Frontier Province, where birth registration is 20%, compared to the 64% national average (World Bank, 2016). This is partly because access to and provision of facilities for birth registration are worse in this area, along with many other government services (World Bank, 2016). This has significant consequences as birth registration is required to enrol in school and acquire a government identity card, at age 18, which is needed to access nearly all government services.

Lower registration rates are not however solely because of the challenges in the administrative infrastructure. It is also because of discriminatory acts targeted at Kenyan-Somalis which restrict their access to civil registration in order to deny its legally empowering and inclusionary effect. This is particularly evident regarding Kenyan identity cards; Kenyan-Somalis face challenges and delays in obtaining an identity card because of credibility concerns about their citizenship status (KNCHR, 2007; Lochery, 2012; World Bank, 2016). Lochery describes how 'Kenyan Somalis have

[18] More specifically, the Government of Kenya, over the past few years, has pursued a centralised database containing the details of all citizens. This found most recent form in the 'Huduma Namba' project which aimed to hold a vast array of details about individuals, foreign residents and refugees alike. It is not possible to comment in detail on this project as it was implemented after the time of fieldwork. Nonetheless, I think the project deserves further empirical scrutiny to analyse the interests at play and it is important not to assume the project aims to or will necessarily achieve greater state surveillance. Breckenridge analyses a recent failed attempt by the government to implement a very similar project and makes an important contribution to this understudied topic in Kenya. Breckenridge attributes the failure of the project to 'fractured financial interests, and specifically of a conflict between the formal banks and Safaricom (a telecommunications firm and creator of the mobile money provider 'M-Pesa'). At issue between them were two very different models for decision-making, and profit, in the extension of personal credit' (K. Breckenridge, 2019, p. 91). The project was therefore more about interests within the financial sector than bureaucratic knowledge *per se*. Similarly, as will be discussed in Chapter 8, the government's interest in UNHCR's proGres database, which contained all the registration details of refugees, was rooted in how it could stop double registration in urban areas and thus enforce encampment, again rather than gain bureaucratic knowledge specifically. Moreover, the Huduma Namba project relies on individuals producing existing documents, such as a government identity card, which means many individuals previously excluded from registration risk being excluded again – meaning gaps in bureaucratic surveillance may therefore be replicated (Kimani, 2019). Refugees have also expressed confusion and concern about the project and some remain unregistered (KANERE, 2019).

to face a vetting committee composed of elders, the local chief, and, often, members of the security services' in order to prove citizenship and obtain an identity card (Lochery 2012: 636). Balaton-Chrimes describes how 'Often the committee requires people to produce impossible to acquire documents, such as grandparents' birth certificates, affidavits (which can be costly) or members of the committee may make demands for bribes' (Balaton-Chrimes, 2015, p. 70). She adds that 'there is no legislation providing procedural rules about how this [vetting] should happen or which people should be subjected to it' (Balaton-Chrimes, 2015, p. 70). In practice however it deliberately targets Kenyan-Somalis on the basis of their ethnicity alone and thus is 'an informal, sometimes arbitrary and certainly discriminatory process' (Balaton-Chrimes, 2015, p. 70). Moreover, investigations by the Kenyan National Commission on Human Rights revealed further discriminatory practices which limited the ability of Kenyan-Somalis to access identity cards. This included the illegal practice of forcing only Kenyan-Somalis to return to their home area to register and being asked to pay bribes to registration officials (KNCHR, 2007).

An incident which further highlights the contested nature of Kenyan-Somali citizenship and belonging is a vetting exercise of ethnic Somalis in Kenya, carried out in 1989. It was ostensibly to distinguish between Kenya-Somalis and Somalis. Lochery however describes how the exercise was 'discriminatory in nature' as it targeted ethnic Somalis *en masse* (Lochery, 2012, p. 628). Also, in continuity with the vetting committees for identity cards, the vetting committees for the screening exercise similarly had 'no safeguards to ensure the independence or impartiality of [the] screening panels and individuals were asked arbitrary questions to prove their indigeneity' (Lochery, 2012, p. 629). Moreover, owning an identity card was not considered sufficient proof of citizenship (partly because of the view that they can be fraudulently obtained) and many individuals utilised patronage networks and paid bribes to pass the screening process which became embroiled in business interests and inter-clan disputes. The screening was therefore not about increasing the legibility of Kenyan-Somalis and the state's pursuit of bureaucratic knowledge, which would increase their legal inclusion, but instead to enforce a 'graduated citizenship' whereby Kenyan-

Somalis were put on a lower rung of the citizenship ladder, with less rights and protections than other citizens (Lochery, 2012, p. 617). Overall, it 'concretized historical marginalization and catalysed new forms of exploitation' (Lochery, 2012, p. 635).

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Why have Kenyan-Somalis been the target of this discrimination and denied registration? It was partly rooted in the activities of the colonial state which enforced the view that they are violent and a threat to the nation state, as discussed above. It was also rooted in the construction of the Northern Frontier Province as marginal to the country, reflected in the few registration services available in the area, although many Kenyan-Somalis now live outside the Northern Frontier Province, particularly in the Eastleigh area of Nairobi.

Significant events at the time of independence were used to re-enforce their exclusion. During the negotiations around independence in 1962, the British government sent a Commission to gather public views regarding the succession of the Northern Frontier Province to a Greater Somalia. It showed that over 80% of the population were in favour. However, as Lochery describes, 'British priorities lay more with a safe exit strategy from a crumbling empire than previously implied principles of self-determination' (Lochery, 2012, p. 620). The findings of the Commission were therefore not implemented. Violent protests in the Province ensued and when President Kenyatta came to power in 1963, he declared a state of emergency. The *Shifta* War for succession ensued between 1963 and 1967 - 'shifta' meaning 'bandit' (Weitzberg, 2017; Whittaker, 2013). During the *Shifta* War, thousands of people died, collective punishments were carried out and there was large-scale confiscation of livestock (D. Anderson, 2014). This period in the history of the Northern Frontier Province was instrumental in enforcing the construction of Kenyan-Somalis as disloyal to the state and a violent, security threat long into the post-colonial era.

This narrative has been used to justify collective punishments, again in continuity with the colonial period, such as in 1984 when around 1,400 residents were tortured and killed in the town of Wagalla, in response to instances of inter-clan violence, crime and animal poaching (D. Anderson, 2014). Anderson describes how this event must also be 'understood both as a consequence of a long-term militarization of the north by the Kenyan state that lasted for a period of nearly 30 years' (Anderson, 2014, p. 669).

The notion that Kenyan-Somalis pose a security threat has been further enforced by terrorist attacks in Kenya by Al Shabaab, a terrorist group based in Somalia, which have been blamed indiscriminately on Somalis, Kenyan-Somalis and Somali refugees alike (discussed further next). The attacks prompted the Kenyan Defence Force invasion of Somalia in 2011 which, in turn, prompted further attacks in Kenya as 'blow back' (D. Anderson & McKnight, 2014). The discrimination and violence against Kenyan-Somalis has thus been justified along a shifting but continuous rhetoric from 'shifta' to Islamic terrorist (Lochery, 2012, p. 638).

4.4 Excluding Refugees

Attitudes towards Kenyan-Somalis are, importantly for this discussion, closely entwined with Somali refugees and refugees more generally (Lochery, 2012; Milner, 2009; Whittaker, 2015b). Geographically, Dadaab refugee camp, which hosts predominantly Somali refugees, is in Northern Frontier Province. The Kenya-Somalia border has long been porous and thus social, economic, clan and ethnic ties extend across the border, reinforced through pastoralist, migratory and refugee movements (Horst, 2006). Legal classifications have also become blurred as some refugees have illegally obtained Kenyan identity cards and some Kenyan-Somalis have registered as refugees in order to access humanitarian services (KNCHR, 2007).

Although Kenya hosts a significant non-Somali refugee population, political attention within Kenya has focused on Somali refugees and therefore shaped policies and practices that often *extend*

to refugees as a whole. Somalis nonetheless have been particularly targeted by: legal exclusion, for example through the denial of registration to Somalis in Nairobi at the time of fieldwork, police round-ups in Nairobi and the threat of closing Dadaab refugee camp.

This section documents chronologically the treatment of refugees by the central government - actors at the centre of Kenya's highly centralised state structure, including the Office of the President and the Permanent Secretary of the Ministry of Interior (within which RAS/DRA is situated), and, following their command, the police. I firstly show the parallel legal exclusion experienced by Kenyan-Somalis with refugees as registration has been systematically suspended which, in turn, restricts access to RSD and refugee status. I secondly show how this is motivated by an exclusionary intent as it forms part of other actions which enforce refugees' encampment at the geo-political periphery of the country and ultimately refugees' return to Somalia and thus their exclusion from the nation altogether. I secondly document how the government *has* engaged in refugee affairs, which has been marked by collective, indiscriminate and often violent actions, primarily through police round-ups.

Police round-ups have been a hallmark of the state's engagement with refugees and Kenyan-Somalis alike who are often indiscriminately targeted together. This predated the arrival of the mass influx of refugees in the early 1990s (see Section 5.2). Hyndman and Nylund note that police roundups took place in June 1991 when 'hundreds of Somalis were rounded up by Kenyan authorities for screening' (Hyndman & Nylund, 1998, p. 41). Later, in August 1991, 'the police burst into the temporary homes of 2,000 Somali and Ethiopian refugees in Nairobi and Mombasa, rounded them up, forced them to board lorries at gun point after which they were driven to refugee camps' (Hyndman & Nylund, 1998, p. 41). The authors also note that round-ups also took place in 1992, 1993 - which Veney remarks 'clearly targeted at Somali refugees' - and 1995 (Veney, 1995).

The 1990s also saw attempts to return refugees to Somalia (Africa Watch, 1989, 1990). Hyndman and Nylund describe how 'Less than a week after President Moi won the Kenyan election in December 1992, he announced that refugees would be sent back to Somalia immediately' (Hyndman & Nylund, 1998, pp. 25–26). In 1998, a more significant round up took place following the bombing of the US embassy in Nairobi (Campbell, 2006; Verdirame, 1999; Verdirame & Harrell-Bond, 2005). In August 1998, the Minister for Home Affairs and National Heritage, Mr Shariff Nassir, issued a statement which ordered refugees to report to the Immigration Department to hand over their papers, at which point 'they were issued with a 'Notice to Prohibited Immigration' which required them to leave Kenya within 14 days' (O'Neill, Rutinwa, & Verdirame, 2000, p. 154). Again, Campbell describes how countrywide police crackdowns took place in 2002, targeting Somalis, under the justification of crime prevention and individuals being present in Kenya illegally (Campbell, 2006, p. 401). Later, in 2004, Kenya's Vice President and Minister of Home Affairs, Moody Awori, remarked:

I am asking all refugees to report to the camps and those that will be found to be in the city and other urban places without authorization will be treated like any other illegal aliens ... The government will soon mount a crackdown on these illegal aliens with a view to flushing them out (quoted in Campbell, 2006, p. 401).

The year 2011 marked an important historical juncture in the treatment of refugees in Kenya. It saw an influx of 113,500 refugees fleeing famine, drought and insecurity in Somalia. It also saw an increase in security incidents in Kenya which, according to the official government narrative, prompted an invasion of Somalia by the Kenyan Defence Force. This was followed by gun, bomb, and grenade attacks in Kenya, partly as 'blowback' for the invasion (Anderson & McKnight, 2014, p. 2). Since around October 2011, registration has primarily been suspended in Dadaab and opened for only a couple of weeks at a time (MSF, 2012). For example, it took place for two weeks before stopping on 30th November 2012 and briefly in the summer of 2015 (Human Rights Watch, 2016).

Since this time, security incidents have been followed on three occasions by attempts by the government to enforce encampment and return. The first took place following a series of bomb attacks in November and December 2012 in the Somali-dominated area of Eastleigh in Nairobi (Carrier, 2016, pp. 228–229). This was followed by a period of police violence in Eastleigh which ran until late January 2013 (Human Rights Watch, 2013). Registration was briefly opened in Dadaab refugee camp between 15th and 31st November 2012. After this period however in December 2012, the Commissioner for Refugee Affairs released a press statement announcing that all asylum-seekers and refugees should 'move back' to Kakuma or Dadaab refugee camp and that 'Registration of asylum seekers and refugees in urban areas has been stopped and all registration centres closed', citing security concerns (Department of Refugee Affairs, 2012). The Commissioner however told me that this was instigated by more senior officers in the Ministry and did not come from within DRA.[19] The statement was followed by a letter written from the Permanent Secretary for Provincial Administration and Internal Security in early January 2013 adding that refugees should ultimately 'return to their home countries after the necessary arrangements are put in place' (Government of Kenya, 2013). The legality of this policy was successfully challenged in the landmark High Court case *Kituo Cha Sheria and 8 others v. The Attorney General, Petition 19/115 of 2013* in which the government's actions were declared unconstitutional and a 'threat to the non-refoulement principle contained in section 18 of the Refugee Act, 2006'. Registration remained suspended in Dadaab, opening only briefly in May 2013 (UNHCR, 2013a).

This model was repeated a second time in late 2013. On 21st September 2013, four members of Al Shabaab opened fire in the upscale Westgate Mall in Nairobi, killing 63 civilians. This prompted a legalistic approach as, in November 2013, a Tripartite Agreement was signed between the Government of Kenya, Government of Somalia and UNHCR 'Governing the Voluntary Repatriation of Somali Refugees Living in Kenya', which created formal channels for the

[19] Commissioner, Department of Refugee Affairs (2009-2012), Nairobi, August 2017.

repatriation of refugees to Somalia. (Government the Republic of Kenya, Government of the Federal Republic of Kenya, & United Nations High Commissioner for Refugees, 2013). The link between Somali refugees and Somali militants are however questionable. Although there have been widespread allegations that Dadaab is used as a recruiting ground for terrorist activity, no registered refugees have been involved in attacks in Kenya (Burns, 2010; Hellsten, 2016). It also remains highly unlikely a militant would leave the country because of a *voluntary* repatriation scheme or be deterred by the closure of the camp.

Tensions however built up and, following a gun attack which killed six people in a church in Likoni, near Mombasa, on 23rd March 2014, Josepth Ole Lenku, Cabinet Secretary for Interior and Coordination of National government, announced that all refugees must relocate to the camps and that 'all registration centres in urban areas would be closed' (Government of Kenya, 2014). Another period of police harassment ensued, officially called 'Usalama [peace] Watch' in April 2014. This was historically the largest round up and was a police-led security operation in Eastleigh where refugees and others were rounded up and held for several days in a sports stadium in Nairobi, after which some refugees were moved to the camps (Independent Policing Oversight Authority, 2014). Ole Lenku also issued a Gazette Notice which officially designated Dadaab and Kakuma as refugee camps, a component of the 2006 Refugee Act but which had not been previously implemented (Gazette, No.1927, 2014). Legal action was taken again in *Samow Mumin Mohamed and 9 others v. Cabinet Secretary, Petition 206 of 2011*; the case was however unsuccessful, despite using similar legal arguments to the previous case (Garlick et al., 2015, p. 73).

This model occurred a third time following a gun attack by Al Shabaab on a university campus in Garissa County on 2nd April 2015, which killed 148 people. This was quickly followed by a statement by Deputy President William Ruto on 11th April that Dadaab was to close within three months (Daily Nation, 2015). The government therefore was not appeased by the voluntary

repatriation agreement and instead favoured mass return, consistent with its indiscriminate and collective approach to managing refugee affairs.

The government's resistance to registration was most visible with the dramatic disbandment of DRA by the central government in May 2016 (Government of Kenya, 2016). The reasons for this incident is discussed further in Section 5.6. but the willingness of the government to disband the Department solely responsible for registering refugees further highlights the states' resistance towards it. At the time of fieldwork, shortly afterwards, registration had restarted in Nairobi and Kakuma, although no Somali refugees were being registered (Government of Kenya, 2016).

Since the Government's announcement about the closure of Dadaab in 2015, new arrivals to Dadaab have not been registered. At the end of November 2017, there were about 5,400 undocumented Somalis in Dadaab (Nyamori, 2018). The government's refusal to register these individuals has been challenged in court, as documented by Amnesty International and Refugee Consortium of Kenya (Amnesty International, 2018; Refugee Consortium of Kenya, 2017a, 2017b).[20] The incident started when a group of 29 Somali nationals and their children were arrested for being illegally present in Kenya (a common occurrence for refugees). The individuals were charged and sent to Mwingi court (200km outside Nairobi, on the main road to Dadaab) where the magistrate ordered that they be taken to Dadaab refugee camp and registered by RAS. The RAS Manager however refused to register them 'citing national security' and sent them back to Mwingi Court. The court ordered the RAS Manager to appear before it on the 10th April 2017 to explain his decision. RAS however filed an application through the Director of Public Prosecution at the High Court in Garissa (a higher court). In granting the application of the RAS manager, the High Court concluded that there was no written law that registration has to be done at the camp. The court then ordered for the individuals to be deported. Refugee Consortium of Kenya, a legal aid NGO, made

[20] The cases are unreported but are discussed in detail in a report by Amnesty International and two situational reports by Refugee Consortium of Kenya, a Kenyan NGO and provider of legal aid to refugees.

an application at the High Court to stay the execution of deportation until the status of the individuals could be ascertained. The court granted this stay of execution but it was not honoured and the individuals were deported to Somalia on 4th May 2017. While the issue is clearly a subject of legal debate, the right of asylum-seekers to be registered by RAS is unequivocally set out in the 2006 Refugee Act and specifies it should be done 'immediately' upon arrival, although it does not specify where. The actions of the RAS Manger nonetheless make clear a deliberate intent not to register refugees.

Overall, the government has consistently and deliberately suspended registration, justified in response to insecurity and terrorist attacks. The response of the government was therefore not to increase surveillance to identify and screen individuals – as UNHCR promotes - but instead to render them more invisible to the state through closing registration and thus denying access to refugee status. The government prefers to use more collective approaches to managing refugee affairs – to move refugees, as a group and often forcefully, away from the centre of the country and contain them at the periphery. This is rooted in the view that refugees/Somalis do not belong to the nation and a constructed colonial geography of the country. This, importantly, also provides insights into why registration is suspended: registration is not seen as increasing the state's surveillance capacity but, instead, offering legal inclusion and rights to refugees which is seen as incompatible with the government's agenda to exclude refugees and blame them for insecurity.

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It must be noted that these announcements about enforcing encampment and return have been weakly implemented and refugees have remained in Nairobi and, indeed, registered by DRA. Moreover, although the repatriation to Somalia has increased since the 2013 Tripartite Agreement, Dadaab shows few signs of closing completely.

There are a range of possible explanations for the failure to fully implement these stated intentions: Firstly, diplomatic and normative constraints imposed by UNHCR, international agencies and human rights organisations who make clear the pressure they impose on the Government of Kenya to resist violent police round-ups and, at times, argue that Somalia is not safe for return and must, on any grounds, be voluntary. Moreover, the instigation of the courts has, at times, imposed a level of legal constraint. Secondly, the closure of the camps would also be practically very difficult – Dadaab is Kenya's fourth largest city - especially without the support of international donors and UNHCR who effectively manage the camps. Thirdly, donors and the UN have often offered increased aid in response to these attempts which appears to have appeased the government. For example, after the announcement to close Dadaab in 2015, US Secretary of State, John Kerry, visited Kenya and pledged $45million in additional aid; he also met with President Uhuru Kenyatta who agreed that Dadaab would not close (Morello, 2015 see also section 5.5.3). Such incidents suggest intentions were partly a mechanism to financially leverage donors. Fourthly, the public spectacles have a strong performative dimension. They are ways for the government to be *seen* to be responding to the security incidents when weaknesses in the security apparatus make it difficult to respond more effectively.

There is ambiguity about the extent to which the government is truly committed to closing the camps. In some ways, the government uses the threat of closure to mobilise donor funds and appear in control of security threats. Nonetheless, the rhetoric around closing Dadaab is used because it resonates with political constructions of Kenyan-Somalis and geographical imaginaries of which spaces are part of the nation. Even if refugees do manage to reside in Nairobi, with varying and often tenuous legal statuses, their exclusion from the city has been reinforced through the threat of encampment.

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Regarding the uses of bureaucratic knowledge, it could be argued that police round-ups are a means for the state to bureaucratically demarcate who has the right to reside in the city and who does not and to enforce a form of legibility over the refugee population through their visibility in the demarcated space of the refugee camp.

In practice however, the actions of the police have not relied on legal-bureaucratic categories. Instead, they have primarily targeted individuals on the basis of ethnicity, instead of documentation. Anderson and McKnight describe how Usalama Watch had 'xenophobic motives at its core'; it 'was launched amid a flurry of public condemnations of the disloyalty of Kenya's Somali population … while the media carried scathing attacks asking citizens to be vigilant and support the security forces' (D. Anderson & McKnight, 2014, pp. 21–22). Documentation therefore did not serve its official role in conferring absolute identity and credibility. Balakian documents how, during Usalama Watch ethnic Somalis relied on money to bribe police in order to avoid arrest, rather than their documents (Balakian, 2016; Independent Policing Oversight Authority, 2014; Rasmussen & Wafer, 2019); she describes how individuals spoke of money 'as their only valid ID'. This is partly rooted in systemic corruption within the Kenyan police force and weaknesses in the administrative infrastructure as police disregarded identity cards on the basis that they can be obtained illegally and therefore cannot be trusted – leading to the situation where even valid IDs are not recognised (Rasmussen & Wafer, 2019). Police therefore rely on other methods to identify who is Somali and who is Kenyan-Somali, such as the raised scar from a tuberculosis vaccine which is routinely given in Kenya but not in Somalia (Balakian, 2016, p. 98). Moreover, during Usalama Watch, UNHCR offered the government the use of their proGres database – the most comprehensive records available on registered refugees - to differentiate between refugees, citizens and unregistered migrants being held in the sports stadium but the government refused.[21] Overall, the Government of Kenya pursued a very basic or unrefined form of legibility. This was about the idealised, if not realised, pursuit of encampment on a mass and somewhat indiscriminate basis. This

[21] Senior UNHCR Officer, UNHCR Branch Office, October 2016.

was very loosely based on individual legal-bureaucratic categories of who has the legal right to reside in Nairobi and who is a refugee.

4.5 Conclusion

This chapter has shown that the formation of the Kenyan state did not rely on the bureaucratic knowledge registration makes available, because of weakness in the colonial administrative infrastructure and its *kipande* system of registration. Gaps in the colonial state's administrative gaze were replicated at independence and reinforced through more direct ethnic discrimination. This was primarily rooted in the *Shifta* War which reinforced colonial constructions of Kenyan-Somalis as disloyal to the state and a security threat. Kenyan-Somali inhabitants therefore continue to struggle to access government identity cards. Importantly, this construction has, by extension and conflation, deeply shaped the treatment of Somali refugees and refugees in general who also became victims of discriminatory, exclusionary and often violent treatment.

Refugees have faced similar legal exclusion through being denied the ability to register and thus ultimately obtain refugee status. This form of exclusion was not however limited to the law but also included measures to enforce refugees' marginalisation through encampment at the geo-political peripheries of the country and their return to Somalia, as part of their exclusion from the nation altogether. The denial of registration therefore played a part in this project of exclusion and was not used as a means to obtain surveillance or legibility, rooted in the weak role this knowledge played in the exercise of state power.

The form of engagement by the central government with refugees was therefore not one of legibility. Although police round-ups can serve to demarcate refugees as a distinct and visible category of persons, this was achieved to a very limited extent. Police round-ups were primarily marked by extra-judicial and discriminatory harassment and violence, rather than distinctions based on legal, bureaucratic categories. Moreover, camps offer a very limited form of legibility. Overall,

the management of refugee affairs was based on an understanding of refugees as an indiscriminate, collective group, to be demarcated geographically through encampment, rather than through knowledge of refugees as individuals.

The uses and role of bureaucratic knowledge are limited and contested and, yet, a Department exists to register refugees and determine their status. It is the history of this Department that I turn to next.

5 Chapter Five: Pursuing Bureaucratic Knowledge? A History of the Department of Refugee Affairs

5.1 Introduction

The previous chapter explored the reasonably well documented account of how political actors at the centre of the Kenyan state engaged in the management of refugee affairs. This was primarily through collective methods to enforce refugees' marginalisation through the threat of encampment and return, and their legal exclusion through the suspension of registration. This chapter, and the chapters that follow, tells a far less documented story. It focuses on the Department of Refugee Affairs (DRA) - a department that has received little more than a few lines in the current academic and policy literature.

This chapter shows that there is a tension within the state between the limited role bureaucratic knowledge played in the development and actions of the Kenyan state – rooted in weaknesses in the administrative infrastructure and its utilisation to achieve legal exclusion – and the seeming pursuit of bureaucratic knowledge by DRA/RAS which was legally established to pursue a ratio-legal bureaucratic method of managing refugee affairs, based around registration and RSD. In what follows, I trace the history of the government's engagement in refugee registration and RSD and its take-up by DRA. I argue that a major factor in why DRA/RAS exists and pursues the bureaucratic management of refugee affairs, despite the preference of the central government, is because of the *long history of influence by international donors, rather than significant domestic political commitment.* The rest of the thesis shows how these competing *modus operandi* within the Government of Kenya play out in the contemporary, everyday management of refugee affairs.

This chapter moves chronologically. It starts with the state's engagement prior to the major influx of refugees in the 1990s, through to the creation of DRA in 2006. It then looks at the role of several international donors in building the capacity of DRA up until the time of fieldwork. The last section

shows how these arms of the government interacted and how the central government undermined the official policies of DRA/RAS.

5.2 State Engagement, pre-1989

Prior to 1989, Kenya only hosted around 14,500 refugees. This increased suddenly to 130,000 refugees in 1991 and 400,000 in 1992 as refugees arrived from Somalia, Sudan and Ethiopia (Odhiambo-Abuya, 2004, p. 188). Prior to these large influxes was a period of state-led management of refugee affairs. Academic discussions of this period tend to be brief; they describe how Kenya hosted very few refugees and mention a government-run Eligibility Committee for determining refugee status (Campbell et al., 2011, p. 5; Human Rights Watch, 2002, p. 58; Pirouet, 1979, p. 8; Verdirame, 1999, p. 56). Through analysis of grey literature, this section provides a more detailed historical account of this period of state engagement in refugee affairs. Through this, I reveal a level of continuity between this and later periods firstly relating to the influence and funding role of UNHCR in RSD and secondly an indifference on the part of the state to actively engaging in the bureaucratic management of refugee affairs.

The most detailed account of RSD prior to 1989 available is by Colin Mace, a student at Exeter College, University of Oxford. He wrote a Field Report based on fieldwork in Nairobi in August and September 1984. He writes:

… there are three possible outcomes to requests for refugee status:

1. Recognised Refugee: accepted by UNHCR, the Immigration Department and the Special Branch ['an arm of Kenya's security apparatus' (Verdirame et al., 2005, p. 80)*].*

2. Mandate refugee: accepted by UNHCR and Immigration Department (who must always be in agreement) but rejected by the Special Branch.

3. Rejected …

… An asylum seeker will normally spend about three months in the [Thika Reception] centre whilst completing the following procedure:

(i) a 'fresh' claim is interviewed by a UNHCR protection officer and and [sic] Immigration Department official. If both officials do not agree on acceptance, then the claim becomes 'pending';

(ii) a 'pending' claim is re-interviewed by the same two officials at a later date. If they still do not both agree on acceptance, the asylum seeker has the right of appeal;

(iii) the appeal is made in an interview with the other UNHCR protection officer and a different Immigration Department official.

(i), (ii), and (iii) are the opportunities for acceptance under the UNHCR mandate. Those who have been successful are interviewed by the Special Branch which decides whether or not the Kenyan government will recognise them. There is no right of appeal against a decision of the Special Branch (Mace, 1984, pp. 3–4).

This account sees a substantive role for UNHCR in RSD and the opportunity to receive refugee status purely under their mandate. This differs from an account by Verdirame which states that UNHCR only had 'an observer/advisor' role (Odhiambo-Abuya, 2004, p. 188; Verdirame, 1999; Verdirame et al., 2005, pp. 31, 80). Mace's account however relies on interviews with staff in post at the time and is consistent with guidance notes published by Jesuit Refugee Services in 1991 (Jesuit Refugee Service, 1991).

UNHCR's relatively active role in RSD is a point of continuity with practices after the early 1990s when UNHCR would take over RSD. There are also precursors of UNHCR's financial involvement; Mace writes that 'Although the centre is UNHCR-funded, it is under the direct control of the Ministry of Home Affairs' (Mace, 1984 see also Abuya 2004, p.188). Similarly, Pirouet writes that 'all the funding for aid to refugees came from outside Kenya, including the funds to pay the salaries of workers in JRSK [Jesuit Refugee Service, Kenya] almost all of whom were Kenyans' (Pirouet, 1979, p. 8).

Pirouet, in a paper presented at the African Studies Association in 1979, outlines some of the procedural challenges within government RSD. She notes that Ugandans struggled to access refugee status and that 9,000-10,000 Ugandan refugees living in Nairobi in 1977 were receiving support from UNHCR and Jesuit Refugee Service, Kenya but were 'unable to get official help' from the Kenyan government. Similarly, she notes, authorities refused to register unaccompanied Ugandan refugees under the age of 18 because of the view that they could not be at risk of persecution on account of their age. Moreover, Pirouet describes how refugees claimed that they were 'shouted at, humiliated and threatened by immigration officials' and how bribery was a common route to accessing documentation (Pirouet, 1979, p. 5).

A point of seeming discontinuity was the adoption of encampment in early 1990s, whereas previously most refugees had lived in Nairobi. Harrell-Bond describes how previously the government 'refrained from creating obstacles' to local integration and allowed the right to work, education and freedom of movement (Verdirame et al., 2005, p. 32 see also Mace 1984; Jesuit Refugee Service, 1991). Campbell describes this as marking a stark change: 'If the pre-1991 refugee regime in Kenya can be characterized as generous and hospitable, with emphasis on local integration, the post-1991 regime has been less hospitable, characterized by growing levels of xenophobia and few opportunities for local integration (Campbell, 2006, p. 399).

While refugees did enjoy greater freedoms prior to 1989 this was primarily because of the government's 'laissez faire' approach - rights were enjoyed simply because the government did not actively restrict them (Verdirame et al., 2005, p. 32). Inaction was demonstrated by the fact that there was no formal refugee policy (and one had still not been enacted by the time of fieldwork) (Pirouet, 1979, p. 8). Moreover, there were incidents of police harassment, in close continuity with later periods (as described in Section 4.4); Pirouet describes that there were police round-ups in July 1979 when 2,500 refugees were picked up and forcibly returned to their country of origin (Pirouet, 1979, p. 7). Moreover, Harrell-Bond adds to her description of the positive livelihood opportunities available to refugees, details of police harassment and the round-up and refoulement of Ugandan and Rwandan refugees, at the instigation of President Moi, in 1987 (Verdirame et al., 2005, p. 55).

Some academics have drawn a 'sharp contrast' or suggested a 'radical change' before and after 1989, following the major influx of refugees (Milner, 2009, p. 88; Odhiambo-Abuya, 2004, p. 188). There are however some previously uncommented-upon points of continuity. Firstly, UNHCR was involved in both RSD decision-making and funded core state activities – although it is not possible to know the details or rationale for this involvement. Secondly, although the treatment of refugees and rights available to them changed substantially, this had only been facilitated previously by the inaction of the government – rather than deliberate government policy - and did see the continued use of periodic round-ups of refugees by police and incidents of refoulement. This disinterest in actively managing refugee affairs is demonstrated in later periods when the government abandoned all involvement in refugee affairs, as discussed next.

5.3 A 'Surrogate State': 1989-2006

The refugee situation in Kenya undoubtedly changed in 1991/2, following the mass influx of refugees. An important part of this change was the takeover of RSD and registration by UNHCR from the government, along with the management of refugee affairs in general. As this thesis

explores the transfer of these bureaucratic processes back to the government, it is helpful to consider why these were taken over by UNHCR in the first place and what this reveals about the government's interest in the management of refugee affairs. Existing discussions on the topic make the simple yet persuasive point that the number of refugees was so high the government did not have the 'capacity' to cope and UNHCR had to step in (Campbell, 2006; Odhiambo-Abuya, 2004). More sustained analysis is challenging because of the undisclosed nature of discussions at the time; the most sustained engagement with this issue is by Verdirame et al who admit it is 'not entirely clear' why UNHCR took over (Verdirame et al., 2005, p. 273). Nonetheless, certain points can be made.

In terms of RSD and registration, the lack of capacity argument is persuasive given that the government's activities were limited to Nairobi and were based in a reception centre with a capacity for around 1,000 refugees at the time (Jesuit Refugee Service, 1991). Some authors thus suggest the government asked UNHCR to take over (Campbell, 2006; Lindley, 2011). Verdirame et al give a more contested account, suggesting it was a 'tug of war', based in part on UNHCR's negative perception of the government as corrupt and incompetent (Verdirame et al., 2005). They argue that 'the main reason for the transfer of responsibility to UNHCR was the lack of funds and resources to enable the government to deal with an emergency' although they also admit 'the Kenyan government did not pose a sustained challenge to UNHCR's monopoly over donors' funds for refugees' (Verdirame et al., 2005, p. 34). A more likely important factor is that UNHCR viewed the situation as a short-term, humanitarian emergency in which capacity building of the government was deemed impractical and likely unattractive because of the negative perceptions of the government. Therefore, because of the government's hostility towards refugees, as well as its relative inexperience in managing refugee affairs, it was easily side-lined by UNHCR who were able to mobilise significant resources to manage the urgent situation.

Following the uptake of the management of refugee affairs by UNHCR in the early 1990s, the Government of Kenya seems to have acquiesced to this arrangement and was not involved in the management of refugee affairs and had no designated office with which to engage. In 2003, a Secretariat for Refugee Affairs was created (Refugee Consortium of Kenya, 2007, p. 4).[22] It is not clear why it was set-up up at this time, although it corresponded with a Refugee Bill being presented to parliament for the first time (Hansard 2003a, 2003b). The Secretariat for Refugee Affairs had a highly limited presence but was operational. One report describes how it only had 'one officer in charge' in 2004 (Moret et al., 2006, p. 55). A couple of years later, Campbell mentions that refugees would approach the 'Refugee Secretariat weekly to attempt to access protection services' (Campbell, 2006, p. 400). An employee, who joined the Secretariat in 2005, described how it had previously just been a 'desk', based within the Ministry of Home Affairs, but when he joined it had seven members of staff.[23] The government's engagement in refugee affairs was therefore very limited and marked by seeming acceptance of UNHCR's significant role in managing refugee affairs. This seemed however to start to change with the legal establishment of a Department responsible for refugee affairs in 2006.

5.4 Legal Beginnings: Refugee Act, 2006

In 2006, the Government of Kenya finally passed legislation specifically dealing with refugee issues - the Refugee Act, No. 13 of 2006. This followed draft bills which had circulated throughout the 1990s and 2000 but notably seemed to have gained little political traction (Betts, 2013; Hyndman & Nylund, 1998; Milner, 2009; Verdirame et al., 2005); only the 2003 bill reached parliament and it faced an insufficient quorum to continue twice during the second reading and

[22] There was also possibly a government Eligibility Committee; Mr Augustine Lomongin, Deputy Secretary, Office of the Vice President and Ministry of Home Affairs, Heritage and Sports, commented to the Second Workshop on the Refugee Policy Review Project in 30th March 2001 that 'The Eligibility/refugee determination Committee has been revived but due to lack of capacity and resources within the government, we find ourselves more than often relying on the UNHCR to facilitate in determining the status [of refugees]' (Lomongin, 2001, p. 5).

[23] Interview with Deputy Commissioner of Refugee Affairs (2005-2009), Nairobi, July 2017.

failed to reach a third reading (Hansard, 2003a, 2003b).[24] The passing of the 2006 Refugee Act marked a significant legal juncture as previously there had not been refugee-specific legislation.

The 2006 Refugee Act established the legal framework for the government to take over responsibility for refugee affairs. It set up crucial aspects of RSD, including the legal definition of a refugee (Section 3); grounds for disqualification (Section 4); withdrawal (Section 19, 20) and cessation of refugee status (Section 5). It set up institutions for managing refugee affairs, including the Department of Refugee affairs (Section 6), a Commissioner of Refugee Affairs (Section 7), a Refugee Affairs Committee (Section 8), and a Refugee Appeals Board (Section 9). It also made a range of administrative arrangements regarding the stay and documentation of refugees, and their rights and duties. The Act was praised by commentators, including UNHCR, as an 'important, modern, and forward-looking piece of legislation' (Refugee Consoritum of Kenya, 2008). It implemented the 1951 Refugee Convention definition of a refugee and 'the international conventions to which Kenya is Party' (Section 16(1)a).

This section provides a content analysis of the three debates preceding the passing of the Act, as recorded in Hansard.[25] It reveal that MPs who appeared to have unanimously supported the bill (there is no record of dissent although the voting record is not available) were actually disinterested in registration, especially RSD and other protection functions. Moreover, there was no discussion of the substantial financial and political commitments needed for the government to become actively engaged in the management of refugee affairs. Instead, the discussion focused on how the Act would help address the grievances of the host community, which is a minor point in the text, and general comments about controlling UNHCR and enforcing the return of refugees to their country of origin. This disinterest on the part of the government in actively managing refugee affairs through bureaucratic channels therefore continued. Although the debate, as recorded in the

[24] Three readings are required for a bill to be passed. The reasons the bill did not reach a third reading are unknown to the author.
[25] The Kenyan Hansard is archived online on Google Books and parliamentary website. It provides verbatim accounts of the speeches made by named politicians.

Hansard, is unlikely to be a full reflection of all MPs' views, what they choose to express in this formal and public forum revealed a striking disconnect between the written content of the Act and the stated motives of the MPs who passed it.

Most importantly, the debates contained very little discussion of the institutions to be set up by the Act. Notably, the establishment of the Refugee Affairs Committee was only discussed briefly in the amendments in which two of the Committee positions are changed (Hansard, 2006c p. 4042); there was no mention of the Department - except to say it would be set up (Hansard, 2006a p. 3631); the Appeals Board was mentioned only once although it was praised (Hansard, 2006a p. 3634); and the Commissioner for Refugee Affairs was briefly mentioned but primarily as a figurehead to lead on the government's concerns (Hansard, 2006a p. 3633). There was very little commitment to taking on responsibility for the management of refugee affairs. Mrs Mugo even expressed the opposite view, stating: 'it is time the UNHCR took a greater responsibility in taking care of refugees … then the burden would be equally shared between the host country and the international community' (Hansard, 2006b p. 3709).

Similarly, there was no meaningful discussion of RSD. There was some discussion around how more refugees should be excluded or that there should be better 'vetting' or screening but with no detailed consideration of what this would involve, use of terms related to RSD or discussion of the RSD procedures used by UNHCR (Hansard, 2006b p. 3704). Instead, it was talked about in the more abstract sense that refugees posed a threat and should not be in Kenya; Mr Nderitu asked 'Who knows that, among those refugees, we do have murderers, rapists and all sorts of people?' (Hansard, 2006b p. 3703); Mr Wetangula commented that refugees could be 'war criminals' because refugees 'walk into this country' (Hansard, 2006a p. 3632). Interestingly, it is Mr Nderitu, who also made statements against the ratification of international protocols (Hansard, 2006b p. 3704), who expressed notions most seemingly consistent with the government taking responsibility for RSD; he remarks: 'it is as if we have abrogated our duties to someone else. It is high time now

that Parliament and government takes control of who enters in the boundaries of this land' (Hansard, 2006b p. 3703). His argument however was that the government should take control in order to 'vet the amount of money the multinationals pump into these refugee camps' and address the wide range of complaints he listed, from environmental damage to members of Al Qaeda disguised as refugees (Hansard, 2006b p. 3704). Government engagement was thus imagined to involve addressing these ills and accessing international funds - 'it is now the responsibility of the Ministry to … get the programmes of refugees to be funded directly by UNHCR' (Hansard, 2006b p. 3704) - rather than legal assessment of asylum cases or financial investment from the government.

Similar to Mr Nderitu, other MPs discussed the role of UNHCR but they focused on how the Bill would enable the government to better control the organisation, especially regarding their management of the environment and allocation of its funds. Mr Dahir said: 'UN agencies were not able to reciprocate our hospitality … we want the UNCHR to start a massive tree planting exercise' (Hansard, 2006a p. 3636). Mr Haji complained about 'the unfairness with which UNHCR is handling local people … UNHCR recruits its workers from Nairobi' (Hansard, 2006b p. 3706). Similarly, Mr Ethuro said just one per cent of the budget which is 'usually billions of dollars' would make a 'big difference' to hosting areas (Hansard, 2006a p. 3641).

The debate, instead of focusing on the uptake of the management of refugee affairs, focused on other issues. Firstly, it focused on preventing influxes of refugees and facilitating their return or repatriation (a major government concern, as discussed in Chapter 4). Several MPs argued that Kenya should take an active role in addressing the root cause of refugee flows. Other MPs however expressed the view that, if Kenya has deemed a country safe or been involved in making it safe, refugees should be made to return. Mr Michuki for example, appeared to endorse forced repatriation, stating that because 'Kenya was involved in creating peace in Southern Sudan' refugees should return; 'I hope … this Bill will provide in such circumstances, the host country can

demand and, in fact, enforce, the movements of such persons back to their country of origin' (Hansard, 2006a p. 3638). Mr Omamba also said 'there should be a limit as to how long one should stay in another person's home' (Hansard, 2006a p. 3638). This sentiment was shared by Mr Konchella, who led the debates, who lamented that when 'there is no reasonable ground for them be staying as refugees … there is little we can do about it because we have no law to forcefully repatriate them' (Hansard, 2006b p. 3713).

Secondly, the debates focused on managing the perceived negative impact of refugees on the host community, which was mentioned by *all* the speakers in the debate, with a particular focus on the environmental impact and lack of recruitment of local people by the UN. Here discussions map more closely to the content of the bill as several Articles relating to host communities were included as amendments, including Articles 7(2) (m), (o) and (p) which ensure 'harmonious co-existence' between refugees and host communities, that refugees 'do not have a negative impact', and the 'sustainable use of resources' in host areas. Article 8(5) also ensures that a representative from the host community is included on the Refugee Affairs Committee. Despite all expressing concern for the negative impact of refugees on host communities, there were splits in how this impact was interpreted. Two MPs from host community constituencies simply wanted the issue addressed and for their concerns to be heard; Mr Ethuro, for example said 'as I rose to support this bill, I did so knowing that it has taken into consideration the interests of the local communities' and calls on UNHCR to start a tree planting programme (Hansard, 2006a pp.3639-3640). Similarly, Maj Sugow argued for a 'balance between the taking care of the welfare of our guests and ensuring the rights, welfare and aspirations of Kenyans who live in areas designated for hosting refugees' (Hansard, 2006b p. 3701). Other MPs however took a more negative view. Mr Dahir, another host community MP, said 'when refugees come, they get better education than the locals… it is like the refugees are our bosses and the locals are poor' (Hansard, 2006a p. 3636). Mr Nderitu also blamed international law for creating this issue; he said: 'the acceleration of the desert had been created by us trying to play good boys by following the international laws of protecting refugees' (Hansard, 2006b p.

3704). The discussion focused the attention away from protecting refugees and towards protecting the rights of the host community. This is demonstrated by Mrs Mugo, who most ardently supported adherence to international law, when she said 'while we take care of refugees, *first and foremost*, we must take care of our communities living within those localities' (Hansard, 2006b p. 3708, emphasis added).

Overall, the content of the debate was strikingly at the odds with the content and stated purpose of the Act to mark the uptake of the bureaucratic management of refugee affairs. The only substantive point of convergence was regarding the host community which likely motivated support for the Bill. This discussion therefore reflected the disinterest that marked previous periods, despite legal changes.

It is helpful to discuss some of the reasons for this divergence. One possible factor was that some of the MPs simply had not read the bill because of time pressures but had an incentive to attend because of financial sitting allowances. I observed this at the 'call for memoranda' for a proposed repeal of the Act in August 2016, where MPs shared their views on the bill but also admitted that they had not read it.[26] Although MPs do not mention having not read the Bill in the debates, the divergence from the content of the Bill makes this a likely possibility.

Another important factor was the involvement and lobbying by UNHCR. UNHCR is described as heavily involved in advocating for the Act (Campbell et al., 2011; Turton, 2005; UNHCR, 2005). Betts emphasises the role of UNHCR in the passing of the Act, arguing that 'UNHCR's then representative to Kenya, George Okoth-Obbo, is widely credited with guiding the process and directly contributing to the drafting of the Act' (Betts, 2013, p. 150).The similarity between the Act and international law suggests UNHCR's influence.

[26] This event was open to the public and I attended stating I was a researcher. The 'Call for Memoranda for 2016 Refugees Bill' took place in the Mini Chamber, County Hall, Parliament Buildings, Nairobi on Tuesday 9th August 2016.

UNHCR's advocacy was done alongside members of civil society, such as Refugee Consortium of Kenya (RCK), which had an implementing partner agreement with UNHCR which funded their advocacy work in this area. Stavropoulou describes how UNHCR has a preference for encouraging NGO actors to carry out advocacy 'on their behalf', presumably to build domestic support (Stavropoulou, 2013, p. 216). UNHCR provides guidance to NGOs on advocacy in established forms, such as the *Protecting Refugees: Field Guide for NGOs* and general advice on 'advocacy lines and strategies' that can be used with governments (Stavropoulou, 2013, p. 217; UNHCR, 1999). RCK describes how it:

engaged a broad cross-section of stakeholders in a spirited campaign for enactment of the law. RCK promoted the legislation, engaged at the highest level with the parliamentary committee responsible for the bill, monitored parliamentary debates, liaised with the Refugee Affairs Department and UN agencies and worked with other civil society actors to push for enactment (Ayiera, 2007, p. 27).

The Executive Director of RCK at the time described to me how initial drafts of the bill were 'not measuring up to international standards' but they had engaged in advocacy and lobbying with government committees, including through a workshop in Mombasa (a city popular for corporate retreats, with many expensive beach-side hotels); she described how 'The law was very much informed by the lobbying that happened'.[27]

UNHCR has a recognised role as advisor and advocate for the implementation of the 1951 Convention. UNHCR Executive Committee Conclusion No. 51 reaffirmed that the 'promotion and dissemination of refugee law is one of the fundamental responsibilities of the Office of the United Nations High Commissioner for Refugees and is directly related to the effective international

[27] Executive Director, Refugee Consortium of Kenya (c.2006), via Skype, June 2015.

protection of refugees' (UNHCR Executive Committee, 2017). A closer role in the drafting of laws is described by Lewis:

UNHCR offices have provided comments on draft legislation to countless governments and even assisted in the drafting of amendments, provided training to government officials, and judicial and administrative officers, and advised on the creation, structure, and functions of asylum bodies to ensure the better protection of refugees. Such advice has been particularly pertinent to countries creating national refugee laws for the first time (Lewis, 2012, p. 141).

Moreover, Stavropoulou states:

UNHCR has developed unique expertise in the design of asylum laws and systems, and offices are usually invited to comment on draft laws impacting on refugees, if not provide first drafts themselves all together (Stavropoulou, 2013, p. 216).

UNHCR seems to have been highly effective in their advocacy at this critical juncture. The extent of their influence is difficult to gauge but it involved significant lobbying and advocacy, presumably based on the expertise UNHCR holds as a global advisor on domestication of international refugee law and incentivised through the workshops outside of Nairobi. Why MPs supported the bill despite its ostensive purpose is also unclear but what is certain is that legally the Act marked a juncture in the state's engagement in refugee affairs, but the hostile attitude of many of the MPs provides important explanation for why implementation of the Act was very slow. It seems donor influence trumped political buy-in – a theme throughout DRA's development, discussed next.

5.5 DRA and International Donors, 2006-2016

Despite the passing of the 2006 Refugee Action, until 2009, the involvement of DRA in the management of refugee affairs remained highly limited. The Department had less than thirty employees, many of whom were secretaries and drivers.[28] This only started to change with engagement from international donors. This section traces the activities and substantial impact of three major donors – Danish International Development Agency (DANIDA), UNHCR and the International Organisation for Migration (IOM) – on the development of DRA prior to the time of fieldwork.

5.5.1 DANIDA

DRA's engagement in the management of refugee affairs started to change with the implementation of a project by DANIDA called 'Capacity building of the Kenyan Refugee and Asylum System – Institutional Capacity for Implementation of a New Refugee Act (2009-2013)'. The project included a total grant of DKK 19.7 million. The overall aim of the project was 'for the development of capacity of the Government of Kenya to manage refugee affairs' (DANIDA, 2013, p. 1). This project is analysed through an internal review of the project shared with the author by the Danish Embassy in Nairobi, interviews with two international advisors who worked very closely with DRA to implement the project and some employees of DRA at the time.

The project came about as part of DANIDA's 'regions of origin initiative' which started in 2003 and attempted to improve protection in the areas where refugees immediately move to e.g. Kenya from Somalia. The rationale of the project was that increased involvement from the Government of Kenya would see improved protection of refugees. This was closely linked to the expectation that increased protection would reduce onward migration of refugees in East Africa to Europe. The project was linked to the *Ministry for Refugees and Immigration* and the Strategic Framework details the potential benefits of the project for Denmark's immigration agenda. This included the

[28] Senior Consultant, DANIDA, via Skype**,** February 2017.

re-integration and return of 'rejected asylum-seekers' from Denmark and 'help preventing irregular onward movement towards richer and more stable countries further afar' (Danish Ministry of Foreign Affairs, 2008, pp. 6–11). It forms part of a trend Landau calls 'containment development', whereby 'across Africa, development aid is increasingly framed as addressing the root causes of migration … [and] is aimed broadly to combat all sources of mobility … and to provide capacity building to the host communities and relevant institutions' (Landau, 2019, p. 4).

This initiative has been criticised as part of an externalisation of European asylum policy, containment and general burden shifting to the Global South (Betts, 2005). Betts however highlights how it also contained humanitarian motives as it was largely led by civil servants within DANIDA, rather than politicians, and actively incorporated dialogue with host governments into its approach (Betts, 2005, p. 17).

Importantly, this agenda meant DANIDA did not have the same institutional tension between ensuring refugee protection and encouraging state involvement that dominated UNHCR's engagement with DRA (as explained in Chapter 1). DANIDA did not have the same mandated focus on protection and had an institutionalised commitment to ensuring state control as it had been linked to their interest in reduced migration to Europe. DANIDA was also a development agency and better placed to engage in capacity building than UNHCR; the international advisors who were placed within DRA consecutively throughout the project were bureaucrats who were used to working within governments and on capacity building projects – compared to the RSD officers employed in this role by UNHCR.

The project saw some significant changes. During the project, the number of staff at DRA increased from around 30 to 120.[29] It also moved offices in 2009 from Maendeleo House - a government office block in the centre of the Nairobi - to its location at the time of fieldwork in the suburb of

[29] Senior Consultant, DANIDA, via Skype**,** February 2017.

Lavington. This new location was chosen for its larger office size and because of the difficulties of managing crowds of refugees in the busy city centre.

The project had the most pronounced success regarding refugee registration; seven registration centres were established across the country, including one in Nairobi, which is the focus of Chapters 6 and 7. In relation to registration, it aimed to set up:

reception centres, procurement of adequate registration equipment, secure file management, sensitizing and training staff in registration, protection and RSD, drafting and implementation of SOPs [standard operating procedures], development of secure documents for asylum seekers and refugees and creation of centralized secure databases (DANIDA, 2013, p. 4).

Although not all these aims were achieved, it did enable DRA to start registering refugees for the first time (ibid). RSD - the topic of Chapter 8 - had less success, with only 40% budget utilization rates (i.e. 60% of the DANIDA allocated budget was not spent). The project review describes that:

four lawyers have been trained in RSD and international refugee protection by UNHCR and 20 para-legals have gone through a first module [of] in-house DRA training in 2012. However, other staff are yet to be trained and vacancies filled. Due to these delays, UNHCR is still conducting RSD (DANIDA, 2013, p. 5).

The DANIDA international consultant described how RSD was more challenging than registration as it was technically more demanding, required higher levels of training of staff and was more labour intensive.

Other aims of the project, including camp management, development of a refugee policy, peaceful co-existence with host communities and finding durable solutions saw limited development and

low budget utilization. The writers of the project review and international advisors attribute this to the organisational culture of DRA and the Kenyan state more broadly. For example, the low utilization rates were rooted partly in the government's lengthy purchasing processes which included a tendering committee and sign-off procedures. Another major issue was government budgets and the failure to release funds for middle managers – positions which remained unfilled and created a decision-making bottleneck at the Commissioner level. This also meant that the funding costs for about 120 DRA staff were paid for by UNHCR, rather than the government. Nonetheless, the early development of DRA into an active department was strongly rooted in the influence, impetus and funds from DANIDA. It was fundamental to DRA starting to register refugees and laid some of the groundwork for it to take over RSD. The influence of DANIDA on registration ceased at the end of the project but much of the equipment remained in use, visible from the DANIDA reference number imprinted on the side of these items.

5.5.2 UNHCR and IOM: 'Project Staff'

UNHCR started funding DRA in around 2011, concurrently to the DANIDA project. This section focuses on UNHCR's historical funding arrangements with DRA.

UNHCR's engagement with DRA primarily started with the funding of staff wages. As noted by the DANIDA review, the government did not release the agreed funds for staff wages and DANIDA was reluctant to fund it.[30] The payment of wages is however common practice for UNHCR; a UNHCR PDES reports states that:

in most countries of the developing world, separate RSD structures have from the outside, in some cases since 1980s, been paid from UNHCR's budget through sub agreements with the responsible

[30] Senior Consultant, DANIDA, via Skype**,** February 2017.

government entity. In most cases this includes salaries, the rent and running costs of buildings, transportation and equipment (van Hovell et al., 2014, p. 57).

UNHCR therefore instigated the creation of a category of staff known as 'project' staff. Project staff were government-contract employees who were on a one-year renewable contract (because of UNHCR's funding cycle) and whose wages were funded by UNHCR but released by the government. They differ from government staff members whose position was integrated into the civil service and who had a permanent contract and access to other benefits, such as to take out a loan and receive a pension. Project staff remained in post as long as UNHCR's funding remained, unlike the government staff who could expect a 'job for life'. The project staff were nearly all younger than the government staff and recent graduates. The use of the term project staff reflects the 'project-isation' at the heart of NGOs and international organisations (Hammami, 1995); they were hired in order to work on a specified project and to achieve designated aims – in this case, registration and RSD. 'Project' officers made up the majority of DRA/RAS' workforce and did the day-to-day work, whereas government staff were either fingerprint officers (seconded from the National Registration Bureau) or managers. For example, in the registration section within RAS's Nairobi Field Office, UNHCR paid the wages of fifteen project officers, managed by three permanent government officers, alongside two government fingerprinting officers. Staff were fully aware of the distinction between these posts because of the official designation, reinforced through the difference in remuneration and managerial hierarchy. As will be discussed in Chapters 7 and 8, the relationship between government and project varied and they had different roles in the capacity building process.

Relatedly, government staff working in DRA/RAS were not permanently affiliated but instead seconded from elsewhere within the Ministry of Interior. This was because permanent posts within the Department had not been established. As a new RAS Manager said to me, "I can go back" - suggesting an almost imminent departure back to the National Registration Bureau (NRB) from

which he had been seconded.[31] UNHCR did significant advocacy to address both this issue and to make project staff government staff with the Directorate of Public Service Management – a government agency whose mandate is to provide strategic leadership and guidance to the public service on the human resource management and development.[32] The government however appeared unwilling or unable to commit the funds and resources to equip the Department with permanent staff. Numerous project staff and others in the sector mentioned that government staff also received a 'top-up' salary from UNHCR. This was apparently because otherwise government wages would have been lower than project staff.

Moreover, the use of project staff within DRA/RAS was not restricted to UNHCR. The International Organisation for Migration (IOM) had paid the wages of two members of staff working in RAS since January 2016 until at least the point of fieldwork.[33] This was part of their work globally to improve global migration management (Andrijasevic & Walters, 2010; Frowd, 2014). Both staff members facilitated documentation for refugees being permanently resettled from Kenya to countries such as USA and Australia, for protection reasons.[34] IOM initiated paying the wages of two staff members within DRA because resettlement was a lengthy process involving several government agencies and IOM was keen to improve the speed of the process because it had to be completed before certain travel documents expired. DRA had told IOM that the process was slow because they did not have enough staff. IOM was aware of UNHCR's project staff and adopted the same model. They were supposed to exclusively do work related to IOM but ended up doing around 20% of their work for DRA. IOM expressed their preference for the staff to be based in IOM offices so that they could manage them, but DRA insisted that they were in their offices. The staff remain permanently based and "integrated" in DRA and only visit the IOM offices on occasion

[31] RAS Manager, RAS, Nairobi, April 2017.
[32] Senior UNHCR Officer, UNHCR, Nairobi, October 2016.
[33] This section is based on an interview with Operations Officer, IOM, Nairobi, October 2016.
[34] Resettlement is widely considered as one of the three durable solutions to displacement, alongside repatriation and local integration.

for meetings. The IOM officer I spoke to expressed their perception that the process was overall going well and the speed of processing documents had increased.

The payment of wages for project staff and salary 'top ups' by UNHCR was part of a wider package of funds given to DRA/RAS. This formed a significant part of their overall budget. DRA Commissioner at the time of the DANIDA project said about one-third of the funds came from the government, with the rest from UNHCR and DANIDA. This appears to have increased with a more recent estimate given to me by a senior government official of 80%.

The funds were given and governed through an implementing partnership agreement between UNHCR and DRA/RAS. This is a standard format for UNHCR's relationship with NGOs globally who typically implement projects and UNHCR holds an overall coordination role (UNHCR, 2019a). The office of the UNHCR Head of Programmes in Dadaab contained a shelf of identical box files for each partnership, with one marked 'RAS'. All partnerships included a project description, budget, work-plan and instalment plan. They were enforceable through a signed project partnership agreement and the release of funds was contingent on implementation of agreed activities.

UNHCR's funding arrangement with DRA/RAS was therefore not simply the availing of money but a constituent part of a wider bureaucratic set-up which configured the power relationship between these institutions through seemingly technocratic documents. While DRA/RAS, as the host government, was in a stronger position to both negotiate and break its project partnership agreement than NGO partners, UNHCR nonetheless sets the parameters and conditions for which activities are financially viable. For example, the discussions about which database would be used to register refugees was significantly shaped by UNHCR's refusal to fund RAS to establish their own database (see Section 7.2). More broadly, the fact DRA/RAS' substantial involvement in refugee affairs was limited to registration, RSD and some protection work was a reflection of the

activities UNHCR had prioritised in the transfer. Simply, DRA/RAS did not do much else because UNHCR did not fund it. There was therefore a real material contingency to DRA/RAS' operations and an existential reliance on UNHCR. This was compounded by the fact that 'assets' of a certain worth remained the property of UNHCR. This included buildings constructed by UNHCR, vehicles, laptops and photocopiers. Lower value items, like chairs and tables, were donated and therefore the property of the government.[35] This meant that, without UNHCR, RAS did not have an office building, equipment or most of their staff.

UNHCR was also significantly involved in the development of DRA through the use of trainings. For instance, when new staff were appointed to senior managerial positions in RAS, following the disbandment of DRA, UNHCR carried out a two day 'dialogue' in Nairobi to introduce them to refugee issues and a longer training about camp management in Naivasha – a scenic lakeside town outside Nairobi and popular location for such trainings.[36] Senior DRA staff were also given the opportunity to attend external trainings, organised by their implementing partners or even abroad. Registration staff did not receive training, because their job was relatively straightforward and functioned reasonably separately to UNHCR (see Chapter 6), although this changed with capacity building (see Chapter 7). RSD staff however received substantial and on-going training (see Chapter 8).

In conclusion, donors shaped and influenced DRA/RAS' engagement in the bureaucratic management of refugees throughout its history. Before the 1990s, its engagement was marked by inaction and propped up by UNHCR. Faced with a mass influx in the early 1990s, the government was ill-prepared but willingly renounced its involvement to UNHCR which become a 'surrogate state'. Legally, the situation changed in 2006 but analysis of the parliamentary debates revealed that MPs who passed the bill did not envision renewed involvement by the government in refugee

[35] Officer, Programmes Unit, UNHCR, Dadaab, July 2017.
[36] Officer, UNHCR, Nairobi, June 2017.

affairs. Instead, disinterest continued. The eventual uptake of its legally mandated activities by DRA did not take place until it was under pressure and received financial incentives from international donors. Analysis of DANIDA, UNHCR and IOM's projects reveal that DRA's development was reliant on donor funds, the infrastructure they funded and the trainings they organised to instil certain practices and norms. Donors therefore exercised considerable control and power over the development of DRA primarily through the financial resources they wielded. Overall, the substantial nature of this influence made it questionable if DRA would have existed without the influence of donors.

5.6 DRA and the Central State

This section brings together the above discussion and Chapter 4 to understand how the central government and DRA – and their divergent importance placed on bureaucratic knowledge - have interacted and coexisted, and, in particular, its impact on DRA. It focuses on the period from 2011, when DRA was operational, and 2016, just before the time of fieldwork. It shows that DRA had a highly contested relationship with the wider government which had undermined its functionality and, at times, threatened its existence.

Crucial to understanding the relationship of DRA/RAS within the central government is the rise of national security concerns from 2011 (see also Section 4.4). This rise in security concerns impacted the work of DRA and bought it into closer contact with the central government. A senior DANIDA official, working closely with DRA at the time, describes how security concerns 'shifted the dynamics and undermined the work of DRA. Internal affairs became more important and their opinions more important than those of DRA. DRA actually became the underdog in the internal government set-up'.[37] In 2012, the Permanent Secretary ordered the Commissioner of DRA to issue a notice for refugees in Nairobi to relocate to the refugee camps (Department of Refugee Affairs,

[37] Senior Consultant, DANIDA (2012-2014), via Skype, June 2017.

2012).[38] On this occasion the Permanent Secretary therefore chose to operate through DRA. The Commissioner however told me he opposed the move and had advocated for refugees to be allowed to stay in Nairobi. Tensions between DRA and the central government continued and in January 2014, the Commissioner for DRA and other senior members of the Department were transferred out of the Department. The Commissioner attributed this to the security agenda of the Ministry of Interior, led by Mr Ole Lenku, the Cabinet Secretary for the Interior and Coordination of National Government, which was focused on the repatriation of refugees but dissatisfied with the slow progress of the Tripartite Agreement which had been signed to enforce the effort in November 2013. DRA was interpreted to be an obstacle to his security agenda. This dissatisfaction was also rooted in concerns about the influence of UNHCR; in January 2014, Ole Lenku reportedly told the DRA Commissioner "I'm happy with your work as a minister but this DRA has grown and has developed a life of its own and it has become unmanageable, so we have to crash this department".[39] DRA was seen as doing too much of its "own thing", rather than following orders from the Ministry.[40] The Commissioner describes how:

They were not happy about how supportive [DRA was being of]the capacity building and I think they had intentions of doing away with the department as they transferred around three of us who had technical knowledge of refugee management and then they posted security staff into the Department so, of course, the security officers will follow the orders.[41]

This move does not seem to have satisfied the concerns of the Ministry as on Friday 6th May 2016, the Principle Secretary of the Ministry of the Interior issued a statement which announced that due to 'national security interests … the Government of Kenya has disbanded the Department of Refugee Affairs (DRA) … further, the Government is working on mechanism for closure [sic] of the two refugee camps within the shortest time possible' (Government of Kenya, 2016). While the

[38] Commissioner, Department of Refugee Affairs (2009-2012), Nairobi, August 2017.
[39] Commissioner, Department of Refugee Affairs (2009-2012), Nairobi, August 2017.
[40] Commissioner, Department of Refugee Affairs (2009-2012), Nairobi, August 2017.
[41] Commissioner, Department of Refugee Affairs (2009-2012), Nairobi, August 2017.

closure of the camps did not take place, DRA was indeed disbanded and a few months later replaced with the Refugee Affairs Secretariat.

I was given various different accounts of why the central government chose to disband DRA. It is clear however that the Ministry of Interior was not content with the performance of DRA as DRA staff, by their own admission, were demoted.[42] The Commissioner at the time, for example, was moved to the Ministry of Sport which, according to informal conversations, had little money and was dealing with the "mess" of the 2016 Olympic Games where Kenyan athletics underperformed.

One account of the reason for the disbandment was that it was to expedite the repatriation process for returning refugees to Somalia. As the former DRA camp manager for Kakuma said: "I don't want to speculate ... one of the main factors is that there's not been a lot of support to the government in regards to the tripartite agreement". This seems to have been a factor as the government invested in establishing National Multi-Agency Repatriation Team (NMART) to issue a report on how to expedite repatriation and Operational Refugee Repatriation Team (ORRT), a committee in Dadaab, to implement this policy (Gazette, No. 4418, 2016). The mandate for repatriation was removed from DRA and now RAS reports to ORRT which was headed by the Deputy District Commissioner in Dadaab. One of the senior RAS staff members was on the ORRT committee and said he was responsible for providing 'field' information to facilitate their operations.[43] ORRT and NMART report to the National Security Council (Amnesty International, 2016, p. 5). This further suggests the central government's frustration with DRA as responsibility for this issue was removed from RAS and given to a central security actor.

A slightly different interpretation of the disbandment of DRA was given by the DRA Commissioner at the time of the disbandment. He said to me:

[42] Former Camp Manager of Kakuma, DRA, Nairobi, August 2016.
[43] Camp Officer, RAS, Dadaab, July 2017.

I don't think it was because they want the repatriation to go faster, it's because of the security concerns, security concerns on these refugees… [the new staff] are doing the same [thing] we were doing but maybe they are more military, [whereas] we were more civilian and humanitarian. So, I think that is what informed them to deploy them there so they can do more security vetting on these refugees.[44]

Security concerns were undoubtedly part of the decision because of the predominance of such concerns within government and the stated reason for the disbandment, as discussed above. This is supported by the fact the new government staff were widely considered to be from an intelligence or military background.[45] This position was commented to mean a tighter line of command between the RAS Managers and central government. The change of name from 'Department' to 'Secretariat' is also highly revealing in this regard. A 'secretariat' refers to an office in the Ministry, established by the Minister. A 'department', on the other hand, is established by law (i.e. the 2006 Refugee Act and DRA). The functions of the Head of a department are provided for by the law so they have more power to resist the Minister, faced primarily only with the threat of transfer, where as a Secretariat has no such legal parameters.

It seems therefore that the primary motive for the disbandment was the perception that DRA had gone 'array', in continuity with the reason for the transfer of staff in January 2014. Possibly due to pressure from UNHCR, it was reopened as RAS but with new Managers and a legal set-up that helped ensure the control of the Ministry of Interior. Why DRA was perceived as gone 'array' and whose agenda was not being followed was not clear because of the highly secretive nature of this elite government decision-making. The influence of UNHCR over the Department seems to have been a likely factor, given the Commissioner's comments. There was also the suggestion, made by

[44] Commissioner, Department of Refugee Affairs (2010-2016), Nairobi, May 2017
[45] This was widely commented upon by NGO and UNHCR employees. Two RAS employees in Kakuma also told me about their military background.

several anonymous commentators, that the high sitting allowances for meetings and trainings, and salary 'top ups' of the government staff, paid by UNHCR, was causing consternation with more senior government officers within the Ministry.

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Overall, DRA had a highly contested and marginalising relationship with the wider government, to such an extent that its existence was threatened. DRA had transferred away staff who had experience of refugee issues, to be replaced by military personnel. It also refused to create permanent civil service posts for both the permanent government staff and, more importantly, the project staff who made up the majority of its staff, or provide a substantial budget. The Ministry was continually dissatisfied with DRA, possibly because of internal political wrangling. Significantly, security issues, and the related repatriation of refugees, which the government had made a strong public commitment to, was moved out of RAS' mandate. Instead, RAS primarily only carried out registration and RSD – the two roles that UNHCR provided funding for as part of the transfer process. RAS therefore toed a delicate line between UNHCR and the Ministry within which it sat: between UNHCR's pressure to use registration and RSD to manage refugees through bureaucratic functionality and the Ministry's pressure to use repatriation, police round-ups and encampment to address its security concerns. How these tensions played out in the everyday management of refugee affairs is explored in the next chapter.

6 Chapter Six: Doing Registration: The Everyday Refugee Registration Practices of RAS

6.1 Introduction

This chapter brings together the two strands of the Government of Kenya's engagement in refugee affairs set out in Chapters 4 and 5; it looks at how the commitment to the bureaucratic management of refugee affairs, promoted and facilitated by donors within DRA, co-exists with the limited role that bureaucratic knowledge played for the central Kenyan state. This chapter is a picture of the compromises and paradoxes that emerge in the everyday management of refugee affairs from these contradicting yet coexisting strands of the Government of Kenya.

I argue that these forces come together to produce a *procedural indifference* – defined as a lack of interest or concern – to registration. In particular, to the enumerative purpose of registration which enables bureaucratic knowledge about refugees to be obtained. Registration allows a state to, at a minimum, elicit information from an individual regarding their name, age, gender, family members and so forth. This enables some form of monitoring or contact with the refugee while they wait for determination of their eligibility for refugee status, which in Kenya can take at least 18 months. More information is taken from a refugee during RSD, which typically involves an interview, but registration is crucial in establishing the state's initial relationship with refugees. Importantly, this indifference is also entwined with the government's *resistance* to registration as a means to deny meaningful on-going recognition to refugees and restrict their enjoyment of rights officially granted through registration. The central government's public and visible indifference, at times, and, at other times, resistance to registration - explored in Chapters 4 and Chapter 5 - are therefore manifest both when the government suspended registration *and* when it did registration.

This indifference and resistance to the purposes and potential effects of registration were not an accident or due to the professional conduct of staff. Instead, it is a reflection of wider state infrastructure that places limited importance on bureaucratic knowledge and a deliberate attempt to resist the empowering recognition and rights that would otherwise be granted to refugees, as

developed theoretically in Chapter 3. The fact registration happened at all was closely rooted in the pressure and incentives from donors, as discussed in Chapter 4, but which were seemingly not successful in addressing this more deeply held indifference and resistance towards registration.

The idea that registration is *intended* to serve certain purposes, such as enumeration, creates a certain normative model against which the practices observed are being compared which challenges the methodological commitment in this thesis to studying the state on its own terms. This is part of a wider challenge in studying bureaucracies; as Hoag writes, 'bureaucracies refuse to let anthropologists forget that a bureaucracy 'should work … they are bureaucracies precisely because they are supposed to achieve certain goals … bureaucratic field sites therefore make non-normative approaches very difficult' (Hoag, 2011, p. 83). I therefore understand registration through its inherent enumerative function but analyse the state's engagement with this enumerative function on its own terms.

This chapter shifts from the broad historical perspective of previous chapters into a close contemporary one. I show that seeing the state 'at work', at the street-level, can be an insightful lens through which to understand fundamental aspects of the state's engagement in the management of refugee affairs (Bierschenk & Olivier de Sardan, 2014; Lipsky, 1980). It is based on full-time participant observation within RAS' Nairobi Field Office over nearly two months, along with three days of observation in the RAS Field Office in Kakuma refugee camp, and interviews with government and RAS officials.

I start with a description of how registration was carried out, step-by-step, and then, more substantively, the indifference displayed within these practices. I describe firstly the indifference displayed towards the enumerative purposes of registration and secondly, how this combined with a resistance to the on-going recognition of refugees which served to deny refugees' ability to enjoy the rights registration is intended to grant. Thirdly, how indifference undermined potential national

security objectives. Fourthly, I describe incidences which, because of their exceptional nature, demanded an active interest but instead prompted discretionary responses – showing that indifference was considered the norm of how work should be carried out. Lastly, I consider the emic perspectives of bureaucrats who saw their indifferent work practices as 'good' work, which was defined as registering refugees as quickly as possible.

This chapter also provides a 'before picture' for the next chapter which describes how a UNHCR-led capacity building project significantly changed how registration was carried out by RAS.

6.2 Doing Registration

This chapter and the next revolve primarily around the RAS Field Office in Nairobi. In this section I describe the typical features of the registration process, which I describe in a staccato fashion to reflect the mechanised and cog-like way in which it worked. This description provides a basis for analysis in the subsequent sections.

The office, like many accommodation blocks and professional offices in the highly securitised city of Nairobi, was in a gated compound. Often hundreds of refugees gathered outside the compound, as early as 5am, spilling over onto the pavement and surrounding area. This informal area, on the grassy bank between the compound wall and the pavement, marked the first step in the registration process. Refugees had to physically negotiate the large crowds and push their way as close as possible to the small entrance gate. With over 1,000 refugees reportedly arriving one day and typically around 130 refugees being registered per day, those who could not make their way to the front would have to return another day and remain unregistered.

For those who could afford it, a few notes likely quietly exchanged hands - to move up the queue or to join the queue and facilitate their entry to the compound.[46]

Those who managed to enter the compound arrived at a waiting area in the space between the compound wall and the entrance to the main building. The nature of the crowds varied. Sometimes the refugees sat on the benches in neat rows, often with small children sat on their laps, or, most commonly, calmly waited in groups. At other times, the area became crammed full of people pushed up against the walls. Depending on the temperament of the officers, throughout the morning, they would attempt both physically to make the refugees form a line and, far more commonly, verbally with shouts of "panga lini!" / "form a line!".[47]

It was a long morning by around nine o'clock when the first officers appeared in the 'reception' room - although many arrived at work much earlier but waited until the refugees had been ordered outside and the necessary 'profiling forms' had been printed. The three to four project officers, visible by their white overcoats displaying the Ministry of Interior logo, sat on large office chairs behind a curved desk – slightly squashed against the wall at the curved end and sat with their feet in the now emptied filing cabinet at the other.

Refugees entered the reception room and filled the short benches on the other side of the desk or stood when these were full. The small space within the office mediated how many could enter and meant the refugees crowded around the door, waiting to enter.

[46] I never witnessed the exchange of money for services within the office or outside. It was however difficult for me to observe the activities immediately outside the gate and the discrete nature of such transactions, as well as the clear motivation to hide such actions from an outsider, meant I was unlikely to witness it. Accusations of bribery were however made to me by one refugee I talked to while walking to the compound who said, upon my enquiry, that she had paid 200KSH to enter the compound the previous day; officers in NGOs also told me their refugee clients had complained to them of having to pay to enter the compound and other literature corroborates this finding (Garlick et al., 2015; Hough, 2013). I therefore conclude it is likely that refugees did pay to enter the compound.

[47] This phrase is sheng, rather than Swahili, which is a dynamic urban vernacular that mixes English, Swahili and other Kenyan languages (Githiora, 2018). It is very commonly used by Nairobi's residents. I include some phrases in Swahili/Sheng to indicate the bi-lingual environment, although my limited language proficiency meant this could not be achieved consistently.

There was one ‘profiling form’ per household. It captured the date of registration, name of registering officer and their signature, as well as the date the refugee had entered Kenya and name of the border point they had used. Underneath this was a table with lines for each family member and, across the top of the table, was written: name, relation to the head of household, gender, marital status, date of birth and special needs. It allowed for up to ten family members to be included but if the family was exceptionally large, extra lines were drawn at the bottom.

Once the ‘profile’ sheet was completed, it was passed down the desk to the officer sat at the end, who copied the details of the head of the household into a large A4 ‘reception book’ as a record of who had arrived that morning. A consecutive reference number was allocated, recorded and then copied onto the top of the profile sheet.

At the end of this interaction, the officer would indicate to the door at the opposite end of the room to which they had entered and say to the refugee: “toka nje, utaitwa” / “go outside, you will be called”. Refugees would then pass through a disused metal detector, into the main compound.

They sat in the main waiting area located outdoors in the centre of the quadrangle office - surrounded by walls with identical grey doors. It was filled with rows of matching wooden benches and covered by corrugated iron and fenced on all sides. This was presumably to contain the crowds but the doors were always open and refugees were reasonably free to wander around the compound.

The waiting was filled only by the purchase of cold snacks and drinks from a vendor within the compound. Wrappers and bottles were disposed of in a large cardboard box hung off the fence or on the increasingly littered floor.

Off the central quad were small rooms and each room marked one step in the bureaucratic process that refugees would have to move through to complete their registration. Even the first refugees who entered the compound would not be finished for at least a few hours because of delays and back-logs between each step.

The first step was ‘data entry’. Information from the ‘profiling form’ was copied onto the government's Microsoft Access database. Some questions were repeated in an attempt to verify the accuracy of the information collected during ‘profiling’ and to avoid later corrections. Some of the information was not however repeated, including a telephone number, which instead remained recorded only in the ‘reception book’.

Then, in another room, a passport-style photo was taken with a digital camera and printed using a specialist mobile printer. A square shape cutter cut the photo to shape and it was glued with a pritt-stick onto the movement pass each refugee was given to permit their travel to Kakuma refugee camp, if they should choose to do so.

Fingerprints were then taken with a half jovial slap on the hand by the officer to make it malleable. Fingers were held and rhythmically rolled, one at a time, onto an ink-coated block then rolled again onto the printed form – one for each box. A once damp wipe was shared around by the refugees to try and clean off the black ink from their hands.

At the end of the day, finally, came the muted handover of a signed and stamped asylum-seeker pass proclaiming asylum-seeker status and the legal right to be in Kenya. The critical output of this bureaucratic process was however only valid for six months, without the option for renewal. With RSD appointments being issued for 18 months after the date of registration, refugees had to rely on an UNHCR-issued RSD appointment slip to attempt to legalise their stay after the six-month period.

With little ceremony, this document was given out by an officer outside one of the offices in the waiting area. Names were called out and the refugee came forward to collect their documents. Along with the asylum-seeker pass, refugees also received a 'movement pass' to Kakuma refugee camp - a gentle reminder that Nairobi is not intended for refugees, although their legal right to stay in Nairobi was secured for now. Refugees also received a 'proof of registration' sheet to take to UNHCR, located in the affluent neighbourhood Westlands on the other side of the city, to prove their initial registration in order to register all over again on a different database. [48]Another identical 'proof of registration' and the form with ink fingerprints were kept by the office. These were kept in two large and irretrievably disorganised piles in a glass cabinet.

6.3 Indifference

Moving on from the typical daily routine in the RAS registration office, I now focus more specifically on *how* registration was carried out and discuss the surprising *indifference* displayed through these practices which undermined the purpose of registration. Because of the centrality of the term 'indifference' for this chapter, I start this section by defining it.

It is crucial to note that the indifference I will discuss is not solely because of the attitude or skills of the individual officers, but rather a reflection of the *indifference embedded in office-wide infrastructure, procedures and norms.* More motivated or skilled officers would have reduced the indifference displayed in the office but only to a certain extent. As I discuss in Section 6.3.4, officers actually considered themselves to work hard, and struggled to deal with exceptional cases, because of the expectation of indifference within the office.

I use the term 'indifference' in this chapter according to its dictionary definition as *'a lack of interest or concern'*. This definition however requires some clarification because it has a slightly different

[48] Registration had been carried out by both RAS and UNHCR since 2011. This institutional duplication was addressed later, as discussed in Chapter 7.

meaning within the bureaucracy literature. The first way in which 'indifference' is used is in reference to the Weberian belief that a bureaucracy should be governed according to standardised, objective and impartial rules. This demands bureaucrats to act according to rules, rather than personal sentiment or preference, thus delineating the separation between the public and private realm. Interestingly, in the RAS office, each refugee was largely treated the same: in ostensive compliance with Weberian norms. This indifference was not however *because* of a deference to rules, but rather a reflection of an indifference-as-lack-of-interest in the individual profile of each refugee.

A second way in which the term indifference is often used is to criticise how bureaucracies dehumanise clients, impose Kafkaesque requirements and fail to recognise the unique needs of individuals. This is not inherent to bureaucracies but rather a common corollary; Lipsky writes that 'ideally, and by training, street-level bureaucrats respond to the individual needs or characteristics of the people they serve or comfort. In practice bureaucrats must deal with clients on a mass basis, since work requirements prohibit individualised service' (Lipsky, 1980, p. xii). Similarly, Herzfeld argues that indifference is due to the 'structure' of bureaucracies but becomes manifest in the 'behavioural' indifference of bureaucrats towards their clients (Herzfeld, 1993). This negative view of bureaucracies is perhaps epitomised in Gupta's study of Indian bureaucracies which he argues contributes to poverty as 'structural violence'; similarly, in the African context, Olivier de Sardan describes how 'unproductiveness and arbitrariness' rooted in patrimonialism and corruption in bureaucracies leads to 'humiliation' of clients (Olivier de Sardan, 2009, p. 58). The bureaucracy I describe in this chapter was indifferent to the individual needs and characteristics of their clients, but this form of indifference did not result in an immediately negative experience for refugees. Rather, it led to a level of equity, whereby every refugee who arrived was registered. Because the protection benefits arising from registration are in fact limited, it could be argued that this unnecessary bureaucracy itself was a form of humiliation, but this was not due to the interaction between clients and officers or the practices within the office itself, but rather in the wider

institutional set-up. These two other uses of the term indifference therefore do not apply directly to this context and instead the term is used here to simply refer to a lack of interest or concern.

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One of the fundamental ways in which indifference was created and reinforced was through the cog-like, mechanised way it worked. It was a relatively simple and predictable bureaucracy which involved little expert, or otherwise, involvement from officers. The layout of the office was organised into separate and distinct office spaces in which different 'cogs' or steps in the registration process happened which included: filling in forms with basic biographic information, copying this information onto a computer database, taking a photo, and ink fingerprints and issuing documents. Different officers were allocated to each of the steps. Moreover, although some officers had two jobs, there was little moving between positions.

This physical and conceptual separating out of the process helped to (re)enforce registration as a banal and technical procedure as officers were only responsible for their step in the process - not for the overall issue of who was being registered or how. This also meant there was not a moment at which the decision was made to register a particular refugee. Instead, the working structure of registration meant this important decision seemed continually delegated to the point that it dissipated. In many ways, the strongest determining moment regarding who would be registered, and who would not, took place informally on the grassy verge outside the office compound where refugees had to negotiate physically with the crowds. Nearly all refugees who were able to enter the compound (apart from Somali refugees) were assured that, at the end of a set of identical procedures, they would be given the legal right to reside in Kenya. The terms given to the formal stages of registration were not indicative either of the determining moment of registration. The first formal step was called 'profiling' and yet took place in an office called the 'reception room' - suggesting it was only where refugees were received, pending the substantive registration process.

In practice, more refugees were referred to the manager for her determining judgement during profiling, but it was primarily treated as a preliminary step to the information being later added to the database, a step known as ‘data entry’. This however simply involved the copying of information from the profiling form onto the computer database. This office layout, terminology and general structure of working was replicated in Kakuma.

The cog-like mechanism of registration was further compounded by minimal managerial oversight or involvement in the process of registration. There were three managers. The two more senior managers were often absent from the office and the third, more junior one, primarily carried out tasks similar to the other officers - fingerprinting and signing the asylum-seeker pass - rather than any oversight role. A few cases were however referred to her and another more senior manager, when present, but managers often lacked the knowledge to make informed and consistent decisions regarding who should be registered.

In their interactions with refugees, officers never went beyond the barest of exchanges with refugees to obtain the information, photo or fingerprint required. During ‘profiling’, as soon as the refugee had sat down, officers asked “name?” and when a response was elicited, they were told to write it down and given a scrap of paper and a pen in order to obtain the spellings (and provide a defence against occasional later accusations by refugees of spelling mistakes). These short verbal commands were more practical given the noise and bustle of the small office with possibly three large families being registered at once. For Ethiopian refugees especially, there was also a significant language barrier. Officers would offer most questions in Swahili first, followed by English if the refugee did not respond, after which the question would merely be repeated or slightly amended until an answer was received. As a sometimes rather exasperated last resort, another refugee would be found to translate.

These short, overheard and rushed exchanges resulted in mistakes in the information captured. Some of these mistakes were only realised if the refugee happened to see their form and recognised it - most commonly their name being incorrectly spelt. Occasionally, easily observable mistakes were also made. In one case, a child was listed as a 'daughter' despite the fact that the mother's date of birth meant she would have been around eight years old at the time of birth. I mentioned this to the officer to which he responded defensively saying that that was the information given and he did not change the form. The refugee later returned, having seen the form, to say the child was her niece, not her daughter. There were external factors for these mistakes, including the lack of interpreters and the loud environment in which these interactions happened, as well as the way that the ultimate validity of any information was always limited because only a handful of refugees came with any identification documents. Nonetheless, the officer's response to my querying revealed that active interrogation of refugees was not interpreted as necessary and that his indifference to the accuracy of the information offered was acceptable.

6.3.1 Indifference and resistance

As discussed in Chapter 4, the government had, at times, deliberately suspended registration. This desire to deny refugees legal recognition found manifestation in the fact Somali refugees were not being registered in this office or elsewhere in Kenya. This practice had been in place since the disbandment of DRA (just before the time of fieldwork) and meant any Somali refugee who arrived at the office was turned away (although there would not have been many as the number of new arrivals from Somalia at the time of fieldwork was low). As I show in this chapter, the desire to deny legal inclusion to refugees was not however restricted to Somalis or by suspending registration. Instead, the government's resistance entwined with indifference to registration in a way that denied meaningful on-going recognition to *all* refugees who registered with RAS.

Registration is an act which is intended to have a temporal reach; it not only makes visible and legible the refugee at a particular moment but also allows the office to be able to utilise, update and

maintain contact and records about the refugee. Importantly, it is also to allow on-going recognition of the refugee in being able to utilise their registration documents and enjoy the rights it is intended to grant after the immediate act of registration. Without this on-going recognition refugees face exclusion similar to those denied access to registration altogether.

Registration by RAS however was established procedurally as a one-off interaction. Important information, such as refugees' address or location in Nairobi, was not captured and their telephone number was captured on paper but could not be entered onto the registration database. This lack of information would make it difficult for RAS to contact a refugee – either in person or by telephone – for any future issue and shows an indifference to monitoring the location or activity of refugees. Moreover, the incorrect or missing information about refugees would also make finding an individual record more challenging.

More fundamentally, there were infrastructural challenges in retrieving and utilising the limited information that was captured. From the uptake of registration by RAS in 2011 until 2016 the registration database, containing all the registration records, was not connected to the internet.[49] This meant that the only way to access the information was on the computer on which the refugee was registered. It was only with additional funds from UNHCR, as part of a capacity building project, that an internet connection was installed. Moreover, the multiple RAS databases, located in camp and urban locations across the country, remained unconnected. This meant there was no way to track refugees' movements or create a comprehensive dataset, and there was a very high risk of duplicate entries. Similarly, as already mentioned, the ink fingerprints taken during registration remained in a large, disorganised stack, stored in a glass cabinet. The explanation given to me for this was that the fingerprints were being kept for 'future reference'. Only fingerprints, taken again once refugee status had been granted, were sent to the National Registration Bureau to

[49] Similarly, according to a World Bank report, in Kenya, only 29 out of 107 civil registration offices had internet connectivity (World Bank, 2017, p. 29).

be scanned into another database.[50] Registration thus appeared stunted and disjointed from a wider state infrastructure, upon which data should flow - allowing an active and ongoing recognition of refugees.

The recognition registration provided to the refugee was also limited. Importantly, the rights-granting purpose of registration was undermined because documents were only valid for six-months and could not be renewed. This was despite most refugees requiring this documentation for, on average, at least 18 months (until their RSD interview when they would be granted refugee status, find another way to legalise their stay or face deportation). After the six-month period ended, refugees used the interview appointment letter provided by UNHCR to prove the legality of their stay in Kenya but, as a non-government issued document, it had limited legal force.

Overall, there was a disinterest in the quantity, accuracy and usability of the data collected from refugees. The data collected was only concerned with refugees' very basic characteristics, rather than information that might be relevant to the state's ability to act on the population. The limited accuracy of the data collected was partly because of officers' professional conduct but also a reflection of the office set-up, including the nature of the database, office space and recruitment of interpreters – issues which were replicated in Kakuma apart from the fact refugees had been hired as 'incentive workers' to work as interpreters. The short conversations were in many ways a reflection of the demands of the forms which required a limited amount of information to be collected and the space so limited that lines and columns were sometimes added by hand by the officer. Registration was thus enacted in such a way to undermine the enumerative functions of registration and function as a set of indifferent cog-like steps in a manufacturing line. It limited the on-going recognition of refugees by the office but also the ability of refugees to utilise their registration documents through an on-going relationship with the state, especially after six months.

[50] The operability of the fingerprints even at this stage was limited as the Automated Fingerprint Identification System used on identity cards meant that 'apart from very specific applications (such as detention and inked fingerprinting by the police or security services that can then be compared with the records)' ink fingerprints could not be used to authenticate individuals against their ID [identity] cards (World Bank, 2016, p. 6).

6.3.2 Indifference to national security

Data collected during registration can be used to serve national security purposes through, for example, identifying potential security threats and making individuals more traceable if the state desires to investigate or deport them. The security rationale for registration has become particularly heightened in recent years, following 9/11. Piazza and Laniel describes how 'The driving concerns behind establishing identification regimes has been security and the perceived need to control the population (Piazza & Laniel, 2008). UNHCR has also invested in registration, particularly biometric registration, because it facilitates more accurate identification and interoperability of data to meet the security interests of its donors (K. L. Jacobsen, 2015); UNHCR also lobbies RAS to continue registration on the basis, in part, that registration can *improve* national security as it enables the screening of potential security threats and state surveillance (Ravelo, 2014).[51] Moreover, the government's own statements and academic analysis indicate that security concerns are very high on the Government of Kenya's agenda (see Section 4.4).

It is therefore noteworthy that there was a high level of indifference in the office to collecting information that could serve a security rationale, despite indication of official norms or expectations for certain security related activities. Firstly, the profiling forms used in the office required a signature to indicate that medical and security screening had been carried out. Medical screening is important for limiting the spread of disease and security screening, at a minimum, screens refugees for possession of weapons. I never however saw screening being carried out, most likely because there was no capacity to do so, in Nairobi and Kakuma. DRA/RAS also had no permanent

[51] Senior UNHCR Officer, UNHCR, Nairobi, October 2016.

presence at any of the border points so was not able to carry it out although it was probably carried out, to some extent, by the Department of Immigration.[52]

Refugees were, secondly, not asked their reasons for flight which might aid in credibility assessments during later RSD interviews or help immediately flag or profile individuals posing a potential security risk (although this was done by UNHCR as part of their parallel registration activities). There was a line on the profiling form to include the reasons for flight of the refugee being registered. Despite these official demands, I saw officers engaging in refugees' reason for flight only once. This was when a group of asylum seekers were brought by UNHCR to the office and, because of their Ugandan nationality and special treatment by UNHCR, were considered to identify as members of the LGBTI [Lesbian, Gay, Bi-sexual, Transgender and Intersex] community, although this was not specifically stated by the UNHCR officer. When individuals from this group were registered, the officers wrote 'LGBTI' on the profiling form, although it was not confirmed or discussed with the refugee. The officers therefore filled in the relevant section of the form relating to reason for flight when the reason was made clear and concise enough to them. Importantly, the section for filling this in on the form was less than a line long, suggesting little official interest in collecting detailed information on this topic.

Thirdly, there were also two undercover Criminal Investigation Bureau officers working in the office on most days. While unable to disclose any specific details to me, they said they investigated individual cases. They were never however actively involved in the registration process itself and seemed to work only on referrals, possibly from the management or other undisclosed informants. Their capacity was also limited by their complete lack of equipment - their office was empty -

[52] This is based on my visit to Nadapal border point, near Kakuma refugee camp where I briefly visited the Department of Immigration office which worked alongside a refugee reception facility run by the Lutheran World Federation. Although no refugees were arriving at the time, the office itself and presence of a large police facility nearby, makes it likely that refugees were screened for weapons. The Department of Immigration office was almost completely bare so it seems unlikely that an extensive medical screening took place. The refugee reception facility did however administer yellow fever vaccinations to all refugees and refugees could be medically assessed and treated by resident doctors from the International Rescue Committee.

although their base was apparently within offices elsewhere. In addition, there was one police officer whose job was security for the compound, but he spent his time chatting to the government officers doing fingerprinting.

6.3.3 Indifference as the norm

While the registering of refugees was characterised by indifference, there were, of course, exceptional cases that demanded interest by the officers and more detailed engagement with an individual case. Here, I focus on three cases where indifference was therefore not possible; in such situations there was not a redress of indifference, i.e. active 'interest and concern', but instead uncertainty and discretionary decision-making. This response shows the embeddedness of indifference and the difficulties of responding when this was not possible as these moments represented a significant rupture to the norm of how registration should work.

Discretion has long been seen as an inevitable outcome of bureaucracies; for example Crozier describes how 'formal organisational structure never completely limits actors who retain room for manoeuvre and strategic games in line with their own interests and situational definitions' (Crozier, 1963 quoted in Bierschenk & Olivier de Sardan, 2014, p. 36) . Similarly, Lipsky highlights the lack of resources and ambiguity and contradictory managerial goals that makes discretion necessary (Lipsky, 1980). In the RAS registration office however it was not the complexity of implementing policies or meeting managerial expectations that resulted in discretion. Rather, it was the result of a lack of knowledge by all officers about refugee issues, objective rules and managerial oversight by which to make consistent decisions. This was not however a point of concern for officers and was instead interpreted as an unnecessary rupture to the *mechanised and indifferent way registration should happen.*

The first exceptional case occurred when there was a perceived risk that refugees had already registered in Kakuma or Dadaab refugee camp and therefore would be doubly registered. This was

one of the main concerns for the RAS officers – most likely as a way to reduce registration in Nairobi and instead enforce registration in refugee camps as part of official encampment policies. Anyone who, when asked when they arrived in Kenya, gave a date from more than a few months previously, would normally face an interrogation about whether they had registered in the camps – marking a break with the usually brief interactions. RAS did not have means to accurately or objectively verify whether they had indeed been registered before because RAS' databases were not linked up between the different locations in Kenya. Officers therefore relied on repeat questioning and appeals to truth - "sema kweli!" / "speak truthfully!" - to convince the refugee to admit to already registering. Individuals that did, or admitted to their child being born in Kakuma, were sent upstairs to the RAS Manager to decide their case, with only some returning to be registered.

A delay in registering could also prompt a second type of exceptional case regarding how long an individual should be in Kenya before being expected to register. Those who admitted to having arrived typically longer than six months previously were often verbally reprimanded by officers. This seemed to be rooted in a common-sense appeal that it simply should not have taken longer than six months to come to the registration centre. Officers displayed no knowledge or awareness of the 2006 Refugee Act which specifies a refugee should register within 30 days of arriving – something nearly all refugees had failed to do – likely rooted in the lack of training that registration officers received.[53] While officers would rarely interact with each other while registering refugees, they would turn to each other to exclaim the long amount of time the refugee had taken to register, as if to the room, and other officers would add their admonishment to the refugee. One officer said to the refugee "you arrived in 2013 – what have you been doing for three years? Some of these people arrived yesterday and they are already registering". In response to one female refugee who had arrived in 2006, the officer said he would talk to his manager. When he came back from

[53] This law was amended under the 2014 Security Act to state that refugees should register immediately but this is impossible given that there are no registration offices at designated entry points on the border.

discussing it with her, he tore up the refugees' registration sheet and put it in the bin and told me the Manager was handling it. On another day however a refugee said they had also arrived in 2013. This particular officer, who was generally calmer and more patient with the refugees, paused for a moment, but then decided just to register the refugee without making any fuss – as though it would have been too much effort.

The third exceptional case concerned more unusual profiles of refugees. One day, I was sat with three officers who were 'profiling' refugees, when the normal mix of nationalities was suddenly halted by two individuals who said they were Angolan. I had not seen anyone from Angola in the office before, and neither had Officer A, who was the officer responsible for profiling them. Officer A asked out loud, half to herself and half to those around her, 'do we register Angolans?'. Nobody replied. I said I did not know. Officer A decided just to continue filling in the form in the identical fashion to the hundred other or so who would be repetitively registered that morning. After the form was nearly finished, Officer A halted again and turned to ask me to check with Manager B, the RAS Manager who worked on the office floor. After trying to encourage her to do this herself, I agreed to take the refugees to see Manager B. Manager B asked them what the problem was. The refugees explained their story (in Swahili). Manager B then turned to me and said they should be registered because they had 'political reasons [for fleeing]'. Based on other interactions with Manager B, she was likely very uncertain in how to make this decision. She had received no training in refugee law, and nationally there is no Kenyan Policy on any aspect of the management of refugee affairs or internal RAS guidelines. One can therefore only speculate if the decision might have been different on another day. I took the short, affirmative message back to Officer A and the refugees were registered the same as everyone else.

In these three instances, officers showed uncertainty about how to handle unusual cases and displayed discretionary decision-making based primarily on common-sense interpretations, their personal disposition or by deferring responsibility to Managers who equally lacked the knowledge

to make informed decisions. While this uncertain and discretionary decision-making was partly a result of the actions of individual officers, importantly, this was also a reflection of the wider procedural set-up. Officers across RAS could not check for double registration because the database was not linked up between locations; similarly, there were no clear guidelines on which nationalities should be registered or training available about the Refugee Act. These low-ranking officers did not have the resources available to them to make consistent decisions or take a meaningful interest in cases.

It is also interesting to note that this was not a point of concern for the officers. They knew how to carry out their largely un-skilled and repetitive tasks and when faced with a situation they were unsure how to handle it was interpreted as an unnecessary inconvenience posed by the refugee – in much the same way as refugees who did not speak Swahili or English. Officers felt that indifference was an acceptable part of the job and events which demanded otherwise were anomalies to the mechanised way registration should be carried out.

6.3.4 Indifference as "good work"

I have argued in this chapter that the practice of registration reveals a surprising level of procedural indifference to the purposes of registration. Officers themselves however did not understand their actions in this way. The actions I have described as showing indifference, most officers saw as a normatively desirable outcome of *registering refugees as quickly as possible*, which was interpreted as an indication of good work and working hard. This is important to understanding the perpetuation of indifference and its embeddedness in organisational norms. As Hoag argues in his ethnography of bureaucrats in the Department of Home Affairs in South Africa, there 'is a different version of events to be told' ; in discussing accusations of abuse of office by bureaucrats, he argues this version of events is not 'more or less "true" or "legitimate", but one that is equally important to an understanding and theorization of the state" (Hoag, 2010, p. 20); it is about the practical norms which actually govern the actions of bureaucrats (Olivier de Sardan, 2008).

The registration process, especially the initial 'profiling', was marked by a sense of rush and effort to register refugees as quickly as possible. This meant that some data was not collected from refugees, such as their telephone number (possibly because it could be not recorded on the database) and their place of birth (the reasons for this were not clear but it was at the end of the form and possibly seen as less relevant if nationality had been obtained). This missing information, and mistakes mentioned earlier, was not however the result of a lack of motivation. In fact, it was quite the opposite. It was considered to be *working hard which was understood by the officers to be registering refugees as quickly as possible* and a seemingly genuine internalised motivation to achieve this. Officers would delay or skip lunch in order to keep processing cases and physically work very fast – quickly tossing the forms back to the refugees in the interest of speed. This challenges Olivier de Sardan's blanket statement that 'it is difficult to encounter a happy or simply motivated civil servant in the [African] countries studied today' (Olivier de Sardan, 2009, p. 50).

Officers also felt that they worked hard. I was given the job of copying some of the data captured during profiling into the 'reception book' which involved numbering each entry, starting from one each day.[54] Because of this, I was asked repeatedly how many refugees had been registered each day and officers would always respond with "ey, it is so many!" Furthermore, one officer, on several occasions, printed out the number of refugees registered from the database and showed it to me with pride and said he would show it to "madam" - the Manager. Similarly, the fingerprint officers would often complain that their arms physically hurt from all their hard work. Although the actual level of work performed by individual officers varied according to their personal levels of motivation with the result that the distribution of work was quite uneven, most officers considered themselves to work hard. Therefore, there was a tension between the normative commitment to *hard work* – which was interpreted to mean registering refugees quickly - and the purposes of registration which demands a level of accuracy – if the information collected was

[54] I discuss my role in the office in Chapter 2.

inaccurate then registration was not in any meaningful sense capturing information from the population.

6.4 Conclusion

At first appearance, RAS registration activities suggest the pursuit of bureaucratic knowledge and a desire to extract information about refugees, in line with registration's enumerative functions, in order to render the population legible and amenable to intervention or surveillance. The registration practices furthermore demonstrated a level of equity, efficiency and procedural competency; nearly all refugees (apart from Somali refugees) who arrived and negotiated their way into the compound were assured of their registration and legal documentation to remain in Nairobi, either that day or in the following days.

Analysis of everyday, street-level registration practices however reveal that the enumerative purposes of registration were not being meaningfully achieved. Instead there was a disinterest in the quantity, accuracy and usability of the data collected from refugees, reflecting the long history of weak administrative infrastructures in Kenya. The data collected was only concerned with refugees' very basic characteristics, rather than information that might be relevant to the state's ability to act on the population. The limited accuracy of the data collected was partly because of officers' professional conduct but also a reflection of the office set-up, including the nature of the database, office space and recruitment of interpreters. The short conversations were in many ways a reflection of the demands of the forms which indicated a limited amount of information to be collected. Even the security rationale for registration, that motivate some states, was not acted upon, despite the entrenched dialogue by the Kenyan state that refugees pose a security threat.

The government's resistance to registration, demonstrated previously by the continued suspension of registration, therefore found manifestation in the office – most clearly demonstrated by refugees' documents expiring after six months. Registration was conceived as a one-off interaction which

meant that refugees could not make future demands of RAS on the basis of their registration; the information collected from them was often incorrect, missing, in an unlinked-up database or ink fingerprints in a filing cabinet. Registration was thus enacted in such a way to limit the on-going recognition of refugees by the office which restricted the ability of refugees to utilise their registration documents and enjoy the rights they were officially intended to grant.

RAS registration offices therefore create the initial paradox that they did not provide bureaucratic knowledge for the state or rights to refugees; they failed to substantially benefit either. As Chapter 5 however showed, the practices need to be viewed against a context of significant donor involvement. Registration was therefore largely a means to meet donor pressure to be seen to register refugees; it existed in a detached, mechanised manner, not to work in a meaningful sense but just to exist. The nature and extent of donor control over RAS, under the pretext of capacity building to address UNHCR's perceived deficiencies in how RAS registration operated, started a few months after this and is the topic of the next two chapters.

7 Chapter Seven: Capacity Building Registration

7.1 Introduction

After UNHCR's capacity building activities, refugees arriving at the RAS Nairobi Field Office to register no longer negotiated their entry to the office on the grassy verge outside. They could wait in the large seating area inside the office. From there, refugees were now called forward to start their registration by newly hired G4S security officers. The first step of registration process was no longer the loud and crowded filling in of profiling forms by three or four officers. This had been replaced by a single officer sitting across a desk from a refugee, while others waited on a row of leather chairs to the side. The verbal interrogation of refugees thought to have already registered in an inaccessible database elsewhere in the country and appeals to their truthfulness, was now carried out through a muted impress of an index finger on a biometric finger scanner. This technology immediately searched the global database and provided the automatic, unquestioned and consistent evidence expected of modern technology of a refugee's registration status and determined whether they would be registered or turned away.[55]

This chapter explores the nature and impact of a UNHCR-led capacity building project on the RAS registration office in Nairobi, around three months after the period described in Chapter 6. The capacity building project came about as part of a process known as the 'unification of registration'. This aimed to end the institutional duplication of refugees being required to register with both UNHCR and RAS. This duplication came about when UNHCR took up the registration of refugees in Kenya in 1992, along with many other aspects of the management of refugee affairs, during the initial large influx of Somali refugees (see Section 5.3). Since 1st March 2011 however DRA started registering refugees (DANIDA, 2013, p. 2). From this time, refugees were required to register twice. Refugees received an asylum-seeker pass from RAS, which gave them the legal right to

[55] Refugees who were shown as having already registered in Kakuma or Dadaab refugee camps could apply to have their file transferred to Nairobi. This was done through the RAS or UNHCR Protection Officer based in the office. Only a handful of refugees had been successful, following UNHCR pressure for certain cases, but the deciding committee, composed primarily of senior RAS officers, was yet to sit.

reside in Kenya while awaiting their RSD appointment. However, they only received an appointment for an RSD interview once they had registered with UNHCR. Both steps were required to access refugee status. Ironically, this institutional duplication could simply have been resolved by UNHCR ceasing to register refugees. UNHCR however felt that capacity building was required because of deficiencies in RAS' registration practices.

In this chapter, I critically examine whose interests this project served and its dynamics at the street-level. I argue that neither RAS nor UNHCR fully supported the official aims of the project to create 'government-led' registration. RAS agreed to the project because of how it helped to enforce encampment and remained indifferent towards registration. I argue that UNHCR's belief in the ability of capacity building to address their protection concerns faltered in practice and instead attempted to address them through instigating their control over RAS. The paradox at the heart of this chapter is therefore that capacity building, as it was configured at the street-level, increased RAS' reliance on UNHCR. I also consider whether the project served the interest of refugees and argue that the changes did not improve refugee protection and instead securitised registration procedures and enforced suspicion about refugees' truthfulness.

I discuss the diverse ways in which control was exercised by UNHCR and its limits. I show that a level of internalisation of UNHCR's standards was only achieved with the RAS project staff (for discussion about these different staff members see Section 5.5.2). Senior government staff however remained outside of UNHCR's purview. This created a disjuncture between these two groups of staff and ultimately a fractured bureaucratic process.

This chapter is grounded in my observation of the changes which occurred in the RAS Nairobi Field Office. This is based on two return visits to the office, after my initial period of research described in Chapter 6. I returned for four days, four months after my first visit, and then for two days, also four months after that. It is also based on my observation of the same process in Kakuma

refugee camp; I spent three days in the Kakuma registration office before unification and one day afterwards.

The chapter begins with an outline of the negotiations and factors which shaped how the unification of registration took place. I then discuss whose interests this project served: firstly, the interests of the government; secondly, the interests of UNHCR and, in this substantive section, the four ways in which UNHCR instigated its control – through rendering the office legible to its rationalist model of capacity building, the configuring effect of its technology adopted in the office, instigation of its managerial control and construction of its expertise; thirdly, the impact of the changes on refugees. I then consider how the project, and the limits of UNHCR's control, created a disjuncture within RAS. I lastly outline the similar capacity building process of RAS registration in Kakuma refugee camp.

7.2 Negotiating the Unification of Registration

The principle motive for unifying registration, according to UNHCR officers, was to make it a 'government-led' process. This was based on the view that registration is the responsibility of the host state and UNHCR's mandate is only to assist states to exercise their protection responsibilities (for discussion of the rationale for the transfer see Section 1.1). In practical terms, UNHCR's uptake of registration in the early 1990s was due to a supposed lack of capacity and willingness by the government. As the government had started independently registering refugees, UNHCR's registration activities were evidently no longer justified on these grounds.

UNHCR officers presented the narrative that registration and RSD are the responsibility of the host government with remarkable consistency. This revealed the structurally determined position UNHCR officers considered themselves to be in. No officers showed particular enthusiasm for the project or described benefits they saw the project achieving except when asked or as part of the abstracted legalistic argument that state involvement necessarily leads to improved refugee

protection. One senior UNHCR officer, leading on the transfer process, when I asked him about why the proGres database had been handed over, said it was because of 'ExCom Conclusion 2002'. He explained what this conclusion entailed and that it was 'UNHCR's role to provide technical support and advice'. There was no mention of wanting to hand it over or the benefits it would be bring. This is, in part, a reflection of the limitations of semi-structured interviews which rely on information from individuals who often have a professional obligation to share their institution's official interpretations of events, often based on policy and formal dictates. The deference to this logic of government responsibility did however show the purchase this legal argument had on staff. I got the very strong sense that capacity building was something that *had* to happen – it was inevitable, the restoring of the proper order of things.

This meant individuals had little to say about their personal impact on or role in the process; they, instead, described decisions as determined by policy, technocratic and legalistic rationales. These limited responses were compounded by the structure of UNHCR which was dominated by a thin managerial stratum which meant decision-making was quite cohesive and contained, and meant most participants had not been involved in decision-making. For both these reasons, the empirical focus in this chapter is on the how decisions played out at the street-level; it is less a study of how policy is made but far more about its *outcomes*.

The unification of registration took place following a long and contested process of negotiation between UNHCR and DRA/RAS. Negotiations began in around 2012 following the uptake of registration by DRA in 2011.[56] They became delayed because the government pushed (at least at times) for UNHCR's proGres database to be handed over to them, to which UNHCR was resistant. UNHCR's proGres database – which stands for 'Profile Global Registration System' - is an IT case management tool used by UNHCR globally since 2002 (UNHCR, 2018a). Different components of it are used across UNHCR's programmes including registration, RSD, protection and

[56] Commissioner for Refugee Affairs, DRA (2009-2014), Nairobi, August 2017.

resettlement, primarily for storing refugees' data (although the government was only given access to the registration component, and only for refugees in Kenya). Importantly, it is used to capture and contain all information collected from refugees during registration. It is interesting to note that the government pushed to access this database, given the context of indifference I have described. One senior DRA officer said they wanted the database because the government did not have data about refugees who arrived prior to 2011, when the government started to register refugees. The government certainly did take interest in certain information on proGres as they would occasionally request to see certain files from UNHCR staff.[57] As will be shown in Section 7.3 however the main interest of the government in the database was to enforce encampment – as had long been pursued by the government (see Section 4.4) - as much of the additional information captured through the database could not be used by the government

UNHCR, on the other hand, was resistant to handing over their database primarily out of protection concerns. Several members of staff expressed concern about it jeopardising confidentiality and that the information might be used for non-protection related activities. UNHCR's resistance to handing over the database was also rooted in practical, institutional issues about the integrity of data which is central to their operational planning and activities. As one UNHCR officer stated: 'it is hard to trust the quality of the data after it is handed over'. UNHCR therefore did not trust the government in how they would collect the data and what they would use it for.

Negotiations were fast-tracked due to the disbandment of DRA - this was marked by a change in senior management in RAS and the new individuals, widely considered to be from a military and intelligence background, prioritised the handover of proGres; one UNHCR officer told me that RAS had said to UNHCR there would be no further discussions until the database was handed over.[58] The decision to hand it over was also motivated in part by past situations where, in Uganda

[57] Officer, Protection Unit, UNHCR, Kakuma, May 2017.
[58] Senior UNHCR Officer, UNHCR, Nairobi, September 2016.

for example, UNHCR delayed handing over proGres which prompted the government to develop their own system and completely shut out UNHCR (Vision Reporter, 2014).

At some point in the negotiations, it was decided that proGres would not simply be handed over but that it would be handed over *and* the unification of registration would take place through the government using proGres to register refugees. There was, of course, the option for unification to take place on the government's existing database or, given its functional limitations, more likely on a new government database. While the exact details of the negotiations on this topic are not available, there are several clear incentives for UNHCR to encourage the unification of registration on their own proGres database.

The use of proGres by governments in Africa has precedent and finds support within UNHCR policy channels. A UNHCR PDES report on *Assisting states with the assumption of responsibility for refugee status determination*, for example, states 'Cooperation in the area of registration, through the gradual transfer of the ProGres system … can be very rewarding' (van Hovell et al., 2014, p. 51). It was in use in numerous other countries in Africa, such as Ghana, Ethiopia, Rwanda and Tanzania.[59] This was either jointly with UNHCR or independently but with some degree of technical or financial support.[60] UNHCR considers that providing a 'tried and tested case management system' is sometimes more appropriate than supporting a government to develop its own system, at least for a certain period.[61] Moreover, the continued use of proGres provides several practical benefits to UNHCR. Firstly, UNHCR considers proGres to be a superior database and therefore any replacement would be detrimental; one UNHCR employee stated that 'the government will take a very long time to develop a system that is as effective or more effective than proGres'.[62] Secondly, proGres is an integral part of UNHCR operations across different departments, for example protection and resettlement and globally, for example, to track double

[59] Operations Data Manager, UNHCR, Kakuma, June 2017.
[60] Officer, UNHCR Geneva, via email, April 2017.
[61] Officer, UNHCR Geneva, via email, April 2017.
[62] Operations Data Manager, UNHCR, Kakuma, June 2017.

registration across countries. Continuing to use proGres therefore avoids any disruption to current working practices. Thirdly, using proGres is cheaper than funding the government to develop a new database. Of course, the government could have provided their own funding - an option that was discussed at times.[63] Apparently, the government gave up on this plan when they accepted there was no funding for it from UNHCR.[64] Of note, UNHCR financed the whole process – it paid for the proGres database server to be set up in an air-conditioned room in the office and new computers and biometric technology for use by RAS staff, which were compatible with proGres.

More fundamentally, the unification of registration on proGres gave UNHCR a continued stake in the process. The database continued in a significant sense to be 'theirs' and therefore they had more legitimacy in monitoring how it was used. Because of this and their prior experience in using proGres, it also facilitated their construction as technical 'experts' and their role in training officers, as discussed below. Ensuring their continued role in registration thus helped UNHCR to address, in part, their concerns mentioned above about how the government's involvement in registration could affect confidentiality and the integrity of the data.

Overall, UNHCR had considerable vested interest to ensure that, if registration was going to be unified, it was done using proGres. ProGres was integral to their existing operations and using it was cheaper than developing a new one. Importantly, the use of proGres also helped UNHCR to maintain a stake in the registration process and thus to address their concerns about confidentiality and the integrity of the data collected. While unification of registration did involve relinquishing a level of control over their data and how registration was carried out, they were under pressure from the government who wanted access to the database and from internal policies to unify registration. Despite the fraught and prolonged negotiations, UNHCR stressed that capacity building was based

[63] Acting Commissioner for Refugee Affairs (2012-2016), DRA, Nairobi, May 2017.
[64] Operations Data Manager, UNHCR, Kakuma, June 2017.

on a close partnership. The purpose of 'unifying' registration in many ways necessitated it and thus agreements had been reached UNHCR and RAS about how this would be achieved.

7.3 For Government?

The official aim of the capacity building project, as discussed by all those involved, was to ultimately make registration 'government-led'. It was officially for the government – to increase government ownership and involvement in registration. This was technically achieved as UNHCR did stop registering refugees in parallel in their office which meant the government became the *de facto* 'lead' actor. It is important to discuss whether, beyond this, capacity building led to a redress of the government's indifference and resistance towards registration. As described in Chapter 6, the government displayed an indifference to the characteristics and profile of refugees being registered, despite the enumerative function of registration as well as resistance to the rights granted through registration. Registration therefore did not indicate the pursuit of bureaucratic knowledge about refugees but rather a mechanistic performance to appease donor pressures. While not an official aim of the project *per se*, it is inherent in the notion of government-led registration, and any good development partnership, that the government supports and has 'buy-in' to the process.

In terms of whether this capacity building project helped achieved this, it is highly noteworthy that much of the new information captured from refugees did not and could not be used by the government. Firstly, capacity building saw use of an integrated component within the proGres database to capture biometric data from refugees. UNHCR Kenya had previously captured the print from both index fingers. Since January 2015, UNHCR developed a new biometric system called Biometric Identity Management System (BIMS) and Kenya was one of the first country operations where it was rolled out (UNHCR, 2015a). BIMS included a full set of electronic fingerprints taken on a small green box, as well as a scan of refugees' irises taken using a blue, plastic machine, resembling a large pair of binoculars. The suitability of this new data for the government was however limited because the electronic fingerprints could not be used by the National Registration

Bureau (NRB) to issue Refugee Cards as it required printed ink fingerprints. This meant that the officers continued to take ink fingerprints after registration was unified and biometric fingerprinting had been adopted. Thus, once refugees had finished with their registration on proGres and BIMS, they had to return to the waiting area to have their fingerprints taken again.

The adoption of proGres, secondly, reduced the government's control and ownership over the data collected. Several RAS officers raised concerns to me about "intellectual property rights". Few officers could elaborate their exact concerns but were aware of the problematic nature of registering for the government on a UNHCR database. UNHCR officers told me there was a memorandum of understanding and 'exchange letter' in place between RAS and UNHCR on the shared use of proGres, as is expected UNHCR practice.[65] A physical server was also put in the RAS Registration Office. Memorandums of understanding however are not legally binding and the head of the office, when I asked him about it, said he did not know about one.

Some of the changes did facilitate more accurate data to be collected, for example through the use of translators, a quieter environment in which to question refugees and the demands of the database which, for example, would not let registration be completed if the officer had not entered all the required data. It also facilitated the capture of a much wider range of information.[66] However the most notable change was the use of biometric technology which the government could not use and, importantly, its independent ownership of the whole process was compromised.

[65] Officer, UNHCR Geneva, via email, April 2017.
[66] All the information collected included: where the applicant lived in their country of origin; education level and the names of institutions where they studied; occupation before and after flight; relatives and those individuals' gender, location and religion; marital status; ethnicity; languages known and how easily they are spoken, written and understood. Other information captured through proGres included: the preferred language for their RSD interview and gender of the interviewer, as well as their reason for flight which was indicated from a drop-down list of very broad answers including, for example, 'insecurity'. They are also asked if they are willing to return - indicated through a tick box - and their conditions for return which could be entered in a text box.

The benefits of new information however depend on the interest and willingness of the government to use it. The main interest by the government in adopting UNHCR's proGres database, as mentioned by the officers in this office and the most senior current RAS officer I interviewed, was however that it stopped double registration. Interest was therefore not the information itself but stopping refugees from 'duping' the system and gaining the legal right to live in Nairobi, contrary to the government's encampment policy. ProGres helped to stop double registration because the database contained the biometric details of all refugees registered with UNHCR across Kenya and could therefore accurately detect who had already registered in one of the camps and therefore was not eligible to register again in Nairobi. As discussed in Chapter 5, this issue caused the greatest consternation and concern amongst RAS officers. The government's resistance to registering refugees in Nairobi was further enacted as later refugees registered in Nairobi were given an RSD appointment slip (required to complete their registration) if they went to Kakuma and their documentation was only valid in Kakuma. It seems likely that addressing double registration was a way to reduce registration in Nairobi, as part of a move towards ending it altogether. It is important to note that the issue of double registration was also of significant concern for UNHCR who were worried about the bureaucratic duplication it created in their own records. This was demonstrated by UNHCR staff who told RAS staff to stop registering South Sudanese refugees and turn them away from the office until the proGres database was operational (it was still being installed at the time although was not actually in use for at least another month) because they thought the refugees had already registered in Kakuma.

Overall, capacity building was not configured in a way that facilitated RAS' increased engagement in registration and instead saw a continued indifference by RAS towards registration. Instead, its support for the project was rooted in how it helped to enforce encampment, as part of its long preference for the collective containment of refugees at the periphery of the country. RAS therefore agreed to the project because of its interest in encampment but not the official aim of the project –

to have greater engagement in registration. Importantly, this fitted well with UNHCR's interests, discussed next.

7.4 For UNHCR?

The above section showed the project did little to increase government engagement in registration despite the official aim to create 'government-led' registration. Partly because of RAS' continued indifference, UNHCR was able to instigate a significant level of *control* over RAS' registration practices. Although UNHCR stated capacity building would address their protection concerns, this belief faltered in practice and UNHCR instead relied on exercising control. This allowed UNHCR to claim publicly that the transfer had gone ahead, in line with internal policy and pressures, but to remain substantially in control of refugee registration. This section describes the different ways this control was achieved.

7.4.1 Legibility through professionalisation

UNHCR capacity building brought about changes which appealed to Weberian understanding of how bureaucracy 'should' function. It brought about changes to the level of professionalisation and rationalisation of both office work practices and office space; processes became more logical and consistent and officers were trained to carry out more skilled work. There is an interesting continuity between UNHCR's project to encourage the government to do registration, which is seen as a central component of a 'modern' state, and the professional/modernist way in which capacity building was carried out; the pursuit of this modernist aim required modernist conduct.

In this section, I argue that these changes were a means to render government registration practices legible to UNHCR, and thus controllable, as well as amenable to fit within their rationalist capacity building model of change. These changes were therefore not brought about in order to gain control, but rather to make control possible.

Professionalisation involved the adoption of more office-like work, rather than the manual assembly-line work before. Project officers were allocated to one desk and expected to sit there working at a computer until all refugees had been registered. This replaced the previous practice of officers moving around the office because of the need to manage crowds and move paperwork between the numerous steps in the registration process. The office furniture and equipment reflected this professionalisation and focus on efficiency; the previous large wooden desks had been replaced with fold-out plastic tables which, although less sturdy, were smaller and meant the space was used more efficiently and two officers could work together in one room, instead of just one. The offices were now stocked with stationery in the drawers and the normally empty filing cabinets now filled with colourful files.

There was also increased consistency between work performed and formal job titles. The communications officer moved upstairs to an office and stopped being involved in registering refugees and one of the Managers now only signed documents, rather than also assisting with fingerprints, in line with what she had previously said was supposed to be her role.

As well as the formalisation of job roles, spaces became designated for certain tasks. Doors, for example, were labelled according to the function of the room. A small exit door was created in the perimeter wall and labelled so that refugees could enter through one door and leave through another, in order to facilitate their efficient and smooth movement through the office. The waiting area between the compound wall and the office building had been paved and covered with a plastic roof to make it more suitable as a waiting area for refugees. Moreover, the grass bank and ditch outside the compound had been filled in, tarmacked and painted to indicate parking spaces, which were primarily used by UNHCR staff who were driven there from their office on the other side of the city.

The project officers' workload was also managed on a rationalised basis and distributed equally. This replaced the previous process whereby the personal motivation of individual officers determined the amount of work they chose to complete. The new distribution mechanism was a Microsoft Word table on a newly acquired laptop which an officer used to equally allocate each refugee household to a different registration officer, accurately adjusted according to household size as this considerably shaped how long registration would take.

These improvements to the level of rationalisation and professionalisation in the RAS office were, I argue, a means to render government registration practices legible to UNHCR and thus to make successful intervention more likely. Understanding and monitoring officers' behaviour was easier when they were allocated to a specific desk and expected to work there throughout the day, than if they moved around performing different tasks; office processes could be more easily understood when doors were labelled and job titles consistent with jobs performed. This legibility also made the office more amenable to fit within UNHCR's rationalist capacity building model of change. Capacity building, and the transfer and unification process more widely, was understood through work-plans, composed of grids with a timeline for discrete outputs and outcomes to be achieved. Within this model, inconsistent, imprecise and unpredictable actors, as described in Chapter 6, struggled to be incorporated. RAS thus needed to become rationalised and professionalised, partly because of the ingrained nature of these norms within understandings of bureaucracy, but also because inversely it enabled UNHCR *to* capacity build them. The project thus again appears geared towards UNHCR's institutional concerns and ways of working, rather than directly increasing the government's engagement in registration.

7.4.2 Technology

Another means through which UNHCR was able to instigate control over RAS project officers was through the configuring effect of the use of their proGres database. The database became the central component in registration and was used to complete all aspects of the registration process. It

indicated and stored all the information to be collected from refugees. This compared with previous practices when some data had been collected on paper as most steps did not involve the database – including reception, fingerprinting, photos and dispatch.

In this context, proGres configured the behaviour of RAS project officers (and UNHCR's own officers who are the main users of this database globally) to behave in a rationalist, consistent and impersonal manner. The database ensured that a consistent level of data was captured from every refugee as it blocked the officer from finishing registration before certain information had been entered. It also prevented certain clerical errors or malpractice through error messages, such as entering the date of flight as later than the date of arrival in country of asylum. Officers also had to log into the database with their own biometric fingerprint in order to enter registration information, meaning the information collected from each refugee could be linked to the individual officer and held accountable for their work. For RSD appointment slips, the identity number of the issuing officer is printed on the slip, as part of measures to detect fraudulent behaviour, for example in issuing earlier appointment dates. All the information collected was also visible to UNHCR officers who monitored the information being collected and the activities of RAS officers. This enabled them to check for mistakes and identify common errors, which were addressed through weekly training sessions. Significantly, senior RAS government staff did not use proGres but instead worked on aspects of registration that remained from before capacity building, discussed below.

7.4.3 Management

Another means by which UNHCR exercised control was through becoming *de facto* managers of the project officers and side-lining the government managers, justified through construction of their expertise over the technology they had introduced.

Under the new processes, the three government managers in the office were not actively involved in managing the project officers who carried out registration. While the managers were not heavily

involved on the office floor previously, the professionalisation efforts notably did not include the instigation of managerial roles as part of an office hierarchy or the adoption of roles consistent with their job title. The main reason for the side-lining of the government managers was that they did not have experience of the proGres database which meant did not have the knowledge needed to take an active role in managing daily activities in the office which had become highly configured around the database. While this cannot necessarily be attributed to UNHCR's actions alone, the introduction of this new technology and the required expertise enforced their absence.

UNHCR officers took over the role of *de facto* managers. One UNHCR officer member sat permanently at a desk in one of the office rooms, while another two mostly moved around the office and other UNHCR employees would periodically visit the office. They would interact with the registration assistants to give bits of advice, updates and more mundane instructions. For example, one senior UNHCR officer, while sat waiting for a car to pick him up, told a RAS officers member to use the tab button on their keyboard in order to navigate the database more quickly. The UNHCR officers were there to continue 'capacity building' the officers. This was even though, when I returned to the office, officers had already been using proGres for 3-4 months and were confident doing so. One UNHCR officer member said they expected to remain in the office until December 2017 (almost a year after RAS officers had started using proGres) and thought this period would be extended, despite also admitting the officers had learnt how to use proGres.

Part of the justification for UNHCR officers to remain in the office was the need for on-the-job training. While this offered practical benefits, given the chance for unexpected technical glitches and the diversity of individuals needing to be registered, there was very little investment in prior training which could have reduced the need for the continued presence of UNHCR officers. The prior training of staff I witnessed was highly limited. The training took place one morning, with half an hour's notice. The lead trainer, an employee from UNHCR, said the training should only take one hour but ran over and had to continue the next day. On both days, all operations in the

office completely ceased and the refugees were left waiting. The training consisted of the UNHCR employee going through each aspect of the database and explaining how it should be filled in. Notably, only one government employee attended as the rest were absent that day. The database was demonstrated using just two laptops with about eight people gathered around each one. No stationery was given out and I was one of only a few making any notes. At the end of this three-hour-long training, in a brief question section, the staff were still clearly confused. In their informal discussions later, some expressed their concern about how to use the database.[67] The quality of this training shows UNHCR's emphasis was on on-the-job training. This enabled them to take up a full-time managerial role in the office because their 'expertise' was needed to ensure RAS staff could use proGres.

7.4.4 Expertise

UNHCR staff were accepted into the office and in their managerial role because they were viewed as experts. This was particularly because of the database which staff did not know how to use. RAS staff willingly turned to UNHCR staff for their guidance and appreciated the managerial support which they lacked previously and had resulted in discretionary decision-making.

It was partly on the basis of this accepted expertise that project staff willingly accepted and implemented the changes in their office - at least in the early days of this project. Staff told me that they liked the new database because it was "modern" and because, as one officer told me, they were "no longer using local standards". Staff respected UNHCR's international and wealthy image which was visibly reinforced by their arrival in the office with new computers, furniture and state-of-the-art technology – as well as other items that provided material benefit to the officers, such as

[67] One of the reasons for this less than optimal training was, according to UNHCR staff, because RAS staff were asked to attend the training organised for clerks at the Verification Exercise (discussed in Section 7.9) but they did not attend as they did not want to halt operations in their office. UNHCR staff also stated that RAS only have six registration assistants and that half were at the Verification Exercise and therefore had already been trained. I however witnessed around 10, rather than 3, employees still involved in registration in the RAS office.

water fountains and snacks which previously could only be purchased from the compound vendor. RAS staff also liked the more professional environment and widely commented on how there was more order now. There was therefore a sense that RAS officers had joined a new rank of professionals through the attention from UNHCR and a place in the 'new world society' the UN represents (Ferguson, 2004).

UNHCR's belief in their own expertise deeply shaped their approach to capacity building and their ability to present a clear and exacting model of how registration should be carried out. They saw capacity building as encouraging the adoption of UNHCR's practices and standards – to the extent that RAS became an almost mirror image of UNHCR. Many of the changes reflected existing UNHCR practices – primarily the use of proGres which configured the process of registration but also other elements such as security arrangements (discussed further below) and more mundane aspects like the new files used to store individual's documents. When I asked one UNHCR registration officer what the differences were between UNHCR and RAS registration in Nairobi, she paused, unable to think of anything, before noting that some things now had a government logo.

This approach was linked to UNHCR's standardising approach to its own global operations. UNHCR, like most international agencies, operates according to a set of global standards which are expected to be applied in each UNHCR country operation. They are domesticated through Standard Operating Procedures that ensure a context-specific but globally consistent set of practices. UNHCR's *Handbook on Registration* sets out the importance of a 'unified' approach, stating that: 'the first principle of the unified approach is that teams engaged in all aspects of refugee protection and assistance will work with a common set of core registration data, gathered through a common process and adhering to common standards' (UNHCR, 2003, p. 17).

Standardisation was also rooted in the construction by UNHCR of their *expertise* in how refugee affairs should be managed. Staff stated their belief in the superiority of their standards and practices,

they saw as honed over the organisation's 50-year history. For instance, I asked one UNHCR officer about the space for RAS to adapt UNHCR procedures. The officer responded stating:

'...we [UNHCR] tell them [RAS] 'we've been doing it for 50 years, they are tested methods ... it changes with time and keeps improving'. So, they can take what they want and personalise it to the Kenyan context but it's not something that should take them back ... we are doing this in many countries for many years ... We are not making them do things that don't work'.

UNHCR's use of their own standards and practices in capacity building was partly because UNHCR has limited internal guidance on the transfer or unification of registration and RSD. An UNHCR Officer in the Protection Unit at UNHCR Headquarters describes how this was partly to enable flexibility in how country operations engage in transfers and to allow them to be context specific. He suggested this does not denote a 'huge documentation gap' because UNHCR has a wide range of guidance available and 'it is the protection and RSD colleagues who are best placed to *apply* that to the particular circumstances' (emphasis added).[68] Capacity building was therefore seen as 'applying' UNHCR's standards with governments. UNHCR is widely seen as an expert and global protection standard setter so to do otherwise would probably have been seen as ethically compromising of the institution's mandate. Moreover, UNHCR staff involved in capacity building were primarily RSD and registration officers and continued to work in these roles, alongside capacity building. They were therefore not development practitioners but instead technical specialists and these were the standards they knew and used daily.

These factors resulted in a level of rigidity – or even a normative bind – that meant UNHCR officers thought that their standards were objectively the best available. This meant the standards were not modified or adapted through participation with RAS. Capacity building was thus seen as a straightforward process of implementing them in another operational area - reinforced, of course,

[68] Officer, Protection Unit, UNHCR Headquarters, via Skype, March 2018.

by the opinion, expressed by several senior UNHCR staff members, that RAS staff simply did not know about registration and did not understand it.

7.5 For Refugees?

UNHCR instigated capacity building on the basis of perceived obvious deficiencies in how RAS carried out registration. It was justified on the basis that UNHCR has an obligation to promote international protection standards in RAS, as part of its mandate to encourage compliance to 1951 Refugee Convention. While these legal norms were not deviated from, I argue in this section that capacity building firstly, saw little change to refugees' rights and secondly, introduced other norms, unrelated to protection *per se*. These were primarily rooted in concerns about the security threats posed by refugees present in the office and a suspicion about their truthfulness. These norms were not foreign to the Kenyan government but UNHCR capacity building enabled the government to act upon them with greater force and accuracy. Importantly, many of these norms were rooted in UNHCR's existing practices and saw the shaping of the government in its mirror image.

Firstly, the rights of refugees did not substantially change - refugees went home with the same documents as before and their rights remained identical. Importantly, apart from the fact they would not receive an appointment for RSD until they want to Kakuma and their 'proof of registration' document granted them the right to live in Kakuma, not Nairobi. Refugees' freedom of movement was also curtailed because, although previously refugees could use the negotiated process of double registration to obtain an asylum-seeker pass for Nairobi, now their immutable bodies and a fingerprint scanner denied them this opportunity. It is overly legalistic to assume that the rights granted through registration can be understood purely through documentation alone - the level of compliance and implementation of the rights in practice will depend on the socio-political context, including the attitude of the government, but this did not appear to substantially change either.

Secondly, capacity building saw the spread of other practices and norms from UNHCR to government. Although understood as 'protection' standards, they centred around suspicion about refugees' truthfulness and the security risk posed by refugees. For instance, the use of biometrics is rooted in a suspicion of those over whom it is used. Biometric technology was historically used over prison populations and then migrant groups (K. Breckenridge, 2014). The security interests are perhaps particularly prominent for the Kenyan refugee population as documents released as part of 'wikileaks' revealed that the United States of America, in a historical incident separate to this, pushed for biometrics in Dadaab refugee camp 'to cross-check refugee prints with its TIP [Terrorist Interdiction Program]' on the basis that doing so will help 'catch terrorists posing as refugees' (K. L. Jacobsen, 2015, p. 4). Although biometrics is now in widespread use with citizens, it remains a method of surveillance for potential wrong-doing.[69] In this context, biometrics was primarily used to prevent the 'wrong-doing' of double registration and, in camp settings, the issue of refugees collecting rations for family members who were no longer present in the camp; UNHCR makes clear 'biometric registration is able to detect double or multiple registrations and invariably improves data collection' (K. L. Jacobsen, 2017; UNHCR, 2013b, p. 17). The use of biometrics is thus based on the belief that truthful information can only be gathered from refugees' muted bodies (Ticktin, 2011).

Another notable change in the office was increased security measures around the office. An electric fence had been added to the high brick wall, also previously funded by UNHCR to replace a link fence, around the compound perimeter.[70] There was also a new hut by the gate used by refugees for a security officer to sit and screen those entering (it was not in use at the time of research). The metal detector in the reception room was still not working but a UNHCR officers member mentioned there were plans to fix it. Around 10-15 G4S security officers had also been hired to work in the office – a common feature in the privatised security landscape of Nairobi (Glück, 2017;

[69] The capturing of biometrics also reduced the risk of malpractice by officers themselves. I discuss the configuring effect of the proGres database on officers in Section 4.6.
[70] This initial fence was built as part of the DANIDA project, as outlined in Section 5.5.1.

Smith, 2017). G4S officers were used by UNHCR across their operations and the officers in RAS' office were managed by UNHCR security officers based in the UNHCR branch office (notably not RAS Managers). When they first arrived, which was slightly before UNHCR officers moved to the office, they had clearly received no training and did not know how to manage the crowds. Their techniques changed over time and became similarly professionalised, like the RAS staff; they policed the movement of refugees both into and around the office; they ordered the refugees according to when they arrived, made them stay in the central waiting area and then allowed a small number of refugees to enter the offices when it was their turn to be registered. Similarly, when they first arrived, which was a couple of months before UNHCR was based full time in the office, they started to hold sticks and other items found around the office as 'tools' for crowd management (although I did not see one used). This was also professionalised, and their sticks were replaced with identical plastic batons.

These security measures seem to have primarily been for the security of UNHCR officers and, only by extension, RAS officers and refugees. Several UNHCR officers commented that UNHCR RSD officers, elsewhere in the building, had intended to move into the RAS Nairobi Registration Office when RAS officers transferred there in March 2016 but were unable to do so because the building did not comply with the necessary UN Department of Safety and Security standards. Many of the changes were therefore to ensure the office complied with these standards, especially as UN staff were working there.

Although refugees benefited from the increased security, emphasis was put on ordering refugees and physically separating them from the officers. This removed the option of spontaneously entering offices – the one way in which refugees could actually make demands of the officers. Moreover, it became potentially more difficult, or at least more concertedly managed, for a refugee to enter the government compound. It was noted by other employees in the sector that it was very difficult for refugees to get an appointment to see UNHCR officers, whereas refugees could

normally walk into the RAS office. This reflects the growing issue of humanitarianism working in ‘fortified aid compounds’ and ‘bunkerisation’ away from refugees. Duffield contrasts this in South Sudan with the ‘relatively open low-walled government buildings’ (Duffield, 2011, p. 266).

Moreover, close-circuit television (CCTV) was installed and one of the upstairs rooms had two large television screens displaying the live footage. This was monitored by plain-clothed Criminal Investigation Bureau (CIB) officers. They proudly showed me the new technology they had acquired - previously their room had been one of the barest in the office, although they did say they were based in CIB Headquarters elsewhere in Nairobi. Now however they had the largely unfettered ability to observe all the goings-on. They told me about a recent incident in which a refugee had tried to give money to a RAS officer after successfully receiving their Refugee Card following a long wait. The CIB officers told me the RAS officer had rightfully refused the money but they had reprimanded the refugee with a warning. UNHCR told me the CCTV was for the security of the officers and to prevent illegal activity. While this is anecdotal evidence, the fact that undercover CIB officers were the ones monitoring it, whose department is central to the security apparatus of the state, and their chosen example of their ‘good work’ to an outsider, illustrates that this technology was being used in part to detect wrong-doing by refugees.

A further change was the introduction of a questionnaire that refugees were asked to complete regarding their reasons for leaving their country of origin, including past links to military or armed groups. This form was used by UNHCR as part of its original registration practices, as part of the application for RSD. The purpose of this questionnaire was neither indicated on the paper copy given to the refugee nor explained verbally by the officer. The questionnaire was generally filled in in quite a muted manner. Refugees were firstly asked to write their personal details down on a piece of paper and, while the officer was entering this into the proGres database, the refugee filled in the self-completion questionnaire. I did not witness much discussion about it either from the refugee or the officer. One RAS officer commented that refugees had no problem answering the

questions because the questionnaire was available in a number of languages and refugees could answer in any language as it would be translated into English by UNHCR. Refugees did however seek clarification if they should include certain information or discuss it with family or friends they had come with. The questionnaire nevertheless seemed of little consequence. Most refugees wrote only a couple of lines for each answer, often balancing the form on their knee or leaning against the bench they sat on, after which it was placed directly by the officer into the refugees' folder.

My discussions with RSD officers in the office revealed that the information was primarily used to corroborate evidence given later in their RSD interview – with the implication that non-corroborating statements could undermine their credibility and thus their claim for refugee status. Therefore, while the questionnaire did serve a protection function, for example through identifying persons with 'special protection needs' and identify security threats – aspects of registration the government did not act upon previously - the main reason for it was to catch refugees 'lying'. One RAS registration officer said he thought the questionnaire was a positive change because refugees are "coached" after registration to know what to say in their RSD interview.

Overall, the capacity building project did little to increase refugees' rights and introduced a range of practices from UNHCR that sought to securitise and enact suspicion towards them. It is important to note that UNHCR was however motivated to limit the negative impact it anticipated from government involvement. It was therefore primarily concerned with counter-factuals – what would have happened otherwise. On this basis, UNHCR would certainly have struggled to implement its wide range of protection activities using the level and quality of data collected by RAS prior to capacity building and thus reduced protection for refugees. The argument here however is not whether refugees benefited or not from capacity building – an assessment which would have required research with refugees. It is instead to make an assessment of what this project achieved and for who, and it is clear that this was about ensuring that the government carried out registration in a way that suited the practical concerns of UNHCR's operations and complied with UNHCR's

standards, which, as part of global shifts in forms of management of refugee affairs, had become entwined with suspicion and security.

7.6 Two-Speed Bureaucracy

The government officers' only involvement with registration was collecting refugees' ink fingerprints and one of the Managers who continued to sign the asylum-seeker pass, which was essential for the legitimacy of this government-issued document. Government officers continued to take ink fingerprints, which was part of the old system of registration, because of the poor infrastructural fit between UNHCR's technology and the wider government's infrastructure, including the National Registration Bureau, which relied on ink fingerprints and used them to issue refugees' identity cards. This did not represent a change in roles – the government officers had always done these roles – but, importantly, reinforced the separation of government officers away from what became the main registration activities which were carried out by the project officers. Therefore, the reforms implemented by UNHCR were primarily implemented by the project officers, which became quite separate and disjointed from the older activities carried out by government officers.

There was therefore not a complete overhaul of the pre-existing registration processes. It was instead a process of 'sedimentation' whereby 'the effects of a particular reform do not usually displace the results of the previous one - at least not completely' (Bierschenk, 2014, p. 229). The 'sediment' left behind in reform efforts are described by Anders as often the result of the favouring of younger, university-educated staff – just like the project staff - because they possess the skills and aptitude that development agencies see as required to achieve reform (Anders, 2014). This therefore created what Olivier de Sardan and Bierschenk describe as 'two-speed bureaucracies', by which a 'traditional' service, relying solely on the state budget, underfunded and therefore condemned to inactivity … co-exists with 'projects'' (Bierschenk & Olivier de Sardan, 2014, p.

26).This is a commonly noted outcome of development projects. [71] Blundo and Le Meur describe how 'development and humanitarian system have been playing an increasing role in the genesis of new parallel bureaucracies and in creating overpaid and functional bureaucratic 'enclaves' within the state administration' (Blundo & Le Meur, 2009, p. 20).

The creation of a 'two-speed' bureaucracy raises questions again about the extent to which the project created 'government-led' registration as full government employees were not involved in the unified registration activities and because of the wider government's reliance on and maintenance of the old system of registration. It also, importantly, shows the parameters and extent of UNHCR's power and control: UNHCR managed to successfully implement changes because of the project officers who were employed because UNHCR funded their wages. Beyond the parameters of the development project, and the aspects of RAS UNHCR funded, UNHCR struggled to have full influence over RAS and the wider state within which RAS was embedded.

7.7 The Unification of Refugee Registration in Kakuma Refugee Camp

The unification of registration also took place, about six months later, in Kakuma Refugee Camp. The process of unification was very similar, with the uptake of proGres by RAS project staff and training by UNHCR. Whereas in Nairobi UNHCR staff moved into the RAS office and proGres was installed there, in Kakuma, RAS project staff moved into UNHCR's office. This was justified on the basis that the RAS Field Office building, where RAS had carried out registration, was owned

[71] Bear and Mathur give another very similar example of government-owned NGOs in India where 'young professionals', hired by private contract agencies on a fixed-term contract, do 'traditional state development work'. The authors describe how they consisted of 'MBA, computer programming and engineering diploma holders', keen to 'join the ranks of the newly aspirational middle classes', in contrast to the 'permanent state employees' who were 'middle-aged men who dressed soberly' and were 'extremely deferential towards their superiors' (Bear & Mathur, 2015, pp. 22–25). Moreover, Markó discusses UN-led reform efforts of the Directorate of Nationality, Passports and Immigration in South Sudan and how it produced two clusters of employees: 'One cluster is a flash bureaucratic model … it contains state-of-the art technology and young skilled officers, but it is largely a façade, staffed by officers without any real decision-making authority. In the other less visible, and seemingly less important, cluster, the war-trained military elite keep the decision-making power firmly in their own hands' (Markó, 2016, p. 119)

by UNHCR and so it was unnecessary to install proGres in what was seen as in effect another UNHCR office.

RAS project staff worked together in one large room, separate to UNHCR officers who worked in their own office rooms within the small compound. The UNHCR officers carried out 'continuous registration' which involved updating files, for example following the birth of a child. RAS project staff, who had not yet been trained in this aspect of registration, only carried out registration of newly arrived refugees. RAS project staff worked alongside other contract staff, hired by Lutheran World Foundation (LWF), who had been kept on after a recent verification exercise which involved very similar skills to registration (see Section 7.9). UNHCR staff explained that LWF staff had been kept on to clear a backlog of registration cases but that their contract would not be renewed, primarily because there were now RAS staff instead. One implementing partner therefore seemingly replaced another.

The capacity building of registration according to UNHCR's standards was more acute in Kakuma as RAS project staff were fully incorporated into the existing model of registration carried out by UNHCR – an issue that occurs again with RSD, discussed in Chapter 8 – to the extent that they worked in UNHCR's office in exactly the same role as UNHCR and LWF clerks had previously. The creation of a 'two speed bureaucracy' also occurred but more strongly; the RAS registration manager and two government fingerprinting officers, who were not project staff, remained in the RAS Field Office to complete applications for refugee identity cards, a step which took place after the initial registration and had previously been done together in the RAS Field Office. This primarily required the taking of ink fingerprints, as a requirement of the National Registration Bureau that issued the identity cards. The other biographical information required for the form was copied from the 'profile' sheet that was printed out after initial registration. The permanent government employees apparently visited the UNHCR office where RAS project staff worked but the daily managerial role was taken up by UNHCR, somewhat expectedly, as it was their office.

Interestingly, in seeking permission to carry out research with the RAS staff in this office, I was told by a UNHCR officer to seek permission from the RAS Manager as they were "their staff" but when I talked to the Manager, they said it was up to UNHCR - reflecting the murkiness of who actually held managerial responsibility.

7.8 Conclusion

The capacity building project appealed to Weberian sensibilities about how a bureaucracy should function. It achieved more ordered, rationalist and professionalised processes. The information collected was more accurate, retrievable and comprehensive. It is important however to critically assess whose interests these changes served.

The project officially aimed to create 'government-led' registration, on the basis that a government with increased capacity would be more engaged in refugee affairs, leading to protection benefits. This was achieved in a literal sense through UNHCR stopping its parallel registration activities but the project, as it was configured at the street-level, however, did not see the government's interest or engagement with registration increase. Much of the additional information collected, most importantly the electronic biometric data, could not even be used by the government and government managers were side-lined from operations. Importantly, the project did not appear to mark a shift by the government away from the indifference towards registration. Instead, their support for the project was motivated by a desire to stop double registration and enforce encampment. The government therefore did not support the official aim of the project but agreed to its components, and, on this basis, acquiesced to UNHCR's new-found control.

The project was therefore configured around UNHCR's interest in controlling operations. UNHCR exerted its control, in part, because of concerns about how government engagement could negatively impact refugee protection. The double bind for UNHCR was that any negative impacts were mitigated at the expense of the official aims of the project. This control was exercised to such

an extent that the project arguably decreased the independence of the government. Whereas previously it had carried out registration independently on a day to day basis – albeit with donor funding and under donor pressure to carry out registration – the changes marked an increase in UNHCR involvement in government practice and greater reliance on UNHCR. RAS was more technologically reliant on UNHCR as it no longer used its own database and instead was reliant on a database owned by UNHCR and guaranteed access to it through a non-legally binding memorandum of understanding. Moreover, RAS was bureaucratically reliant on UNHCR whose technology and standards it had adopted.

UNHCR's control over the project staff was exercised through a wide range of measures. It took place though the subtle configuring effect of its proGres database, examination of their practices through adopting managerial oversight and the use of their expertise to present an exacting model of how registration should be carried out.

UNHCR's expertise and level of control occurred to such an extent that RAS came to adopt many of UNHCR's standards and practise and became an almost mirror image of it. This however introduced some of UNHCR's practices that had been shaped by global shifts towards suspicion and security concerns about refugees. These practices did not directly improve protection for refugees. The rights of refugees did not substantially change as refugees left the office with exactly the same documents as before and, more broadly, the unification of registration did not represent a significant change in government attitude towards refugees. Their rights in fact worsened through biometric technology which enforced encampment policies, and the adoption of UNHCR security standards which allowed suspicion towards refugees to be more effectively enacted upon.

The project therefore primarily served the interests of UNHCR – just as many development projects suit their donors. It was initiated as an attempt, as far as was possible, to resolve UNHCR's institutional tension between both an obligation and a resistance to unifying registration. It enabled

UNHCR to claim it had achieved 'government-led' registration while at the same time instigating control over the government for both protection and operational interests.

UNHCR's power however had its limits. Its control was primarily limited to the project officers who used the proGres database and came under UNHCR' managerial influence. As their wages were already paid by UNHCR and they were hired as a crucial part of UNHCR's capacity building project, UNHCR's influence over them was accepted by senior RAS staff. The project only reinforced a separation between them. UNHCR therefore implemented changes within the parameters of its development project and what it funded, but the changes brought about functioned as a distinct and somewhat isolated enclave, separated from the registration activities of the government staff and the wider state infrastructure the government staff served.

In Chapter 8, we see very similar forms of capacity building and its outcomes play out again but this time in RSD, the step after registration in the process of obtaining refugee status. Before that, I consider a Verification Exercise in Nairobi, which happened just before the unification of registration, and saw RAS and UNHCR work closely together and many of the same issues that occurred in this chapter and the next, occur again.

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7.9 Verification Exercise

RAS and UNHCR worked together in partnership on an activity closely related to registration - a Verification Exercise in Nairobi. Many of the activities that happened in the registration office were mirrored at this exercise.

According to a leaflet intended for refugees, which I picked up at the event, the purpose of the exercise was to:

… allow the Government and UNHCR to collect accurate and up to date information about you and all your family members. This information is necessary for the Government and UNHCR to adequately plan for the delivery of all services, to implement effective protection and activities and provide meaningful support.

UNHCR instigates verification exercises, sometimes called headcounts, in refugee camps relatively frequently as the confines of a camp make it easier, along with the tying of assistance to up-to-date registration. In Nairobi however no verification had ever taken place, apparently because of the resistance of the government. Impetus came at this time because of pressure from the government about closing Dadaab refugee camp (see Section 4.4); verification was both a way to reduce numbers, as a recount will nearly always produce lower official statistics because some refugees will not attend, and to ask refugees about their intention to return to their country of origin which was recorded on the proGres database, and presumably a basis for follow up by UNHCR and its voluntary repatriation programme.

The verification exercise was held in several large halls in the compound of a church in Eastleigh, in central Nairobi. It took place over three months as there were around 50,000 refugees to verify. I spent four days observing the exercise and talking to clerks carrying it out. The verification itself involved clerks who sat in rows in the middle of the hall and checked refugees' information and made minor changes or additions to it. They also collected refugees' biometric data using the new BIMS technology described in Section 7.4.2. The clerks were hired by Danish Refugee Council, an international NGO, as part of an implementing partnership agreement, because this arrangement was cheaper for UNHCR.

The verification exercise was discussed by UNHCR staff as a joint operation with RAS, as the wording of the above leaflet indicates. UNHCR said they had consulted RAS staff at the various

planning stages, they had attended meetings and given in-put. This was most visibly reflected by the government logo emblazoned on the florescent yellow jackets of all the clerks. The similarity of the verification exercise to UNHCR's registration practices however suggested RAS had not significantly shaped the operation. It was identical to many of the practices I observed at UNHCR registration in Kakuma and were adopted by RAS, as described above, during capacity building. For example, verification was configured around UNHCR's proGres database and the use of the its BIMS technology, G4S guards were hired for security and the same index finger scanner was used to check if refugees had already registered.

UNHCR staff were also clearly the managers in charge of the operation, constantly moving around helping clerks with their work. Senior managers from RAS were only there some of the time. An indication who was in charge occurred through negotiating access: when I first arrived, I asked a government manager for permission to carry out research but she instantly referred me to the UNHCR manager as she saw it as his decision to make. They consulted with each other but it was the UNHCR officer who then asked me several questions and made his determining judgement.

When I asked UNHCR staff, in later interviews, what the government had paid for, they insisted RAS had contributed through the time of the fingerprinting officers and the police officers who were there for security. UNHCR, on the other hand, through its implementing partners, had hired and trained 70 clerks and paid for each of them to use a laptop, the biometric technology and the venue.

Some permanent government staff were present at the exercise to take ink fingerprints from refugees. This took place on the stage at the end of the hall - separated from the neat rows of clerks taking electronic fingerprints - as part of the 'two-speed' bureaucracy created by UNHCR's interaction with the government's manual bureaucracy. The ink fingerprints were partly for those applying for refugee identity cards although nearly all refugees had their fingerprints taken and all

had to have a single print put on the proof of verification document they received to confirm their attendance. This formed a significant bottleneck at the end of the process. I was told in Kakuma, ink fingerprinting had continued days after the rest of the verification had stopped. RAS project officers were more embedded in the central activities of the verification exercise as they were responsible for printing the 'proof of verification' documents for all refugees who attended.

Overall, this activity was UNHCR's bureaucratised response to the government's pressure to close Dadaab and reduce the number of refugees in Kenya. Instead of the government's violent police round-ups to remove refugees from Nairobi and threats to suddenly close the camp, it was attempting to find individuals who might be willing to return and reduce the official statistics. Importantly, this exercise provides another opportunity to see how UNHCR and RAS worked together. Officially, it was a joint exercise and jointly agreed. However, in practice, UNHCR was clearly in control as it managed and funded the entire operation and configured it around the use of their technology. The only contribution of the government was a slow add-on at the end of the process to collect ink fingerprints, closely mirroring the two-speed bureaucracy described above.

8 Chapter Eight: Capacity Building Refugee Status Determination

8.1 Introduction

After a wait of sometimes over two years following registration, refugees have a refugee status determination (RSD) interview. This is to legally assess their eligibility for refugee status and determine if they can stay in Kenya or will be expected to leave or otherwise legalise their stay. RSD is widely considered to be the responsibility of the host government and important to the exercise of state power as it enables the monitoring and documentation of individuals on its territory. And, yet, UNHCR had carried out RSD since 1992, when it took over the management of refugee affairs more generally. This, like registration, was in the process of being handed back to the government.[72]

This chapter explores the concurrent process of capacity building RAS to carry out RSD by UNHCR. It looks at how this project played out and to what effect. Like Chapter 7, it discusses whose interests this project served and the dynamics of how UNHCR and RAS interacted.

The transfer of RSD followed a comparable trajectory to the unification of refugee registration – the topic of Chapter 7. The main difference between these processes is that, whereas RAS had

[72] Some refugees are recognised on a *prima facie* basis which means they do not have to go through the RSD process and are typically recognised based on their nationality (UNHCR, 2015b). This applied to Somali refugees since early 1990s until May 2016 and to South Sudanese refugees from August 2014 until the time of fieldwork (Gazette No. 5274, 2014). The decision to grant *prima facie* refugee status to Somali refugees was, in some ways, highly generous and inclusive. It is difficult to comment on the government's reasons for this due to the historical nature of this initial decision, but the huge size of the caseload meant individual processing would have been very challenging and almost certainly the preferred option by UNHCR. As Kagan notes, 'individual status determination is extremely resource intensive' (Kagan, 2017, p. 199). The inclusiveness however came, as Betts argues, 'at a price' as it meant accepting 'containment as the norm' (Betts, 2013, p. 150). The level of inclusion was therefore very limited as refugees were expected to remain in camps and solely managed by UNHCR. I think, more importantly, that acceptance of *prima facie* status showed a form of disinterest in RSD as the government was prepared to accept group recognition. The decision to revoke *prima facie* status for Somalis in May 2016 was issued in a Gazette notice which stated the government: 'revokes the *prima facie* refugee status of asylum seekers [sic] from Somalia with effect from 1st April 2016, and all asylum seekers from Somalia shall be required to undergo the Refugee Status Determination process' (Gazette No.3017, 2016). The wording meant it was unclear if this revocation applied retrospectively but, in practice, it was only applied to new arrivals. This however could not be implemented because new arrivals were not being registered and therefore could not undergo RSD. This was therefore another example of the destructive interest, a notion discussed further in this chapter, of the government which hindered bureaucratic operations.

independently carried out registration since 2011, RAS did not have any prior involvement in RSD. UNHCR thus did not have a government counterpart in RSD with which to unify. Instead, it had the opportunity to create RAS RSD procedures from scratch.

To clarify further, RSD is the 'legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law' (UNHCR, 2019d). It typically involves an interview to gather refugees' personal account of why they fled their country of origin and assessment of this against other available evidence to make an evaluative judgement regarding if the individual is eligible for refugee status. It is central to the legal protection of refugees as it is the means for accessing refugee status as a legal identity, and the accompanying rights and documentation, and to the ability of states to know the individuals on its territory.

This chapter has two interrelated lines of argument. First, it documents again the indifference of RAS – in this case to taking over responsibility for RSD. Secondly, it argues how this, amongst other factors, allowed UNHCR to have considerable control over RAS and standardise it according to UNHCR's existing practices. I show that these actions were in tension with the official aim of the capacity building project - to build independent processes with the active support of the government – but were part of the agreed components of the project. UNHCR's continued control within RSD was therefore agreed to by RAS because of its indifference to actively being involved in RSD. This chapter further shows that UNHCR' control was limited to project officers and thus did not significantly influence senior RAS officers or the wider Ministry.

In the first section I outline the interests of both UNHCR and RAS which influenced how the transfer and capacity building project was designed and carried out. I secondly explore the bureaucratic practices of RAS project officers and focus on how UNHCR was able to exercise control through their managerial role, construction of their expertise and the configuring effect of

UNHCR's proGres database. The third section focuses on the experiences of those RAS project officers: their perspectives, professional identities and everyday frustrations provide an additional lens through which to understand the transfer.

8.2 Negotiating RSD

The process of transferring RSD to RAS was a drawn-out process that started in 2011 and was on-going at the time of fieldwork. The process revolved around detailed work-plans which set out the content and timeline for agreed activities. The first work plan anticipated a phased approach to handing over RSD. It was agreed and signed by both organisations in November 2013 but, for reasons discussed below, this was abandoned in June 2014. At this time, tense negotiations culminated in a newly agreed 18-month work plan which saw the Commissioner take over official endorsement of refugee status decisions. The deadline for the transfer passed in January 2016 (before the time of fieldwork) but staff told me they were still using the content from it. As is symptomatic of development partnerships, the process was highly bureaucratic and involved work 'retreats', meetings and working groups to decide the official structures for the process. However, although both UNHCR and DRA/RAS stated their formal commitment to the transfer, there were other, sometimes conflicting, interests at play. The interests of both organizations are outlined in this section and are important for understanding why the transfer – described in Section 8.3 – took the form it did.

8.2.1 UNHCR interests

RSD is widely considered to be the responsibility of host states and UNHCR Executive Committee has called on states to develop national RSD procedures (see Section 1.1). This is because the uptake of RSD by governments can see important protection benefits for refugees as only governments can ensure the legal protection of refugees; moreover, UNHCR staff expressed the view that when host governments grant refugee status themselves, they are more likely to respect and enforce refugee rights, especially if refugees receive government issued documentation.

UNHCR has also faced criticism from a legal point of view for its role in RSD, particularly because it does not allow for an independent appeal mechanism as decisions granted by UNHCR under its mandate can only be appealed to UNHCR (Abuya & Wachira, 2006; M. Alexander, 1999; Jones, 2008; Kagan, 2006).

There are other institutional interests at play. Perhaps the most pertinent is the money saved from transferring RSD to host governments. RSD poses a considerable financial burden on UNHCR. In 2016, UNHCR conducted RSD in 67 countries, making it the second largest RSD system in the world (Fresia & von Känel, 2016, p. 101). As the UNHCR Director of International Protection has stated: 'One thing is clear: without more robust State engagement, resources, and alternatives to individual processing, dealing with such a high number of individual RSD applications registered by UNHCR is not sustainable' (Türk, 2014, p. 5). This is particularly relevant to Kenya as, in 2012, when the transfer started, of the 31 states party to the 1951 Refugee Convention without a national RSD procedure, Kenya was the biggest by volume of applications and number of individual RSD applications (van Hovell et al., 2014, p. 26).

The caseload was particularly big in Kenya because of the backlog of cases which became significant following the influx of more Somali refugees in 2011. A case joins the backlog if more than six months passed between the issuance of the RSD appointment slip, typically at the time of registration, and the RSD interview. At the time of fieldwork, the backlog was more than eighteen months and refugees were being given appointments for 2019. UNHCR's concern with clearing the backlog was rooted in protection concerns as refugees, especially in Nairobi, without refugee status and the corresponding documents could face increased harassment from police and challenges accessing services. UNHCR's concern about the backlog of cases promoted the organisation globally to look for alternatives to lengthy individual RSD processes (Kagan, 2017; Türk, 2014; UNHCR, 2018b).

This backlog of cases was an important factor in decision-making about the transfer process as UNHCR hired DRA/RAS project officers to help clear it. This was cheaper than hiring UNHCR officers because the wages of DRA/RAS officers was less. The use of implementing agencies was highly consistent with UNHCR's model for managing refugee affairs in Kenya which was to adopt a coordinating role and 'outsource' protection activities to other organisations and similar to the model used during the Verification Exercise. A senior UNHCR officer also stated that governments have more flexibility in how to handle cases and thus to do it quicker than UNHCR, such as through group processing, as UNHCR is constrained by its own standards. The hiring of project officers was also partly because hiring additional UNHCR officers would have been contrary to the ethos of the transfer arrangement. These hiring practices were therefore, in part, temporary measures to address the organizational and financial challenge UNHCR was facing regarding the backlog of cases. As one UNHCR officer noted, the hiring of a significant number of additional RAS RSD officers in 2016 was only temporary as, once the backlog of cases was cleared, these officers would not be needed, and their contracts would not be renewed.

UNHCR therefore faced protection, institutional and legal grounds for the transferring RSD to RAS. As has been developed throughout this thesis, while UNHCR's mandate to ensure refugee protection and carry out the transfer can be successfully reinforcing of each other, UNHCR's perception that the Government of Kenya posed a threat to refugee protection brought these into conflict. Therefore, despite the above interests to transfer RSD, I will argue that UNHCR instigated significant control and influence over how RAS carried out RSD in order to limit their control and slow down the progress of the transfer. I will also argue that the focus on hiring DRA/RAS RSD officers, so as to clear the backlog of cases more cheaply, also distorted the focus of the transfer onto a temporary increase in staff, rather than comprehensive investment in independent RAS RSD operations.

8.2.2 Government indifference

The senior RAS Managers - the thin managerial strata within RAS, composed of permanent government staff - consistently stated their commitment to taking up responsibility for RSD from UNHCR. This chapter however contributes to the line of argument throughout this thesis that, despite this ostensive commitment, the managers were *indifferent towards the bureaucratic knowledge* made available through managing registration and RSD. Interestingly, this indifference did not extend to the project staff who carried out RSD who were highly committed to the transfer process, as discussed in Section 8.4. In this section, I focus on how this indifference was manifest by the Managers who seemed disinterested in taking on an active managerial role, consistent with their job titles, and instead allowed UNHCR officers to have a *de facto* managerial role over RAS RSD officers – much like the registration managers discussed in Chapter 7. Below, I suggest some practical impediments to their active managerial involvement. I argue however that a deliberate indifference or destructive interest (engagement that hinders the progress of the transfer) was the main reason and explore this through three distinct incidents.

RAS Managers were not actively involved in RSD in almost any form. They worked in separate offices to the RSD project officers and did not have any day to day contact with them. In Nairobi, RSD staff worked in the RAS Field Office while Managers remained in the Headquarters office and in Kakuma and Dadaab RAS RSD staff worked in UNHCR offices and the managers were based in the main RAS office (although RSD was not ongoing in Dadaab at the time of fieldwork). RSD officers officially reported to them but, in reality, it was UNHCR staff who managed their work. There was therefore a clear divide between the project staff who carried out RSD and the managers who were permanent government staff – a divide that was similarly enforced by UNHCR's capacity building of registration.

It is important to consider the practical impediments to RAS Managers taking an active managerial role in RSD. Firstly, they did not have the legal and technical skills required for RSD; my conversations revealed they had no background in law or refugee affairs, although training was

frequently offered by UNHCR. The greater managerial involvement in registration, compared to RSD, was because it is more straightforward and more suited to the administrative background of officers who had previously held civil servant posts, for example, elsewhere in the Directorate of Immigration and Registration of Persons. Secondly, there was a highly limited number of officers posted to RAS, partly because of the wider Ministry's failure to create sufficient middle-management roles and a permanent staffing structure. For example, in Kakuma refugee camp there were only two government officers and their official role was camp management – their job titles were Camp Manager and Deputy Camp Manager - not RSD.[73] This meant that they would not have had the time needed to either learn about RSD or actively manage it.

While these practical impediments were important factors to consider, a deliberate level of indifference was, in practice, a more significant determinant of the government's engagement with RSD. The first incident in which this became apparent was when I was seeking permission to carry out research with the RAS RSD officers in Kakuma. I was told by a RAS RSD officer that I needed to get permission from the RAS Camp Manager. I therefore left the UNHCR compound where RSD officers work and was driven 10 minutes to the RAS office, in a separate government compound. When I met him, I obtained a letter granting such permission. The RAS RSD officer however said that the letter was not sufficient because it did not specify RSD. I returned to the Camp Manager who was somewhat frustrated at changing the letter, stating that *"RAS doesn't do RSD"*, although he amended the letter to state 'She is also permitted to perform research in RSD offices within UNHCR compound'. It was a single comment that slipped out in the conversation. Nonetheless, it revealed the separation perceived by senior RAS officers between themselves and the RSD operations ostensibly acting under their name – possibly further indicated by the specification in the letter of 'within UNHCR compound' which specified the physical separation and the association of RSD with UNHCR.

[73] There were also 2-3 government fingerprinting officers, especially seconded from the National Registration Bureau to carried out fingerprinting, as part of registration.

A second incident which showed the indifferent and destructive interest of the government, surprisingly presented itself when DRA took over formal responsibility for RSD. By way of background, DRA, in a meeting with UNHCR in May 2014, said they wanted to take over RSD immediately. This pressure from DRA prompted UNHCR to commit more resources to the transfer and a member of the UNHCR Regional Support Hub was appointed to lead the transfer process. Tense negotiations culminated in a new eighteen-month work plan which saw the Commissioner take over official endorsement of refugee status decisions and issuance of refugee certificates. This was a reversal of the phased approach agreed upon in November 2013, which had intended to see the gradual increase in capacity of DRA in order to legally transfer RSD at the end.[74] Importantly, this decision did not denote the start of sustained engagement by the government in RSD. This chapter will show that the government did not proceed to invest in bureaucratic, technocratic or infrastructural terms in RSD. Instead, the decision that the Commissioner would endorse refugee certificates was more about symbolic control. It was also the easiest aspect to take over; it was simply the signing of a certificate. UNHCR also accepted this arrangement because, in the words of one senior officer, they did not have to "give very much away"; they did not see RAS as ready to take on this responsibility fully, as capacity building was not complete, and were resistant to a full transfer at this stage.[75]

DRA's interest seems to have been prompted by national security concerns at the time and the need to be seen to publicly take action. This is evidenced by the decision closely following Usalama Watch in April 2014 – a large police round up in Nairobi – following the Likoni Church Attack on 23rd March 2014, where five people were killed by gunmen (Waitherero, 2014; see also Section 4.4). Security concerns were also the backdrop for moves by the central government to establish a new government agency and National Digital Registry System that would unify registration

[74] This account of events was given by several senior UNHCR officials and RAS officials. It is also discussed in a UNHCR PDES report (Garlick et al., 2015, p. 16).
[75] Senior UNHCR Officer, UNHCR, Nairobi, October 2016.

practices across different departments (K. Breckenridge, 2019). The new agency was intended to establish a unique identifier for all citizens, migrants and refugees. The outlined plans would likely require access to UNHCR's proGres database which stored refugees' data; significantly, the announcement by the government to take over RSD took place one month after the project was publicly announced in April 2014.[76] The intended project however failed to be realised which may further indicate the subsequent decline in interest in RSD.[77] Importantly, it seems likely that the government's interest in RSD was actually rooted in the central government's concern to develop a centralised database – primarily aimed at citizens - rather than a desire to become actively involved in RSD operations specifically.[78]

The decision by the government to formally take over RSD had a destructive impact on RSD; it meant cases could no longer be rejected because there was no appeal mechanism available because the government Refugee Appeals Board (RAB), as set out in the 2006 Refugee Act, was not operational. Rejection letters therefore were not issued, and such cases had to remain pending. Prior to the formal uptake of RSD by the government, rejected cases could be appealed to UNHCR but this was no longer an option as UNHCR could not provide an appeal mechanism for a government decision. The engagement of the government therefore had a highly detrimental impact on the integrity of RSD as those ineligible of refugee status could not be rejected. Thus, the government's ostensive takeover of RSD, under the guise of national security, ironically showed their limited interest in the proper functioning of RSD and potentially risked national security as it hindered due process for the rejection and deportation of those ineligible for refugee status.

[76] UNHCR and government officials did not mention this initiative to me and I only became aware of it after the time of fieldwork. I was not therefore able to ask officials how this initiative impacted negotiations about RSD. It is possible that government officials were acting on the instructions of central government and were not fully aware of the initiative at the time.
[77] For discussion of why the project failed, see Footnote 19.
[78] It is possible that the on-going interest of the central government in creating a centralised database was also a factor in why the government pushed for the handover of UNHCR's proGres database as part of the unification of registration (as discussed in Section 7.3).

The government's destructive attitude towards RSD was demonstrated on a third occasion when it disbanded DRA in 2016, including all aspects of government involvement in RSD. The reasons for the disbandment are discussed in Section 5.6. It is highly interesting to note, relating to RSD specifically, that the Permanent Secretary for the Ministry of Interior, within which DRA/RAS sits, signed a gazette notice, officially designating certain documents, including a recognition letter, essential to the official functioning of government RSD, on the same day that he signed a gazette notice to revoke *prima facie* refugee status for Somali refugees (Gazette No. 3017, 2016). This was followed, two weeks later, by the disbandment of DRA, most likely on the instruction of the Office of the President. It seems possible that both Gazettes notices were signed on the same day because the government was unwilling to issue recognition letters based on *prima facie* status. Neither actions however would matter if the department was to be imminently disbanded. It is not possible to know the exact reasons for this, and it perhaps can only highlight the internal contradictions of state bureaucracy and decision-making, but it raises the possibility that ostensive commitment to RSD came just before or *possibly* even triggered the whole system to be abandoned.

The disbandment, much like the challenges of providing an appeal mechanism, had significant legal consequences for the functioning of RSD. When DRA reopened under the name RAS, refugee certificates could no longer be issued because the change of name was not reflected in the legal documents used to officially reject and accept refugees after RSD, which had to be officially issued through a government gazette notice.[79] This meant that, throughout the time of fieldwork, cases could be neither rejected nor accepted, although RSD casework continued, and the cases remained pending.[80] Refugees going through RSD were therefore left in a legal limbo.

[79] The legal standing of RAS was potentially addressed through the *Statute Law (Miscellaneous Amendments) Bill, 2016,* passed in November 2016, which amended the 2006 Refugee Act to remove all references to DRA and replace them with RAS. This did not however remove the need to issue a gazette notice with the updated RSD documents. The legal quagmire was compounded by a ruling in *Constitution Petition No. 227 of 2016,* issued in February 2017, that the disbandment of DRA was beyond the power of the respondents who issued the statement disbanding the department, and thus that the decision was 'null and void'. The situation had not been resolved by the end of fieldwork.

[80] UNHCR accepted certain vulnerable cases, primarily to facilitate their resettlement to a third country, under its own mandate, although this apparently caused consternation with the government.

Overall, the government took an interest in RSD in 2014 but this was motivated by a spike in security concerns on the popular and political agenda at the time and related desire to create a centralised government database. It was productive in terms of moving the transfer process forward and put pressure on UNHCR to more actively pursue it. Nonetheless, the government both before and after this time was largely indifferent or unable to actively support the transfer and did little to financially or otherwise facilitate it, to the extent that some senior officials did not even consider the government to do RSD. The 'interest' in 2014, and the decision to disband DRA, both significantly undermined the operational and legal functioning of RSD to the extent that cases could not actually be decided. As argued throughout this thesis and developed further in this chapter, an important reason why government RSD existed at all was the considerable influence and control exercised by donors, discussed next.

8.3 Bureaucratic practices

This section focuses on the bureaucratic *practices* of RSD and is structured around the three main ways UNHCR exercised control over the RAS project staff who carried out RSD: through their managerial role, construction of their expertise and the configuring effect of the proGres database. I argue that UNHCR exercised considerable control and influence over DRA/RAS and incorporated it into its existing model of RSD, despite it being discussed officially as a process of capacity building to increase independent government control and legally being a government process. I argue that this control was both reflective of and enabled by the government's indifference to doing RSD. The next section describes the *experiences* of RAS officers involved in RSD. Their perspectives, professional identities and everyday frustrations provide an additional lens through which to understand the tensions and contradictions arising from the process of transferring RSD and capacity building RAS.

8.3.1 Management

One of the core ways in which UNHCR exercised control over RSD practices was through instigation of their managerial role over the RAS RSD staff, which was achieved through the use of UNHCR offices by RAS officers (and the absence of government managers, as discussed in Section 8.2.2).

In Kakuma, RAS officers worked in the UNHCR compound. RAS officers sat interspersed with UNHCR officers behind identical, unlabelled blue office doors. There were no signs to indicate that this was where government activities were carried out, apart from a few subtle visual clues, such as a RAS polo shirt or notebook embossed with the government logo. Similarly, in Dadaab refugee camp, when RSD was ongoing, interviews were done by UNHCR and DRA officers together in UNHCR field offices in the camps. DRA officers completed their written assessments in their own offices but in a compound shared by most agencies working in Dadaab. This was partly because of UNHCR's confidentiality concerns about DRA officers taking case files out of the compound to the DRA office in a government compound in Dadaab town. This however changed later because of UNHCR's desire for closer management of the DRA officers, and the officers started working in UNHCR offices.

In Nairobi, the DRA RSD officers had previously worked in UNHCR's office. In January 2016 however they moved across the city to the RAS Nairobi Field Office (where registration also took place), at the instigation of the senior DRA officials. This did not happen in Kakuma or Dadaab because there was no available office space. UNHCR stated they had intended to move with DRA officers but the office did not comply with UN safety standards (and the intention to move was later abandoned). Despite this, much of UNHCR's infrastructure and bureaucratic standards were instilled in this new office. This was because the existing office was completely unprepared and lacked even computers and an internet connection. UNHCR was instrumental in setting up the office and UNHCR staff would visit to assist in continued capacity building. Notably, the government managers still did not take an active interest in RSD and remained based in the RAS

Headquarters Office across town and very rarely visited. The decision by DRA to move the RSD officers into their Field Office seems to have been made by one senior DRA official who had a particularly antagonistic relationship with UNHCR. The move had a largely destructive impact on RSD as the lack of basic infrastructure in the office severely hindered work and, as discussed next, had a detrimental effect on staff morale.

Plans to build office space in Kakuma, including a file registry, and accommodation for the RAS officers had been in place for several years. Disagreements between the government, UNHCR and host community appear to have delayed finalisation of the project and meant the unspent funds were returned to Geneva, as per global UNHCR budget requirements (UNHCR, 2019a). At the time of fieldwork, the construction of the offices were completed but were not furnished and did not have basic necessities like water and electricity. Development had been halted because of complaints from the highly-mobilised host community - a frequent issue for humanitarian operations in Kakuma - who sought concessions in return for granting land.

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The use of UNHCR office space, along with other factors discussed next, facilitated UNHCR's continued role in significant parts of the RSD process.

RAS staff only carried out the initial interview. This was the first, and normally only interview with a refugee to obtain their account of why they sought refugee status. Following the interview and consideration of other available information, officers would write a report giving their recommendation regarding whether the individual was eligible for refugee status. Very few UNHCR staff, at the time of fieldwork, were carrying out the initial interview. This was however followed by a review process that was only carried out by UNHCR officers. The review process aimed to ensure consistency and standards of decision-making and the case could be sent back for

an additional interview with the refugee by the initial reviewer. It was the reviewer who made the final recommendation on whether a case should be accepted or rejected.

UNHCR aimed to promote existing initial interviewers to reviewers but the necessary training had been delayed from 2014 until 2016, which UNHCR attributed to a lack of funds. In 2016, when 20 new RAS officers were hired, the existing RSD officers were promoted to reviewers. The reviewer training in Nairobi however only covered 'simplified cases', not the full range of more complex cases.[81] This was apparently because of disagreements between UNHCR and RAS resulting in RAS withdrawing their officers before the agreed end of the training. UNHCR had required the new reviewers to review 200 simplified cases before moving onto other types of cases, which RAS thought would take too long. Therefore, a breakdown in the relationship between UNHCR and RAS meant some of the review processes were still being carried out by UNHCR staff. It is worth noting that capacity building was conceptualised as RAS staff taking over roles carried out by UNHCR staff and therefore the direct replication of UNHCR's model for doing RSD.

After the initial interview and review process, all cases moved to Nairobi and, since 2014, the recommendation of the reviewer was passed to the Technical Advisory Committee (TAC). This body was created following the government's official takeover of RSD in 2014 when it was agreed that the DRA Commissioner would endorse refugee certificates. It was considered that the Commissioner however had both limited knowledge of RSD processes and limited time to assess individual cases. It was therefore decided that he would rely on the TAC to present 'profiles' or groups of similar cases to him. The TAC is unique to Kenya as it is more commonly done by a legal entity, such as a board which would present cases to the issuing authority. The TAC is attended by the Head of Protection from RAS and the RAS RSD Supervisor and UNHCR officers. Its name labours its minimal and non-political role and yet it forms a crucial part of RSD. UNHCR officers,

[81] Training only took place in Nairobi. Reviewer training in Kakuma was delayed as there were no international officers to carry out the training, due to vacant positions, but a 'mission' of international officers from Nairobi arrived in later 2017 to carry out the training.

who formed a majority on the committee, described their role as explaining and advocating why certain cases should be accepted or rejected. The RAS officers present had highly limited experience in RSD - neither individuals in post at the time of fieldwork were directly involved in casework or had a legal background. Their ability to challenge or question the cases put before them by UNHCR must therefore have been limited.[82] Following the meeting of the TAC, cases were then given to the Commissioner for his endorsement and refugee certificates were issued.

Therefore, the dominance of UNHCR in the bureaucratic decision-making hierarchy continued up to the highest level so that when the Commissioner finally issued the refugee certificates, it proclaimed that refugee status had been granted by the Government of Kenya and yet their role was very limited; the only substantive role was the initial reviewers who were project staff and worked in an environment almost entirely configured by UNHCR.

In recognition of the need to establish a managerial hierarchy for RAS RSD operations, as a typical feature of a bureaucracy, UNHCR instigated a RAS RSD supervisor role from 2013 onwards. Their managerial responsibilities were however limited; the officer was a 'project officer', rather than a full government officer, and had the same level of knowledge of RSD as the other officers so could not provide management to RSD officers on this substantive aspect of their work. Instead, they provided operational and administrative support and acted as a go-between between RAS and UNHCR. I was frequently told that that they managed RAS officers' annual leave. This itself however was compromised because UNHCR officers were frustrated that this was organised without consultation with them. As one officer described it, 'manager' was "just a title".

The number of RAS RSD officers had however increased over time. From only four DRA RSD officers in 2012 and, despite challenges with retention but almost annual recruitment since, the

[82] It was not possible to attend meetings of the TAC. Meetings were also highly infrequent during the time of fieldwork because the Commissioner could not endorse refugee certificates (as discussed in Section 8.2.2).

number of RAS officers outnumbered the number of UNHCR officers. UNHCR's focus on clearing the backlog of cases seems to have driven this focus on improving staff capacity. There were however several accusations of UNHCR 'poaching' the best DRA staff. DRA staff were likely keen to move to UNHCR because of the better working conditions and pay, discussed below, but which obviously undermined capacity building. To address this, an agreement had apparently been put in place to stop UNHCR from hiring DRA/RAS staff.

8.3.2 Expertise

Another way UNHCR exercised control was through the promotion of UNHCR standards for doing RSD, rooted in the construction of their expertise. DRA/RAS officers were trained entirely by UNHCR officers because there was nobody considered to have sufficient expertise to carry it out within RAS (as discussed in Section 8.2.2). The training of new DRA/RAS officers typically involved several weeks induction within UNHCR offices; officers were taught in a classroom style method about the general aspects of RSD, followed by on-the-job training and shadowing UNHCR officers. Training was also carried out on an on-going basis, often alongside UNHCR officers, as officers were expected to gain additional skills in order to deal with more complex cases; RAS officers said they completed online training schemes designed by UNHCR.

UNHCR's ability and willingness to provide such comprehensive training was rooted in, and relied on, UNHCR's vast corpus of 'expert' documents relating to RSD, published for use by UNHCR and governments worldwide. These include: *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR, 2011); *Guidelines on International Protection* which are intended to provide 'UNHCR's authoritative legal position on the various interpretive issues that arise and to provide legal guidance for governments and practitioners' (Türk, 2004, p. 304); *Guidance Notes* which are issued to manage large caseloads by specifying how to deal with particular types of claims or thematic issues such as credibility assessment; UNHCR also periodically issues *Eligibility Guidelines* on a country-specific basis, setting out UNHCR's position

regarding particular groups who, taking into account UNHCR's assessment of country conditions, should be recognised as a refugee.[83]

This corpus granted UNHCR the knowledge and authority to articulate a clear model of how RSD should be done. UNHCR staff described to me how RSD is a highly demanding and complex process which requires long-term training which in turn justified their on-going role in training and managing RAS officers. Although most considered the RAS RSD officers to be on their way to be being fully trained, this was often contrasted with the RAS Managers who were described as having no knowledge of RSD. It also created a very specific deficit in the knowledge of RAS officers which only UNHCR officers could address; these standards became measures against which to assess RAS officers' conduct and their preparedness to independently carry out RSD.

Compounding this, RAS had not developed many of its own internal bureaucratic processes. RAS did not have their own standard operating procedures (SOPs), despite efforts to develop them. Officers thus relied on UNHCR's SOPs and, it was described to me that, because of the government's lack of knowledge and experience, the draft SOPs were closely reliant on UNHCR's.[84] This was a point of constant discussions between UNHCR and DRA/RAS and there had been numerous drafts since around 2013. Similarly, a refugee policy, which would include RSD, had been drafted and re-drafted since at least 2012 but had never been signed off by the necessary senior government officers and implemented. Moreover, staff relied on UNHCR's registry for storing and retrieving paper copies of each refugee's case file, essential for carrying out assessment of the case within RSD. Overall, RAS' everyday working practices were completely reliant and modelled on and configured by UNHCR's existing RSD bureaucratic practices, standards and infrastructure.

[83] All these documents are archived and available from UNHCR's RefWorld website (UNHCR, 2019b).
[84] Officer, RSD Team, DRA (2015-2016), Nairobi, October 2016.

8.3.3 Technology

Lastly, UNHCR exercised control through the configuring effect of its proGres database which was used by RAS staff, in a similar manner to that achieved in capacity building registration. ProGres was used for managing the scheduling of appointments and ultimately endorsing the decision about eligibility for refugee status. Reviewers, for instance, indicated their final determination of a case on a page of UNHCR's proGres database which the initial officers could not access. When refugees were granted refugee status, they were asked to go to DRA offices; UNHCR then brought the proGres database to the office in order to verify refugees' identity through their biometric data stored on the database. The Notifications of Recognition letter, the formal document indicating refugee status had been granted, was then generated from the database and signed by the Commissioner, before the refugee's file was then updated (Garlick et al., 2015). UNHCR's proGres database therefore played a crucial role in storing all the data and decisions regarding refugee status determination and the issuing of documentation (although the refugee identity card was issued by the government); information that RAS Management could only access on request and of which RAS RSD staff could only access part. RAS staff used this database because it was used by UNHCR staff; interestingly there was no talk of RAS developing their own database. Instead, as shown in Chapter 7, UNHCR encouraged the adoption of this database in registration and thus its likely continued use.

Overall, RAS RSD capacity was increasing in terms of staff capacity and there were moves to instigate RAS reviewers, build new offices, develop SOPs and implement a refugee policy. These issues were however all plagued by set-backs and delays. RAS staff therefore worked in an environment which was managed by UNHCR staff in strict accordance with their own standards and existing practices. RAS staff had simply been incorporated into the existing model of RSD that UNHCR operated when it did RSD by itself – nothing had changed apart from the official title of the initial reviewers. The failure to significantly develop independent RAS operations, apart from the hiring of staff, meant RAS was reliant on UNHCR for almost everything - staff wages, the

office buildings, the technology. Importantly, all of this was either owned or funded by UNHCR; there had been little, if any, financial contribution from the government. Arguably this state of affairs was because capacity building was not complete. Nonetheless, it is striking to see the extent to which RAS RSD was shaped in the mirror image of UNHCR RSD. It is also noteworthy that the most success had been made in hiring more contract staff, which assisted in UNHCR's aim to clear the backlog of cases, and not more long-term infrastructure. Although UNHCR had managed to exert significant control, this was undoubtedly because of the absence of senior DRA/RAS staff whose indifference meant they willingly allowed UNHCR to take control, and their main moments of engagement had a destructive impact on the transfer process.

8.4 Bureaucratic experiences

The experience and perspectives of RAS RSD project officers are constitutive of how the transfer took place. Their perspectives, professional identities and everyday frustrations are a lens through which to understand the street-level realities of the transfer and capacity building process. This section reveals the challenges and frustrations RAS project officers experienced because of their contested position between RAS and UNHCR, rooted in the ostracised nature of RSD from the managerial centre of RAS and the wider government. I show that this was the case, firstly, in Kakuma, where officers worked in UNHCR offices, and secondly found a different but equal level of alienation and frustration in Nairobi where officers worked in a government office.

Many RAS RSD officers in Kakuma felt conflicted in their relationship with the government for whom they officially worked. This was rooted in the significant contact they had with UNHCR; one officer, when I asked about her professional contact with UNHCR, laughed, and, gesturing around her, said "we're in UNHCR!". In her answer, I felt she found it hard to identify the contact she had with UNHCR as she was working with them all the time. One officer even commented that: "Sometimes I feel like I work for UNHCR because everything I do is for UNHCR".

Kakuma RAS RSD officers were clearly aware of the professional separation of their work from RAS and the physical distance between their office and the RAS office, a 10-minute drive away. Characterizations of this varied slightly. One officer described, somewhat defensively, how:

"We are in contact them [RAS]. We include the boss in our emails, they [RAS Office] monitor us, and haven't forgotten about us just because we are over here. [Our manager] tells them what we are doing. Our reports are sent to them. We have contact with them."

Others saw the physical separation as having a greater impact and thus the contact between them as more marginal; "We only go there for staff meetings. These meetings happen once a month. Camp manager talks, briefs us on what is happening and what will happen … small, small things".

All officers however identified as RAS employees. Their articulation to me of their affiliation was partly based, of course, on official designation. Some also mentioned that when they applied for the job, they thought it was a government job and did not know about the role of UNHCR until they started, although UNHCR claimed to have influence over the shortlisting of candidates. Staff's identification as government employees was not however, I felt, based on the level of involvement from the RAS office or the two employees there. Instead, it was based on the need to defend their capabilities in order for the transfer to progress; they felt that, as individuals, they were professionally ready and experienced enough to carry out RSD independently of UNHCR. To deny their affiliation to the government to me as an outsider, was to deny their own professional expertise and confess their continued reliance or subordination to UNHCR. To suggest that they were not government employees and therefore not carrying out RSD independently of UNHCR would mean, as one officer put it, "doubting oneself". This was also reinforced by their knowledge that RSD is the rightful role of the government and recognition that they outnumbered UNHCR officers and therefore had sufficient human capacity.

Beyond the need to claim affiliation to RAS as part of a defensive affirmation of their own professional abilities, it was also because RAS officers, although working in UNHCR's offices, were not treated as UNHCR employees and thus it was meaningless to claim affiliation to them. There were clear material differences that reinforced their status as non-UNHCR employees - RAS officers could not live in UNHCR accommodation, located in the compound where they worked, and instead had to find their own accommodation in Kakuma town and were driven in together from the RAS office in town every day. They also were not allowed to use the canteen or enter other UNHCR offices without an invite or use the free UN flights to Nairobi. This naturally also caused frustrations for RAS employees who did not receive the same benefits as UNHCR employees but often performed identical work.

RAS staff were also frustrated that they did not have permanent government posts and the benefits this would bring including a pension and the ability to take out loans and a mortgage. Staff instead faced the uncertainty of having their one-year contract renewed. They therefore did not receive the benefits of being fully affiliated to either RAS or UNHCR. Staff also commented on the limited room for career progression in either organisation. The option to become a reviewer had been promised for several years but training had only very recently happened.

It is interesting to contrast the experiences of RSD officers in Kakuma, with that given by RAS RSD officers in Nairobi. These RSD officers had experienced quite a different professional trajectory; most had joined RAS around the same time as officers in Kakuma and had initially worked within UNHCR offices but had later moved to the RAS Nairobi Field Office. This obviously changed their relationship with UNHCR. Whereas previously they could ask the UNHCR reviewers easily for advice, they were now only contactable through email via their manager. This absence of support from UNHCR was not replaced by a government managerial presence, despite working in a government office (the would-be managers chose to remain located

in the Headquarters office in another area of the city). Officers said “We just feel abandoned. We are neither embraced by the government or UNHCR. We are actually wondering ‘who are we?’”.

Therefore, despite moving to a government office, officers did not experience a greater sense of affiliation to the government. Instead they felt abandoned and even expressed a desire to move back to UNHCR offices where they had managerial support. In their current office, internet connection fluctuated, and it had generally poor facilities, including for example often non-flushing toilets and lack of free drinking water. When they first moved in, at the sudden instigation of DRA Management, there had been no equipment at all as the offices had previously been unused. This sharply contrasted with the plush UN offices in the upmarket Westlands neighbourhood which offered greater material benefits and better resources.

Overall, across the locations where RAS RSD officers worked, they lacked meaningful affiliation and contact with the government for which they officially worked. Although recognizing their official designation and articulating assurances to it, this seemed rooted in strategic defence of their own professional abilities and desire to see the transfer move forward to aid their professional development. It was also rooted in their exclusion from UNHCR and frustrations related to their inferior work benefits compared to UNHCR, despite doing the same work. The inertia of the transfer progress was thus a self-reinforcing cycle as these frustrations led to low retention, and thus almost annual cycles of recruitment, which hampered capacity development and progress of the transfer.

8.5 Conclusion

This chapter continued the two lines of argument woven throughout the thesis. First, it showed the government’s striking indifference towards the bureaucratic knowledge available from RSD to the extent that RAS managers were not involved at all and primarily worked in separate offices to where RSD took place. Although officially a government process, this was primarily only a

signature. DRA/RAS Managers and the wider Ministry, furthermore, had a destructive impact on RSD as the nominal takeover in 2014 and the decision to disband DRA in 2016, fundamentally undermined RSD operations as cases could be neither accepted or rejected.

The absence of RAS managers was however partly reinforced through UNHCR's control over operations, which did not actively encourage their involvement. UNHCR's control – the second line of argument - meant RAS RSD structures were almost completely reliant on UNHCR. UNHCR shaped the entire bureaucratic, technological and infrastructural environment in which RAS RSD took place from the offices and technology staff used to the standards staff adhered to. It was largely UNHCR RSD as it had always existed but with different initial interviewers.

There were also subtle attempts to undermine RAS' independence. The focus of capacity building had been disproportionately on hiring initial interviewers in order to address the backlog of cases which UNHCR was under pressure to reduce. Although faced by a wide range of practical challenges, the failure to significantly develop any long-term infrastructure for the RAS over a period of 4-5 years is worth querying. Some RAS staff said they felt that UNHCR was holding up the transfer and failing to push forward because of concerns that RAS would not meet UNHCR's protection standards.

The adoption of UNHCR's standards was justified as a way to instil the protection norms that UNHCR upheld in its own work and advocacy with governments globally. Although it was about restricting the perceived negative impact of DRA/RAS on RSD, it is worth noting that the protection benefits for refugees were minimal as the process remained almost exactly the same. The only possible benefit came about through refugees being given a government-issued refugee document, rather than one issued by UNHCR under its own mandate. The willingness of the government to fully implement the rights officially granted to refugees however seemed to remain the same. Interestingly however this aspect of the transfer came about purely because of the

government and was a reversal of the approach promoted by UNHCR which anticipated it being the last stage in a phased transfer process.

UNHCR's control was not however without the acquiescence of senior RAS staff; they agreed to the work plans that set out how the transfer would take place and thus the exercise of control over the RAS project staff. More broadly, the continued control of UNHCR suited the government's indifference. As with registration, RAS granted UNHCR control because it did not want to manage these aspects itself.

Staff incorporation into UNHCR was never however absolute. DRA/RAS officers' inferior financial remuneration and designation as inexperienced, separated and ostracized them from UNHCR. As project staff they were not fully incorporated in the government either and functioned as part of the disjuncture between these two groups of staff and ultimately fractured bureaucracy. Their experiences and frustrations were emblematic of the transfer itself - "lost" in an enclave between the indifference of one organisation and the ostracizing effect of another. Left frustrated by the failure of the transfer to achieve the promised career progression and job security, many of them left.

Although for most refugees RSD was the final stage in the process of accessing refugee status, for those who were found ineligible, the option of appeal potentially marked another step. Its importance in this process and as another area where UNHCR and RAS worked together on capacity building, I lastly discuss the Refugee Appeals Board, before the overall conclusion in Chapter 9.

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8.6 Capacity Building the Refugee Appeals Board

Following RSD, those who are found to be ineligible for refugee status potentially face being forcibly returned to their country of origin. The risks posed by a failure of due process mean that the option of appeal is central to the legal integrity of RSD (Goodwin-Gill & McAdam, 2007, pp. 533–537). When UNHCR carried out RSD, they offered an internal appeal mechanism. When RAS officially took over RSD in 2016, as discussed in Section 8.2, and it became a government process, UNHCR could no longer provide this. The government's Refugee Appeal Board (RAB), as set out in the 2006 Refugee Act, was not however functional. UNHCR described that they decided that cases should therefore not be rejected and remain pending until an appeals mechanism was available. UNHCR therefore engaged in capacity building RAB to address this crucial component of RSD. Since July 2016, when DRA took over RSD until the end of fieldwork in September 2018, RAB however was still not operational.

RAB provides another important example of the challenges the transfer and capacity building project faced. It encountered an inertia of bureaucratic delays, rooted in the government's disinterest or destructive interest in the process which meant necessary resources were not in place. RAB's development was also similarly influenced by UNHCR's expert guidance and enabled by its funding.

RAB was located in an office block in the centre of Nairobi and I visited it twice, with a ten-month interval. On both occasions the office was all set out with tables, chairs and a few computers. It had curtains – the style of which two separate individuals said had been a point of hot dispute. It seemed like an office apart from the notable lack of work and the just three project officers, one government officer and a driver - there to try and make the board functional.

UNHCR did not have an implementing partnership agreement with RAB, presumably because of the need for judicial independence. It had nonetheless paid for much of the furniture and equipment – demonstrated by its ubiquitous reference number stamped on the side the chairs, table, the fridge,

the microwave. It also carried out training of the board members of RAB, as they apparently had no familiarity with refugee issues – mirroring the training it did for RAS RSD officers. One RAB staff member said that because of this lack of knowledge and experience they were mixing the model suggested by UNHCR with elements of the Kenyan legal system to try and come up with something new.

RAB however struggled to become operational because of a lack of funding and commitment from the Ministry, closely mirroring RAS. One of the main issues was a lack of staff. The Department of Personnel Service Management (DPSM), the government agency responsible for the personnel structure of the civil service, had not yet created a permanent structure for RAB – as it had not for RAS. RAB therefore relied on project staff and seconded staff from elsewhere in the Ministry. Several seconded staff had however been moved out with the disbandment of DRA and only one had been replaced. RAB therefore did not have a CEO as it did not have the money to hire one. There was also no budget for the sitting allowances of the board. This itself required guidance from the Salaries and Remuneration Commission, another government body, to know how much they should be paid per sitting.

The 'rules of procedure' - which guided the day to day running of the board - had also become a sticking point. They had been finalised in November 2016 through a work 'retreat' with both UNHCR and the government, but they not been agreed and implemented - mirroring the challenges of implementing SOPs and a refugee policy, affecting other aspects of RAS. The rules of procedure had been sent to the Cabinet Secretary, the Head of the Ministry within which RAS sits, but he had suddenly died a few days later, apparently with little progress since.

RAB also faced further challenges because of the decision to disband DRA, like it had RAS RSD. The official documents needed for the appeal process, such as the rejection letter, had been finally authorised through the issuance of a government gazette notice very shortly before the central

government disbanded DRA (see Section 8.2.2). With the name change to RAS, new documents therefore needed to be gazetted but this had not yet happened. Without the disbandment, an officer commented that RAB might have been operational. However, because of this decision by the central government, it remained the work of a few project officers to try to establish the basic components of RAB and implement a legal mechanism to deport those found ineligible for refugee status – those whom the government publicly claims it wants to leave Kenya because they threaten national security.

9 Chapter Nine: Conclusion

The announcement by the Principal Secretary to disband DRA in May 2016 came as a shock to many of its own staff and others working in the sector in Kenya. Although the government somewhat reversed this decision a few months later, and opened RAS in its place, this disbandment was not a spur-of-the-moment decision or a momentary lapse in judgement. Instead, it was part of a much longer historical trajectory and a political landscape in which the Government of Kenya has consistently been resistant or indifferent to a bureaucratic model of managing refugee affairs. Registration and RSD are foundational to the international refugee regime: often interpreted not just as a policy or agenda promoted by an international organisation but as constitutive of refugee affairs as a whole. In this thesis, however, I have tracked the contestation and struggles that arise from of adopting or domesticating this model in Kenya. I have shown that resistance to it is far more than an issue of capacity and can reveal important wider themes about state power and its relationship between governments and development organisations.

9.1 Procedural Indifference and a Two-Speed Bureaucracy: When Donors and Governments Conjoin

At the heart of this thesis was a notion I described as 'procedural indifference,' which marked RAS' engagement in registration and RSD throughout the period of fieldwork. Indifference, I argued, fundamentally undermined how RAS functioned. Indifference meant registration happened but it did not work. It meant RSD took place, although not in a context that truly reflected the engagement of the Kenyan state, as was the ostensible intention, but rather in an environment entirely configured and managed by UNHCR.

Procedural indifference was evident across RAS, from the cog-like mechanised way in which registration was carried out, to the limited scope and length of rights that followed. To begin with, no individual officer was responsible for registering a single refugee and the determining moment of who was to be registered was continually delegated to the point that it dissipated. Despite the

enumerative purpose of registration, little information was captured from refugees and the forms they were asked to use indicated only the most minimal interest in the collection of information. Crucial data was not easily retrievable: the databases were only recently put online and remained unconnected between locations, and ink fingerprints were stored in disorganised piles in a cupboard. These infrastructural challenges also served to deny refugees on-going recognition. For example, individual telephone numbers could not be stored on the database and no address was taken, which indicated that the government did not intend to have any future contact with the refugee. The rights granted to refugees were also significantly curtailed as the asylum-seeker pass expired after six months and could not be renewed. The surprising element of this procedural indifference was the extent to which it contradicted the importance placed on national security in public statements by the government. These created the impression that registration and other forms of surveillance were robust, essential, would be securitised, but, in reality, registration was imprecise, incomplete, and did little to serve security purposes – not least because the reason for flight or other background information was not taken, and a security screening was not carried out.

The government's procedural indifference was also evident from their engagement in RSD. Senior RAS officers had very little contact with the project officers who carried out RSD and many remained based in other offices, even after project officers moved to the RAS Nairobi field office. This was partly because of the small number of senior RAS officials who were responsible for other issues and their lack of prior experience in RSD, but staff did not express any desire to address this, instead stating that 'RAS doesn't do RSD'. Furthermore, the Ministry had taken a destructive interest in RSD meant that, at the time of fieldwork, cases could not be accepted or rejected because of the decision to take on responsibility for RSD without a functioning appeals board and, later, to disband DRA.

The slow progress of the transfer, which had dragged on for around seven years, was therefore deliberate. A lot of time and money, in the end, was spent to deliberately achieve very little and

maintain the status quo. Refugees went to a different office to be registered but the procedures were exactly the same as they previously encountered in UNHCR's offices, although without having to register twice. Refugees could be interviewed by a RAS RSD officer in Kakuma, but they would not know until the officer introduced themselves. Registration and RSD, therefore, did little to serve the interests of either refugees or the state. This was not, however, an accident; nor was the periodic suspension of registration at times simply a deviation from the norm. Registration and RSD did not work or did not happen because the government had little interest in them working. Instead, they existed because of the normative and financial pressure exercised by donors.

Chapter 5 focused on this pressure from donors and the history of their engagement with DRA/RAS in detail. In this chapter I showed that even before the mass influx of refugees in the early 1990s, which is often described as a period of engagement by the Kenyan state in refugee affairs, UNHCR was financially involved in RSD procedures and decision-making. The passing of the 2006 Refugee Act saw the ostensive re-engagement of the government in the management of refugee affairs but, as content analysis of the three debates preceding the passing of the act revealed, MPs did not express their commitment to taking on the responsibility for refugee affairs or discuss the content of the bill. This provides explanatory reasons why the passing of the Act did not mark a turning point in the attitude of the government and the failure to implement crucial aspects of the Act, including the Refugee Appeals Board. The development of DRA only started with capacity building projects by DANIDA and UNHCR in 2011. The DANIDA project was crucial in establishing registration - not least because DANIDA did not have the institutional and normative constraints of UNHCR and instead was motivated by the underlying rationale that improved protection in Kenya through increased engagement by the government would decrease onward migration to Europe. The project however faced significant challenges and did not achieve many of the aims beyond establishing registration. Finances for staffing remained a problem but were resolved by UNHCR's, and later IOM's, decision to pay the wages of project staff, who made up most of the staff. UNHCR's capacity building of DRA/RAS expanded over time to include funding the

majority its budget and owning most of its office buildings and equipment. The development of DRA/RAS had therefore been significantly shaped by international donors, and much of its physical infrastructure had become contingent on donor funding.

Chapters 7 and 8 continued examining this trajectory to show the way in which donors continued to influence RAS. Drawing on Foucauldian notions of power, I revealed how UNHCR exercised a subtle, invisible and productive control over the RAS project staff. Indeed, during this period UNHCR took on the role of *de facto* managers of registration and RSD staff, despite them being officially managed by the government. UNHCR staff managed project staff on a daily basis and reconfigured office spaces in ways that gave them the ability to observe and examine the practices of these staff. They monitored their conduct, such as through reviewing their initial RSD interview or monitoring the registration data entered on the proGres database, and they engaged in substantial and often on-going training to modify behaviour and ensure adherence to expected standards. UNHCR drew on its vast corpus of publications to prescribe clear standards of conduct and behaviour against which its normalizing judgements were made. Project staff embraced the expertise and guidance offered by UNHCR staff and appreciated the order and 'modern' standards they had brought to the office. Although RAS RSD staff expressed frustration with UNHCR and resented their managerial role, they nonetheless approved of the standards and procedures UNHCR had taught them and asserted their desire for independent operations on the basis that they had learnt them.

Another means through which UNHCR exercised control over the RAS project staff was through the configuring effect of the proGres database it encouraged RAS to adopt. The exercise of control cannot be understood purely through discourses, ideas and social constructions as it should include its material components as well. This otherwise 'missing' component has an ontological significance as part of the assemblage of human and non-human actors that made up capacity building (Latour, 1992). The proGres database had been designed by UNHCR and therefore

contained ‘scripts’ that anticipated a particular type of user and thus worked to elicit particular forms of agency and subjectivity (Akrich, 1992; von Schnitzler, 2008). ProGres was particularly involved in configuring the RAS registration staff whose work came to revolve around the database. It ensured consistent and more accurate data was collected as well as encouraged more professional and rationalist conduct: the database demanded that staff sit at their desk throughout the day and complete a designated number of tasks. The use of biometric technology, as part of the database, also denied the agency of staff to subjectively or selectively enter registration information but instead relied on the objectivity that modern technology is widely seen to render.

Procedural indifference thus came about because of the government’s competing priorities between a long-held resistance towards the bureaucratic management of refugees, and a donor-created Secretariat established and funded to carry out just this. Procedural indifference was a way for the government to address pressure from donors to register refugees and obtain the financial incentives on offer, while also limiting the empowering rights registration would otherwise grant to refugees. Donors did not create procedural indifference but, rather, it was an outcome of the state’s attempt to reconcile its interests and outlooks with UNHCR’s. Procedural indifference therefore shows how ‘street-level’ bureaucracy can be *productive*: a place where divergent interests came to co-exist and the state was able to innovatively but subtly adapt to these competing demands (Lipsky, 1980).

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These competing agendas, along with procedural indifference, also produced what I termed a ‘two-speed bureaucracy’. UNHCR’s pressure and influence was managed by RAS by incorporating UNHCR’s activities as part of a parallel bureaucracy, rather than overhauling existing practices. It was the result of the restriction of UNHCR’s control to project staff, rather than senior RAS staff. Indeed, registration, RSD and the verification exercise all showed the separation between the manual government bureaucracy, based on ink fingerprints, and the more dynamic donor-influenced bureaucracy, run by young graduates using new technology. Senior RAS staff largely

did not use the proGres database as they remained in managerial roles or taking ink fingerprints, as demanded by the wider government's administrative infrastructure. Senior RAS staff also did not come under UNHCR's managerial purview, as part of their separated tasks or because they worked in different offices. The project staff, because of UNHCR's funding of their wages, were seen by RAS and UNHCR staff alike as part of the 'project' that UNHCR was capacity building. There was thus an acceptance that UNHCR could have a degree of control over these staff members. Government staff, on the other hand, were life-long civil servants who continued in the posts they had been appointed to by the government and fulfilled the demands of these posts which were separate from the roles given to project staff. The separation between project and government staff varied. For registration, the difference was slight, although it increased significantly after capacity building because of the demand to continue to take ink fingerprints. The separation however was always very stark for RSD, as government officers worked in different offices to the project staff.

Overall, the creation of a two-speed bureaucracy further shows the innovative ways in which competing agendas held by donors and its state partners can come to co-exist. This department was of course unique. And, yet, competing interests are common to many development projects because they encourage actions that might not otherwise have been taken and instigate a different way of doing things. It is not the case that competing agendas, when they cannot be reconciled, will necessarily lead to the breakdown or 'failure' of a project. Instead, where there are interests to make it work – in this case, primarily financial – competing agendas can adapt and coalesce: they find new and innovative ways of co-existing. How this happens and how it manifests itself will vary and deserves investigation. In the case explored here, it led to outcomes that were very different from the official aims. It produced a Secretariat that was procedurally indifferent to the bureaucratic information it was created and mandated to collect. A Secretariat that contained parallel and fractured activities. A Secretariat that had no permanent staff, did not have its own budget and only performed the tasks UNHCR funded it to do. Far from capacity building, donor engagement in many ways contributed to state weakness by creating a Secretariat that could not fully function.

9.2 Official Aims and Institutional Interests: Why development projects fail

The above section explored the strange things that development projects can produce. This has important implications for thinking about the institutional interests that shape development organisations' engagement in development projects and why they often do not achieve their official aims (Bierschenk & Olivier de Sardan, 2014; Mosse, 2011). This thesis has shown how UNHCR described its capacity building project as a technocratic exercise, premised on the perceived obvious deficiencies in how RAS carried out registration and its complete lack of RSD operations. In reality, however, capacity building was a guise to restrict the power of RAS and, ironically, it served to increase the reliance of RAS on UNHCR.

The project therefore did not achieve its official aims. This, however, did not happen because of reasons frequently outlined in the literature on development projects. It was not due to a 'policy-implementation gap' (Bierschenk & Olivier de Sardan, 2014, p. 50), the donor's failure to achieve true participation with the government (Crewe, 2014; Crook, 2010; Leonard, 2008), the government's lack of political buy-in to the project (Mosse, 2011, p. 6) or because donors were diverted by domestic political interests (Escobar, 1995). Nor did the project fail to achieve the official aims because of a failure to obtain a 'good' partnership. The project examined in this thesis, rather, was largely implemented willingly and as intended by both organisations. Although the partnership was in many ways unequal and negotiations were very tense at times, RAS largely supported the agreed components of the project. Instead, *the project did not achieve its official aims because the components and design of the project was not set up to do so and because the project suited the interests of RAS and UNHCR.*

As discussed throughout this thesis, RAS was indifferent to the official aim of the project: to take on responsibility for the bureaucratic management of refugee affairs. Nonetheless, it let the project go ahead. The government allowed the forms of control discussed above – it was content with

UNHCR's control over the project staff and let UNHCR adopt managerial roles and implement the use of its technology and infrastructure. This was because, as also discussed above, it was a means to appease the demands of donors and access the financial incentives they offered. While this funding was, officially at least, intended for use in the public sphere, senior RAS staff also personally benefited as they received *per diems* for attending training and salary 'top-ups'. Additionally, the government also did not have to commit any of its own resources to the project, only passively acquiesce to UNHCR's activities.

More significantly, RAS' indifference to the official aims was shared by UNHCR. The project, as it was designed and implemented, enabled UNHCR to resolve its own institutional tension; it enabled ostensive commitment to the transfer to be enacted, in order to appease internal pressures, while also seeing little substantive uptake by the government in practice, and thus concerns about how this could negatively impact refugee protection. This resolution was however an uneasy compromise to UNHCR's competing interests. It was uneasy because it depended on the government's continued indifference, and it was a compromise because it did not fully fulfil the demands of the transfer or UNHCR's desire to be fully in control. To the extent that any double bind can be resolved, UNHCR found possibly the most conducive outcome. The common notion that development projects often serve the interests of their donors, therefore, found even more pertinence here as it was primarily *about* UNHCR - it was the main beneficiary of its own project.

The project, therefore, ultimately suited both UNHCR and RAS. Neither wanted the transfer to be fully achieved, and both were appeased by its limited progress. The transfer was not fully achieved because neither organisation was fully committed to it and thus did not set up the project to achieve it. UNHCR configured the project from the beginning around instigating its control, giving it the official heading of capacity building.

Overall, this example shows an important and often unrecognised way in which development projects can fail to achieve their official aims. It also shows the complex interests at play, which are not always clearly visible in official documents but are visible only at the street-level. Existing accounts of UNHCR's institutional decision-making and practices have perhaps both too readily accepted UNHCR's account of events and not examined its actions with a sufficiently close-empirical lens. This thesis therefore also points to important methodological considerations, discussed next.

9.3 Methodological Reflections: The Practical Norms of Street-Level Bureaucracies

The starting point for this thesis was the limitations of rationalist explanations of how macro-level factors determine African state behaviour. It was motivated by the desire to contribute to a growing ethnographic literature that seeks a fine-grained empirical approach to the norms, practices and perspectives of state behaviour. This ethnographic approach has been used to understand asylum regimes in the West but not yet in Africa. The thesis was motivated by a desire to look beyond the public statements by politicians to see the state as it 'really' behaves (Olivier de Sardan, 2008). It has examined the unremarkable, quotidian and mundane actions of the state as containing complex and sometimes contradictory dynamics that fundamentally shape political and institutional decision-making. The thesis has been driven by an understanding the state *on its own terms*, rather than in reference to idealised Weberian and invariably Western categories and assumptions of how a state should function. It has sought to describe the practices, norms and emic perspectives that shape bureaucracies and the diverse forms of 'everyday governance' (Blundo & Le Meur, 2009).

The focus on the practical norms and everyday practices of bureaucrats required participant observation. Indeed, the detail of everyday actions are often so mundane and 'obvious' to those involved that they can be difficult to recount in an interview. Similarly, interviews provide limited space for the reflection required to identify and discuss the practical norms that silently guide behaviour. In this thesis I focused on participant observation but also drew on interviews to piece

together the wider political context to offices and other sites of participant observation. Where participant observation was not possible, because of time and access constraints, ethnographic interviews were used, which focused on everyday bureaucratic practices.

By focusing on bureaucrats at the 'street-level', this thesis has offered a set of original methodological orientations and insights into the topic of bureaucracies and asylum regimes. As the literature on bureaucracies makes clear, it is at the 'street level' that policies are implemented and enacted in practice. If we only focus on the actions and perspectives of bureaucrats at a managerial level, or at the production of top-level policy, we can miss how state practice is actually played out and exercised on the lives of citizens and non-citizens. Interviews with senior level government or UN bureaucrats, I found, exhibited a lack of awareness of the actions of junior staff members and stronger desire to preserve institutional narratives or institutional reputation – they therefore failed to illuminate how things actually operated in practice. The street-level in this study, in addition, was particularly important because managerial staff were often absent from registration processes and the project staff working at the street-level were in many ways the heart of the department. Although job titles reflected who held power over the department as a whole, RSD and registration were actually carried out by the junior project staff largely without managerial oversight. Bureaucracies should be approached without assumptions about who holds the power and authority and who shapes the practice, likely rooted in Weberian ideas about bureaucratic hierarchies, regarding where the heart of the action lies and who most significantly shapes a bureaucracy.

The study also shows the importance of studying not just street-level bureaucrats but also street-level infrastructures and procedures that exist beyond the actions of individual bureaucrats. The 'procedural indifference' discussed in this thesis largely existed beyond the purposive actions of individual bureaucrats. Research on bureaucracies therefore needs to look at the equipment, technology, and bureaucratic materiality that configures the behaviour of bureaucrats – not just how

these items are used or produced by bureaucrats. In viewing the registration bureaucracy as an infrastructure – one that is intended to facilitate the flow of information to the wider state – I showed how this infrastructure was in fact broken, meaning the information remained stuck in cabinets or inaccessible databases.

9.4 Theoretical Reflections: Rethinking Bureaucratic Knowledge and State Power

Procedural indifference, the creation of a two-speed bureaucracy and the ability of UNHCR to implement a project that enabled them to gain considerable control over the state, was because registration and RSD were not valued by the Kenyan state. Ultimately, therefore, this thesis critiques the importance placed on bureaucratic knowledge in theories of state power. The importance of bureaucratic knowledge to state power is exemplified by and rooted in the work of Scott, Torpey and Foucault. As Rose and Miller, drawing on Foucault, argue: 'government is the domain of cognition, calculation, experimentation, evaluation' and the modern state, in wanting to act upon its population, has engaged a wide range of institutions, from schools to hospitals, to gain knowledge, statistics, charts and graphs about the 'domain to be governed' (Rose & Miller, 1992, p. 175). Scott shows how this information tends to be simplified, abstracted and standardised in order to translate the messiness and complexity of realities into forms that bureaucrats can use. Only through this simplification can societies be rendered legible and the state able to 'see' (Scott, 1998). Torpey adds that to achieve the level of successful intervention Scott describes requires, not just administrative penetration, but 'embracing' the population. This relies on demarcating who belongs to the nation and who does not, through monopolisation of the legitimate means of movement (Torpey, 2000). Movement across borders therefore came to rely on a bureaucratic apparatus, principally the passport.

This thesis has shown that such theories do not recognise the contested and complex practices involved in trying to differentiate one person from another in state bureaucracies – especially at the 'street level'. In addition, such theories focus disproportionately on the particular form of state

development in Western Europe. This point was discussed in chapter four, which showed how the colonial state in Kenya developed with a weak administrative infrastructure, because of its focus on the extraction of resources and labour, rather than investment in public infrastructure. The *kipande* system, although sometimes described as a developed system of registration, was in fact primarily a method for regulating the work of migrant labourers. UNHCR understood the post-colonial legacies of this in terms of capacity, as an infrastructural deficit that could simply be addressed through providing that infrastructure, but such an understanding is highly simplistic. Instead, the legacies should be understood as reflecting a form of state development that relied on regulating domestic economic opportunities, as a gatekeeping activity, and not bureaucratic knowledge.

In addition, mainstream theories of bureaucratic knowledge and state power ignore how states can often be *resistant* to registration. This can occur because registration offers recipients legal empowerment and recognition, which – particularly in contexts of weak administrative infrastructures – offers little benefit to the state. This issue was also explored in chapter four, which examined how a desire to exclude refugees was closely related to the treatment of Kenyan-Somalis. legal exclusion, I showed, was enacted in Kenya through the government's systematic suspension of registration and as registration denied meaningful, on-going recognition. Although legally distinct, the category of citizen and refugee in this instance has always been blurred. The desire to exclude Kenyan-Somalis can be illuminated by the governance of the Northern Frontier Province, in which Kenyan-Somalis predominantly live, which under colonial rule was treated as a buffer zone for the central highlands of Kenya. This constructed the area as at the geo-political periphery and was reinforced at independence by responses to a campaign by some of the region's inhabitants to succeed to a Greater Somalia and the ensuing *Shifta* War, later utilised to construct Somalis as violent and disloyal to the state. The area continued to be governed through incidents of collective violence and enforced economic and political marginalisation. This construction, by conflation, deeply shaped the treatment of Somali refugees but also refugees in general. The result was the

legal exclusion of Kenyan-Somalis through discriminatory practices, which restricted access to identity cards and, similarly, refugees' ability to register. The level of rights and assistance available from the government following registration and RSD was low, and denying registration formed one part of a broader set of actions, which sought to exclude and marginalise refugees.

Overall, acknowledging the legal recognition that registration can offer refugees sheds light on why states, resistant to hosting refugees, might choose not to register them. Current understandings of state power, reinforced through state security practices especially in the West, make it easy to assume that states will always pursue bureaucratic surveillance and monitoring of refugees. In Kenya, in contrast, it was politically prudent to resist legal recognition at the expense of bureaucratic surveillance. Ideas about bureaucratic knowledge therefore need to recognise the trade off at the heart of registration and thus that at times it might offer more to refugees than to states. Kenya's colonial past is therefore crucial for understanding refugee registration today.

There are, however, some differences in the picture today. The fact registration happens at all, of course, is a divergence from the past. Indeed, state surveillance *is* increasing and there is important research in its nascent stage about how this increase is taking place in Africa (Donovan et al., 2016). The account of registration provided in this thesis however shows that the increase in surveillance is happening *unevenly* and in ways that often replicate historical dynamics. Middle-class Kenyans, for example, are increasingly caught in the state' administrative gaze and can access driving license and passport to prove their identity (Nyabola, 2014). Refugees however have a very different experience. Refugees specifically face exclusion from the state's bureaucratic-surveillance infrastructure, justified through constructions of geography and ethnicity. Examination of state surveillance and its uses of bureaucratic knowledge must therefore be attentive to how different groups are treated, including citizens and non-citizens. Importantly, this thesis has shown that a fine-grain empirical approach is needed to show the subtle ways in which the differential treatment of individuals or groups in a society is realised. Although refugees can simply be excluded from registration – when it was suspended – it was more often through a form of registration that denied

on-going recognition. Other registration exercises, in other countries across post-colonial Africa, may well disguise forms of indifference and resistance that are not visible at the surface in a similar manner to the Kenyan case. Indeed, in an age when surveillance is increasing, we must be attentive to exactly *how* this is happening in order to understand the often-subtle ways in which certain groups are excluded or adversely incorporated. Such omissions are rarely bureaucratic oversights – as they can seem on first appearance – but the product of entrenched political configurations that (re)enforce graduated forms of recognition.

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The theoretical contribution made in this thesis, therefore, demonstrates the importance of situating topics related to refugees in a much wider political and historical landscape, primarily through bringing Refugee Studies into conversation with African Studies. Although refugee and migratory issues figure on the landscape of African Studies, the reverse is not achieved to the same extent. The study of refugee affairs – perhaps due to its thematic, rather than disciplinary roots – tends to focus on phenomena directly related to refugees and can at times neglect insights that are available by looking more widely. In particular, this thesis has drawn on insights from two areas of broader literature. Firstly, the thesis has examined refugee registration through a lens that includes civil registration: despite the vast literature on RSD within Refugee Studies, none, to my knowledge, has situated it within the wider literature on the politics of registration and recognition. Secondly, this thesis has looked historically to the political configurations of the colonial state and its impact on the state's actions today. There are other topics, particularly around the rule of law, devolved government and policing that deeply effect the treatment of refugees in Kenya but are shaped by dynamics largely unrelated to refugees specifically. Literature and debates on these topics could, in the future, be brought together very productively with emerging debates in Refugee Studies.

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In conclusion, registration systems, like the one explored here, that continue to be developed and expanded in Africa, may not be the pursuit of surveillance that they appear to be. Donors and

governments alike ascribe the challenges that arise from this pursuit as due to a lack of capacity – to technocratic issues that can be remedied with more assistance. This thesis draws on insights from African Studies to point to a different problem - a historically embedded state set-up that does not always value bureaucratic knowledge. More accurate surveillance equipment simply cannot reorientate a state whose development did not rely on the extraction of information from its citizens and functioned, until very recently, without it. Theoretical insights developed in this thesis show that registration and RSD contain a balance of incentives between rights and recognition, which benefit refugees, on the one hand, and bureaucratic knowledge, which benefit the state, on the other. Which way the scale tips depends on the political landscape and group being registered. Theories about the importance of bureaucratic knowledge, drawing on the experience of the state in the West and embedded in the international refugee regime, therefore need to be rethought in light of the political and historical contingency they contain.

Complicating the interests at play is the financial incentives offered by development actors. Financial incentives can mean otherwise competing agendas are able to co-exist and facilitate a project but without a shared aim. This thesis has shown the new and innovative ways in which two different conceptions of how to manage refugee affairs in Kenya was able to coalesce alongside each other through changes that were fractured and piece-meal. More unique to this project was that the official aim of increased surveillance was not even shared by the development agency. This highlights the complex institutional interests that shape development projects and the continued need for greater 'studying up' of international actors, including UNHCR. The result was a transfer process that was delayed, not by implementation, but by design – introducing new ways to consider how development projects fail to achieve their official aims. Ultimately, the configuration of institutional interests resulted in a form of so-called capacity building that created a Secretariat that was procedurally indifferent to the task at hand and could not fully function, thus actually contributing to state weakness.

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