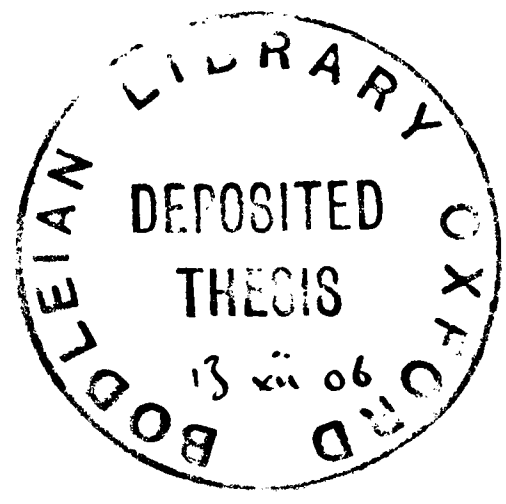
REFUGEES AND THE STATE IN KENYA: THE POLITICS OF IDENTITY, RIGHTS AND DISPLACEMENT

Thesis submitted in partial fulfilment of the requirements for the Degree of Doctor of Philosophy

by

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Authorship Declaration

I hereby certify that this thesis is the result of my own work except where otherwise indicated and due acknowledgement is given.

SIGNED



DATE

20/07/06.

ABSTRACT

The thesis provides an empirical basis for understanding state behaviour towards refugees by focusing on refugees in Kakuma Camp, Kenya. It compares and contrasts the experiences of encamped refugees with the experiences of Kenyans outside the camp, stressing the need to understand the socio-political context within which displacement and protection occurs. The study describes the processes of state formation in Kenya and the evolution of particular understandings of citizenship and membership. It argues that the state in Africa has, inherent within its foundations, exclusionary and discriminatory practices, which affect both citizens and non-citizens. These result in multiple sites of inclusion and exclusion based on membership of a variety of shifting groups, categories and networks. This observation suggests the need to re-evaluate our understanding of the dominant analytical concepts of 'state' as 'protector' and 'citizen' as 'insider' thus far used to address the issue of entitlement to rights, around which the refugee regime has been constructed. The thesis also underscores the importance of breaking out of the 'territorial trap', calling attention to the growing importance of international and transnational actors in defining the actions of the state and the direction of domestic policy. It points out that as refugees are progressively excluded from the realm of the nation-state, they increasingly turn to the international community, represented by international humanitarian actors, for recognition. This contributes to the marginalisation of the state in the management of refugee affairs, which has a negative impact both on the protection of refugee rights and the credibility of the state in the eyes of its citizens. In response to this development, the thesis questions the legitimacy and accountability of international humanitarian actors and emphasises the importance of bringing the state back into the centre of the refugee protection regime.

FOR ANNA

Mother, teacher, friend, inspiration

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I would like to begin, naturally, by thanking my family. I am eternally grateful to my parents for teaching me, through the example of their lives, to think outside the box, to challenge stereotypes, to always question injustice. Thank you for your unconditional support, for your infinite patience, for always believing in me, for providing me with the platform from which to jump beyond myself. My sister and dearest friend, Rose, gave me a home away from home and saw me through the growing years. I am extremely thankful to her for her grace and kindness and for her wise counsel. And to my niece, Elena, who reminds me every day how important it is to keep asking the simple questions.

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LIST OF ACRONYMS

APHRC	African Population and Health Research Centre
CAR	Central African Republic
CBS	Central Bureau of Statistics
COP	Country Operations Plan
DAR	Development Assistance for Refugees
DC	District Commissioner
DFID	Department for International Development
DLI	Development through Local Integration
DO	District Officer
EAC	East African Community
FGM	Female Genital Mutilation
GOK	Government of Kenya
HDI	Human Development Index
HDR	Human Development Report
HRW	Human Rights Watch
ICARA	International Conference on Assistance to Refugees in Africa
ICJ	International Commission of Jurists
IDPs	Internally displaced persons
IOM	International Organisation for Migration
IP	Implementing Partner
IRC	International Rescue Committee
JRS	Jesuit Refugee Services
KANU	Kenya African National Union
KAR	Kenya Army Reservists
KAR	Kings African Rifles
KC	'Kenya Cowboy' (slang term referring to descendents of Kenya's white settler population)
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Education
KPR	Kenya Police Reservists
LNC	Local Native Councils

LWF	Lutheran World Federation
MOU	Memorandum of Understanding
NARC	National Rainbow Coalition
NIEO	New International Economic Order
NFD	Northern Frontier District
NHIF	National Hospital Insurance Fund
NGOs	Non-governmental organisations
OAU	Organisation of African Unity
OIOS	Office of Internal Oversight Services
ORS	Oral Rehydration Salts
PC	Provincial Commissioner
PRRO	Protracted Relief and Recovery Operation
RCK	Refugee Consortium of Kenya
SAPs	Structural Adjustment Programmes
SGBV	Sexual and gender-based violence
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children Fund
UNHCR	United Nations High Commissioner for Refugees
US	United States
WFP	World Food Programme
WVK	World Vision Kenya

GLOSSARY OF TERMS

boda boda	bicycle-taxi
bwana kubwa	Kiswahili word meaning 'big man' referring to individuals perceived as powerful, prominent or rich
chai	Kiswahili word, literally meaning 'tea' used as euphemism when requesting a bribe, for example, 'can you buy me some tea' or 'I have not had any tea today' implying that the speaker would like some money (to 'buy the tea')
kati kati	Kiswahili word literally translated as 'in the middle' used by refugees to refer to the one meal they eat in the middle of the day
kawaja	Arabic word meaning 'white' used by Sudanese communities to refer to 'white person', foreigner or outsider
mabati	Kiswahili word for tin used as roofing material
makuti	Kiswahili word for woven, flax-like material used as roofing material
Mungiki	Name of a predominantly Kikuyu fundamentalist sect with a religious political and cultural agenda, derived from Kikuyu root word meaning 'masses' or 'people' referring to
mwananchi	Kiswahili word meaning 'common man' or citizen
mzungu	Kiswahili word meaning 'white person'

ngidekesiney ka akuj	Turkana phrase referring to illnesses believed to be caused by God
ngidekesiney ka ekipalan	Turkana phrase referring to illnesses believed to be caused by witchcraft
shifta	Kiswahili word meaning 'bandit' apparently deriving from the English word 'shifter' and originally used by English colonial authorities to refer to members of nomadic Somali tribes they found difficult to contain
toa kitu kidogo	Kiswahili phrase literally translated as 'give something small', commonly used to request a bribe

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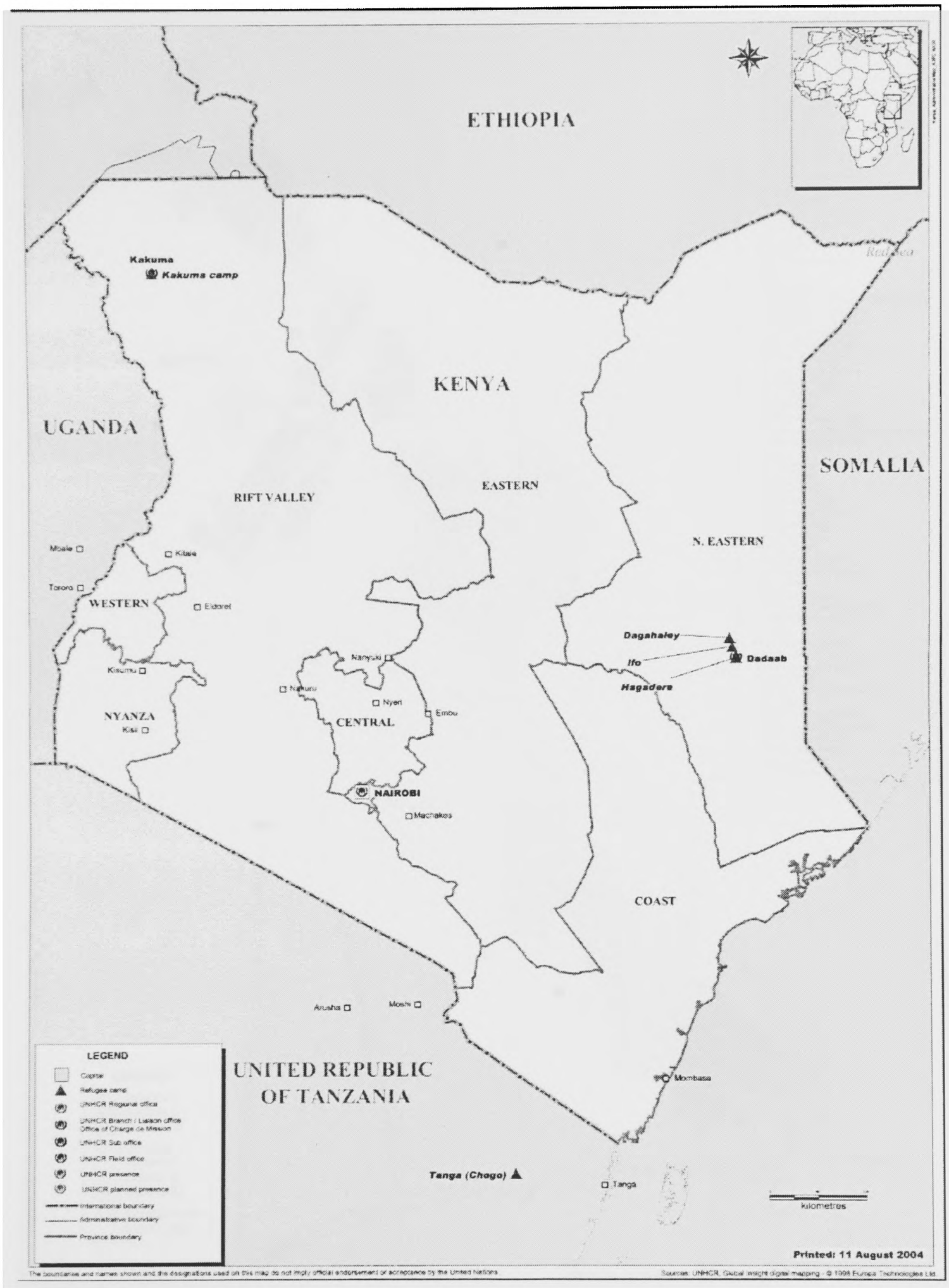


Figure 1: Administrative Map of Kenya 2004 Showing Location of Refugee Camps

Source: United Nations High Commissioner for Refugees

Kakuma Refugee Camp Overview

Map As of June 2002

UNHCR Regional Spatial Analysis Lab (RSAL): Nairobi, Kenya

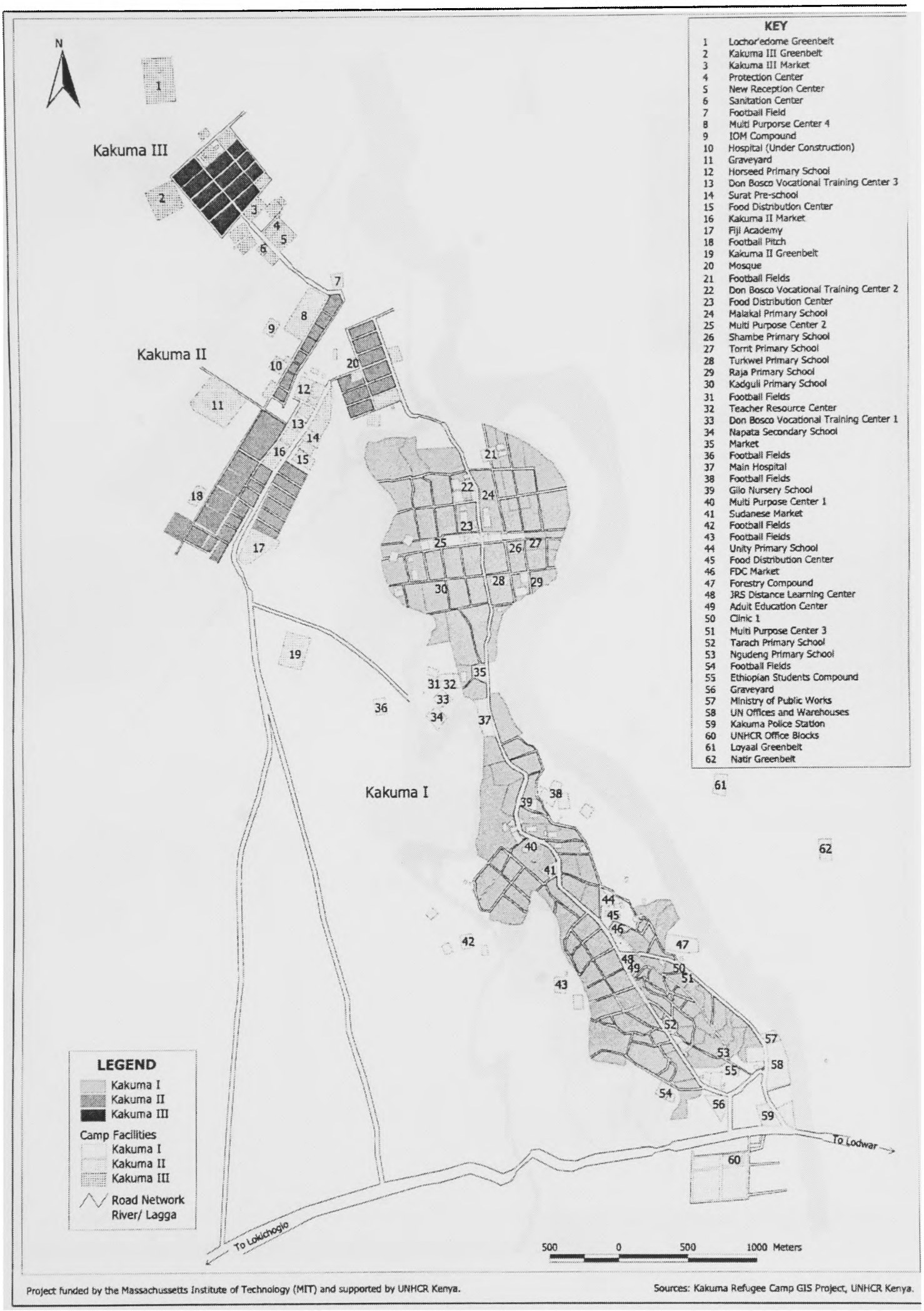


Figure 2: Kakuma Refugee Camp Overview

Source: LWF/Kakuma Refugee Camp GIS Project, UNHCR, Kenya

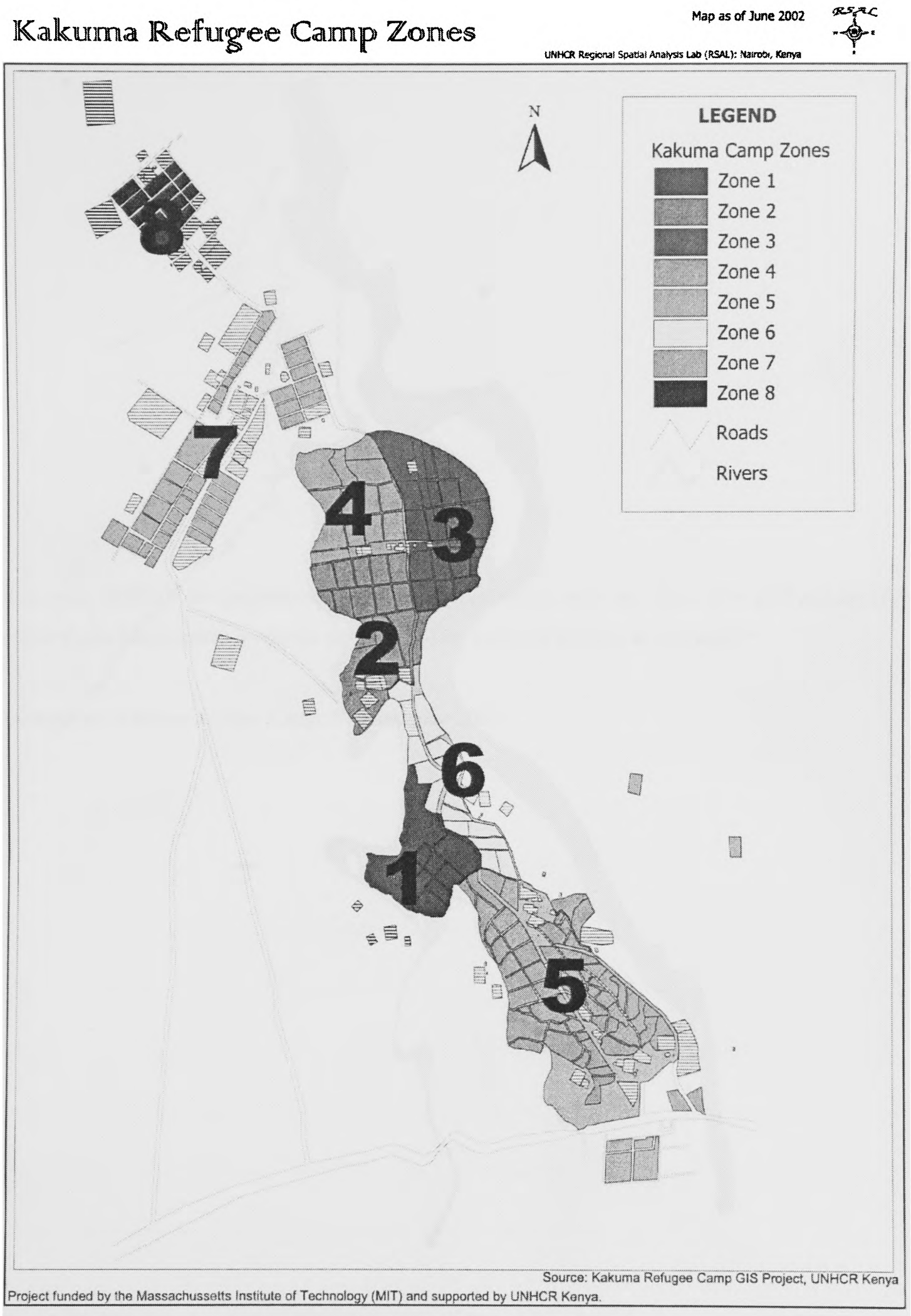


Figure 3: Kakuma Refugee Camp Zones

Source: LWF/Kakuma Refugee Camp GIS Project, UNHCR Kenya

'It is very difficult to understand me if you have never seen my face. It is difficult to take action if you have never received my complaint. You will always let me suffer'

Anonymous, Kakuma Refugee Camp, 07 November 2002

CHAPTER ONE

FIMBO YA MBALI HAIUWI NYOKA[1]

THE CHANGING BOUNDARIES OF REFUGEE PROTECTION IN KENYA

The current global population of over 50 million refugees and displaced persons represents a figure approaching one per cent of the world's total population. In the past few decades, the growth of global refugee numbers has established an increasingly high profile for the subject of forced migration within political and public debate. Today, the issue of asylum, particularly in the states of Western Europe, North America and Australia, is a fundamental political concern on which these governments are increasingly focusing much of their attention.

The plight of refugees became acute in the post World War II period, when the political system of nation states first became extended globally. During this period, states were assigned the role of protectors of rights, but also that of exclusive protectors of citizens. The main shortcoming of the aforementioned model, however, (one that this thesis hopes to address) is that it places individual freedoms and rights on an abstract pedestal, and *forgets that they are exercised within a historical context by specific states,* which may themselves be sources of human insecurity (Adelman 1999: 103, emphasis added).

[1] The literal translation of this Kiswahili proverb is 'A distant stick does not kill a snake'. The meaning is 'we have to look to our immediate surroundings for solutions to a problem before looking further afield' or 'we should try to help ourselves with what we have at home before we look to outsiders for help'.

For most of the 1950s, the refugee problem assumed an 'East-West dimension', centred on the ideological opposition that existed between the socialist and capitalist systems (Salomon 1990). During this period, the 1951 Convention Relating to the Status of Refugees was generously applied, primarily as a weapon of psychological warfare to encourage the flight of so-called ideological refugees from East to West, emphasising the contrast between the 'oppressive' East and the 'free and democratic' West (Loescher 1993). By the beginning of the 1960s, however, the attention of the international refugee regime began to move from Europe to Africa and Asia, as anti-colonial struggles and post-independence conflicts began to generate large numbers of refugees (Zolberg et al 1989).

The number of refugees reached a world peak in Europe in 1990, with the subsequent demise of the Cold War leading to a reduction in the numbers of those seeking refuge on that continent. In the Middle East, the number of refugees began to decline in the same period. Similar trends were exhibited in South and Central America, with the growth of more democratic systems of government, and in Asia, with the exception of a few serious trouble spots like Sri Lanka and Myanmar (Adelman 1999: 101).

However, in contrast to other regions of the world, where refugee numbers were declining, the problem in Africa showed no signs of dissipation. In round figures, the refugee flows in Africa of the 1960s were of a magnitude of tens of thousands of persons. By the 1970s the volumes had risen to hundreds of thousands, and since the 1980s, the numbers have multiplied to literally millions (Westin 1999: 27). In its 1999 survey, Human Rights Watch (HRW) reported that 'of the top ten refugee producers in the world, five were African: Burundi, Eritrea, Sierra Leone, Somalia and Sudan'.

The claim of refugees to protection is enshrined in the 1948 Universal Declaration of Human Rights[2], which states that 'everyone has the right to seek and enjoy in other countries asylum from prosecution.' The 1951 Geneva Convention Relating to the Status of Refugees further expands the rights of the refugee and guarantees treatment in the country of asylum equal with that of nationals in regard to religious freedom, acquisition of property, rights of association, and access to the courts and public education.

Unfortunately, the current refugee regime no longer appears to meet the interests of those to whom it applies (Goodwin-Gill 1999). Increasingly, this has resulted in questions being raised about the adequacy of the 1951 Convention as the 'cornerstone' and 'foundation' of the international refugee system (Millbank 2000). Questions have also been raised about the changing role of the Office of the United Nations High Commissioner for Refugees, which, it is argued, has severely compromised its ability to protect refugees, largely as a result of its growing engagement in highly political and interventionist work (Goodwin-Gill 1999; Twomey and Nicholson 1999; Barutciski 2002, Loescher 2001).

The international refugee regime, it appears, is also being undermined by the actions of many of the world's states, particularly those in the West, who appear to see strict migration control as a means to express and assert their sovereignty (Collinson 1998). Behind the humanitarian rhetoric, it appears that the policy of many, if not all, governments today is not to afford welcome to asylum seekers and refugees (Zetter

[2] The Universal Declaration of Human Rights (UDHR) is an example of non-legally binding international instrument, also referred to in international legal terms ' soft law'. Soft law is intended to mould conduct on the international scene and may be transformed into hard law – subsequent state practice may be such to change the status of the soft law or the soft law may ultimately result in a hard law treaty being concluded. For example, the UDHR was a statement of intent but led to the promulgation of the 1966 Covenant of Civil, Political and Economic Rights and the 1966 Covenant on Economic, Social and Cultural Rights which are legally binding for all signatory parties.

1999:66). This is evidenced by the fact that in recent years, many Western states that subscribe to the international legal regime for the protection of refugees have undertaken radical changes through both legislative and inter-state agreements, which have resulted in restrictions on access to asylum and the protection of refugees (Gorlick 2000: 2).

Similar shifts are discernible on the African[3] continent, where many states also appear to have become less committed to asylum. Asylum seekers are often rejected at borders, and those who manage to enter and remain in host countries find that their physical security, dignity and material safety cannot be guaranteed (Rutinwa 1999). Failing permanent solutions, many refugees end up in camps set up by the UNHCR for long periods of time. Once intended as a temporary solution for refugees seeking immediate safety and basic material assistance, these camps are increasingly becoming a permanent fixture (Hyndman 1999: 107).

International responses to human displacement in the 1990s and beyond can be characterised as increasingly politicised, with an added emphasis on 'managing migration'. Predominantly, in current literature[4], the roots of the politicisation of 'the refugee', and concomitant restrictionist policies of states, are often traced to the primacy of the liberal democratic state system, wherein the refugee, by virtue of the anomaly of not belonging to a specific territory, is seen to highlight contradictions within the nation-state system.

---

[3] The term 'Africa' is used in the context of this paper to refer to the countries of sub-Saharan Africa.
[4] See for example the works of Aristide Zolberg (1983), Claudena Skran (1995), Nevzat Soguk (1999) and Rogers Brubaker (1992) for in-depth analyses of the position of refugees vis-à-vis state and citizen.

According to some proponents of this view,

> The twentieth century became the century of refugees not because it was extraordinary in forcing people to flee but because of the division of the globe into nation-states in which states were assigned the role of protectors of rights, but also that of exclusive protectors of their own citizens, including the role of gatekeeper to determine who could become a new citizen (Adelman 1999: 90).

Refugees, consequently, are seen to represent both a threat to, and an opportunity for, statecraft (Soguk 1999). On the one hand, they are a threat because they highlight the failure of individual governments to protect their citizens and because they challenge the assumption that all individuals belong to a territory defined as 'the nation-state'. After all, the very idea of the refugee is predicated on a conception of entrance into a territorially bounded entity. As a consequence, it has been suggested that refugees are an indication that ' the sovereignty of the nation state itself - the entity to which the language of citizenship refers, and within which the claims of citizenship, community and participation are made - is being eroded and challenged' (Held 1994:24).[5] On the other hand, refugees represent an opportunity for statecraft, insofar as invoking the category of 'refugee' reinforces national identities by emphasizing the dichotomy between the citizen as 'insider' and the refugee as 'outsider'.

[5] Citizenship and rights are two concepts once considered cornerstones of the nation state. The concept of rights once acted to legitimate the nation-state, but rights were always 'construed nationally', in the context of a country with boundaries, with a 'people' or 'nation' or 'citizens' within those boundaries (Jacobson 1996: 14-15). However, in recent times, it has been posited, the distinction between citizen and non-citizen has been exceedingly blurred (Soysal 1994) and any individual who is in a country is now entitled to the full protection of the law.

The portrayal of the refugee as a threat, as well as the constant differentiation between the 'inside' and the 'outside', between 'us' and the 'other', has contributed to high levels of intolerance towards non-citizens, including refugees. And, as Gibney (2001: 2) argues, such increasingly hostile public attitudes towards refugees, as well as the dynamics of electoral politics, have significantly contributed to the rise of restrictive policies by Western governments over the last fifteen years.

However, although compelling, most arguments relating to the 'crisis of protection' and the evolution of asylum policy have been fashioned largely by the European experience (Westin 1999: 31). Models derived from the Western experience continue to be applied to the African continent, in spite of the fact that refugee situations in sub-Saharan Africa differ markedly from those in Europe in many respects. Meanwhile, the policies and practices of African states in relation to refugees have rarely been subjected to rigorous research (Kibreab 1991: 5). A more in-depth appraisal of the structural and institutional forces that have shaped current attitudes to refugees on the African continent is therefore necessary in order to understand the development of refugee policy in Africa vis-à-vis the West.[6]

Today, the majority of refugees live in exile for years, with no immediate prospect of finding a durable solution to their plight. While they might not face immediate danger, many of these refugees find that their basic rights and essential economic, social and psychological needs remain unfulfilled for the duration of their exile. In spite of the protracted nature of refugee situations, pointing to the need for the development of long-term solutions, recent trends in the protection of refugees

[6] For the purposes of this paper, the terms West/North/European are used interchangeably to refer to the countries of the Euro-Atlantic core.

indicate a global shift from long-term welfare to transient, day-to-day sustenance (Chaulia 2003: 165). These trends are reflected in the policy of the Kenyan state towards refugees[7], on which this thesis will focus, which is characterised by:

- The maintenance of large refugee camps in remote areas, close to refugees' countries of origin;
- A determination to resist the integration of refugees into the economic and social life of the country;
- An assumption that, pending their repatriation, responsibility for refugees will be assumed by UNHCR and other humanitarian agencies.

This thesis seeks to understand how and why the current refugee regime in Kenya evolved from what has been described as a liberal, open door policy in the first decade of independence, in which the Kenyan state played an active role in the refugee status determination process, to a restrictive policy centred on the principle of encampment and its attendant notion of *prima facie*[8] refugee status. The thesis also questions the implications of this evolution on the formulation of refugee policy in Kenya.

Kibreab (1991) argues that the overriding concern of African governments in the formulation of refugee policy is to minimise costs and maximise benefits to themselves and their citizens. For this reason, he says, African governments prefer to

---

[7] Kenya has been chosen as a case study because it is in the unenviable position of sharing its borders with no fewer than four nations, Sudan, Somalia, Ethiopia and Uganda, all of which have generated sufficient internal conflict to produce a consistent flow of refugees into the country. Primary research with refugees was conducted in Kakuma Refugee Camp, in the north west of Kenya. Kakuma has existed since 1992 and is home to approximately 80,000 refugees, mostly of Sudanese origin, but also incorporating a substantial Somali population and some Ethiopians, Ugandans, Congolese, Rwandans and Burundians.

[8] In 1961, the United Nations (UN General Assembly Resolution 1673) gave the UNHCR authority to assist both 'refugees within his mandate and those from whom he extends his good offices' This measure allowed UNHCR to consider Africans (who only had to cross the border and prove their nationality, as opposed to prove individual persecution) as *prima facie* eligible for assistance, without accusing any of the European colonial powers or newly independent states of persecution.

place refugees into organised settlements where they do not burden the local infrastructure and their needs can be met by international donor agencies. Other factors influencing refugee policy formation have been identified as the costs and benefits of accepting international assistance, relations with the sending country, political calculations about the local community's absorption capacity and national security considerations (Jacobsen 1996: 655).

Although I acknowledge the importance of these factors, my argument is based on the assumption that policy responses to the issue of immigration (of which refugees constitute one component) are shaped and sustained by interpretations of the concept of state sovereignty and accompanying notions of territoriality, citizenship and rights (Reitzes 1997: 4). The thesis will, consequently, primarily focus on a discussion of the changing face of asylum in Kenya with a specific emphasis on the link between post-colonial state development and the policy making process. In so doing, I hope to expose the link between the foundational logic of the existing political order and attitudes towards refugees.

In order to understand recent responses of host countries to mass displacements of people, it is necessary to examine and assess the structures of inclusion and exclusion erected by the state in relation to both citizens and non-citizens. A focus on refugees, and their position in the host polity vis-à-vis citizens, highlights the relationship between identity and entitlement to rights, especially in states where rights and obligations have not been fully 'nationalised'.

The principal hypothesis of my study is twofold. First, the state in Africa has, inherent within its foundations, exclusionary and discriminatory practices, which

affect both citizens and non-citizens. This has resulted in multiple 'sites' of inclusion and exclusion for both citizens and refugees based on membership of a variety of shifting groups, categories and networks. It is, therefore, necessary to re-evaluate the dominant analytical concepts of 'state' and 'citizen', which have thus far been used to address the issue of entitlement to rights around which the refugee regime has been constructed.

Second, the changing boundaries of citizenship, and the political identity of the state, challenge existing concepts of distributive justice which assume the existence of a community, defined as the state, within which rights are held and goods shared (Walzer 1983). In fact, they point towards the growth of societies that exist within and beyond state borders (Soysal 1994), which compromise the authority of the state and highlight the need to question the utility and/or validity of a state-centric approach to refugee protection.

The argument of the thesis questions the Weberian understanding of the modern nation-state's territorial and functional foundations. It stresses the importance of breaking out of the 'territorial trap' (Agnew 1994), that is, the belief that sovereignty and political processes are inherently vested in a single administrative body overseeing a bounded territory. In so doing it highlights contemporary forms of human organisation and demonstrates the increasing importance of international and transnational actors in defining the actions of the state and the direction of domestic policy. (Landau 2003: 24).

It also questions the assumption that modern states define their citizens positively, that is, as 'insiders' or 'members' of the state, and non-citizens negatively and

residually, that is, as 'outsiders', excluded not because of what they are but because of what they are not (Brubaker 1992: 29). In the post-war era, citizenship has undergone a profound change, through which the two central components of citizenship – identity and rights – are increasingly decoupled. Rights that were once associated with belonging in a national community have become increasingly abstract, and are often defined and legitimated at a transnational level (Soysal 1996: 18).

It has been argued that, in Western/European/liberal democratic states, refugees have felt the implications of the recent 'rights revolution' more slowly and with much less force than permanent residents and citizens. Lacking communal ties, they have required, in contrast to permanent residents, 'a triumph of the abstract moral over the concrete communitarian obligations' (Joppke 1998: 134). Thus, they have had to claim rights as individuals on the basis of identification with a 'universal personhood' rather than as rights-bearing members of a particular state.

I will argue that refugees in protracted camp situations in the African context also increasingly claim their rights on the basis of identification with a universal personhood. However, they also portray themselves as rights-bearing members of a particular community – the community of the camp. As the time spent in camps grows ever longer, the camp ceases to be a provisional space, a place of transit. What was supposed to be an exception becomes routine within an organisation of space that becomes permanent. In these human concentrations, with extraterritorial status, veritable 'imaginary nations' emerge (Mbembe 2000: 270).

In the transnational community of the camp, the gap between the practical reality of membership based rights and their universalistic mode of justification provides a foothold for human rights groups and other non-governmental organisations to challenge the state's arbitrary treatment of asylum seekers (Gibney 2001: 17). It is interesting to note that in Kenya, this gap also provides an opportunity for citizens to re-assess and strengthen their position in the polity. Citizens, as exemplified by the host community, the Turkana, are increasingly exhibiting the perception that legal and administrative responsibilities derive from humanitarian agencies like UNHCR rather than the state.

Such developments, I argue, underscore the need for a conceptual exploration of the non-state sphere as a possible alternative or support to the African state. In the extraterritorial sphere of the refugee camp, lies the possibility for a change in the balance of power between the contemporary state and society. The question that remains to be answered is whether this space will create new channels of empowerment and democratisation, or simply lead to novel forms of control by dominant classes or the state, or both (Doornbos 1990: 197-198).

Background to the Status of Refugees in Kenya

The areas on the African continent hardest hit by armed conflict, which have tended to generate the largest numbers of refugees, have generally been located in the eastern and southern parts of Africa, with the Great Lakes region being affected the most severely of all (Westin 1999: 24). With this in mind, the study has been located in Kenya, which presently hosts significant refugee populations originating from the

various countries in the region which have experienced, or are currently experiencing, some level of generalized conflict.[9]

Kenya has been signatory to the 1951 Convention and the 1967 Protocol related to the Status of Refugees since May 1966 and November 1981 respectively. It is also signatory to the OAU Convention on Refugees and has incorporated provisions of the Universal Declaration of Human Rights into domestic legislature.[10] Despite the longstanding presence of refugees in Kenya, however, the country has no legislation specifically pertaining to refugees, although a Refugee Bill has been tabled before parliament.

The Kenya government does not offer permanent refugee status. When over 400,000 refugees fleeing civil strife and drought arrived from the neighbouring countries of Somalia, Sudan, Ethiopia and Uganda in 1991, the government suspended the process by which it ruled on applications for refugee status or asylum. Since then a handful of affluent individuals have effectively purchased 'refugee status' but, for all practical purposes, an official asylum application process has ceased to exist and the state favours a policy of encampment.[11] In September of 1998 the government agreed to meet with the UNHCR to work out a procedure for officially documenting refugees and asylum seekers. However, the details of implementing this agreement are yet to be established.

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[9] These countries include Somalia, Sudan, Ethiopia, Uganda, the Democratic Republic of Congo (DRC), Burundi and Rwanda.
[10] See Appendix Four for a list of international and domestic legal instruments relevant to the protection of refugees in Kenya
[11] By December 1992, at the peak of the refugee emergency, the government had established fifteen camps including Habasweine, Rhamu, Liboi, Mandera, Banessa, El Wak, Walda, Ifo, Hagadera, Dagahaley, Swaleh Nguru, Utange, Marafa, Hatimy, Jomvu and Kakuma. However many of these camps were disbanded and consolidated with time, leaving Kakuma and Dadaab (comprising Ifo, Hagadera and Dagahaley).

Currently, forced migrants are considered *prima facie* refugees, based on group determination procedures, and granted temporary protection with the understanding that they will reside in one of two designated refugee camps, Kakuma in the northwest of the country, and Dadaab, in the northeast.[12] Kakuma Camp, where my fieldwork was carried out, was established in July 1992. It is located in north-western Kenya's Turkana District, Rift Valley Province,[13] in a border area that has always been insecure and weakly governed, characterised by banditry, cattle rustling and violent clashes between the Kenyan army and local bandits. However, while hundreds of thousands of nationals have fled these areas, appeals from refugees to be moved to safer parts of the country have fallen on deaf ears (Harrell-Bond, 1999a).

Kakuma is now a series of four camps and has increased in size as the population has expanded, now covering an area of over 25 square kilometres.[14] The population of the camp is estimated at 81, 621 people and increases weekly. On average, about 1500 South Sudanese refugees arrive in the camp every month (ACT 2003: 4). Most recently, the population of the camp has expanded dramatically with the transfer of 10,000 Somali Bantus from Dadaab, who are in transit, awaiting relocation to the United States of America. There are over 12 different nationalities represented in the camp, with the vast majority originating from Sudan and Somalia.

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[12] See Figure 1: Map of Kenya, which indicates the location of the two camps.

[13] The original refugee camp sits on a peninsula of land bordering the rivers Tarach and Lodoket. Since 1997, three new sites - Kakuma II, III and IV - have been constructed across the river Lodoket, to accommodate refugees transferred from the closed camps on Coast Province, new arrivals from Sudan and the Somali Bantu population in transit from Dadaab, awaiting relocation to the United States of America. The Kakuma camps shelter some 79,401 refugees (UNHCR 2000), comprising Sudanese, Somali, Ethiopian, Congolese, Rwandans, Burundian and Ugandan nationals. The largest of these populations is Sudanese, numbering some 62,000, while the numbers of Congolese, Rwandans and Burundians are quite minimal, approximately 1000 in total. The camp is divided into 5 zones, which are further sub-divided into smaller units. Zones 1, 2, 3 and 4 are completely Sudanese while Zone 5 comprises Sudanese, Ethiopians, Ugandans, Zairians (sic) and a smaller population of Tanzanians, Somalis and others (Bajor 1997: 64). In total, the refugees comprise 13 per cent of the Turkana district population (Costello 2000).

[14] See Figures 2 and 3, Maps of Kakuma, for an illustration of camp structure and organization.

The United Nations High Commissioner for Refugees (UNHCR) has overall responsibility for the co-ordination of all aspects of protection and assistance activities, most of which are funded by UNHCR but implemented by NGO Partners. However there are serious shortcomings in the protection of refugees in Kakuma, particularly with reference to the ability of refugees to access basic rights such as food, water, basic education and health care and security. Humanitarian organisations trace many of these protection gaps to shortfalls in funding, but although it must be acknowledged that there have indeed been significant cuts in donor funding, the root of the problem lies deeper.

Radical shifts in the nature of disaster response *have* left many humanitarian agencies reeling. Unfortunately, in response, UNHCR and other humanitarian agencies appear to have chosen to adopt a long term 'care and maintenance' programme which has neither contributed to the promotion of self-reliance among refugees nor facilitated positive interaction between the exiled and local populations. Refugees are thus offered what amounts to temporary protection, which can often have the effect of dislodging refugee protection from the realm of enforceable human rights. Temporary protection may offer a short-term strategy to ensure the immediate physical safety of refugees, but it does not provide a durable solution, especially in contexts where it continues to be applied in what is obviously a long-term settlement like Kakuma.

Outline of Chapters

The thesis comprises seven chapters, which continuously shift from the macro to the micro level, weaving connections between theory and fieldwork, in an effort to concisely situate the reality of the particular human security experience of refugees in Kakuma within the greater scope of the study of human displacement today.

The first part of the thesis (Chapters 1 to 3) introduces the central arguments of the thesis, which will be further developed in the chapters that follow. The findings of my thesis are based both on secondary materials[15], including academic works, research and policy documents and statistical reports, and on fieldwork, in Kakuma Refugee Camp and Nairobi, which was undertaken for a period of eight months.

Chapter 2 of this section outlines the fieldwork component of the thesis, emphasising the importance of the field study in anchoring our understanding of the experiences of displacement and protection in the concrete facts of daily experience. More than 200 interviews[16] were carried out in both Kakuma and Nairobi. The fieldwork was conducted according to the method of 'participant observation', gradually moving from passive to more active observation as I became more comfortable with my environment, more directed and more aware of the intricacies of the relationships between myself and the communities I studied. This allowed me to focus on their

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[15] Most of the demographic data used was obtained from official sources, that is, the government and non-governmental organisations. It must be noted that some of the data quoted may be somewhat inaccurate as a result of general data collection problems in Kenya.

[16] Interviews were both structured and semi-structured and were conducted with individuals, focus groups and during community meetings. The interview design was flexible. Although based on a pre-set interview schedule, they often deviated and involved soliciting themes and ideas from interviewees. Interviewees were selected using snowball sampling taking into account a social analysis of the field that I had previously conducted based primarily on census information collected from UNHCR, Lutheran World Federation (LWF), which is the main implementing partner in Kakuma Camp, and the Central Bureau of Statistics (CBS), Kenya. This was to ensure that all groups/categories representative of the informant communities and the cleavages contained therein would be included in the interview group.

'lived experience' and enabled me to generate data I had not previously anticipated (Rodgers 2002).

The section then moves on to an examination of the development of the post-colonial African state, with a specific focus on Kenya, and concepts of citizenship and rights. It questions which of these concepts were transformed in the post-colony and which were continued and subsequently incorporated into the refugee policy of the host state.

The state in Africa is often portrayed as a deviation from the norm. Many definitions tend to look at African political rationalities as failed copies of Western political systems (Van Hoyweghen 2001: 4). There are arguments both for and against theories of cultural reductionism on the one hand, and structural universalism on the other. However, I believe that it is important to maintain an analytical balance between difference and similarity, as well as to recognise the possibility of continuity rather than rupture in political developments. It is an over-simplification to divide our socio-political world into two groups: the western modern and the indigenous traditional. Instead, the emergence of a distinctive 'hybrid' system, originating from the west, nurtured by local contexts, and transformed over time should be acknowledged (Bhargava 2004: 13).

To this end, I strongly emphasise the need to underline the specificity of the African experience. This means avoiding the tendency to de-historicise phenomena, including identity, rights and displacement, by lifting them from their context only to make sense of them by analogy, that is, through piecemeal comparison to developments in the West (Mamdani 1996: 13).

Finally, an examination of the position of citizens in the state provides a better perspective on the dynamics of African state-society relationships especially in relation to the process of incorporation and disengagement. It highlights how 'state' and 'civil society' can, in deeply polarised situations, become each other's opposites and opponents, with shifting boundaries between them (Doornbos 1990: 191). It asks whether, in circumstances where the post-colonial state has shown a fundamental incapacity to fairly distribute its meagre political and economic resources (Akokpari 1998: 214), it is the citizen who disengages from the state or the state that disengages from popular demands as voiced by the citizen.

The second part of the thesis (Chapters 3 and 4) examines and questions developments in policy towards refugees, including the initial involvement of the Kenyan state in the process of individual status determination, the subsequent ceding of powers to UNHCR and the informal institutionalisation of encampment policy. It also questions the tendency to portray a line of disconnect between the pre-1991 refugee regime and the post-1991 refugee regime (Verdirame 1999; Kagwanja 2002; Horst 2003) and highlights the continuities in refugee policy that can be traced from the colonial to the contemporary Kenyan state.

Given the structure of the state as hitherto discussed, it is suggested that Kenyan citizens participate in the state in a way that does not demonstrably affect the content of refugee policy. Participation in Kenya rarely occurs for the purpose of changing the character of the system, and the goals to which the system is already committed to pursuing (Barkan 1979: 27).[17] Consequently, this section argues that the root of

[17] Although Barkan's study was conducted at the end of the 1970s, the argument is still applicable today. For example, it has been noted that the establishment of multi-party democracy in Kenya was not based upon a fundamental desire for or

recent restrictive policies by the state in Kenya cannot be found in the dynamics of electoral politics or hostile public attitudes towards asylum seekers as is often claimed to be the case in the West.

Finally, I note that in spite of recent attempts to incorporate international refugee law into domestic legislation in the form of a Refugee Bill, the character of the state and the nature of the process of accumulation in Africa undermines constitutionalism. In many developing countries, the law is a commodity that only the state may mobilise and manipulate (Ghai 1992). Whether legislation specifically relating to refugees will entrench the protection duty of the state remains to be seen.

In the third part (Chapters 5, 6 and 7) of the thesis, I begin with an analysis of the impact of the shift in policy on the standards for the protection of refugees, drawing largely on fieldwork conducted in Kakuma Camp. Any framework for the protection of refugees should take into account refugees' perceptions of what is important to their day-to-day survival. Most refugees I spoke to noted that there is a need for improved channels of communication between refugees and agencies to enable an exchange of ideas. Many placed great importance on self-sufficiency, which is understandable given the duration of time they have spent in the camp completely reliant on external aid. They also emphasised that their relationship with UNHCR was extremely discordant and expressed dissatisfaction with the agency.

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understanding of multi-party politics on the part of either the government or the people. Many saw multi-party politics primarily as a means to seize control of the state and the funding it controlled (Throup/Hornsby 1998: 4). Similarly, the agreements that drew so many divergent groups into the National Rainbow Coalition (NARC) in the last elections (2002) were brokered around a planned division of power after the election (Anderson: 2003: 341) rather than a concrete political vision.

The camp, it is argued, is under the *de facto* control of UNHCR, because the agency does not simply monitor the Kenyan state's treatment of refugees but has adopted the state's responsibility over them for itself. Thus, although the presence of refugees theoretically gives rise to rights and duties vis-à-vis the Kenyan state in international law, the situation on the ground is governed in reality largely outside the conventional application of this legal framework. I conclude that this development is largely a result of the twin phenomena of globalisation and fragmentation, which have led to a shift of authority over individuals from states to non-state actors, such as international organisations and multinational corporations (Wilde 1998).

In this section, I also compare and contrast the experiences of refugees in the camp to the experiences of Kenyans outside the camp, based on fieldwork conducted in Nairobi. This enables an assessment of whether the problems faced by refugees are simply as a result of their refugee status and their confinement to camps, or whether there are other factors, also faced by the local population, that contribute to their particular situation.

Conclusion

Citizenship does not always correlate with a sense of membership of a broader community. Groups and individuals are very often designated as 'other' and discriminated against whether or not they are citizens of a particular state (Cesarani/Fullbrook 1996: 215). An examination of policies relating to the protection of refugees based solely on their definition as 'other' may, therefore, prove to be very limited in scope.

It has already been suggested, especially in the work of those who have studied border identities and identities in flux (Wilson and Donnan 1998; Allen 1996; Merkx 2000), that hosts and refugees may have more in common than is initially assumed. In such circumstances, the distinction between insider and outsider is somewhat nebulous. Given that initial displacements generally occur across the nearest international border, which in the African context is often fluid, we should question the 'making strange' of the asylum country and the implications this has for refugee policy in general (Malkki 1995: 509). It is, after all, doubtful that most people's social universe stops abruptly at the border of their own country or that life just across the border could be as axiomatically alien as has sometimes been suggested (Stein 1981; Geiger 1993).

To further highlight the increasingly obscure relationship between insider and outsider, included and excluded and the de-territorialisation of rights, I refer to recent observations, which infer that rights, participation and representation in the polity are increasingly matters beyond the vocabulary of national citizenship. A counter-argument, however, states that although, under a mantle of institutionalised human rights discourse, the rights of the person transcend those of the citizen, they are still realised through membership of the state (Soysal 1994: 165). Throughout the course of this thesis, I attempt to dispute the latter position, ultimately concluding that protracted camps have come to represent extra-territorial spaces within and around which functional relations with, and expectations of, the state become fragmented and directed towards non-state entities (Landau 2003: 19).

CHAPTER TWO

ELIMU NI MAISHA, SI VITABU[18]

FIELDWORK AS THE LIVED EXPERIENCE OF LEARNING

On a daily basis, we are exposed to images of suffering, poverty, injustice and inequality, which merge and diverge to such an extent that real life and fiction become indistinguishable. Our jaded eyes have seen it all. 'Refugees' are the *masses* that *descend* upon our borders in a *desperate* bid for safety.[19] It is easy to be complacent about the fact that the images are real and that the 'masses', in fact, comprise individuals each with their own story to tell. It is easy to forget that the nameless faces we see are reflections of the infinite ability of the human race to exhibit remarkable tenacity in the face of extreme adversity.

Robert Chambers (Harrell-Bond 1986: vii, emphasis added) notes that, '... the fact remains that at a time when unprecedented numbers of desperate people have been migrating, struggling to survive in or out of camps, and dying, we who are not desperate or dying have still been negligently ignorant of what is *really* going on'. As academics, more often than not engaging in large-scale theorisation and analysis, we stand in danger of losing sight of the element of the singular, and risk the de-personalisation of many of the issues that we seek to address. Our failure to question

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[18] The literal translation of this Kiswahili proverb is 'Learning is in life, not only in books.' The meaning is 'Experience is a good teacher'

[19] A few examples of the portrayal of refugees in the British media include 'Madness – Refugees bring chaos...' *Daily Record*, August 7, 2001; '...a tide of humanity that sees Britain as the land of milk and honey.' *The Sun*, 22 May 2002; 'Asylum seekers: 9 out of 10 are conmen' *Daily Star*, 22 May 2002, 'Britain: the No. 1 refugee magnet', *The Sun*, 14 September 2002 along with numerous other articles that accuse refugees of being a drain on the National Healthcare System, being criminals and so on. Although one might argue that the newspapers cited above are tabloid journals and, as such, prone to sensationalising, the fact that they are also the most widely circulated newspapers in the UK and, consequently, influence a large audience must be taken into consideration. *The Sun* alone has a daily circulation of approximately 3,520,767 against a daily circulation of 602,709 for the more mainstream *Times* (U.K. Audit Bureau of Circulations: May, 2003).

the adequacy of existing assumptions and categories, has the capacity to detract significantly from the validity of our conclusions (insofar as we continue to ask the wrong questions) *especially* in what I would term people-oriented fields like forced migration.

Sensing, perhaps, the impersonal nature and potential exclusivity of academia, 'those who suffer the insults of forced migration...may legitimately ask what right social scientists have to study them. One answer rests on the liberal assumption that good research should inform policy to its betterment' (Colson 2003: 3-4). This is an assumption that I have integrated as a guiding principle of my study. In an effort to bridge the gap between theory and practice, to provide a more comprehensive and focused picture of 'the problem' and to address the dual imperative[20] of refugee research, I chose to incorporate an extensive period of fieldwork into my study.

Scudder (1993: 124) notes that that the dichotomy between basic and applied research is inappropriate where comparative long-term studies of development-induced displacement, which contribute to methodology, theory and policy, are involved. I propose that such a dichotomy is inappropriate in *any* study of displacement, including the study of forced migration, because such research should strive, of necessity, to be both academically and practically relevant. However, this is not to say that I do not recognise the possible tension that may arise out of attempts to bridge the 'research-practice' divide in refugee studies. For instance, although it may be assumed that 'good research' is a pre-cursor to 'good policy', it is often the case that good research calls into question many of the taken for granted

[20] I use this term in the context in which it is used by Jacobsen and Landau (2003) in their UNHCR Working Paper entitled 'Researching Refugees: Some Methodological and Ethical Considerations in Social Science and Forced Migration'.

assumptions/categories/concepts of policy makers and it may not, as such, be immediately acceptable to them. Alternatively, research that is 'acceptable' to policy makers, that is to say policy-driven, may become too 'policy dependent' (Black 2001) and, in so far as it rarely deviates from problem definitions built into its terms of reference, 'can lead not only to poor sociology, but also to bad policy' (Castles 2003: 26).

Ultimately then, the role of academic knowledge should be to reflect critically upon, not to confirm and legitimise, taken for granted assumptions upon which policymaking is based (Turton 2004: 25). The process of fieldwork contributes significantly to the process of critical reflection, particularly in so far as it encourages a more detailed understanding of the situation of refugees at the local level, enabling us to see the refugee as an ordinary person, embedded in a particular set of circumstances. In the process it becomes all the more difficult it is to ignore his/her plight and to remain a bystander (Turton 2003: 11).

My research incorporates a comparative component, that is, it compares and contrasts the experiences of refugees living inside the camp, with the experiences of Kenyans outside the camp. The comparative element highlights the importance of understanding the context within which displacement and protection occurs. In addition, the introduction of the 'control group' enables an assessment of whether the problems faced by refugees are simply as a result of their refugee status or whether there are other factors (also faced by the local population) that contribute to their particular situation (Jacobsen 2003: 13).

In this chapter, I will explore the process of fieldwork, outlining the evolution of my research design, as influenced by developments in the field, and the impact this had on the manner of data collection, in an attempt to contribute to current discussions on methods (or, as has been argued, the lack of method) in refugee-centred research (Jacobsen and Landau 2003). I will also delve into the difficulties involved in conducting research in two different 'spaces' as a researcher with two different 'faces'. Finally, I will identify some of the methodological and ethical considerations that arise from social science research in forced migration.

The Empathetic Character: Participation, Observation and the Accumulation of Knowledge

How do we draw the line between participant observation as a method of research and as, simply put, a facet of character and a part of our daily lives? Any successful interaction with another person involves being observant, whether through the process of listening or seeing or a combination of both. It also requires the ability to empathise (which entails participation or interaction mentally, if not in the active physical sense) with him/her on some level in order to be able to understand the root of their words or actions. Participant observation, therefore, is a timeworn method of acquiring knowledge about others as well as about ourselves. The difficulty, I believe, is not in the researcher assuming the role of participant observer, but in the researcher being aware of the fact that one *is* a participant observer in any given situation and is, consequently, always learning.

Perhaps this is why it is so difficult to find any one standard definition of participant observation, and why there are no rules set in concrete, which define the process as a

method of research. There are as many sets of techniques of participant observation as there are participant observers.

The particular definition that best describes the techniques I adopted in my study is one noted from McCall and Simmons (1969: 1), which states that participant observation is

> a characteristic blend or combination of methods and techniques that...involves some amount of genuinely social interaction in the field with the subjects of study, some direct observations of related events, some formal and a great deal of informal interviewing, some systematic counting, some collection of documents and artefacts and open-endedness in the direction the study takes.

Participant observation was chosen as the primary method of study because I believed it significantly reduced the problem of reactivity, that is, people changing their behaviour because they are aware they are being studied. The duration of the fieldwork was also an important factor in helping to lower reactivity. Lower reactivity usually means higher validity of data, although in practice, of course, it is almost impossible to eradicate all incidences of reactivity. In my case, both in Nairobi and in Kakuma, people were immediately aware that they were being studied because I was instantly distinguishable from the crowd due to my appearance. Almost everywhere I went, crowds of children ran behind me screaming '*mzungu, mzungu*' or '*kawaja, kawaja*'[21], which, apart from anything else, made it difficult to 'blend into the community'. However, with time, my appearance caused less and less of a stir as the community became inured to my presence.

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[21] *Mzungu* is a Kiswahili word used in many of the East and Central African states to refer to a white person, but is also applied to light skinned persons who are assumed to be 'outsiders' or 'Westerners'. *Kawaja* is the Arabic-derived equivalent used by various groups in the Sudanese community.

The politics of access can become highly complex when field research is conducted among a group that is, in essence, a minority. It has been noted that

> ...the minority sits inside a delicate and complicated structure of political and moral postures. Embedded in this structure are the group's deepest and aspirations and frustrations. To enter this fabric, no matter how gently, means that this structure of frustration and aspiration is somehow altered (Warwick 1983: 321).

There are obvious differences that are highlighted when working with poorer communities. Economic barriers can sometimes prove insurmountable although, with time and effort, they may assume less importance. Kreitzer (2000: 15) describes how, during her research among Liberian refugees, she was faced with three recurrent questions: What is your mission? How will your study help me in a practical way? Do you have any money? I was often faced with the same three questions, although not perhaps in the same order and, for the duration of my stay in Kakuma, I was aware that my efforts to walk or take a *boda boda*[22]around the camp, eat local food from a roadside kiosk, or drink unpurified water from unsterilised jerricans at the risk of being violently ill in an attempt to avoid insulting my hosts, and to de-emphasise the economic differences between us, might be appreciated but would not necessarily result in the inclusion I sought.

Most importantly, however much the observer's 'identification' is with the people being studied, they know, and the researcher knows, that he or she is never a permanent member of the community, only a temporary or transient member. As such, he or she will always be viewed as an 'outsider' on some level and, although

[22] A *boda boda* is a 'bicycle-taxi', that is, a bicycle adapted for the purpose by fashioning a makeshift seat out of old rags and cardboard attached to a ramp behind the rider's seat, used as transport in most of Western Kenya and Uganda, which has also gained popularity in the camp as a cheap mode of transport.

his or her presence may be tolerated or even accepted, it will always have an impact on the behaviour of the 'insider'. In a refugee camp, like Kakuma, the validity of this statement may be questioned, given that the term 'camp' by definition implies transience and denotes fluidity of the concept of 'belonging'. I would, however, argue that the distinctions between insider and outsider are very strong in Kakuma, given that the camp has existed for over a decade and has assumed the appearance of a small town with one important distinguishing characteristic: the restriction on mobility of its inhabitants, meaning it can be characterised as a 'bounded' community.[23]

Paradoxically, however, this bounded community can be quite easily penetrated, not least given the constant number of new arrivals to the camp. Some of these are displaced as a result of conflicts in surrounding regions, while others come in with the numerous humanitarian agencies working in the camp. Either way, residents of Kakuma camp are used to new faces. Consequently, different levels of 'belonging' have developed, as well as different categories of 'insider'. These range from one who works in Kakuma (international and local NGO staff, school teachers, researchers and so on) to one who lives in Kakuma (shopkeepers, transporters and so on, who could be from any of the many Kenyan ethnic communities as well as the Turkana host community, who have close ethnic ties to some of the refugee communities). The refugees, in their own perception at least, are at the apex of this hierarchy. The position of other categories on the hierarchy of belonging may vary according to the informant and the context.

[23] Although the community may be spatially bounded, it is not socially bounded, in the sense of being socially isolated. Like any other community, often even more so given the nature of the process of displacement, which results in the dispersal of community members, there is a wider network of connection, nationally, regionally and internationally.

Thus, for example, at one time or another, international staff may be at the top of the hierarchy because they are perceived as being able to access resources, or may drop lower down the hierarchy where they are perceived as distant, uncommunicative and unresponsive. Local NGO staff may be perceived as powerless or as 'pawns' of the international community or, alternatively, as a primary point of contact for the refugees and, consequently, as a valuable ally in the quest to access resources. Similarly, the researcher may be categorised as intrusive and powerless, being in no position to access resources or as useful, acting as a go-between with agencies and bringing in limited resources. Thus, while the researcher may not be able to integrate within the refugee community, he or she is in a position to carve out a niche on any one of several levels of belonging, and thus establish a place as 'partial insider'.

With regard to integration, however, it must be noted that my experiences in Nairobi turned out to be very different from those in Kakuma. Although I had initially characterised Nairobi as an open community it turned out to be the very opposite. It is a city with very distinct sub-cultures, based on class and race distinctions, and certain communities (especially slum settlements) were particularly hard to access. I was an outsider, by virtue of race and socio-economic status, trying to transverse long existent boundaries. As a foreigner, I may perhaps have been indulged as eccentric. As a Kenyan, I was seen as an aberration, sometimes tolerated, often treated with suspicion. This uneasy state of affairs was compounded by the fact that I was not in a position to establish long-term residency or develop close connections with my informants and could not, therefore, 'prove myself' to them.[24] Because I had a limited time frame, I was always conscious, first and foremost, of my role as

[24] Because I had to cover several communities, in order to take into account ethnic and socio-economic variations that exist across city lines, I had to cover a large area in a limited amount of time, which meant that I was unable to spend significant amounts of time with any of my informant populations.

researcher. This, for me, meant that the essence of participation was often lost – there was no time for 'hanging out' – and I was unable to establish a proper place for myself within the community (Rodgers 2004).

In the long run, however, particularly in Kakuma, but also in Nairobi, participant observation proved to be a very productive method of investigation. It allowed me to formulate more relevant questions because it enabled me to get a better feeling for the communities I was working with. It also brought to the fore issues that were important for the population rather than questions that I had initially believed to be important (Bernard 1988: 150-151). The research process moved from passive to more active observation as I became more comfortable with my environment, more directed and more aware of the intricacies of the relationships between and within the communities I studied. This inevitably enabled me to focus on their 'lived experience' and allowed me to generate data that I had not previously anticipated (see Rodgers 2002: 66-72).

In the process, I realised that my potential bias as a researcher had a significant impact on the observations I was able to make. I undertook fieldwork with a particular focus in mind: to observe the understanding, appropriation and realisation of basic rights among defined populations. With time, I would understand that, as Kaplan (1964: 133) says, "We do not observe 'everything that there is to be seen'. An observation is *made*, it is the product of an active choice, not of a passive exposure". At this juncture, I should note that I feel that Kaplan's statement needs to be slightly expanded. Seeing may be categorised as passive, but it is important to acknowledge that although the process of observation is active, it is also selective, and often determined by the dictates of that which we as researchers want to observe, or that

which our subjects want us to observe. Thus, even though we may have made an active choice to observe, often we are not actively in control of our final observations.

Had I, for instance, travelled to Kakuma with the intention of analysing the development of a common 'refugee identity' among camp residents, I would have 'participated' in the camp in an entirely different manner and come away with an entirely different set of observations. I give this particular example, because when it came to the subject of rights, refugees very readily identified themselves as 'refugees' with a particular set of 'refugee rights'. I had arrived in Kakuma aware of the dangers of labelling - of, as Malkki (1995: 511) puts it, assuming refugees to be an 'essentialised anthropological tribe'. However, in spite of the obvious differences between the various inhabitants of Kakuma camp, inhabitants seemed to have developed a very strong common and primary identity of 'refugee', which transcended other identities. Given that many had lived in Kakuma for over ten years, had spent the formative years of their lives in the camp having arrived there at an early age, or had been born there and known no other life, I did not initially find it appropriate as a newcomer to question this identity.

With time, however, I became aware that the term 'refugee' had been appropriated because of its 'usefulness' - and had a very particular and context-specific meaning to refugees. It was used most often in its negative connotation, drawing on the stereotypical image of the refugee as 'helpless', 'dependent', 'suffering' and surfaced primarily in interactions with agencies, donors and locals. On a day-to-day basis, however, and with each other, refugees drew on their national or ethnic identities. Many divisions existed between the various communities, which I had not initially observed, simply because I was not looking for them. I was rarely exposed to these

divides because of the scope of my work and, possibly, because refugees realised that they were better placed to advance their position as a group and, therefore, chose to portray themselves to me in this way. As such, I was afforded entry and re-entry into and across a variety of socio-cultural groups that I may have otherwise been denied, by virtue of the perceived neutrality of my subject matter, and my subsequent naivety.

The participant observer, therefore, cannot claim to be completely neutral or objective. Choices must be made, starting from the site of study, to the area of study, to the subjects to be studied. In making these choices the research, and the researcher, acquires a certain amount of subjectivity, which, it has been argued, detracts from the significance of the findings of any study based on participant observation. Jacobsen and Landau (2003: 8), for example, claim that validity is a problem in all research, which is not resolved by extended exposure to the research population, or by in-depth interviews. Indeed, they go on to suggest, people living or working amongst refugees may be more likely to accept a particular 'imagined' history as they become more absorbed into the community and less objectively aware of their surroundings. However, although they readily identify the shortcomings of participant observation, their argument falters in their failure to make concrete comparisons between participant observation and any other methods of data collection, which might justify their conclusion that the former is more prone to produce unreliable data (than, in this case, an unspecified latter). More importantly, they fail to offer an alternative to in-depth qualitative investigation.

That researchers risk becoming deeply involved with their informants, during prolonged fieldwork, is incontestable. However, it should be noted that, especially when conducting studies in harsh environments, which advance the need for, and the process of, creating mutual trust networks, this involvement is not the prerogative of the researcher alone. In such environments close personal relationships often develop of necessity. And, although the researcher may initially pursue familiarity as a desirable research technique, it may inevitably evolve into a necessary survival strategy.

It should not be assumed that the researcher is alone in seeking to establish reciprocal relationships or that these relationships develop solely through the efforts of the researcher. In reality, all parties involved realise the benefits of incorporation. This incorporation *can* have negative consequences, especially where the researcher is seen as a source of personal advancement for those involved in the research process. This may result in reactivity, which can eventually compromise the research findings. It may also lead to the creation of a subject-object relationship between the fieldworker and those observed especially in situations of unequal distribution of power and resources, which can render the framework problematic. However, as mentioned above, certain environments encourage the formation of relationships between the researcher and the 'researched' that are mutually beneficial and can lead to observations that are not predicated on an 'imagined' history.

In Kakuma, for example, the sense of isolation experienced by inhabitants, and constraints on freedom of movement on both refugees and aid workers 'enforced' close physical proximity, encouraged in-depth interaction and led to the formation of friendships between agency staff, refugees and locals, which may not otherwise have

developed in a less restrictive environment. As an outsider, staying in the camp for an extended period of time, I soon realised the importance of the formation of networks on a very basic level. New found acquaintances went out of their way to give me a lift to the agency compound when I was stranded in Kakuma IV, led me down winding back streets to talk to neighbours or share a meal, or defended my character and intentions when strangers reacted negatively to my presence. On my part, I acted as a go-between for refugees trying to access agency staff, postal service for those with friends in Nairobi or outside the country and a mobile library service for staff members who had no access to up-to-date reading materials in the field.

At no point did I feel used or compromised. It was a way of life. We all needed one another. This need did introduce an element of reactivity, but it was a form of reactivity that enhanced, rather than detracted from the quality of my research, which built on relationships created from the honest need for self-preservation on the part of agencies, locals and refugees.

The Subjects of Study: Sampling as an Interactive Process

The use of the term 'subject' can have negative connotations, conjuring up images of insensate individuals selected to facilitate the process of data collection, having little or no say in process or conclusion. I initially struggled with the use of this word to denote participants in my study, many of who became well known to me in the course of my fieldwork. However, in due course, I was forced to admit that, in many ways, my informants *were* subjects, in that they were subject to participation in a process not of their making, that is, my research project. I, therefore, resolved, through the use of snowball sampling, to encourage co-operative participation in the

selection process, in an effort to reduce the element of subjection. By putting the power back in the hands of the refugees, that is, by giving them the opportunity to *decide* to participate in my research rather than handpicking a select group without inclusive consultation, refugees assumed the role of active agents, rather than passive participants.

Prior to commencing fieldwork, I obtained census material from the United Nations High Commissioner for Refugees, the Lutheran World Federation and the Central Bureau of Statistics on the population structure of Kakuma camp and Nairobi Province. Although I did not undertake a comprehensive survey of the populations to be interviewed prior to conducting the study, I did conduct a social analysis of field sites (using the information gathered from the materials cited above) to ensure that all groups, representative of the informant communities and the cleavages contained therein, were included in the research sample.

Based on this analysis, and taking into account other factors that might distinguish between different population groups, I constructed a personal information sheet which identified certain categories of the population that I felt should be incorporated into the study in order to ensure a more representative sample. The criteria on this sheet included gender, age, marital status, religious affiliation, ethnic background, educational background and occupational status.[25]

In Nairobi, I identified the major divisional areas within the city, which often correspond to extreme socio-economic divides between populations, and made an

[25] See Appendix One for an example of the Personal Information Sheet and the various interview schedules used to interview refugees, citizens, UNHCR and implementing partners during fieldwork.

attempt to incorporate subjects from each of these areas. In addition to satisfying the selection criteria identified above, therefore, informants also had to have established residence in one of the major divisional areas as selected.

In Kakuma, I began my research using the selection criteria previously mentioned to ensure I had a representative sample. However, given the factors that had led to the presence of many of the refugee groups in the camp, for instance religious or ethnic based civil war, I found it inappropriate to inquire about some of the categories I had previously identified, specifically, religious affiliation and/or ethnic group. The history of the genocide in Rwanda, for example, meant that many Rwandan informants were unwilling to identify themselves either as Hutu or Tutsi for fear of the labels certain categories engendered. On occasion, information about ethnic background or religious affiliation *was* revealed. With time, however, I realised that there was a tendency among many respondents, especially where personal relationships had been established over the long-term, to sometimes forget my role as researcher. I, therefore, chose not to incorporate what I knew to be otherwise confidential information in my research notes.

I *had*, initially, anticipated using random selection to identify potential informants keeping in mind that I hoped to be able to generalise some of the findings of my research, but after spending some time in the field I was compelled to reconsider my approach. In their critique of sampling methods used by most studies in forced migration, Jacobsen and Landau (2003: 5) state that 'in almost no cases were subjects randomly selected, the technique best suited for making broader generalisation'. I find, however, that the value of random selection as a technique is largely context-specific.

This is because in conducting studies of camp-settled refugees, for instance, the variegated structure of communities in the camp must be taken into account. In a camp like Kakuma, where the male to female ratio is significantly skewed in favour of the former, where 73.87 per cent of the population falls under the 25 year age bracket and where 71.86 per cent of the population is of Sudanese origin, the use of the random survey technique would significantly increase the risk of omitting vulnerable or at-risk minorities, and reduce the validity of any research claiming to be representative of the whole population under study. In Nairobi where, as previously mentioned, populations are sharply divided along economic, ethnic and racial lines, there is a risk that random surveys may lead to similar crimes of omission.

I therefore decided to use snowball sampling and held interviews with a total of 232 individuals and conducted 19 focus group discussions.[26] Of these, 105 respondents were from Nairobi and 127 respondents were from Kakuma. The following figures give a breakdown of respondents in both Nairobi and Kakuma, outlining some of the selection criteria taken into consideration and drawing comparisons between the sample population and the general population of the sites of study.

[26] See Appendix Two for a comprehensive list of the eighteen focus group discussions held in Kakuma camp.

Category	MALE	FEMALE	TOTAL
Total population distribution for Nairobi Province	1,153,828	989,426	2,143,254
Population distribution for Nairobi Research Sample	56	48	104
Proportion of total Nairobi Province population (%)	53.84	46.16	100
Proportion of total Nairobi Research Sample (%)	53.85	46.15	100
Ratio of total Nairobi population	1.166	1	-
Ratio of Nairobi Research Sample	1.166	1	-

Figure 4: Comparative distribution of Nairobi study subjects by gender

As can be seen from the table above, the distribution of the Nairobi research sample group by gender is reflective of the actual population distribution by gender in Nairobi province, with both categories sharing a percentage of 53.8 per cent male and 46.2 per cent female.

Ethnic Background	Proportion of Total Nairobi Research Sample	Proportion of total Nairobi Population	Percentage of Total Nairobi Research Sample	Percentage of Total Nairobi Population*
Meru	15	21191	14.28	1.74
Kikuyu	34	428755	32.38	35.18
Embu	6	12111	5.71	0.99
Kamba	17	178758	16.19	14.67
Luhya	7	217992	6.67	17.89
Somali	3	8717	2.86	0.72
Luo	5	244969	4.76	20.10
Taita	5	10756	4.76	0.88
Kisii	3	34911	2.86	2.86
Mnyankole (Ugandan)	1	6692	0.95	0.55
Lingala	1	-	0.95	-
Swahili	1	1119	0.95	0.09
Kipsigis	1	21973	0.95	1.80
Nubi	2	-	1.90	-
Maasai	1	4923	0.95	0.40
Asian	3	25715	2.86	2.11
TOTAL	105	1218582	99.98	99.98

Figure 5: Comparative Distribution of Respondents in Nairobi by Ethnic Background

Source: Republic of Kenya, Kenya Population Census (1989) Vol. 1, Office of the Vice President and Ministry of Planning and National Development, Central Bureau of Statistics, Nairobi: Government Printers.

* Percentages for the total Nairobi population sample are derived as the sum of the ethnic groups highlighted in the table above, not all of which correspond to those targeted by the author's own sample (see Figure 2 above). They do not, however, reflect the above ethnic groups as a percentage of the absolute total population of Nairobi, because numerous ethnic groups and sub-groups not included in the study sample have been omitted from this table.

I was only able to obtain records on the ethnic (and religious) breakdown of the total Nairobi population from the 1989 Population Census as indicated above. After repeated documentary and Internet searches, I contacted the Central Bureau of Statistics, Ministry of Planning and National Development asking for more current demographic data. I received a response from the Deputy Director, Head, Population

and Other Social Statistics informing me that 'as a matter of Government policy (they) were under strict instructions to suppress all date records on ethnicity and religion and would, therefore, be unable to assist me'.[27]

It was, consequently, difficult to ensure a representative ethnic sample of participants in Nairobi, because I was unable to obtain accurate figures of the population distribution of the city prior to commencing fieldwork. Figures obtained, and quoted, from the 1989 Census, should not be assumed to be wholly accurate, given problems of accurate data collection faced by many African governments, and the tendency of the government to alter statistics (particularly in relation to ethnicity) for the purpose of manipulating the electoral process.

Additionally, I did not identify ethnic participants by their ethnic sub-groups, but only by the larger more common classification. This proves problematic in the process of comparison to Census figures, where common classifications have been further broken down into sub-groups. This is particularly evident with members of the Somali and Swahili groupings. In my study sample, I attempted to include participants from all of the main ethnic groups in the country, as well as a few of the more marginalized ones.

[27] See Appendix Three for a copy of communication between Mwangi and Munene, Deputy Director, Head, Population and Other Social Statistics, Central Bureau of Statistics.

Religious Affiliation	Number of Respondents
Christian	87
Muslim	10
Hindu	2
None	5

Figure 6: Religious Affiliation of Respondents in Nairobi

Highest Educational Attainment[28]	Number of Respondents
Primary	13
Secondary	56
Other (vocational/university)	28
None	7

Figure 7: Educational Background of Respondents in Nairobi

In as much as the final sample *may* significantly represent a cross section of inhabitants of Nairobi, it cannot claim to adequately portray the considerable differences between urban and rural populations countrywide. In spite of this, however, it must be noted that within Nairobi, there are extreme disparities between the poor and the non-poor, which may be viewed as reflective of similar differences on a national level.

In Kakuma, meanwhile, I conducted 123 interviews and held 19 focus group discussions. Of the 123 informants, 85 were male and 38 were female. Note that

[28]Inclusion in a category does not necessarily mean completion. For example, individuals who completed Form 2 of their secondary education but did not obtain the Kenya Certificate of Secondary Education (KCSE) have been included in the 'Secondary' Category.

there is a higher disparity between male and female respondents in this survey group than in the Nairobi survey group. As has been indicated, it was very difficult to access female informants, particularly within the more conservative communities, like the Somali communities. Other researchers conducting studies in Kakuma have observed similar trends.[29]

The following table shows the distribution of respondents in Kakuma by national origin.

Country of Origin	Population in the camp	Percentage of total camp population	Number of Respondents	%age of total Respondents
Sudan	56248	71.86	72	61.54
Ethiopia	2261	2.89	14	11.97
Eritrea	22	0.03	-	-
Somalia	18720	23.92	15	12.82
Burundi	133	0.17	2	1.71
Rwanda	214	0.27	3	2.56
Uganda	313	0.40	7	5.98
DRC	359	0.46	4	3.42
Angola	2	0.003	-	-
TOTAL	78272	100	117	100

Figure 8: National Origin of Respondents in Kakuma

Source: Logistics Department: Food Distribution Brief, Lutheran World Federation (2002c)

NB. The above table does not include 5 of the respondents interviewed in Kakuma, who were of the Turkana ethnic group, which is the dominant ethnic group that inhabits the region in which Kakuma camp is situated, for the purposes of allowing comparison with statistics about the total camp population as presented in Figure 9 below.

[29] See Unknown author (2001), The Social and Cultural Determinants of the Spread of STIs among Adolescents in Kakuma Refugee Camp, Unpublished Thesis, Kenyatta University

Category	MALE	FEMALE	TOTAL
Total population distribution Kakuma Camp	46809	31463	78272
Population distribution for Kakuma Research Sample	85	38	123
Proportion of total Kakuma Camp population (%)	59.80	40.20	100
Proportion of total Kakuma Research Sample (%)	69.11	30.89	100
Ratio of total Kakuma population	1.49	1	-
Ratio of Kakuma Research Sample	2.24	1	-

Figure 9: Comparative distribution of Kakuma subjects by gender

Source: Gender Unit Annual Report 2002, Lutheran World Federation (2002e)

As can be seen from the above table, the ratio of male to female subjects is skewed in favour of the former for the research sample population. This reflects the difficulties, previously mentioned, and to be discussed later in detail, that I faced in accessing the female population in Kakuma.

Religious Affiliation	Number of Respondents
Christian (Orthodox, Catholic etc.)	83
Muslim	21
None	-

Figure 10: Religious Affiliation of Respondents in Kakuma

I was unable to obtain any statistical information on the religious affiliation of the total camp population. However, given that a large majority of the population comprises Sudanese, Ethiopians and Central/East Africans, who are predominantly Christian, I believe that my sample group is suitably representative of religious groupings in the camp.

Entering the Field: Assumed Identities and Created Contexts

It has been said that 'the fieldworker cannot anticipate the developments in the field which will inevitably guide the course of his investigations. Hypotheses formed without regard to these considerations may turn out to be trivial if not banal' (Srinivas et al, 1979: 8). In the course of my research, I began to realise that the two concepts I had assumed as constants prior to the commencement of my work, also the two concepts used most frequently in reference to practical research, those of 'the fieldworker' and 'the field', would have to be constantly re-evaluated in an effort to avoid being caught up in a web of banal observations.

Prior to commencing my study, I was frequently reminded that no amount of planning could fully prepare me for the ups and downs of the field. Real life does not conform to plan. There were, however, two things that I did not think to question: my identity as 'fieldworker' or 'researcher' and my 'fields' of study, which I had identified as Kakuma and Nairobi.

I arrived in Kenya to begin fieldwork in August 2002 and, almost immediately, became aware that the identity I had assumed, and others' assumption of my

identity were not one and the same. I had arrived prepared to assume the neutral identity of researcher but gradually I began to take on several identities, sometimes separate, sometimes intertwined, often dictated by context.

There have been many discussions about doing fieldwork in one's own culture as opposed to doing fieldwork in another. It has been suggested that the former is often of necessity different from the latter. There are pros, such as knowledge of the language, and cons, such as the difficulty of seeing what is really significant in a 'taken for granted situation' (Ellen 1984: 82). Powdermaker (1966) identifies the ability to become involved and yet observe with complete detachment, continually to step in and out of other cultures, as the key to successful participant observation. Participant observation encourages objectivity, and the researcher as 'stranger' is assumed to be in a better position to examine what appears self explanatory to members of the group (Seale 1998: 218). This, it is argued, becomes difficult when one is working within a group with which one is familiar.

I would argue that difficulties, especially of maintaining objectivity, persist, regardless of whether one is an insider or not. Often, as an insider, one is better placed than the outsider to understand the intricacies of the workings of a particular society, which decreases the risk of succumbing to the 'exoticisation' of the 'other' that sometimes characterises the work of those who study societies other than their own. One is not tempted to place responsibility where it does not exist, possibly as a result of misplaced personal guilt syndrome, or to make excuses for failure where there are none. Consequently, to be an outsider, if one can ever truly be an outsider, given the wide spanning effects of globalisation, is not necessarily a precursor to being objective.

I do acknowledge that, as an insider, it is very easy to gloss over what are seen as mundane, ordinary, every day events. But even easier, for both the insider and outsider, is to become de-sensitised to his or her surroundings, losing not only objectivity, but also the faculty of observation. Upon arrival in Kakuma, every five steps outside the comfort of the agency compound was an assault on the senses. Towards the end of my stay, however, I would find myself having walked half way across the camp without quite having realised how I got there. The lesson then is twofold, and well expressed by Middleton (1970: 9) when he says, 'One of the hardest requirements of fieldwork is having to 'live as a human being among other human beings yet also having to act as an objective observer'.

Personally, I cannot lay claim to having been either an insider or an outsider. My identity was amorphous, the boundaries between insider and outsider distorted. Although I could, on the one hand, claim to be doing fieldwork within my own society, given that I am Kenyan by birth, my status as an insider was somewhat ill defined. Given my multi-racial background and consequently ambiguous racial/national status (in a country where ethnicity and race are primary determinants of belonging), I was often treated to a certain extent, as an outsider. Additionally, it has to be noted that it is very difficult to pinpoint a characteristically 'Kenyan' identity given that Kenyans come from a variety of backgrounds. Various factors including ethnic group, generation, socio-economic status and rural or urban upbringing all come together to create distinct categories of identification. Thus, even on the rare occasion where I was immediately identified as Kenyan, I was not able to identify with each particular individual I interviewed simply on the basis of an imagined common 'Kenyan identity'.

My somewhat indistinct identity was both an asset and a hindrance. On occasion it allowed me to access informants who would otherwise have been inaccessible. It meant that I was able to slide between the identity of insider and outsider, depending on the circumstances. Often individuals were drawn into conversation with me because they identified me as a foreigner, and they hoped that I would be in a position to offer them some help, usually construed as material assistance. When I emphasised my African heritage, many would continue to talk to me, but on a more personal level, in a way they would not have spoken to foreigners who 'do not understand the way we do things over here'. Paradoxically, however, because I did not conform to the visual stereotype of a Kenyan, with time they would often 'forget' that I was Kenyan and would talk to me in-depth about issues, mainly political, which they may not otherwise have addressed with a 'local' for fear they could not trust him or her. In Nairobi, for example, where my Kikuyu ethnicity may have been a threat, given the political history of the country and the prevailing political climate during my research, it was instead a constant source of amusement. Word quickly spread and neighbours gathered to see the 'white Kikuyu'. In Kakuma, meanwhile, refugees would complain vehemently to me about the Kenyan government, implementing partners (IPs) or local staff, in a way they would never have done with 'Kenyan staff' without ever stopping to draw my nationality into the equation.

In a sense, this lack of clarity led me to question my own identity and, hopefully, increased my awareness of the unstable foundations upon which labels of identity are built. Identity was all a question of perception, and I fought hard not to conform to similar typecasting of any of my informants on my part. Additionally, in many instances I soon realised that it was professionally advantageous to remain 'different' in the eyes of informants because this increased my opportunities to contribute to my

own role definition, and provided me with greater flexibility and the ability to do things which ordinary members of the community could not (Ellen 1984: 104).

This was particularly the case when it came to my identity as a woman, an identity that would prove helpful in some ways, and a hindrance in ways I had not anticipated. It has been noted that the lone female fieldworker is usually better placed than the lone male fieldworker. This is because it is often easier for the woman to enter female spheres where no man may appear. It is also argued that a woman is more likely to penetrate a male domain than a man to enter a mixed or female domain. Generally, it is felt that one woman in all-male company has much less effect on the group than one man in all-female company (Ellen 1984: 124).

In many situations, being a woman enabled me to be privy to numerous sensitive discussions, which I may otherwise have been excluded from. On one occasion, for instance, when discussing a case of male sodomy with several caseworkers, the victim indicated that he would prefer the other men in the room to leave but said he would not mind my presence. Because I was a woman, men often saw me as less of a threat than other men, and would speak freely around me.

Generally and quite to my surprise, I found it easiest to work with males who fell within the 25 to 40 year old age group. The main reason for this was because they usually tended to be the most educated, the most willing to talk, and interested in talking with me. They were not intimidated by my academic background and were interested in engaging in debates, and in gaining information about how to further their own academic careers. Sadly, they were also easy to work with because they were the easiest group to access in the camp. Most of the younger boys went to

school, the older men were elders, who occupied themselves with administration of community affairs. For this particular age group, however, there were very few employment opportunities in the camp, apart from a few highly sought after positions as NGO staff counterparts and teachers in schools. The only other option available was to start a small business, something that most did not have the financial capacity to do.

In some cases, researchers find that their presence alone, perhaps simply as a novelty and welcome diversion from the monotony of daily life, perhaps just because the people like to talk to someone who will listen, has been sufficient reward for their informants' co-operation (Ellen 1984: 109). I found this to be the case with many of the men I interviewed in Kakuma. Many were unemployed and idle, and with the destruction of social systems of stratification brought about by upheaval and the structure of aid-dependency in the camp, their role as head of the household or breadwinner had been taken away. Many felt inadequate and useless and my arrival, my questions and my obvious need for a guide provided a distraction and instilled a sense, albeit temporary, of importance.

Something I did not anticipate as a woman, however, was the difficulty I would face speaking to young women from the 25 to 40 year age group. Prior to arrival in the field, I had believed that I would find it easier to interview women than men. However, in Kakuma, it proved incredibly difficult to 'connect' with this group. First, they were difficult to access because they were occupied with numerous chores, including going to the market, fetching water, washing clothes and cooking food and did not have the time to 'sit and chat'. Even when I was able to meet the women, it often proved complicated to engage with them. To many of them, our

common status as women was irrelevant. The fact that I was an independent, educated, unmarried, childless woman was, more often than not, an insurmountable barrier.

Which begs the question: why did men accept me, while the women so often rejected me? After all, as a community, can it not be assumed that they shared a common set of cultural standards/norms that I did not conform to?

There is often the expectation that informants will try and place the fieldworker within their own frames of social status and values. While I believe that this can sometimes be the case, I think it somewhat presumptuous and perhaps overbearing to assume that cultures are static and bounded. In many instances, and specifically in the context of the camp, cultures intertwine but remain distinct. I believe groups/individuals are more aware of difference that we, as outsiders, tend to assume. It should not be presumed that because people have not been exposed to other worlds, they are oblivious to the existence of cultural differences. Indeed they remain conscious of those differences but are, I believe, willing to make exceptions in so far as one does not try to impose one's own value systems or standards upon them.

The different reactions I received from men and women I felt were related to their exposure to diversity (more limited for the latter), and to the social hierarchies that dictate a society's capacity for change. Men, in any patriarchal society, are always in a better position to engage with difference, simply because it is they who shape societal norms. They define how difference impacts society. Engagement, in and of itself, in no way alters the male position in the social order. Women, however,

especially young women, risk jeopardising their status, and have much more to lose than men by interacting with the other.

My professional identity, that of researcher, was also not as clear-cut as initially anticipated. When working in Nairobi I continuously emphasised my status as a student, but was inevitably identified as elite, and on several occasions was asked for *kitu kidogo* or *chai*[30]. 'Help us because we are helping you', was an attitude I often encountered. This I had anticipated. However, I was never sure how to present myself, given the difficulties I encountered with many of the organisations I tried to contact, to those who fell under the category of official government, NGO or donor informants. Occasionally, I presented myself as a student researcher, because this proved less threatening, while on other occasions I used the term associate researcher, in situations where organisations would have otherwise refused to grant appointments, deeming me unimportant.

All these identities, separate and combined, portrayed differently according to the specific space within which I found myself, would serve me in numerous ways during the course of my fieldwork. Which leads invariably to a discussion of the various contexts that compelled the re-interpretation of my identity(ies).

Working in Nairobi resulted in numerous challenges, the most prominent being the questions it raised about the applicability of the particular style of fieldwork (participant observation) I had chosen in an urban setting. Ellen (1984: 83) summarises the problem quite succinctly when he asks, 'how does one do participant

[30] *Kitu kidogo* is literally translated as something small, *chai* as tea. Both are euphemisms regularly used in everyday Kiswahili slang to mean a bribe.

observation in a community of perhaps one million people?' In my case, the 'community' numbered an estimated three million people, with a further six million estimated to inhabit the greater Nairobi area. It should also be noted that, over 50 per cent of Nairobi residents are estimated to be living in slum areas in and around the city centre, communities which are notoriously hard to penetrate (APHRC 2002).

Nairobi, therefore, could not be properly defined as a unit or field of study. On the one hand, it could be partially identified as a bounded community, given that people living in the city acquired a distinct identity, often associated with being closer to centres of power and knowledge. An identity, it must be noted, more often attributed to them by those living outside the city, than assumed by those who actually lived within the city. On closer inspection, however, the vast divides that characterised Nairobi became evident - mostly centred on place of residence, which corresponded to socio-economic status. The KC's, or Kenya Cowboys, descendants of European settlers, lived in Karen or Langata, the Asians in Parklands, expatriates and upwardly mobile Africans in Muthaiga and Runda, the middle class Africans in South C, the lower classes in Mathare and Kangemi. Additionally, mobility between rural and urban areas was frequent, and many people had homes in rural areas and identified themselves primarily as belonging to those homes. Despite its cosmopolitan surface, ethnic identification was still strong. In all these dimensions, therefore, I took on a different face, necessary to penetrate the particular 'sub-culture' I had identified.

In Kakuma, as previously mentioned, space was similarly difficult to delineate. A sprawling little town, rather than enclosed camp, with restrictions on movement both physically enforced and also largely due to the hostile geographical terrain.

Artificially bounded, but on closer inspection with fluid borders, with legal and underground arrivals into the community every day. Refugees constantly changed their own identities, sometimes defining themselves as refugees, other times as Sudanese, or as Nuer, or as 'those of Kakuma' - the latter which could mean, those who had lived in Kakuma since it had been established and, therefore, were veterans, or had a higher claim on suffering the most, or those who were more 'developed' (which was often equated to being better educated), who had lived in the camp for a long time, as opposed to new arrivals of whom it was said, had 'come from the bush'. If a community or social space is so-defined by its inhabitants, then Kakuma was many different places at various times or all at once, and I had to remain constantly aware of its changing guises during the course of my work there.

The Interview Process

One of the main advantages of the interview method is that it gives the researcher more control and usually results in higher response rates, especially in cases where people have difficulty reading or writing, or would not take time to respond to an impersonal questionnaire (Frankfort-Nachmias 1996: 238). Given that a large proportion of the older population in the camp and many who dwell in the slum settlements of Nairobi exhibit low literacy rates, the use of interviews was particularly useful in the context of this particular study.

Prior to departure for the field, I had constructed several interview schedules, each focusing on a particular group to incorporate into the survey. The schedules were prepared in English, and designed for refugees, citizens, UN officials, NGO staff,

Implementing Partners (IPs) and government officials. Upon arrival in the field I soon revised my interviewing strategy.

In Nairobi, the interviews retained much of their original constitution. I used the original version of the interview schedule, introducing related questions as the interview progressed. Prior to administration, the interview schedules were discussed with two experienced social scientists from the University of Nairobi, and two independent consultants, all of whom had extensive experience of conducting social surveys in both urban and rural settings on a variety of subjects. They were also discussed with my research assistant, before the start of interviewing and then reviewed after the first ten interviews had been conducted and transcribed.

Interviews in Nairobi were conducted in English and/or Kiswahili, without the use of a translator. Given the difficulty in accessing informants, and the related time constraints, the only feasible way to conduct the study was to quite strictly follow the layout of the interview schedule. Thus, we deviated from the layout only when it was necessary to obtain further explanation or clarification of a statement that had been made by the respondent.

In Kakuma, interviews assumed a much more fluid texture, given the lack of time constraints on most of the population and the willingness of many of my informants to engage in long informal discussions. I did not make any formal attempts to learn the languages of the informants I worked with because they came from such a variety of backgrounds that it was unfeasible. I was able to communicate in English, Kiswahili and French as the need arose and in other situations used translators.

Interviews were both structured and semi-structured and were conducted with individuals and in focus groups. I found focus group discussions to be particularly useful in contexts where informants may have been intimidated by a one-on-one approach, or would be encouraged to be more vocal in a group setting, for example, when discussing food distribution, relations between the host and refugee communities and so on.

I tried to keep my interview design very flexible. I constantly attempted to withhold assumptions about 'how things worked' and to solicit themes and ideas from the interviewees. These themes were then analysed and specific issues to be examined in detail were identified. Field notes were taken for both formal and informal interviews, either during or after the interview and collated at the end of the day. I also obtained photographic documentation, although this was limited given that, in many circumstances, I found it inappropriate to take photographs.

Although I had originally anticipated using a tape recorder, I realised in the initial stages of my study that many potential informants were occasionally wary of my motives or placed a high priority on confidentiality and were reluctant to be recorded. In some circumstances, even if informants were willing to be taped, knowing that there was a tape recorder in the room would significantly influence the way they interacted with me. They appeared more self-conscious and would remain formal and abrupt, conforming to stereotypical interview mode, rather than lapsing into comfortable conversation. I conducted my first taped interviews in Nairobi, with NGO officials, whom I assumed would have had experience with, and would be comfortable with, recording equipment. However, I soon noticed that they constantly glanced at the tape recorder and maintained an official tone at all times,

talking to it rather than to me. Consequently, I decided not to use any recording devices and the change in the attitude of the interviewees, and the quality of the interviews was immediately noticeable. I personally transcribed the few recorded interviews I did have verbatim, in an effort to minimise the risk of error.

Leaning (2001: 1432) identifies four areas, corresponding to the four main principles of bio-ethics, which should be taken into consideration when conducting field research among refugee populations, whom she characterises as more vulnerable to manipulation and exploitation. These are informed consent, confidentiality, do no harm and beneficence, the most complex being the latter. In whose interest is research being done and who will benefit from the results? I made a conscious attempt to take all these principles into consideration for the duration of my fieldwork, both in Kakuma and in Nairobi.

At every meeting I would introduce myself at length, covering my national and/or ethnic background, which is a question of importance for many Africans[31], my educational background, in an effort to establish my legitimacy as a researcher, the purpose of my study, the sponsors of my study, expected outcomes and, in Kakuma, would explain my role as a volunteer at LWF. Depending on the number of people being interviewed and the time available for discussions, I would then ask for a short introduction from the informant(s) and we would then hold an interview session, which would evolve as more of an informal conversation than a structured question and answer session. If there were other people present at the session, for example, translators or caseworkers, I would ask the informant if they were comfortable

[31] It has been noted that many Southern countries have relatively rigid systems of social stratification and since status tends to be ascribed, rather than achieved, social and biological characteristics which may be irrelevant in other circumstances, may assume crucial importance, for example, background, language, race, gender, age, religion and so on. See Bulmer and Warwick (1983) for further analysis of this issue.

speaking in the presence of the person. At the end of an interview, I would ask the informant(s) if they had any questions, whether directly related to the interview or not, which they wanted me to answer. This was in line with the emphasis I placed on the interactivity of the interview process and the importance of transparency.

In Nairobi, I made extensive use of my research assistant in his capacities as interviewer and translator. As previously mentioned, it was difficult to establish a personal rapport with my informants in the Nairobi field site. It would have, similarly, been difficult to find assistants who could claim insider status with all the communities I had hoped to target. I, therefore, decided to hire a single assistant for the duration of the study for several reasons. I placed primary emphasis on his social work skills and the fact that he had a history of community work with several of the groups I hoped to interview. Consequently, there was an element of 'localness' involved, which made initial interactions with informants easier (Ellen 1984: 265). Additionally, it was easier to maintain an element of continuity in the research and gain more relevant information by working with one individual, with whom a stable working relationship could be established.

I had entered the field with well-entrenched assumptions about the dynamics of relationships/hierarchies between men and women in African societies and how this would affect honesty on sensitive issues like threats to personal security, rape and so on. This myth was dispelled soon after my arrival in Kakuma, where I was witness and party to, several conversations on these particular topics in the presence of male caseworkers. When I questioned how openly women talked to them about their problems they explained that it had been a difficult process, but after years of work in their respective communities they had built up relationships of trust and

confidence, which enabled them to circumvent gender barriers. The myth was also dispelled, of course, by my own experiences when interacting with male and female informants in the camp.

I did not choose informants immediately upon arrival. In both Nairobi and Kakuma, I liased with local and national staff and community workers, who had already established contacts within the communities I had identified. Key informants were chosen for several reasons. In Kakuma, community leaders were chosen because of their formal status in society. I spoke to them to get a sense of community dynamics and hierarchies and as a way of 'appeasing' them, easing my entry into society and as a mark of respect (Daley 1997: 17). However, I made an effort not to use them a specific entry point into society given that the whole system of electing community leaders was slightly flawed and I was never sure how much legitimacy they had within their respective communities.

Other informants were chosen by virtue of their informal positions. Primary among these were caseworkers, many who had cultivated close personal relationships with their communities, who were respected and trusted, and allowed me to access certain sections of the community I might otherwise never have been able to approach as an outsider. They were particularly helpful at the start of my research because they gave me invaluable information on local customs and traditions and pointers on how to interact with my informants. It was easier to go out into the field and meet potential informants with someone who could 'vouch' for my character. Eventually, I would go out into the field on my own with little more than an introduction from a caseworker, or with his or her name at hand and find people open and welcoming. In Kakuma, information networks were surprisingly strong

and within days of my arrival I would go around without needing to introduce myself to what I considered new groups because they were already aware of my presence in the camp.

I maintained confidentiality of respondents, where requested, and in my field notes only identify interview subjects by number and use pseudonyms in the thesis. Harrell-Bond (1976) notes that it is impossible to hide all insiders from themselves and their peers and, sometimes, from outsiders, particularly when specific roles or offices are involved. I do acknowledge that in some cases it may be possible for individuals familiar with the personal history of an informant to identify him/her from the details of my notes and as such, I have attempted to limit events recounted in the thesis only to facts relevant to the research.

There are always problems associated with fieldwork, some of which may be predicted, some that must be addressed as the study progresses and still others that may only be realised in retrospect and taken as lessons learnt. Specifically related to working with informants from other cultures is the risk of a biased response resulting from the use of translators or local research assistants (Jacobsen and Landau 2003: 9). However, it must be realised that there is also a risk of biased response even when translators or research assistants are not necessary, simply because of the potential for linguistic variation or different cultural interpretations of terms, even where the researcher and researched claim to speak the same language.

Where translators or research assistants are used, and I would recommend the use of someone with knowledge of local customs regardless of the researcher's language competency if only for initial entry into the field, they must be chosen with

discretion. My research assistant in Nairobi was chosen primarily because he had a strong background in social work. He had worked with several of the communities I was interested in incorporating into my study, which was an advantage, because it meant he had established community contacts and would not have to spend extensive periods building a rapport with informants.

In Kakuma, I did not have a research assistant, but worked primarily with community caseworkers, who doubled as translators. During most of my interviews at the camp, I had caseworkers/translators present, who had already established a good rapport with the community and were usually held in high regard around the camp. In group-settings, individuals in the group were at liberty to volunteer or to be proposed by respondents to act in the capacity of translator upon the consent of all those present. Although translators were not always required, I did find it useful to have someone with knowledge of the local language present in the event of potential misunderstandings between respondents and myself. I realised that often, even when a respondent claimed to speak English, Kiswahili or French, the languages that I communicated in, there was still a great risk of miscommunication due to linguistic variations. The Kiswahili spoken by the Congolese community, for example, was often interspersed with words from the individual's own ethnic dialect which made it difficult for me to understand.

The validity of the interview process is largely dependent on the quality of information available to the researcher. This in turn, depends to a large extent on the kind and quality of relationship between the researcher and their informants (Chagnon 1974). It is incredibly difficult to create a climate of trust. Often, my informants expressed their distrust of researchers. I was not the first researcher to

cross their path, and would not be the last. In Nairobi, in the run up to the general election, people shied away from discussions relating to human rights. Proponents of the human rights movement in the past were seen as synonymous with supporters of the opposition and although tensions had not risen to levels seen in previous multi-party election, Kenyans had learnt, from previous experience, to be wary. In Kakuma, meanwhile, the mistrust stemmed from years of uncertainty, in which refugees had seen aid workers, researchers and agencies come and go, had no access to the state which granted them 'protection' and felt generally ignored and neglected.

As noted by Colson (2003: 6)

> ...the lack of trust that operates among refugee camps and among others uprooted should be no surprise, for those who encounter one another lack the reciprocal relationships and expectations of a common future that guarantee good faith. Good intentions, even if perceived do not earn trust.

In a climate of mistrust, respondents will sometimes be dishonest, and this has to be taken into consideration, both during interactions with informants and when analysing data. Dishonesty should not necessarily be taken as a reflection of the skills of the researcher or as an implication on the character of the informer, but it *should* be seen as an opportunity for reflection and re-evaluation.

To give one example from my own experience: I was conducting a survey at water points throughout the camp in an effort to examine refugees' abilities to access water. For the duration of my stay, many refugees complained about their inability to access water, either because the agency placed severe restrictions on the collection of water,

or because the agency simply did not turn on the taps. While the agency acknowledged that there was a water shortage as a result of persistent drought, they insisted that the problem was being exaggerated. I decided to see for myself, and stationed myself at several water taps over the course of several days. I would arrive before the taps were turned on and stay until the taps were turned off each day. This would often entail spending three to four hours being spent at any one point.

On one of these vigils, two women confronted each other and began to fight. I was simultaneously trying to continue to 'observe', to avoid being caught in the fracas and to maintain a calm façade. My immediate observation was that here was a group of women so desperate for water that they would fight each other, tooth and nail, for it. The situation was indeed dire. My suspicions were raised, however, when the women were dragged into a corner and easily separated from each other, when I noticed that the other women present at the tap were all laughing at the fight rather than being drawn into, or attempting to stop, it, and when the 'fighting women' were to be seen minutes later standing and chatting happily in a corner. This scene would be repeated a further two times that afternoon for further emphasis. Later, one of the women standing in line at the tap, whom I had earlier befriended, informed me that the whole scene had been staged for my benefit, given that some of the women were convinced I was from a donor organisation and might be in a position to improve their situation.

Although this is a simple, and somewhat humorous, example of intentional dishonesty, it should be noted that the potential for intentional error is always present, and may not always be so lightly taken, especially when discussing incidents of violence. At such times it is important to refrain from making value

judgements. However much one's individual principles may be offended, immediate responses must be stifled in order to maintain access to the community. The context of the action must also always be taken into consideration. In this case, the fact that the woman had chosen to dramatise their predicament *could* be interpreted as an indicator of their desperation and as a sign that they felt they needed to make the most out of a limited window of opportunity.

What is important to remember is that, whatever the origin of a problem and whatever its conclusion, the researcher must take into account and acknowledge all the practical, often-deemed inconsequential issues, involved in fieldwork. If he or she fails to do so, each new generation of researchers may be condemned to repeat the mistakes of their predecessors unable to refer to more explicit accounts of the major difficulties to be overcome (Sender and Smith 1990: 14).

Conclusion: Research as a Dimension of Ethical Choice

Although the fieldwork concept may, at first sight, appear apparently unproblematic, it is actually rather complex, in terms of the multiplicity of styles that the idea covers and the methodological and ethical problems it raises. Perhaps the most prominent question raised is this. What legitimacy do researchers have to speak for others? Given the numerous challenges I encountered, the need to constantly re-evaluate categories of analysis, and the feeling that I, as a researcher, and my field of research were both in a constant state of flux, I did not know if I could claim to have 'understood' and, consequently, to be able to 'speak for'.

The aim of my fieldwork was to understand the experiences of the refugees from their point of view, as opposed to from a top-down perspective. By listening in an informal way to what they had to say, I gained insight into issues of importance that I did not have in mind when I planned the research. The open-ended nature of the research process also allowed me to adapt my questions as I went along, challenging previous assumptions and, I believe, leading to a better understanding of the lives and experiences of refugees.

In listening to and re-telling the story of others, we come to understand a bit better what it is like to be in their shoes, we are able to empathise with the 'other' and we are able to conceive of them as members of our 'moral community', thereby creating a sense of solidarity. As Rorty (1989: xvi) notes, solidarity is not discovered by reflection but created. It is created by increasing our sensitivity to the particular details of the pain and humiliation of other, unfamiliar sorts of people. This increased sensitivity makes it more difficult to marginalize people different from ourselves by thinking, 'They do not feel as we would'.

It is important to realise that the understanding of the life of the 'other', in this case the refugee has to be constructed. It is constructed through a combination of stories, resulting from the interaction between the researcher and the subject of the research. Time after time, I told my informants, in all sincerity, 'I am here to try and tell your story'. Although I question my ability to be able to tell truthfully, and in its entirety, the story of another in my own words, I also recognise that the main aim of telling this story is not is to share an 'objective reality' corresponding to the 'truth' (which does not exist), but to enable us to *imagine* what it is like to be the stranger.

While trying to speak for those among whom he/she has worked, however, the researcher must make a point of questioning his or her (un)witting location in power relations obscured behind cultural habit and scholarly rhetoric (Nordstrom and Robben 1995: 11). There are risks inherent in power - that much is incontestable. Yet are we not, as researchers and academics positioned in privilege, encouraged to speak out against the injustices we encounter? Granted, researchers are part of the 'information economy' and should realise that research necessarily involves making political and ethical choices about which voices are heard and whose knowledge counts (Goodhand 2000: 12). And sometimes it is tempting to refrain from accepting the responsibility of making these choices for fear of making the wrong choice.

I believe we must acknowledge the risks involved in speaking for (an)other, but I continue to remain strongly convinced of our duty to speak out and write the wrongs. To quote Davis (1992: 160),

> We can recognise that other people construe their worlds; and we can guess that we do the same. If that is all we could live happily ever after, exploring mental worlds and refusing judgement...but it is not all. Pain is real: whatever my construction of it may be and whatever construction the sufferer may put on it.

In the same way, those suffering in Kakuma are real, and whether we have experienced suffering as they have, or simply borne witness to it, we can still recognise their pain. James (1997) exhorts us to question whether one person can understand another's fears and, by extension, whether a scholar can or should interpret a community's fears. I fully agree with her when she states, 'The answer from our discipline has to be affirmative'.

CHAPTER THREE

USIPOZIBA UFA, UTAJENGA UKUTA[32]

STATES, CITIZENS AND RIGHTS: THE CONCEPT OF RESPONSIBILITY AND THE POLITICS OF PROTECTION IN THE AFRICAN POST-COLONY

Growing refugee numbers have been cited as a leading cause of increasingly restrictive refugee policies the world over. Many states that have subscribed to the international legal regime for the protection of refugees by acceding to international instruments are now undertaking radical changes, through both legislative and inter-state arrangements[33], which have resulted in restricted access to asylum and the provision of legal rights to refugees. These limitations include the imposition of carrier sanctions, the application of 'safe third country' principles, increasing resort to temporary protection, constraining access to refugee status determination procedures and employing increasingly restrictive interpretations of the refugee definition (Gorlick 2000: 2).

Africa has not proved an exception to the rule. Since the late 1980s, there has been a visible shift in refugee policy on the continent. Many states now prefer the creation of

[32] Literal translation: If you do not fill up the crack, you will have to build a wall. Meaning: You have to deal with the root/cause of a problem, rather than its apparent manifestations in order to solve it fully.

[33] For example, see the Dublin Convention, a treaty between the 15 EU member states that sets up a detailed system to allocate responsibility for the examination of asylum applications the Convention came into force in September 1997. The aim of the Convention is to prevent multiple asylum applications being made throughout the Union by providing that an asylum applicant must make an application in the first EU country in which s/he had an opportunity to do so. In the event that an asylum seeker does not avail of this opportunity, and instead travels to another EU country s/he may be sent back to the first country. This is based on the 'safe third country' notion. The signatory government does not have to make sure that the asylum seeker will get a fair and full hearing in that other country. Nor does the signatory government have to ensure, under the Dublin Convention, that the person is not eventually returned, through an EU country to a country from which s/he fled (497A0819(01) Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities – Dublin Convention Official Journal C254, 19/08/1997 p.0001-0012).

'safe havens' within the countries generating refugees.[34] Additionally, states routinely reject refugees at their borders and repatriate refugees even when conditions in their countries of origin are still unstable. One of the most memorable examples of mass repatriation in this context was the expulsion of over 400,000 Rwandan refugees from Tanzania in 1996 (IRIN 1996).[35] It has, consequently, been argued that, with the intensification of the refugee problem, states have become less committed to the protection of refugees (Rutinwa, 1999).

In analysing the dynamics of migration in sub-Saharan Africa, Adepoju (1994) identifies the four central 'regimes' that have resulted in the displacement of populations as economic, demographic, political and cultural. Meanwhile, in a study of what he terms the 'homeless' in Africa, which focuses both on refugees and internally displaced persons (IDPs), Miller (1982) pinpoints civil and ethnic conflicts, colonial and racist domination, oppressive governments, foreign invasion, and natural disasters as central to Africa's refugee dilemma.

The causal factors identified above, however, are symptomatic of a deeper, more fundamental systemic failure, which can be described, in the words of Doornbos (1990: 179), as 'the problem of the African state'. In referring to this phrase, I acknowledge its obvious allusion to the elements of crisis in Africa, such as economic stagnation, political instability, unrestrained crime waves and civil wars. But it also points to the need to *problematise* the African state and to understand that political

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[34] At a conference addressing the challenges of refugee protection in Africa, the Tanzanian Minister for Home Affairs, Omar Ramadha Mapuri stated that, 'The possibility of establishing 'safe havens' under international supervision within the refugee generating countries needs to be explored seriously and urgently and not to be discouraged as unworkable...' (IRIN 2003).

[35] There are numerous other examples of *refoulement* on the African continent, including the forcible repatriation of Liberians from Guinea by the Guinean army (BBC 2000, *Liberian Refugees Return from Guinea*, 12 October, 2000), of ethnic Tutsi Congolese from Rwanda (USCR 2002: *USCR Calls on Rwanda to End Forced Return of Congolese Refugees*, 25 September 2002), of Rwandans, Equatorial Guineans and Angolans from Gabon (USCR 1998 *Worldwide Country Report: Gabon*) and so on.

action in Africa operates in a rational, albeit informal and uncodified manner that is not ordered in the way that politics in the West is ordered (Chabal/Daloz 1999: xix).

Although African states have reproduced many of the familiar features of the international system, they have also developed their own distinctive and unique attributes. The state in Africa does not conform to the rational-legal ideal concept of 'statehood', which supposedly has standards of universal provision for national citizens. Instead it has, inherent within its foundations, exclusionary and discriminatory practices that affect both citizens and non-citizens. This has resulted in multiple sites of inclusion and exclusion based on membership of a variety of shifting groups, categories and networks. The African continent, often said to be governed by age old tradition, is, in fact, a place of unrivalled change and mobility where societies, which have been subject to extreme destabilisation, are continually developing new and diverse coping strategies.

Theoretical, political and legal discourse on refugees has largely been fashioned by the European experience, and more specifically, by the early post war/Cold War period (Westin 1999: 31). Models derived from the Western experience continue to be applied to the African continent, despite the fact that refugee situations in sub-Saharan Africa differ markedly from those in Europe. In order to develop a more comprehensive analysis of the experience of refugees in Africa, therefore, there is need for a more in-depth appraisal of the forces that have shaped this experience, including local circumstances and the political and social history of regions (Ager 1999: 2). Unfortunately, the policies and practices of African states in relation to forced migrants have rarely been subjected to rigorous research (Kibreab 1991:5).

Any discussion of the evolution of refugee policy in an Africa-specific context requires an understanding of the unique historical, political, social and economic environments in which the African state has evolved and within which policy is subsequently constructed. Consequently, my inquiry into the development of the state in Africa, and its impact on the evolution of associated notions of citizenship, inclusion and exclusion, is based on the premise that, in order to understand the substantive properties of policy making, one must consider the conditions under which the policy under investigation is designed. I also assume that state institutions are neither neutral, nor aloof, but have interests of their own (Chazan et al 1999: 40).

I will concentrate on Africa's, and Kenya's, colonial and post-colonial history because this period marks a significant turning point in the organisational structure of African societies. Although the significance of population movement in pre-colonial Africa and its influence on the formation of contemporary social and political attitudes towards migrants and migration *is* acknowledged, and will occasionally be referred to, I have chosen to omit an in-depth study of the pre-colonial period. This is because it is difficult to determine how far back one has to go to identify the 'traditional societies' alleged to be characteristic of the pre-colonial period. Do we start before the Portuguese conquest, the Islamic invasion, or before the Bantu expansion? I believe that the static concept of 'traditional society' so often applied to Africa cannot withstand rigid examination and would not, therefore, contribute significantly to the development of my argument (Mamdani 1996: 39).

The validity of Kenya as a case study illustrative of conditions in other African states may be questioned. To the extent that the African colonial state was an historical formation, Kenya cannot be regarded as wholly representative of 'the state in Africa'.

Yet the structure of states on the continent did come to share certain features because everywhere the organization and the reorganization of the colonial state was a response to a central and overriding dilemma: the 'native'[36] question. These commonalities allow us to construct a 'scientific object', that is to say, Africa, and to circumscribe a political area in a comparative perspective (Bayart 1993: 34). Based on this premise, I will through the course of this thesis refer generally to Africa and more specifically to Kenya and, in the long run, hope to draw conclusions that relate to the continent as a whole.

The central argument of this chapter is that most African governments fail to protect the rights of refugees for the same reason that they fail to protect the rights of their own citizens. These range from indifference, lack of accountability, corruption and impunity to the entrenchment of the habit of arbitrary rule, all of which can be traced to the particular structural and organisational identity of the post-colonial state in Africa. The chapter will begin with an analysis of state formation in Africa, underlining the specificity of the African experience, the political culture bequeathed by the experience of colonialism and the impact this had on the evolution of civil society and civil rights. In the second part of the chapter I consider the evolution of boundaries, of migration and of citizenship as one of the primary identities affecting entitlement to state protection. I will also identify the 'paradox of citizenship' in Africa, where citizenship does not automatically constitute membership. In the third part of the chapter, I will highlight the process through which polity-specific modes of membership shape and maintain state discourse and policies and will ask to what extent rights and privileges are granted to citizens and non-citizens. Finally, I will

[36] Although I acknowledge the deprecatory nature of the term, I must stress that the word 'native' is used throughout the thesis in the context in which it was applied during colonial rule, as part of the emphasis on differentiation used to structure the relationship between Africans and Europeans. For the rest of this thesis, therefore, the use of inverted commas will be omitted for purposes of continuity and clarity.

trace the historical development of the Kenyan state. I aim to pinpoint the structures of inclusion and exclusion that survived the transition from colonialism to independence. I will also identify the patterns of incorporation and disengagement that were further institutionalised in the post-independence period as a means of consolidating the legitimacy of the state and which continue to contribute to contemporary policy-making, including policy relating to the protection of refugees.

State Formation in Africa: Dualism, Diversity and Differentiation

On the eve of independence, African leaders received a structure of control but lacked a power base from which they could effectively establish priorities and pursue policies. It was in this context of power impoverishment and political fluidity, buttressed by inherited institutions of control, that they operated for the first years of independence (Chazan et al. 1999: 46). To transform the residue of an empire into a nation required a combination of persuasion, with the ability to distribute tangible benefits. However in Africa, states had meagre resources, which led to them becoming more authoritarian in an effort to control distribution. This process, in itself, entailed the political persecution of certain categories of the population and would ultimately serve to define, on one front, who was considered an insider and who was considered an outsider.

The trend towards power consolidation, which should logically have been opposed by populations only just emerging from the shadows of colonial oppression, was instead facilitated by the discovery of a legitimating formula in the form of 'the development ideal'. The centralisation of power was thus justified as a more direct way to achieve rapid development and advance the general public welfare. This

utilitarian argument rationalized the quest for control by suggesting that the curtailment of personal liberties was a necessary sacrifice to fulfil a broader notion of public good (Callaghy 1986).

The idea of the developmental and centralised state emerged soon after independence, and was strongly influenced through the 1970s by the importation of dependency theory from Latin America as well as the movement for a New International Economic Order.[37] It was characterised by a move towards nationalising colonial corporations and indigenising businesses owned by 'foreign entrepreneurs.'[38] It began with, and, in its strongest form, was epitomised by the racial cleansing of Asians conducted by Idi Amin in Uganda in 1972.[39] However, in spite of the expansion of the developmental state after colonialism, it should be noted that the premise of state control and management of the economy as a necessary condition of development was solidly implanted well *before* the imperial flags were lowered (Young 2004: 28). The need to control the supply of basic primary commodities during the Second World War led to new forms of state intervention in the economy. After the war, many of the wartime emergency controls were institutionalised and agricultural monopolies were consolidated under state management for key export crops. Thus, state control was made easier to enforce, given the legacy of colonialism. The political culture bequeathed by colonialism contained the idea that authoritarianism was an appropriate mode of rule and that

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[37] Formal proposals for a New International Economic Order (NIEO) were put forward by developing countries at a summit meeting for the Non Aligned Movement in 1973. The proposal stemmed from growing economic and political tensions between developing and developed nations. Frustrated with poor growth prospects, developing nations demanded a better deal, rallied through the Non Aligned Movement and came together at the UN Conference on Trade and Development (UNCTAD), where they argued for better terms of trade and more liberal terms for financing debt. The success of OPEC served as a further catalyst for countries to come together in support of the NIEO but, unfortunately, due to the lack of power of many of the nations of the South as well as increasingly divergent interests, the goals of the NIEO were never realised.

[38] This referred to the South Asian and Mediterranean mercantiles who had a strong hold on the business sector in most African countries. In Kenya, this group was mostly of Indian and Pakistani origin.

[39] Amin ordered the Asian community to depart within 90 days. Of the 83,000 Asians resident in Uganda in 1970, 30,000 of whom held citizenship, only 10,000 remained by 1975 (Twaddle 1975).

political activity was merely a disguised form of self-interest, subversive of the public welfare (Kasfir 1983: 34).

Control was not limited to the economy. Control of the population had played an integral role in the structure of the colonial state, which was, essentially, a military administrative unit. The colonial authority used coercion, by an authoritarian policy of forced settlement, by controlling migratory movement and by artificially fixing ethnic details through birth certificates and identity cards to control the population. Coercion initially assumed two forms. Debated as alternative modes of controlling the 'natives' in the early colonial period, direct and indirect rule would soon evolve into complementary ways of 'native control' (Mamdani 1996:16). Direct rule took the form of urban civil power and led to the exclusion of the natives (Africans) from civil freedoms guaranteed to citizens (Europeans) in civil society. Indirect rule, however, signified a rural tribal authority and involved the incorporation of natives into a state-enforced customary order. As they learned from experience - of both the ongoing resistance of the colonized and of earlier parallel colonial encounters - colonial powers generalized indirect rule as their principal answer to the 'native question'.

The combination of direct and indirect rule led to the creation of what has been termed the 'bifurcated state'. It contained two forms of power under a single authority, divided between subjects and citizens, regulated by customary law on the one hand and modern law on the other. Rural customary law spoke the language of community and culture; urban modern law spoke the language of civil society and civil rights. Rural law claimed to enforce tradition, civil law to protect rights (Mamdani 1996). Civil society was, therefore, primarily a creation of the colonial

state and only applied to certain segments of the population. The rights of free association and free publicity, and eventually political representation, were the rights of citizens under direct rule, not of subjects indirectly ruled by a customarily organized tribal authority. Thus, on the eve of independence, many Africans did not conceive of themselves as citizens but as subjects in relation to the state and this perception often continues, in many instances, to define state-citizen relations to this day.

Dualism was not only a feature of citizenship, but also a feature of institutional development. Mechanisms for the extraction of resources were refined, those for distribution rudimentary. Government was imposed but not participatory, instructive rather than consultative (Chazan et al. 1999: 29). Military and police forces were everywhere carefully elaborated as instruments of rule, and participation in political life was actively discouraged. The population was not encouraged to conceive of the state as responsive to or responsible for their needs. The state-citizen relationship was not viewed in terms of reciprocity. This becomes even more evident in relation to the roles played by agents of the state.

The decentralised arm of the colonial state was the Native Authority, which bore little resemblance to a local administration authority, say, in Britain. Its personnel functioned without judicial restraint and were never elected. Appointed from above, they enjoyed office so long as they had the support of their superiors. Their powers were diffuse with little functional specificity (Mamdani 1996: 53). This structure would continue post-independence with the concentration of the apparatus of state power in the hands of individual leaders.

The personalisation of the decision-making process was concomitant with the overall trend towards centralisation. Leadership became a substitute for regularised channels of policy making. It was usually the president who had the final say and policies were often formulated on the back of presidential off-the-cuff statements, taking the form of presidential decree. Thus, for example, on one occasion, President Moi warned that refugees in three locations, Dadaab, Garissa and Kakuma, would be relocated to Somalia and Sudan accusing them of exacerbating insecurity in the country, stating that 'we have been very generous to the refugees but they are treating us in an unfriendly manner' (East African Standard 1997: 1). This statement (and several others on the part of the president) was followed by sweeping arrests of foreigners, including recognised refugees. Executive presidents are undoubtedly informed by the opinions of party officials, personal advisers, technical experts, senior bureaucrats and so on. However, unlike their counterparts in the West, African leaders during the first generation of independence were not subject to checks and balances, nor were they restrained by organised pressures from below (Chazan et al 1999: 53).

Mobilised civic response and/or opposition to the government is often a by-product of strong national identification, where the citizen conceives of himself as having duties to the state, while simultaneously deriving rights by virtue of his/her membership of the state. The emergence of new states in Africa triggered what has been termed an 'integrative revolution', based on the creation of a national identity, which would play a crucial role in determining the distinction between insider and outsider (Geertz 1963). National identity requires the actualisation of the myth of being 'born together'. Under the best of circumstances this would generate

considerable tension, but given the difficulties prevailing on the African continent the process of national identity formation was much more complicated.

This is not to say, however, that national identities have not developed on the continent. According to Frantz Fanon (1963: 154-155), 'national culture is not folklore or abstract populism that believes it can discover a people's true nature. It is not made of actions, which are less and less attached to the ever-present reality of the people'. Thus, although many argue about the arbitrariness of African borders, which brought together disparate groups, without a shared history or cultural commonality, I would argue that, with time, groups of Africans have come to share a common history, based on shared experiences of oppression and on the struggle for independence, and a link, corresponding to Fanon's 'ever-present reality', derived from their mutual experiences as members of the polity, which has enabled them to conceive of themselves as nationals of a particular state.

Consequently, African nationalism is adaptable. Ties are often based on a common understanding of shared suffering rather than an idealistic vision of a glorious past or future. It is difficult to pinpoint, for instance, what is 'Kenyan' about being Kenyan, and yet most Kenyans will unfailingly tell you they are proud of their identity. But what is this identity? Perhaps one of the best summations on what it means to be Kenyan comes from Binyavanga Wainaina (2003), who states,

> There is nothing wrong with being what you are not in Kenya - just be it successfully. If there is a courtesy that every Kenyan practices, it is that none of us ever question each other's contradictions - we all have them...For us, life is about having a fluid disposition.

Being Kenyan, therefore, involves being an unlikely composition of contradiction, paradox, fluid identity, perhaps necessitated by the need for adaptability in a constantly changing and challenging environment.

The subject of nationalism, and its ambiguities, inevitably leads to an exploration of the murky waters of ethnicity. It is in the arena of the ethnic that the fluidity of disposition previously mentioned is so often displayed. It has been argued that ethnicity is the prime source of identity formation in Africa and a primary catalyst in the breakdown of the state. Although I acknowledge the importance of ethnic ties, I believe that ethnicity cannot provide a basic reference point for the post-colonial state because ethnic lines are constantly being redrawn and because ethnicity is largely enmeshed in the phenomenon of the state, for which it supposedly provides the explanatory key. The contemporary force of ethnicity, therefore, comes much more from its appropriation by local people most often in relation to the allocation of the state's resources. In the context of the contemporary state, ethnicity exists mainly as an agent of accumulation, of both wealth and political power (Bayart 1993). Thus, although ethnicity in Africa is almost never absent from politics, it cannot be said to provide its basic fabric.

It should also be noted that ethnicity does not exclude other lines of identification, for instance, biological, religious or economic, which play an integral role in relations between citizens, between citizens and the state and between states on the continent. In Kenya, for example, although politicians may come into power on an ethnic platform or use ethnicity as a means of mobilising the masses, it has to be recognised that populations play on ethnic identification as a way of accessing resources of the state. In this context, therefore, ethnicity is manipulated only in relation to the

existence of the state. Similarly, cross-border ethnic ties have assumed importance only in so far as the state and actual borders now exist.

The flexibility of ethnicity must always be taken into account, that is, where people classify themselves into a category or sub-category in so far as it is beneficial to them. Ties can be created between populations where they did not previously exist. For example, the Kalenjin is a grouping of smaller tribes, including the Nandi, Tugen, Kipsigis and so on, brought together for the primary purpose of creating a stronger political base for President Daniel Arap Moi, coming, as he did, from a minority ethnic group. On another level, ethnic identities can be transversed for personal gain.

Thus, Somali Kenyans often tend to move between their two identities as Somali and Kenyan depending on the situational context. They define themselves as Kenyans for the purpose of maintaining control over contested land and as Somali when this enables them to claim rights by virtue of their status as a minority. In so doing they are able to access the centre in ways that other peripheral communities have not been able to precisely by virtue of their depicted status as 'outsider'. Identity, however, can also be manipulated by external sources, and commonly from the centre. Thus, for a long time, the Somali community, particularly in the northeast of the country was marginalised and discriminated against. But when the community began to make a concerted push for secession of their province, the government began to appoint Somalis as District Officers, District Assistants and Chiefs in an effort to co-opt influential members of the community and pre-empt the secessionist movement (Nasong'o 2000: 51).

It is important to recognise and acknowledge this mutability of identity because this distinction between insider and outsider has often been identified as a source of restrictive policies towards refugees. The role of xenophobia in the adoption of anti-refugee platforms is said to motivate restrictive asylum policies in the West[40], where ideas of who is in and who is out of the polity are clearly defined. It has also increasingly been cited as evident in many African countries (Rutinwa 1996) but this may, in fact, prove to be an over-simplistic analysis of supposedly fixed absolute attitudes on the ground towards those who might be classified as 'outsiders'. Given the fluid nature of ethnic identity and ethnic ties, ethnicity may not assume as much political importance as has previously been presumed. Where it does play a role, this role may be superficial, may change with time and/or may be influenced from above, that is state-induced, rather than from below, that is, a reflection of actual sentiment expressed by the citizens a state claims to represent.

Although ethnicity does exert an influence on the ability of groups to access the centre, one of the most important factors that has limited civic participation in the polity in Africa is the lack of salient socio-economic groups to voice group interests as a result of the poor development of productive forces on the continent. Because of a lack of stable land tenure, the category of landowners was either non-existent or marginal before the colonial juridical revolution. The peasantry was and is a less monolithic and less obviously formed social class than is generally the case, for instance, in Asia. And finally, as industrialisation was long in coming and confined in scope, the working class is only a recent creation, limited in size.

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[40] The European Commission on Racism and Intolerance, for example, expressed concern at the general negative climate concerning asylum seekers and refugees in the United Kingdom. It noted that frequent changes in immigration and asylum policies designed to increasingly deter these categories of persons from coming into the United Kingdom have contributed to the creation of this negative climate. It addresses numerous areas of the immigration act including detention, systems of support for asylum seekers and so on (Second Report on the United Kingdom, CRI (2201) 6, Adopted on 16 June 2000). Similar reservations have also been expressed with regard to several other European countries including Denmark, Holland, Spain and others.

Additionally, in African social groupings, positions are not mutually exclusive and an individual can be both a salaried worker and independent producer depending on the farming calendar or the time of the week. Many Africans maintain both urban and rural homes, because they often need to straddle sectors in order to eke out a living and, as such, they do not identify strongly with either grouping. Alternatively, many urban individuals maintain social ties with rural areas by virtue of family or even political obligations. Thus, even where the rural category may be considered peripheral, the legitimacy of the category 'rural' and, subsequently, the marginality of the group so defined, should be re-evaluated.

Similarly, proximity to the centre should not be presumed to indicate access to power. Subordinate urban social groups, workers, those employed in the 'informal' sector and the 'poor' can no longer be disregarded, as this thesis will illustrate. Almost one third of the population of the continent now live in towns but they are no less exploited despite their supposed access to the centre (Bayart 1993: 68). All in all, it becomes difficult for disenfranchised groups to form a coherent voice and marginalisation comes to characterise a society in which group identities are not distinctive enough to allow for mass mobilisation.

Given its lack of internal legitimacy, its developmental stagnation and its failure adequately to represent and protect its citizens, some may find it difficult to accept that the African state is functional. A state is not an abstraction, however, but a continually evolving construct. Thus, in Africa, although the state is a Western imposition, it has evolved as an African construct, through the ways in which it has been appropriated, both by those in power and by those who are subject to it.

Members of the polity are constantly recreating themselves to safeguard their existence and, in so doing, continue to redefine the parameters of the state. In less than a century, political spaces on the continent have consolidated themselves around the state. Territorial unification has been made possible by western technology with roads, planes, telephones and weapons. The space of the state may be created by force and coercion, which postcolonial authorities are no less reluctant to use than their predecessors. Domination may be asserted without disguise. But, in spite of all the difficulties they face, Africans, still choose to define themselves as Kenyans, Nigerians, Ghanaians and Ethiopians. The state in Africa, it seems, is here to stay.

Boundaries and Belonging

It has been noted that patterns of incorporation and integration, can be associated empirically with the institutionalized modes and the organizational logic of membership in particular polities (Soysal 1994:5). In this section, I will examine the patterns of incorporation and disengagement of citizens and non-citizens that emerge as a result of the institutionalized modes and organizational logic of membership in the state in Africa. I will also question to what extent rights and privileges are granted to citizens and non-citizens in the host polity and will evaluate the process through which polity specific modes of membership shape and maintain state discourses, policies and programs and budgets that concern refugees.

Two developments are crucial to the understanding of citizenship in Africa. First, the boundaries of colonial dependencies - which sought for the first time in African history to tie each person to a geographically defined polity - determined who was

considered indigenous and non-indigenous. Second, and equally important, the development of citizenship laws in the post-independence period was meant to determine who were considered nationals and who were considered non-nationals of the state.

Boundaries, or their right to exist at all, were not generally accepted by the local population both prior, and during the transition, to independence (Clapham 1996). The continuation into independence of the territorial units and rudimentary state structures established by colonial rule, regardless of their frequently artificial nature and the recent nature of their creation, would inevitably have a significant impact on the concept of belonging. This perceived illegitimacy of boundaries would eventually determine the direction of refugee policy in many countries. Kenya, for instance, had to worry about Somali nationalist claims to part of its territory. Britain had decided in 1963 to attach what was then called the Northern Frontier Province, where some 240,000 Somalis lived, to Kenya. At independence, Kenya inherited a disputed border and local hostilities, known as the *shifta* war. This would lead to the country's preoccupation with the idea of refugees as a threat to state security, stemming from previous experiences with the ethnic Somali population.

However, although borders are persistently cited as a legacy of colonialism that continues to burden the African state, on closer inspection it becomes evident that the origin of most contemporary border disputes lies not in the desire to make an ethno cultural space coincide with the space in the state, but in the struggle to control resources considered to be vital.

In fact, according to Mbembe (2000)

> Far from being simple products of colonialism, current boundaries reflect commercial, religious and military realities, the rivalries, power relationships, and alliances that prevailed among the various imperial powers, and between them and Africans through the centuries preceding colonisation proper. From this point of view, their constitution depends on a relatively long-term social and cultural process.

Thus, to state that current African boundaries are merely a product of colonial arbitrariness is to ignore their multiple origins. Having said this, the *consolidation* of African boundaries during the colonial era did fundamentally change the nature of population movements across the continent. It limited the potential for movement and confined hitherto mobile populations to specific territorial units. As a result, citizenship acquired a salience often greater than the ties claimed between ethnic groups separated by a border. However, African countries did not exploit the new firmness of their boundaries to develop innovative citizenship regulations that might establish a strong national bond between state and citizen (Herbst 2000: 227). Thus, although individuals might conceive of themselves as members of a particular polity, they do not necessarily accrue any benefits from this membership. Additionally, cross-border associations, stemming primarily from a shared ethnic background, continue to exist, although the strength of these ties has been severely eroded. As a result, many groups essentially operate in a type of no-man's land, caught between ethnic affiliation, on the one hand, and identification with the state on the other, belonging to both, benefiting from neither.

In spite of the professed permanence of boundaries, African states do not in reality exercise effective authority over their borders and are, consequently, extremely insecure about their territory. African nations guard their sovereignty because it is so critical to the exercise of power. The wider dimension of the state, and its right over space, has replaced the shackles of ancient societies, which ignored linear frontiers and recognised each other through a right over persons. The creation of boundaries has led to a new area of domination, brought about by the colonial change of scale in which the dominated were enclosed.

This territorial insecurity may serve to explain why, in spite of recommendations for burden sharing agreements, following in the vein of European states' diminution of boundaries and joint asylum policies, African states have consistently refused to implement arrangements like the European Union's, which they perceive to diminish the authority of states. This also explains why citizenship continues to be so critical on the continent. States have yet to become confident enough about their sovereignty to lessen the significance of citizenship, which is one of the few badges of status and privilege that sovereignty allows them to allocate (Herbst 2000: 234).

The state in Africa is, consequently, structured as a double area of identity (rights over persons) and inequality (rights over space). The latter is increasingly significant, however, as within the space of a few decades the production of inequality has made a qualitative leap in relation to previous centuries. Social stratification has widened, not simply as a result of the reproduction of historical hierarchies, but also as a result of their reproduction in previously unsuspected and inaccessible ways, that is, through the use of political, economic and military resources (Bayart 1993: 111). This

has led to increasing incidents of members of the polity being marginalized, which is most obviously manifested as a growth in internal conflicts.

Paradoxically, although citizenship assumes such an important place in the consolidation of power, African states, unlike those in the West, do not face the immediate security challenges that make tying the population to the political centre and emphasising distinctions between insiders and outsiders a necessity. There are fewer inter-state conflicts and states on the African continent are more concerned with trying to avoid intra-state conflicts. Thus, 'insiders' on the periphery may be marginalized, whilst 'outsiders' with access to the centre, may be integrated.

The arbitrary boundaries of African states have been cited as the reason for weak national identities, sources of refugee-generating conflict and the root of restrictive asylum policies. It should be noted, however, that in Africa, as elsewhere, states and their boundaries are historical (albeit with a more recent history) and not natural constructions. They are constructed through the process of historical contestation and struggle. Consequently, borders or boundaries provide no excuses for the failure to build coherent and effective governance systems capable of serving the diverse interests within the population (Gutto 2001: 64)

I do acknowledge that in diverse and fragmented societies, marked by profound restructuring of the economic and social order, there *are* challenges to the capacity of state institutions to ensure inclusion and participation for all who are formally members of the political community let alone for those who are outsiders seeking the protection of a state other than their own. This is an important point to consider

because it highlights the potentially limiting milieu within which a rights-based protection approach for refugees would have to be situated.

To quote the Lawyer's Committee on Human Rights (1995)

> Continued adherence to the twin fallacies of disinterested host governments and their expected conformity with international standards despite domestic records of abuse will continue to compromise refugees guaranteed rights to physical and legal protection.

We must understand the potentially restrictive environment within which we attempt to advocate improvements in the status of refugees. We cannot criticise states for failing to protect the rights of refugees, while ignoring the failure of those same states to protect the rights of their own citizens.

The fragile relationship between the citizen and the state, particularly with reference to the denial of rights does have colonial precedents. The colonial legacy of the bifurcated state, as previously mentioned, bequeathed independent African citizenship laws with two dimensions: civic and ethnic (Mamdani 1996). Civic citizenship refers to individual rights, that is, civil and political, which are usually stipulated as such constitutionally. In contrast, ethnic citizenship refers to group rights, which encompass social and economic rights and are normally referred to as 'customary rights'. It is necessary to understand how these two forms of citizenship and rights emerged during the colonial period, how they endured in the post-independence period and their impact on the dynamics of state-society incorporation and disengagement.

Ethnic citizenship is predicated upon the kin, territorial, political, and cultural structures evident on the African scene, which have in common an ascriptive and/or delimited geographic definition of membership. Particular sub-national, symbolic schemes bind members together. These groups adhere to patterns of authority established by traditional or revised custom, and members have a notion of belonging to a community linked together around common norms and values. The locations of these groups span, and at times transcend, the boundaries of any given country.

The commitment to the primary tie has promoted some perception of common goals and interests. In political terms, demands have been raised, votes given and support withdrawn depending on government responses to these concerns. Vertical boundaries are based on intricate and constantly changing notions of inclusion and exclusion. How people view themselves is thus often a mixture of objective criteria as well as some reflection of how others categorise and behave towards them. In the wider setting, ascriptive structures offer channels for lateral interaction and for engagement with central government authorities, as well as for withdrawal from the state realm. With very few exceptions, however, they do not preclude other associations (Chazan et al 1999: 84).

African social orders are marked by the fact that their component units are related to, and yet also distinct from, each other. Each group occupies a particular social 'space' yet at the same time interacts with other groups, both on a hierarchal and lateral basis. Economic, material, cultural and social fields are made up of these organisational spaces, which tend to come together mostly at the apex - much less so

at the base (Chazan et al. 1999: 100). Social and economic organisations have also emerged explicitly around associational interests. This horizontal group of basic social structures covers a diversity of groups established to secure occupational and social self-improvement and service goals. Membership in these organisations is usually on a voluntary basis and associations operate within broader geographic frameworks.

This is not to say that the relevance of the historical 'I' versus 'the other' can be obscured or ignored. Differentiation can be, and is, made, sometimes with disastrous consequences, as witnessed by the genocide in Rwanda. But the 'I' is not unitary and culture is not monolithic. Differences not only exist between the insider and the outsider. They are also at work within the insider and within the outsider (Minh-Ha 1995: 218). The centre itself can be marginal and it is not, therefore, possible to undertake a study of incorporation and disengagement without being made aware of the margins within the centre and the centre within the margins and without encountering marginalisation from both the ruling centre and the established margin.

This may explain why citizenship does not always correlate with a sense of membership of a broader community, and why groups and individuals are very often designated as 'other' and discriminated against even when they are citizens of a particular state, representing the margins within the centre (Cesarani/Fulbrook 1996: 215). It may also shed light on preferential behaviour towards sub-groups of categories designated as 'other', who correspond to the centre within the margin, usually those with significant economic or political connections. After the 1994 genocide in Rwanda, for example, numerous Rwandan refugees fled to Kenya. Some

were ultimately sent to refugee camps where they remain. Others, however, including those who had the financial ability to pay the requisite bribes as well as those who were well-connected politically were permitted to remain in Nairobi, travelling in and out of the country without any restrictions. Disturbingly, many of the latter group were alleged perpetrators in the genocide, and remained under the protection of the Kenyan government, which resisted co-operation with the International Criminal Tribunal on Rwanda until late 1997 (HRW 1999).[41]

The implications of different forms of organisational space for the formulation of refugee policy must be addressed. Which of the different but inter-related social orders is more influential in terms of policy making? It would appear that the group at the apex (or at the centre) is more influential but also straddles more identities, and is therefore more likely to identify with refugees, while the group at the bottom (or at the periphery), which is more likely to interact with the refugees, is less open to differentiation, less open to interaction, but also less able to influence policy. This may be one explanation for the violence often encountered at the periphery, as evidenced by on the ground conflict between the local Turkana and refugees in Kakuma, starkly contrasted with apparent ambivalence at the centre, as indicated by the lack of political will to formulate a sustainable solution to the plight of refugees.

In most African countries, therefore, understanding who makes decisions and what networks are activated during the decision making process is critical to enabling access and influencing policy. The durability of particular centres of power is crucial

[41] The granting of asylum to alleged *genocidaires* was also in contravention of the Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, which states that 'The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes...'

to gaining attention. The longer certain arrangements have been in place, the easier it is to unravel personal and structural relationships, to know where to pressure and to use this knowledge as leverage to gain results. The importance of this knowledge has long been evident to the *mwananchi*, the African on the street. Perhaps it is time that it is correspondingly recognised as a necessary pre-condition for access by those who seek to persuade host governments to adopt policies and practices to end the indiscriminate treatment of refugees.

Migration

Migration has always been a fact of life in African societies. The exit option, which prevailed in acephalous societies in the form of institutionalised secession of clans and lineages held back the emergence of centralised states. It also strengthened the negotiating hand of subordinate groups, including those within state societies. It offered a perilous but realistic escape from the excessive demands of the dominating class. Subordinate groups contributed greatly to the production of ancient societies. They had the weapon of mobility (made possible by the availability of land and the simplicity of agrarian technologies), which the powerful feared wherever their power was calculated by the number of people under their authority (Bayart 1993: 22). However, the widespread nature of escape routes in Africa did not exclude other forms of political action. Dependants were not without a voice in either lineage or centralised societies. They were represented in a range of councils, associations and societies in which they often had important functions. Subordinate actors were, therefore, able to impose limitations on leaders and mobility was not the primary/only option of political expression.

The 'exit option' continues, in new and diverse ways, to be a viable strategy in the political arena more common at the micro-level of co-habitation with the state. For example, churches play a big role, whether it be criticising the state or simply providing a social net for the 'common people'. Contemporary sects, like the *Mungiki*,[42] in Kenya ignore rather than contest the state. Frontiers of the state are transgressed, the informal sector takes over the official economy, taxes are not collected, poaching becomes endemic, weapons circulate and people appropriate the legitimate use of force and deliver summary justice. The population continues to 'migrate' or move away from the state in new and different ways.

It has been said that despite the fact that there is still a large amount of physical migration in Africa, the movement of people in independent Africa is often temporary and is primarily for individual economic reasons in contrast to past patterns where it was possible for whole communities to escape permanently from their rulers (Herbst 2000: 228). But although the option of desertion from the space of the state may not be exercised with as much ease as it was previously, the geographical mobility of Africans remains enormous. Migration is a widespread and regular phenomenon, with hundreds of thousands of refugees seeking to escape dictatorships or civil war (Bayart 1993: 258). The presence of large numbers of refugees in many parts of Africa is evidence that the exit option is still viable for many on the continent. However, when people now attempt to leave their country of origin in large numbers, they are no longer able, as was the case in the past, to settle in a new area as strangers. Few governments in Africa view refugees' migration as

[42] *Mungiki* is a Kikuyu word taken from the etymological root word, *Muingi*, to mean masses or people. The *Mungiki* is a fundamentalist movement with a religious, cultural and political agenda. Although *Mungiki* is largely a Kikuyu movement, the sect claims to embrace all other Kenyans. The movement has adopted Kikuyu religion to challenge religious and political authority and has raised an outcry from religious leaders and government officials. For in-depth studies of the movement see Grace Wamue (2001) and Peter Mwangi Kagwanja (2003).

permanent and most expect refugees to eventually return to their countries of origin. Most refugees are concentrated around international boundaries and not allowed to penetrate into the interior of the country of asylum (Herbst 2000: 229).[43]

In most of the West, a shift can be discerned in asylum policy, from what can be termed 'high politics' (matters of national security) to what one might call low politics (matters of day to day electoral politics, including employment, national identity and the welfare state) (Gibney 2001: 7). A similar shift, perhaps, can be seen in the development of African states' responses to refugees, that is, from the period where newly independent states viewed refugees as fellow nationalists, fighting against the yoke of colonial oppression (high politics), to the contemporary view of refugees as posing an economic strain on an already burdened state system (low politics).

If forced migration is indeed the 'modern' version of the 'exit option', the reason that some African states might not want to institute legislation specifically relating to refugees may be that they do not want to legitimise migration as an option for exiting the system. Regulating procedures may encourage or facilitate movement where migrants are aware that a particular government's behaviour towards refugees is defined by certain procedural constraints. Perhaps African governments are worried that in the same way refugees once moved to the West, secure in the knowledge that with a genuine asylum claim their rights would be protected, refugees will now willingly claim asylum in African states that have integrated legal procedures for the protection of refugees. Perhaps they worry that the advent of

[43] This is in contravention to Article 2 (6) of the Convention Governing Specific Aspects of Refugee Problems in Africa, 1001 U.N.T.S. 45, which states that 'For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin'.

institutionalised mechanisms for refugee protection on the continent will establish migration as a legitimate exit option once again. This would significantly decrease their ability to control marginalized or subordinate populations. It may be then, that refugee policy, or the lack thereof, may in fact be a corollary of a domestic policy of repression, especially given the patrimonial structure of government in Africa, where power is linked to control over numbers.

The State in Kenya

The Kenyan colony was managed in a manner similar to that of an administrative state in which decision-making powers are centralised in the state bureaucracy while organised politics, if allowed to exist, is kept at the bare minimum. However, the lack of personnel that every colonial power faced[44] and the extreme difficulty in communicating over long distances meant that decentralised administration, in the form of co-option of chiefs and the creation of Native Councils was inevitable.

These indigenous intermediaries of the colonial state made free use of their privileges as auxiliaries of the administration to enrich themselves. In this sense, 'corruption', as it is known today, was an organic part of the system of 'indirect rule'. Kenyan Local Native Councils (LNC), created in 1925, provided many chiefs and the 'educated' former pupils of the mission schools with the opportunity to accumulate their initial capital during the notorious 'years of opportunity'. The members of the LNCs constituted a privileged group, particularly from the point of view of land

[44] In Kenya, the tightest governed British colony north of the Limpopo, there were a total of 145 British administrative cadres in 1921, and even fewer, 114, in 1939. This gave a ratio of 1 per 22,000 natives.

ownership, who prepared the way for the division of the colonial movement, in the aftermath of World War II.

The colonial state bureaucracy was used by colonising powers to reorganise pre-colonial modes of production and to maintain law and order. It was therefore logical for the nationalist movement to challenge both the colonial power and the colonial state bureaucracy as instruments of exploitation. The colonial state attempted to meet this challenge and to legitimise the state bureaucracy by an increase in the promotion of educated Africans to senior positions in the civil service. This process of co-optation would continue into the post-independence era, when the state bureaucracy of Kenya retained its leading role in the decision-making processes with only marginal influence from the ruling party, the Kenya African National Union (KANU).

At independence, Kenya inherited the 'Westminster model' of parliamentary government. The sovereignty of Parliament remains a cardinal concept of the Westminster model. In theory, parliament has supreme power as well as direct and executive control over legislation; it exercises indirect control over the activities and actions of the cabinet and state bureaucracy. In Kenyan practice, however, parliamentary power over decisions is limited because cabinet ministers are given more powers than ordinary members to do what they think is good for the general welfare of the country. The executive branch is given the power to initiate and be the locus of public policy making (Okumu 1979: 45).

Thus, legislation is not necessarily reflective of general parliamentary debate and engagement with issues, but is often a result of arbitrary executive decision-making.

During the initial influx of Somali refugees into the country, for example, thousands of Somalis were confined to camps in the North of the country and deemed a security risk. However, the Kenyan executive, at the time, maintained good relations with the government of Siad Barre, and members of his clan who fled to Kenya were not required to reside in the camps. They were accorded special privileges and were never fully brought under the category of refugees. Such discrepancies not only undermine the consistency of public policy but also frustrate any effort to evolve legitimate national policy, including policy relating to refugees (Barkan 1979: 65).

They are the result of the fact that the legislature does not provide an important arena for the deliberation and making of public policy and the electoral process does not provide voters with a choice of policy alternatives, or a choice between competing governing elites.

Another crucial factor in the development of institutional practice in the Kenyan state was the granting of independence and the transfer of power to govern, to an African government formed by the leaders of the dominant political party. Because the political system was controlled by a single group of political leaders, the process of competition, mutual criticism, and bargaining between the government and opposition parties that characterised the political process in the West was never established. Additionally, there was little room for criticism within the governing party itself. KANU was already in a weak position given that the party was formed in 1960, only three years before Kenya became independent in December 1963. At the time of independence, the party was weak in structure and incipient in ideological formation. It was basically an anti-colonial movement, whose main strength lay in its capacity to mobilise the population around slogans and issues that held broad public appeal.

KANU was also weak given the historical context within which the party was formed and operated within the first few years of its existence. The colonial government had placed a ban on nation wide political parties prior to 1960, which forced parties to confine their activities to a single administrative district. The process of party development was, therefore, highly decentralised and resulted in the formation of a series of autonomous political machines whose defined purpose was usually limited to the promotion and defence of the interests of a single ethnic group. This made it all but impossible to establish a single, cohesive, nationwide organisation, free from the strains of competing sectional interests. What emerged was a structure of political representation that was particularly responsive to local interests and issues rather than to matters of national concern.

KANU was therefore perceived as a political liability by its leader, Jomo Kenyatta, who subsequently consigned it to a minor role in the Kenyan political system. A strong executive was created through a series of constitutional amendments, which made the president virtually independent of both party and parliamentary controls. These amendments gradually reduced the power and effectiveness of KANU as a policy-making institution and resulted in the emergence of an oligarchy of cabinet ministers and top state bureaucrats that became increasingly independent of (and occasionally defiant towards) both Parliament and the party (Okumu 1979: 57).

Additionally, Kenyatta placed an inordinate emphasis on the expansion of the administrative state. Kenya had retained a well-established central administration inherited from the colonial authorities. The colonial administration in Kenya, as elsewhere in Africa, was a classical bureaucracy. It performed the function of

maintaining the status quo and safeguarding the privileges and interests of its masters. Kenyatta appropriated this mechanism, with a particular focus on the provincial administration. This resulted in a series of informal and regionally based patron-client hierarchies, made up of local, regional and national leaders, which functioned as a political device to link the grassroots of the political system to the centre (Barkan 1979:11).

This trend was intensified by Moi in the late 1980s, a period which saw even more concentration of power in the hands of the executive, especially the provincial administrators, controlled from the Office of the President (Throup/Hornsby 1998: 582). Administrators included the Provincial Commissioners (PCs), the District Commissioners (DCs) and District Officers (DOs) who are civil servants, who were directed to get involved in the internal affairs of KANU. The President even went as far as creating new districts within the country, often as a tactic to widen his base of authority. In Kenya, as in many parts of Africa, the redefinition of internal boundaries was carried out under cover of creating new administrative districts, provinces and municipalities. These administrative divisions had both political and economic goals but they also contributed to the crystallisation of ethnic identities (Mbembe 2000).

The creation of more state bureaucracies and the weakening of civil institutions like county councils, municipal councils and city councils where power was vested in the individual rather than the institution also contributed to the institutional weakness (Anyang'-Nyongo 1994: 19). There was virtually unlimited license at the local level for powerful individuals to declare states of emergency, arrest and punish and issue licences. Local authorities were given the power to review and vet party meetings

throughout the country and to isolate dissenters. This meant, for example, that it was possible for a provincial administrator to prevent an elected Member of Parliament from addressing his/her own constituency (Berkeley 1996: 32). KANU officials and members of parliament henceforth were subjected to these administrative procedures, undermining the meaning and legitimacy of representation in Kenya's legislature.

This power was extended to other agents of the state including the Commissioner of Police who is a direct appointee of the President, serving in that capacity at the pleasure of the latter. This inevitably opens the position to political interference. Upon the establishment of colonial rule, the police force was created as a coercive mechanism to pacify those Africans who resisted the imposition of colonial rule. After independence, the police force continued to be used as a convenient tool for pacifying the opposition and critics of the government in power (Kiai 2001: 2), often operating with total disregard for the very law they were meant to uphold. This led to disillusionment among members of the public, many of whom felt that the government was incapable of guaranteeing, or was unwilling to guarantee, security to all citizens (Munene 2000: 155).

Human rights abuses by the police are also evident in relation to non-members of the state. After terrorist attacks in the country in 2002, police conducted large-scale raids and arbitrarily arrested refugees from Ethiopia, Somalia, Sudan and the Democratic Republic of Congo. Refugees described being beaten by police and children being detained. A few avoided arrest by bribing police officers. Human Rights Watch accused the government of 'scapegoating marginal groups such as refugees' to which the police spokesman at the time countered 'Kenya is for Kenyans' (Rowan 2002).

Judicial independence and impartiality was also questionable. In 1998, the tenure of the attorney general, judges of the high court and the appeals court, and members of the public service commission was dispensed with by the Constitution of Kenya (Amendment) 1988 (Weekly Review, 1988).[45] The loss of tenure meant that the president could dismiss anyone at his whim, a fact that greatly strengthened his hold over the judiciary. Consequently, there were many judges and magistrates who appeared to go out of their way to do the bidding of the state and to malign those associated with opposition movements. The Chairman of the Kenya Magistrates and Judges Association, Aggrey Muchelule noted several instances of judicial interference, where orders had been given to courts not to admit cases on university affairs, land matters of political parties. According to Muchelule (1997: 40), 'If the rights of the members of the judiciary are being limited, then no Kenyan or other person can expect the courts of the country to allow him or her the enjoyment of these rights'. Meanwhile, according to retired Justice William Mbaya, 'the menace of the Executive's interference with the judiciary is manifested in consistent pronouncements by the President on matters *sub-judice*. Such pronouncements can only be regarded as being intended to influence the decisions of the court' (Daily Nation, 1997).

The political and economic institutions that were set up in Kenya during the colonial period were mostly absorbed piece meal into the post-independence state. There were, however, several strategic changes made in the structural administration of the

[45] This amendment was passed in Parliament without a single member opposing it, less than three hours after the Attorney-General Mr. Justice Matthew Guy Muli introduced it. This was despite the fact that it touched on one of the most fundamental tenets of the country's constitution, involving the independence of the judiciary and public service from political control.

state, which would have an impact on the relationship between citizen and state and the accountability and ultimate legitimacy of the state.

The main scheme of social control in place during Kenyatta's rule involved deflecting popular participation through the granting of a representational monopoly to powerful existing social formations and scrupulously monitoring their activities. Each group was accorded limited autonomy to pursue its own interests within parameters laid down by leaders. The system was both statist and exclusionary. The depoliticisation of the bulk of the population was favoured. This approach appealed to middle class groups and major ethnic associations. Kenyatta thus propped up existing institutions of social domination and sought to co-opt them for his own purposes. In so doing, he preserved the interests of those who were already powerful in the countryside and cities (Chazan et al 1999: 179).

However, while the British (often deliberately) avoided contact with the local population, Kenyan civil servants could not afford to ignore their roots in the local social structure. British administrators formed a group of socially well-established officers who did not have to worry about their position in society. Kenyan civil servants, however, had to prove to themselves, to their relatives and to their local peers that they could 'make it' (Hyden 1979: 107). Thus, citizens did have an opportunity to participate in government and to access centres of power, but their influence on bureaucracy and policy-making was mimimal. Instead, political participation in Kenya developed with the express objective of electing one's representatives to central political institutions so that one's community could be more effectively linked to the centre and gain access to the resources that the centre commanded. It has not commonly occurred for the purpose of changing the

leadership, nor the character of the system, nor the goals (more often than not unstated) to which the system was already committed (Barkan 1979: 27).

Citizen participation in the governance of society is a central component of the political dimension of development and the formation of public policy. Kenyans have had the opportunity of participating in government through the electoral process to a degree unmatched in most other African states, but they have participated in a way that does not demonstrably affect the content of public policy.

Even with the re-instatement of the multi-party system in 1991, the tendency for parties to rely on popular appeal, as opposed to concrete policy platforms, remained apparent. Multi-party competition served to further reveal a lack of political principle within the Kenyan elite. The primary objective of most political leaders seemed to be personal gain and financial advantage. Parties were built around sectional interests, rather than concrete policy visions. Kenya proved to have few statesmen or citizens of political principle. Many were open to the highest bidder which, given its control of the state, usually meant KANU. The democracy label was often nothing more than a convenient cover term or legitimising symbol for widely varying local political struggles (Haugeraud 1997: 17).

With few exceptions, those elected to both local and national office were those who are most effective at securing central government resources for the communities they represented. With each successive election, more and more communities became more effectively linked to their government via a network of patron-client hierarchies, which served as the main organisational mechanism through which those at the lower reaches of the political system, and on the periphery, could gain

access to those at the top. As an increasing number of communities make demands on the centre, however, the resources available for allocation to each community are reduced and the potential for more intense political conflict increases. Participation, therefore, results in a breakdown of political order and may, consequently, be suppressed (Barkan 1979: 28).

To be viable, political systems must develop mechanisms for linking the central agencies of the state to the population it purports to rule. Without well-developed linkages between government and members of a society, policies cannot be formulated to respond to the needs of a population. However, most political linkages in Kenya parallel those of the economy and are therefore most developed between urban areas and those rural areas that are centres for the production of cash crops for export, or for other export-oriented activities, such as tourism. Additionally, the most resilient linkages are those of the state administration, many of which were established during the colonial period and which function for the purpose of facilitating the centre's penetration and control of the periphery, rather than connecting the periphery to the centre. The bureaucrats who facilitate these linkages are, therefore, primarily agents of the centre, and are not responsible to the people they are assigned to serve (Barkan 1979:67).

It should not, consequently, be assumed that they are susceptible to popular pressure when it comes to the arena of public policy making. Neither should it be presumed that the impoverishment of the 'common man' necessarily provokes any radicalisation of his/her political consciousness. Nor does it erode the prestige of the state broker, the *bwana mkubwa* (big man) on whom they depend. There is, therefore, a need to challenge the portrayal of the state in the form of a dichotomy between the

high and the low, which might be interpreted as conforming to the categories of state and civil society (Bayart 1993: 209).

Even where this dichotomy does exist, the importance of patronage and ethnicity in contrast to class and ideology and, *above all,* the appeal of populism and money, should be stressed. There remains considerable support in Kenya for the eighteenth century Western notion that political power should be the preserve of the rich, who are seen as the only ones who do not need to abuse their positions to amass personal wealth (Throup/Hornsby 1998: 586). This may explain the development of the somewhat feudal practice during the Moi era that allowed for membership of his 'court' to be inherited. Several MPs inherited parliamentary seats when their relatives died including Mr. Katana Ngala (from his father Ronald Ngala), Mr. Musalia Mudavadi (from his father Moses Mudavadi) and perhaps the most puzzling inheritance, that of twenty three year old Vincent M'Maitsi, who took his father's seat while still an undergraduate student and was immediately given the portfolio of Assistant Minister for Planning and Development (Himbara 1994: 121).

Over thirty years of neo-patrimonial ethnic and regional clientage have created an enduring political culture of sectional competition for power, and for the goods that follow. This means that private and state paths to accumulation, broadly speaking, share the same ethos of personal enrichment and munificence. Conversely, there is nothing to suggest that their articulation rests upon a relationship of exteriority. There is a network of closely meshed interests running back through time, through contracts, loans, acquisitions and marriages. In this confusion, state and private operators act complementarily, changing hats to fit the circumstances. The capacity

of so-called civil society to restrain the state, where the lines between civil society and state are blurred, becomes questionable.

As previously mentioned, power gives priority, even monopolistic access, to resources of extraction. It also provides access to cultural resources - and in most of Africa a mastery of western knowledge conditions mastery of the state and the economy. The distribution of educational establishments is often reflective of socio-economic divisions. Thus, for example, an analysis of educational coverage in Kenya shows that levels of schooling improved at a faster than average rate for the Kikuyu and the Kalenjin, whose chief patron was the state president. The timing of these groups' improvement in educational standards correlates with the timing of Kenyatta's and then Moi's rise to power (Weinreb 2001: 12).

Because social prerogatives are attached to power and because educational instruments are managed in a highly politicised way by governments, membership of the ruling class is one of the salient criteria of this unequal access to knowledge. This explains the importance of schools in the shaping of social stratification in the contemporary African context and the value attached to education in individual, social or ethnic strategies. It also explains the denial of access to education to certain groups in society, which may be termed undesirable to the nation sate project.

Stimulated marginalization is also evident when it comes to land distribution. The chronic shortage of arable land, which comprises approximately seven per cent of the country's territory, has been stated as one of the factors explaining Kenya's apprehension with regard to large refugee influxes and its determination to resist the integration of refugees into the economic and social life of the country (Crisp 1999).

However, although there is undoubtedly a shortage of land, in reality, a large portion of the 'land problem' derives from the state, which is both an inefficient administrator and predator on land that really belongs to ordinary land users. Approximately 80 per cent of the land in the highlands was sold intact at independence and remains untouched by agrarian reform. At the beginning of the 1990s, 5 per cent of the landowners owned 70 per cent of the farmland and it has been estimated that as many as many as 90 per cent of farms of more than 3 hectares have absentee landlords.

There is definitely a need to design more innovative tenure regimes to suit the variety of complex land use systems that characterise the African landscape. For instance, the assumption by policy makers that a tenure system suited to agricultural communities can also serve pastoral or nomadic communities is not tenable (Okoth-Ogendo 1999: 10). The Turkana, on whose land Kakuma is situated, have been seriously affected by this assumption. Pressures resulting from colonial boundaries and perpetuated by Kenya's post-colonial governments are clearly evident in the inter-group raids and conflicts along the borders. Fixed boundaries were drawn with little regard to seasonal variations and the needs for people for pasture (Osamba 2000: 8). However, the spatial hold of the state is incomplete and although the government attempts to limit cross-border movement, it has lost effective control over the bandits and cattle rustlers who have become more militarised, predatory and destructive in their operations, thus exposing the vulnerability of the state. The challenge to the state's monopoly of violence is evident in the privatisation of violence through the emergence of warlords for the purposes of predatory accumulation.

The Turkana people, therefore, appear to be faced with the same uncertainties that many refugees living in the same corner of northwest Kenya are struggling with. The trials of the refugee population, it seems, are only made more visible by virtue of the international attention afforded them by their categorisation as 'refugee', as a person 'unwilling or unable to avail himself of the protection of his own government'.* This observation is not meant to imply that the refugees' predicament is made any less real by virtue of the fact that we can point to similar hardships being faced by large segments of the Kenyan populace. It does, however, reinforce the observation that drawing formal distinctions between the internally displaced, refugees and returnees violates the realities on the ground (Allen 1996: xii). In Kenya, and in Africa in general, most refugee crises are situated along border areas where there is, to say the least, confusion about identities and where identities change and become more or less important according to the circumstances. Refugees should not, therefore, be seen as a separate category in a borderland affected by conflict (Merkx 2000: 5-7). In fact, Crisp (1999:9) argues that even if such distinctions can be made in strictly legal terms, they are irrelevant in terms of human needs and humanitarian assistance.

The Turkana are in as much need of assistance as the refugee population they 'host' and have realised the advantages to be gained from the presence of the camp. In 1992, there were about 7,000 Turkana living around Kakuma Refugee Camp, while today there are about 45,000. 'Relief is the only industry here,' says Cosmos Chanda, Head of UNHCR Sub-Office in Kakuma. 'We guarantee water, health and education so they congregate here' (IRIN 2003). Thus, in spite of the much-publicised conflicts between locals and refugees, the former do stand to benefit from the presence of the

* 1951 Geneva Convention on the Status of Refugees

latter, because what their government has been unable to provide for them, UNHCR now will.

In a culture of extreme scarcity it is not surprising that the refugee issue has been politicised. The extreme personalisation of politics in the region, however, implies that although on the surface there may appear to be public dissatisfaction with the presence of refugees in the region, this may actually only be a reflection of the politics of engagement of a government elite that chooses to ignore the needs of its own population.

Conclusion

One of the tragic ironies of the post independence period is the deliberate inability or unwillingness for the leadership to effect structural changes in the political system they inherited, especially with regard to the instruments of oppression and exploitation. It has been said that African inheritors of the colonial state found access to power too easy. They did not have to learn the lessons of discipline and never felt the need for popular support, unlike, for example, their Indian counterparts (Mulei 1996: 50).

However, one cannot place all the blame for current inadequacies on the colonial system. Indeed the creation of dichotomies between Africa and 'the west' is ever less feasible in the age of globalisation. Thus, appreciating exactly what it costs to detach oneself (in the context of Africa) from the west means knowing to what extent the west has, perhaps insidiously, drawn nearer to Africa. It also means knowing what is still Western in what we reproach the West for. While acknowledging the historical

bridge between the colony and the state, neither must be portrayed as a passive actor. African states *have* developed in a specific manner, a manner that *has* been influenced by their colonial past, but in the course of their development, they have assumed and subsumed many characteristics of the West.

Taking this approach then, it can be seen that the problem in Kenya is not one of poorly entrenched, 'western-imposed institutions' of governance, but one of misuse of public institutions, private and civil society organisations and pressure groups. The problem is not one of lack of skills and qualified human capital that can preside over the political and economic transformation of the country but one of lack of political will and commitment. It is a problem of greed, selfishness and insensitivity, especially of the political leadership both within the government and the opposition (Nzomo 1994: 61). In many ways, in its contemporary form, the Kenyan state continues to correspond to the remarkably prescient portrait of the newly independent African state drawn in the late 1960s by Frantz Fanon (1967: 132) who noted that

> The state, which by its strength and discretion ought to inspire confidence and disarm and lull everybody to sleep, on the contrary, seeks to impose itself in spectacular fashion. It makes a display, it jostles people and bullies them, thus intimating to the citizen that he is continual danger.

However, the state cannot solely be held to account and citizens must be accorded some responsibility for having allowed authoritarianism to seep in. In a study commissioned to look into the characteristics of the Kenyan citizen soon after independence, the citizen was portrayed as one

> for whom hard work counts more than political activism, for whom traditions have lost their hold without being replaced by political ideology, for whom educational advantage has not led to a demand for privilege, for whom strong support for the existing political regimes is mixed with a disposition towards critical appraisal of individual performance in political roles (Koff/von der Muhll 1967: 51).

Although not ideal, the future, it seemed, was bright and yet, in three decades, political socialisation and awareness waned considerably. Many Kenyans shifted their status back from citizen to subject, reneging on the political responsibilities associated with participatory democracy. Over time, citizens were systematically politically intimidated and denied an enabling and empowering environment to facilitate their political and democratic participation. With time, especially following the re-introduction of the multi-party system and the election of the new NARC government in 2002, this state of affairs is changing. However, reaching over 30 million people and changing their attitudes is a time-consuming exercise. It involves changing the acceptance of authoritarianism within the people, an acceptance that has taken three decades to achieve (Nowrojee 1994: 11).

This is the setting within which we seek the improvement of protection standards for all those who are marginalized, refugees and citizens alike. It is for this reason, therefore, that we must look not only to past strategies, but should consider the adaptability of each particular strategy to the unique politico-economic environment of the region. Political life is less likely to follow a linear path of reform than to represent the outcomes of conflicts of interest between dominant factions. The resources on which political life draws are extremely diverse, and it should always be remembered that power, and the policy that results from it, is divided into a real

entity and a legal fiction. Consequently, by focusing on the specific characteristics of the domestic environment within which refugee protection occurs, it is hoped that we will be able to identify solutions, which differentiate between, and emphasise, the real entity rather than the legal fiction.

CHAPTER FOUR

BAADA YA DHIKI FARAJA?[46]

THE PROTECTION OF REFUGEES IN POST-INDEPENDENCE KENYA

The end of colonial domination and the emergence of newly independent African states in the 1950s and 1960s coincided with the advent of a considerable number of refugee situations. It was during this period that, instead of being a continent controlled by a limited number of European colonial powers whose mutual solidarity made it possible to check 'subversive' movements, the African continent became a system of independent states whose frontiers could be easily crossed by those, like refugees, who felt compelled to do so (Eriksson 1972: 49-51).

The first recorded movements of refugees during the period that marked the beginning of the transition from colonialism to independence was from the Sudan, where refugees crossed the borders as early as 1955. Algerian refugees went to Morocco and Tunisia from 1957 onwards and Rwandan refugees began moving to neighbouring states in 1959. Between 1955 and 1960, large numbers of Angolans were also on the move. From 1963 to 1965, refugee movements were witnessed from Portuguese Guinea and Mozambique and in 1967 large numbers of refugees from Ethiopia were recorded (Aiboni 1978:2).

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[46] The literal translation of this Kiswahili proverb is 'After hardship comes relief'. Similar to the English 'Every cloud has a silver lining'.

During this initial phase of movement, African refugees could be divided into three distinct groups. The first group originated from countries still under white minority rule, for example, the Republic of South Africa and Rhodesia. The second group came from territories under colonial domination such as Angola, Mozambique and Guinea-Bissau. The third group comprised forced migrants from independent African states like Rwanda, Sudan, Zaire and Malawi (Eriksson 1972: 59).

Refugees from the first two groups were exceptionally few. It has, for instance, been estimated that during 1964 only between 800 and 900 refugees came from the non-independent territories of south and southwest Africa. These refugees rarely looked for any form of permanent settlement. More often than not, their ultimate aim was to return to their country of origin, once it had been liberated. Refugees that originated from the third group, however, would soon number hundreds of thousands, and would present the continent with a much more difficult problem (Hammell 1967: 86).

Given the growing number of forced migrants from independent states, the need for an effective system of refugee protection on the African continent was recognised and, as early as the mid 1960s, the management of refugees in Africa was under discussion. Around this time, Omari stated that, "the refugee problem is complicated by the conception of the 'refugee mentality', which assumes that the refugee will return to his country of origin in the shortest possible time." He also noted that, in his opinion, "the refugee problem cannot be solved unless it is looked at as a *long-term* problem" (Omari 1967: 92).

Forty years later, the terminology differs, but the message is the same. It is now similarly argued that a *longer-term* perspective, which assumes that refugees will stay

for a number of years, and makes plans to utilise their presence, would be a better alternative to funding years of relief that only serves to perpetuate refugee dependency (Dick 2002). UNHCR also acknowledges the utility of a long-term approach. Recently, the organisation noted that, while spending on 'care and maintenance' (which currently makes up 40 per cent of UNHCR's 2004 budget) is often necessary, it is not an investment in the future. Such an approach only ensures that protracted situations are perpetuated, not solved (UNHCR 2004c: 3).

Current attempts to incorporate a long-term perspective, which focus on including refugees within a development framework, by targeting development assistance for refugee solutions as part of UNHCR's Convention Plus initiative[47], are not new. In this chapter we shall see how many supposedly 'innovative' solutions to the plight of refugees in Africa are new versions of old ideas and how the problems faced by contemporary refugees frequently reflect those faced by their predecessors. As it becomes apparent not only how little has changed but, more importantly, how much has remained the same, the significance of both understanding, and learning from, past mistakes will be highlighted.

With the aim of understanding the constant interplay between continuity and change, the first part of this chapter will outline key early developments in refugee policy on the African continent, including land settlement, burden sharing and the OAU Convention, situating the Kenyan experience of refugee policy development within a broader African context. In the second part of the chapter, I will trace the

[47] Convention Plus is an international effort initiated and co-ordinated by UNHCR. Its aim is to improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements. UNHCR aims to pursue generic multilateral agreements to target three priority challenges: the strategic use of resettlement; more effective targeting of development assistance and clarification of the responsibilities of states in the event of irregular secondary movements of refugees and asylum seekers. For further information on the Convention Plus Initiative see http://www.unhcr.ch/convention-plus

evolution of refugee policy in Kenya from what could be characterised as a liberal, open door policy in the first decade of independence, to a restrictive policy centred on the principle of encampment associated with the early 1990s and multi-party era. Finally, in the third part of the chapter, I will describe Kenya's encampment policy, with reference to Kakuma Refugee Camp, in an effort to reveal the impact of encampment measures on standards of protection for refugees in Kenya.

Early Developments in Refugee Policy in Africa

The total number of refugees in Africa varies considerably according to the source of the figures. It is often claimed that refugee organisations tend to exaggerate numbers, while governments either minimise them for political reasons, or inflate them for aid purposes (Rubin 1974: 298). In spite of these discrepancies, however, it is clear that the number of refugees on the continent continues to increase. It has been estimated that by the end of the 1950s, there were no more than 200,000 refugees in Africa. In 1970, the number had grown to 750,000 and by 1980 there were more than 4,000,000 (CIMADE/INODEP/MINK 1986: 3). The total number of refugees on the continent only began to drop marginally in the late1990s, averaging 3.5 million in the years that followed and, currently, is on the rise again. The number of African refugees as a percentage of refugees worldwide increased steadily, totalling 30 per cent in 2002 (UNHCR 2002).

Several solutions to the growing number of refugees were proposed. It was evident that voluntary repatriation for the vast majority of refugees was not a viable solution given the protracted nature of most conflict situations on the continent. Even in the early decades of independence, there was a growing realisation among countries of

asylum that refugees had in most cases come to stay, if not permanently, then at least for a very long while. Alternative long-term solutions would, therefore, have to be found (Eriksson 1972: 60).

This search for solutions would initially involve both host states and UNHCR and would come to incorporate the Organisation of African Unity (OAU) as well as a multitude of implementing partners. UNHCR began its African operations in Congo in 1960 and then in Algeria in 1961.[48] At an early stage it acknowledged the protracted nature of refugee situations on the continent (Brooks and El Ayouty 1970: xi). Highlighting the importance of an immediate response to the refugee problem in Africa, Sadruddin Aga Khan, then High Commissioner for Refugees, stated that if UNHCR was unable to facilitate the voluntary return of refugees in Africa, then it was necessary to settle them quickly. He noted that 'if you allow a refugee situation to become stagnant, if you have large groups of people who are without work, who cannot look after themselves...this results in instability and a great deal of suffering' (Aga Khan 1970: 216).

Consequently, in the absence of the repatriation option, and in an effort to avoid the 'stagnation' that existed in aid-dependent camps in protracted situations, the main remedies identified by African governments were land settlement for large groups and education and employment for individuals. These solutions would require the continued co-operation of both inter-governmental and non-governmental groups and an increasingly liberal attitude from African governments (Eriksson 1972: 54).

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[48] UNHCR began its operations in Kenya in 1969 when it was called upon to assist with the arrival of Sudanese asylum seekers. Originally the organisation was administered as part of a joint effort between the government of Kenya and UNDP. In 1978 UNHCR opened its own office in Nairobi and assumed a lead role in the management of the Kenya Refugee Programme.

Given the development challenges faced by most newly independent African states, it was inevitable that it would be on this continent that governments would start to recognise and articulate the nature of the 'refugee problem' in developmental terms.

The beginnings of the strategic link between refugees and development in Africa can be traced to the Conference on the Legal, Economic and Social Aspects of African Refugee Problems, held in Addis Ababa in October of 1967. The conference recommended that African countries hosting refugees should adopt a 'zonal-development approach' to refugee-affected areas, by ensuring that refugee needs were not dealt with in isolation from the development needs of the area in which they were settled (Gorman 1987: 13). Two other noteworthy meetings followed the Addis Ababa Conference: the International Conferences on Assistance to Refugees in Africa (ICARA) I and II. Although regarded as unsuccessful by both African host states and northern donor states, these conferences made a significant contribution to the 'refugee aid and development' regime, which fed into the zonal development approach.

Land settlement

Land settlement, also referred to as 'zonal development' was generally accepted as the best way to enable refugees to integrate into the economic and social systems of the host country and to make an effective contribution to the overall development of the country (Kironde 1970: 11). Settlement projects were initially launched in the Central African Republic (CAR), Sudan, Burundi and Ethiopia. In Tanzania and Zambia, policies were particularly stringent, requiring all rural refugees to be placed in such settlements. The most ambitious and successful programme was in Tanzania,

and it was largely based on this success that the country continued to be cited, until well into the early 1990s, as having one of the most progressive refugee regimes in Africa. In other cases, however, settlement programmes were less successful for a variety of reasons, such as insufficient land in Burundi and/or poor quality land in Uganda or, as in the case of the Central African Republic, as a result of insufficient government support (Woronoff 1973: 30).

In general, though, there were few problems with the absorption of large groups of refugees on the continent. With or without help from external agents like the UNHCR, these groups usually self-settled on the land and the majority of them were able to fend for themselves on more or less equal terms with the local population. This did not necessarily mean that social integration had taken place in all refugee settlements. In some instances, administrative control was often designed more to isolate refugee groups than to allow for interaction between the refugee and host population. But on the whole, by the 1980s, self-settlement schemes appeared to be successful, particularly as advocated by UNHCR (Hartling 1981: 39).[49]

According to proponents of the zonal development approach, settlement schemes would eventually help refugees to become self-sufficient. Integration would ensure that there was less friction between refugees and their hosts, especially where the latter claimed that they received worse treatment than the refugees. The impact of refugees on host communities should not be underestimated. In Turkana district where Kakuma camp is located, in spite of the fact that local people have benefited to some extent, both directly and indirectly, from the presence of the camp, local

[49] Indeed, rural settlement schemes proved to be so popular, that a programme of semi-urban or suburban settlements was also proposed (albeit unsuccessfully) as a means of providing urban refugees with access to wage earning opportunities.

community representatives still feel that the Turkana population has been hard done by. In 2003, for instance, the Member of Parliament for Turkana North, John Munyes, while acknowledging the benefits that have accrued to the local population from the presence of refugees in the region, complained that refugees had brought about unfair competition for scarce resources, and increased security and health problems. He also claimed that refugee children were unfairly advantaged because 'refugees get scholarships to further education overseas' (Daily Nation, 2003f).

The symbiotic relationship between Kakuma camp and the host population cannot be ignored. Since the establishment of the camp in 1991, the local population in Kakuma has grown from about 5,000 to 30,000-40,000. Food distribution in Kakuma creates a magnet for Turkana pastoralists (particularly women and children) keen to benefit from small-scale labour, petty trading and even begging (WFP/UNHCR 2000: 12). The Turkana, following years of successive drought and lack of investment in infrastructure, are considerably worse off economically than refugees. They face numerous problems, including a high dropout rate and low completion rates in all levels of education leading to high levels of illiteracy. Health facilities are static and inaccessible, and there are few mobile health services, all of which does little to serve the needs of a predominantly nomadic, and therefore mobile, population (Republic of Kenya 2002a: 8).

In late 2002, then camp manager at Kakuma, Graham Davison, agreed that the local people were in great need of help but questioned why responsibility should fall on the refugee camp. 'Right now they are holding us responsible for upgrading their lives, but basic necessities like shelter, water, education and food are not our responsibility. They are the government's' he argued (Daily Nation, 2002a).

Although Davison makes a valid point, in that the government has seriously reneged on many of its responsibilities towards the Turkana population, the long-term burdens that refugees pose for development are serious, and not easily resolved by administrative arrangements that divide refugee and development functions. Humanitarian agencies, as well as the government, have to come together to create a sustainable programme that recognises the rights of both refugee and local populations.

Kakuma camp is a classic example of a refugee population that may have substantially benefited from an integrated approach to settlement but that is now totally dependent on UNHCR assistance. Unfortunately, the isolationist stance that camp administrators have developed in the administration of Kakuma has resulted in an antagonistic relationship between refugees and locals. The division between refugee and host communities is a direct reflection of the division between relief and development activities. The latter may make sense during refugee emergencies or when the refugee situation can be solved expeditiously. But such an approach has decreasing utility in those cases where voluntary repatriation is not immediately feasible and where local settlement in the first country of asylum is the only available solution (Gorman 1987: 12).

Burden sharing

In May 1979, the Pan African Conference on the Situation of Refugees in Africa was convened in Arusha, Tanzania. The Arusha Conference contributed most significantly to the evolution of thinking on refugee-related development aid by introducing the concept of burden sharing. In so doing, it heightened awareness

among Africans that international assistance was only addressing a fraction of the refugee population in Africa and largely ignoring the needs of thousands of spontaneously settled refugees as well as the needs of host countries.

The burden-sharing concept initially focussed on the promotion of resettlement for some refugees from the most seriously affected asylum countries to other countries in Africa. Later, the concept was expanded to include not just resettlement in African countries but also international assistance to help host countries cope with refugee-related development burdens. The 1994 Addis Ababa Document on Refugees and Forced Population Displacements in Africa re-affirms the importance of the principles of international solidarity and burden sharing in enhancing the protection of refugees on the continent. It notes that it is evident that African countries cannot sustain the burdens of hosting refugees on their own. According to Recommendation Ten of the Addis Ababa Document:

> The refugee crisis cannot be addressed effectively through rigid and regionalised approaches. The Symposium recommends that this problem be addressed in a global and comprehensive manner, as it will ultimately affect every region of the world. Likewise, countries should strive for effective cooperation and assistance on refugee, displacement and migratory issues, the same way they collaborate on security, economic and environmental matters.

This vision of burden sharing corresponds to recent proposals by James Hathaway, who argues that governments will not accept asylum seekers if they see the granting of refugee status as an uncontrolled backdoor route to permanent immigration. Hathaway also notes that the real costs associated with the arrival of refugees are not fairly shared out among governments. Thus, the southern hemisphere hosts about 85

per cent of the world's refugees with approximately 10 per cent of the world's resources. In a re-statement of ideas originally put forward at the 1979 Arusha Conference, he argues for a system of sharing out both the burden in dollar terms and the responsibility in human terms of refugee protection. This would enable governments to admit refugees, knowing that if the numbers are too great or the costs too high there is a guarantee, not a promise, that they will be helped (Hathaway 1999; 1998).

Some have described Hathaway's proposal as radical, others as unfeasible. It has been attacked on the grounds that the incorporation of principles of burden-sharing would lead states to be more inclined to agree on the lowest common denominator of refugee rights, rather than instituting a maximist rights regime. Given that Hathaway's proposal is simply a reworking of the 1979 Arusha Conference model, which, at the time, was widely accepted as a viable solution to the refugee problem on the African continent, the scale of opposition that his proposal has met with is surprising. Consequently, burden sharing, no doubt the most frequently and widely proclaimed principle of refugee protection among African countries, remains a goal, which has never really been achieved.

The OAU Convention

Perhaps the most important contribution of the OAU to the protection of refugees on the continent was the creation of a legal instrument that complemented, and in many ways furthered, the protection standards entrenched in the 1951 Convention. The Convention definition of refugees was often too narrow to encompass many of the endemic African refugee situations. The Convention was particularly unsatisfactory

in an African context because of the limitations it placed on the grounds on which refugee status could be claimed. There was a tendency to over-emphasise nationality as the main criterion of classification. Given border disputes on the continent, in which it was precisely nationality that was in question, the assumption of a pre-determined relationship between national identity, movement and the right to claim refugee status was debatable.

Another problem relating to the applicability of the 1951 Convention was that the instrument was adopted at a time when most African countries were not yet independent. Very often it was unclear in which countries, and under what circumstances, the Convention was or was not relevant. For example, Belgium did not apply the Convention to her colonies, while France declared that it applied to all territories in which international relations were its responsibility. The United Kingdom, meanwhile, listed twenty-three countries to which the Convention was to be extended, including nine in Africa, of which one was Kenya (Rubin 1974: 294). When it came to the 1967 Protocol, only Britain was involved as a colonial power, and it specifically excluded two African countries (South Africa and Rhodesia) from its ambit.

This already complex situation was further complicated by the fact that by the mid 1970s, when most African countries had achieved independence, five countries, including Kenya, had ratified only the 1951 Convention, without adopting the 1967 Protocol. This made the standards of protection doubtful, given the timeline associated with the Convention.[50] In addition, although several countries had

[50] The scope of the 1951 Convention was limited to people who had become refugees in Europe prior to 1951. UNHCR was originally given a three-year mandate to help post World War II refugees, after which the organisation was intended to dissolve.

enacted legislation to deal specifically with refugee situations, for example, Botswana (1967) and Senegal (1972), many African countries, of which Kenya was one, continued to deal with matters relating to refugees under less specific laws, relating to immigration and aliens. Immigration legislation was often used for such 'practical' purposes as restricting the employment opportunities of refugees, who were often declared prohibited immigrants and provided with no more than temporary residence permits entitling them to work. In Kenya, for example, these had to be renewed monthly, making the refugees' already uncertain status even more precarious (Rubin 1974: 311).

It was in the context of this ambiguity, in a continent where refugee problems were particularly acute, that the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa came to constitute a valuable regional complement to the 1951 Convention. The OAU Convention expanded the definition of refugee to include

> ...Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (Article 1, Paragraph 2).

This definition was particularly important given the reality of refugee crises in Africa, where situations of mass influx made examining individual claims for refugee status impractical. The OAU Convention also went beyond the 1951 Convention, in providing specifically that no person would be rejected at the

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The 1967 Protocol Relating to the Status of Refugees was introduced to abolish the temporal and geographical limitations thereby making it applicable to post 1951 refugees from all over the world.

frontier, compelling him or her to return to, or remain in, a territory where his or her life, physical integrity or liberty would be threatened. It emphasised that the granting of asylum should not be considered an unfriendly act and contained detailed provisions concerning the voluntary repatriation of refugees.

Of particular importance to refugees on the continent was that the OAU drew no distinction between refugees from independent African states and those from countries under colonial rule. Thus, while UNHCR interpreted its 'non-political' role, in terms of the Statute and Convention, as rendering it unable to assist freedom fighters or refugees otherwise engaged in military activities against a government, the OAU was not similarly inhibited. This more liberal approach to the classification of refugees resulted in the protection of large numbers of refugees who might otherwise have slipped through the system.

Unfortunately, not all refugees benefited from this liberal approach. The OAU, as well as individual governments, often made it a condition of asylum that 'political refugees' be approved by one or other of the exiled political parties from their countries of origin. The recognition of these political parties in exile enabled them to secure the adherence of individuals who had hitherto remained unattached, or who no longer desired to be attached, to a particular party. Under such circumstances, refusal by one party to endorse an individual - or refusal by the individual to be endorsed by a party - was interpreted as a *de facto* denial of the opportunity to receive asylum. Also under this system, the withdrawal of approval by a political party meant that individuals were declared *persona non grata* and could be, and often were, deported. Kenya occasionally undertook such actions, usually against individuals, but sometimes against so-called dissident groups (Rubin 1974: 304).

In spite of the active commitment of the OAU to furthering the rights of refugees, the 1970s witnessed a distinct move towards non-involvement on the part of both the OAU and UNHCR, potentially the most effective co-ordinators of assistance and protection on the continent. Many perceived this move as a sign of organisational weakness, or perhaps ambivalence, which had a visible impact on the legitimacy granted to particular refugee situations. Certain leaders, either for propaganda reasons, or to get back at those who had fled, refused to admit the existence of a refugee problem. In other instances, in order to maintain friendly relations with their neighbours, some countries either sent back refugees or actively encouraged them to return. This forced repatriation occasionally had disastrous results, as when the Sudanese regime and Amin's regime in Uganda killed forced returnees who were seen as a political liability (Woronoff 1979: 43-44).

During this period, both the OAU and UNHCR were seen to move extremely gingerly in support of refugees' needs when these were in conflict with either liberation movements or the host government. Perhaps this was as it should be in terms of political realities but, in the long run, it adversely affected their capacity to aggressively address a number of refugee problems (Potholom 1976: 13).

Closing the Door

In the first decade of independence, the long-term integrated settlement of large groups[51] as well as individual status determination leading to asylum were seen as

[51] In this thesis I am mainly concerned with the movement of large populations of refugees, rather than individuals. This is primarily because the majority of African refugees, both historically and currently, moved to host countries in large groups.

'durable solutions' in the African context. The integration of individuals *was* seen as ultimately possible. This was particularly true in the large urban areas that were already exhibiting distinctly cosmopolitan characteristics and were, consequently, seen as capable of absorbing refugees (Eriksson 1972: 53). Refugees were recognised as a potential resource for the country of asylum, integration was seen as acceptable and urban resettlement as feasible.

In Kenya, for example, the government readily welcomed Ugandan refugees fleeing the brutal regime of Idi Amin. These refugees arrived in small numbers and were relatively easy for the government to manage. For the most part, they were highly educated professionals able to provide crucial services to schools, universities and hospitals. Post-independence Kenya was experiencing rapid economic development and expansion and the Ugandan refugees were easily absorbed into the job market. They were viewed favourably by Kenyans as positive contributors to the economy and were seen not as refugees but as individuals who helped develop Kenya during the initial stages of post-independence (Campbell 2005).

In stark contrast, contemporary African refugees face highly restrictive asylum regimes. In fact, forced migrants in most African countries today are usually considered *prima facie* refugees, based on group status determination procedures, rather than as individual asylum seekers. Individual status determination is not only seen as a time-consuming and costly process, but also as leading to permanent responsibilities on the part of the state of asylum. On the other hand, group status

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Movement by individuals was more often than not restricted to second countries of asylum, often beyond the continent, although there were exceptions to this (Ricca 1989: 151).

determination almost inevitably implies temporary protection and obviates the long-term obligations of the host state.

Rather than providing an alternative form of protection, therefore, the adoption of *prima facie* status is often a strategic move on the part of governments to enable them to shirk their responsibility to refugees. The designation of *prima facie* status can be a means to avoid recognition under the OAU Convention, which would trigger other obligations from which recognised refugees may benefit under that Convention. It is also generally utilised as a temporary designation in Africa, where *prima facie* refugees must reside in refugee camps and normally have no access to the individual status determination procedures that would grant them the basic rights of a Convention refugee (Hyndman and Nyklund 1998: 35).

Contemporary responses to refugee movements in Africa seem to mirror western 'closed door' policies. Several reasons have been cited for this growing restrictionism. Refugee numbers were growing in Africa[52] and, taking into account contracting resources, states were ill equipped to meet the needs of their own citizens let alone refugees. Unfortunately, their main source of external assistance, the UNHCR, was also facing challenges to its efforts to continue to support refugees on the African continent. Wars, refugees and catastrophes in other parts of the world continued to dominate the headlines and distract attention from refugees in 'forgotten' camps like Kakuma in Kenya. According to the Lutheran World Federation, the main implementing partner in Kakuma, events in Afghanistan and

[52] In round figures, the refugee flows in Africa of the 1960s were of a magnitude of tens of thousands of persons. By the 1970s, numbers had risen to hundreds of thousands, and since the 1980s, numbers have multiplied to literally millions (Westin 1999: 27). In its 1999 survey, Human Rights Watch reported that 'of the top ten refugee producers in the world, five were African: Burundi, Eritrea, Sierra Leone, Somalia and Sudan'

Iraq currently dictate the time, focus and funds of potential donors to the Kakuma programme (LWF 2002b: 4).

Refugees are in general unfortunate. But in Africa, the continent with the most refugees, they are often worse off because assistance levels are low, and because many tend to be the unremembered victims of long forgotten conflicts. As far back as the early 1980s, there were considerable discrepancies in the share received by an African refugee from international assistance when compared with refugees from other parts of the world. According to Kibreab, during this period, while the African refugee received an average of $22 per annum, the refugee in other parts of the world received approximately $56 (Kibreab 1985: 7).

Such striking disparities are still in evidence. In February 2000, the Assistant High Commissioner for Refugees drew the attention of the Humanitarian Liaison Working Group to the contrast in assistance made available to Europe and Africa, with refugees in the former receiving ten items in their food basket at a cost of $0.53, while African refugees received five items for which only $0.15 were spent (Jamal 2000: 16). According to the Commissioner, 'what is provided to refugees in Africa, including food and basic survival items is far less than in other parts of the world' (UNHCR 2000b).

Meanwhile, the UK Department for International Development (DFID) has calculated that, since 1997, the per capita humanitarian assistance it has provided in European emergencies has been five times higher than emergencies in Africa. It concluded that this divergence could not be explained just by differences in cost of delivery and associated security. Rather it raised the possibility that wider strategic

interests were important in determining the allocation of resources (DFID 2003: 4). Unfortunately, it seems that, although all crises that threaten the lives of civilians are imperative, some are more imperative than others (Slim 1997).

Of course, the challenges to refugee protection are not only external: African states themselves have become less committed to asylum. Refugees are often rejected at the border, and those who manage to enter and remain in host countries find that their physical security, dignity and material safety cannot be guaranteed (Rutinwa 1999). As responses to human displacement become more politicised, many states have become less willing to offer their hospitality. Unsurprisingly, this reluctance has frequently been justified by reference to the example set by the world's more affluent nations, many of which have introduced a barrage of measures designed to obstruct or dissuade people from gaining access to, and claiming asylum in, their countries. (Crisp and Dessalegne 2002: 2).

But is this apparent shift to more restrictive policies really as dramatic as is often claimed? After all, African refugees were *not* always welcomed according to the norms of traditional hospitality. They were, at times, subjected to harassment and exploitation. Where they did receive a warm welcome, it was often due to the advantages the local population hoped to enjoy from their presence. Hospitality was then, as now, a function of resource availability. As Kibreab (1985: 68-70) argues, the often-invoked 'traditional African hospitality' is nothing more than a myth.

Most host societies today are confronted with related and steadily worsening problems coupled with the dramatic growth in size, distribution and complexity of refugee movements. Often these problems, which include stagnating or declining

economies, growing populations, environmental degradation, increased competition for jobs and land, rising crime levels and increased social tensions, are exacerbated by strict constraints on the amount of public expenditure devoted to wages and social welfare under structural adjustment programmes (Bascom 1998: 171). Under these circumstances, refugee policies are constructed, as they always have been, on a pragmatic basis.

African countries are aware that, given the nature of contemporary conflicts, the prospects of repatriation are fewer. States are, therefore, less willing to provide asylum, knowing that once they accept refugees they may never be able to return to their country. They are also aware that, in the current international climate, with popular support for immigration at a historic low, third country resettlement is difficult to achieve. Presently, the United States, Canada and Australia are the only countries with planned levels for the annual intake of African refugees. As resettlement targets decline, the allocation of places for African refugees is already disproportionately small. African refugees comprise 36 per cent of the world's population, yet, from 1995 to 1996, the US allotted about 6 per cent of its resettlement openings to African refugees (Hyndman 1999, 1997). Resettlement is generally an option available only to a minority of better-educated refugees. In the late 1990s, for instance, it was an opportunity enjoyed by only one refugee in every ten thousand, with less than 35,000 Africans resettled in the West compared to over one million Indochinese (Bascom 1998: 164). Consequently, local integration appears to be the only remaining option. But once again, it is not popular because host states believe that integrating refugees may have long-term adverse effects on their own populations (Vas Dev 2003: 114-115).

Thus, in the apparent absence of 'durable solutions' to the refugee 'problem', most African governments have adopted what could be called a temporary approach to asylum. Although the term 'temporary protection' is rarely applied in this context, policies of encampment in protracted refugee situations, providing usually only minimum standards of protection, are based on the assumption that refugee populations will seek protection for a minimum period.

The Development of Refugee Policy in Kenya: From Individual Asylum to Encampment

Conflicts between and within nations have led to large refugee movements in Eastern Africa for more than thirty years. Throughout the late 1970s and 1980s, the majority of Africa's refugees came from, and migrated to, central and eastern African countries. Zaire, Tanzania, and Uganda bore the brunt of these displacements. At that time, Kenya and Malawi were the only two states in the region not to have any large-scale involvement with refugee movements, although at the height of the Amin era, as has previously been mentioned, a large Ugandan community found asylum in Kenya. Although they became locally integrated, only a few were ever formally recognised as refugees (Rogge 1985: 14-15).

Refugee movements in the east and central African region have been the result of a number of factors, including ethnic and religious conflicts, irredentist and separatist-inspired violence, international wars in the region and intervention in domestic conflicts by external powers. These factors, sometimes acting alone but mostly in concert, have made refugee flows in the region more complex and more long lasting than anywhere else on the continent. Except for the flight of the Hutu from Rwanda

in 1994, no other region within Africa has seen such an exponential growth in refugees in such a short period of time, and none has persisted with such intensity for such a long period of time (Bariagaber 1999: 599-602).

Refugee policy is intended to ensure the security of a specific excluded social category. In reality, however, and given the complexity of factors which give rise to refugee movements, policy responses are usually informed by various other considerations, including interpretations of the concept of state sovereignty, territoriality, citizenship and rights (Reitzes 1997: 4). The state is seen as the protector of the rights of citizens ('members') and refugee policy is often concerned primarily with containing the real or perceived threat to national security posed by refugees ('non-members').

However, given that most conflicts in the African context generate refugees who seek asylum in neighbouring countries, the potential security threat appears to be greater in Africa than it is in most western contexts. The highly politicised nature of refugee movements on the African continent contrasts with refugee movements in the West, which are very often 'depoliticised', with no overt connection between the refugee, his or her state of origin and his or her state of asylum, which substantially reduces the security risk to the host country.

Historically, most of Africa's refugee movements tended to be short-distance movements. This is a trend that is still evident today, and has continued to determine the way African states react to, and deal with, refugees. In many cases, the movement of refugees led to large areas of heavy refugee concentration in border regions. With few exceptions, refugees moved just across the border into the country

of asylum and rarely penetrated deep into it, remaining in or near their initial place of asylum for the duration of their exile (Rogge 1998: 26). These peripheral regions often tended to be areas that typically had a higher percentage of their population living in poverty. Massive refugee influxes, therefore, can have a potentially devastating impact on host populations in the affected regions (Stein 1986: 265).

Refugees are also seen as a political problem. As politically active groups, or as popular constituencies with which active groups are associated, refugees are symptoms of conflicts that threaten to spill over into neighbouring countries. Similarly the presence of large numbers of refugees is likely to influence the domestic politics in a country, particularly when resources are scarce and when a regime is already suffering from political and economic upheavals. The presence of local refugees in neighbouring countries is as threatening to the state as refugees present in the state are to the governments of their respective countries.

Thus, while a state may be tempted to support refugees who constitute opposition groups from neighbouring countries, the strategic advantages of such a policy have to be weighed against the possibility of neighbouring states doing the same. For African states affected by domestic conflict, refugees are not only a symptom of conflict, but also a likely source for the perpetuation of that conflict. Moreover, the presence of refugees is likely to become a source of tension between the neighbouring states themselves. For example, between 1994 and 1997, Zaire's relations with Rwanda deteriorated as the latter accused the former of aiding armed Hutus attempting to re-capture Kigali. During the same period, Zaire's relations with Uganda also deteriorated because of Kinshasa's suspicion that Uganda has aided Zairian rebel forces. Meanwhile, Zambia ensured that all Hutus seeking refuge in the

country were registered and disarmed at the border in order to avoid compromising its relations with Rwanda (Sorenson 1994: 179).

Kenya's longstanding apprehension with regard to large refugee influxes is primarily the result of viewing refugees both as a political and a security threat. Most notably, in relation to politics and security, is the particular and persistent fear of ethnic Somalis who have fought to be incorporated into the greater Somali state (Crisp 1999). Conflict over the Kenya-Somali border can be traced back to colonial occupation at the turn of the 20th century, when the British colonial administration created the Northern Frontier District (which encompasses what is now the Northeast Province) as a 'buffer zone' on its borders with Ethiopian and Italian Somaliland (now Somalia). This policy generated significant resistance to colonial rule, led to sustained political organisation among the Somali community and brought about the quest for unification with the Republic of Somalia when it attained its independence in 1960. Although Somalia formally renounced its claim on the Northeast Province in 1967, the state of emergency remained in effect until 1991, and the surveillance and expulsion of Somalis by the Kenyan government remains current practice (Hyndman 1997).

Kenya has raised security concerns with more frequency since the large refugee influxes of the 1990s. The country has responded to the deteriorating internal security situation by closing borders, particularly the border with Somalia. There have on several occasions been calls for the forcible repatriation of refugees. There have also been threats to expel, as well as actual expulsions of, refugees. Refugees have been blamed for the country's growing crime levels and the rising availability of small arms, which are smuggled through the borders with war torn nations.

However, it must be noted that the government may have actually contributed to domestic insecurity by failing to disarm refugees on entry to Kenya (ICJ 1998: 32). In a recent effort to remedy this situation, the Vice-President and Minister for Home Affairs, Mr. Awori, stated that the government would carefully screen refugees and monitor arms movement (Daily Nation, 2003e).

Another key factor influencing the country's refugee policy is the chronic shortage of arable land, which comprises only three per cent of the country's territory. In Kenya the land issue is particularly sensitive. The post-independence government feared that refugees might permanently settle in economically valuable areas of the country, especially in the highlands. Camps were, therefore, located in semi-arid environments with an average density of less than 0.05 inhabitants per hectare, as compared to the average of 5 in most rural districts. In these underpopulated areas, refugees cannot be used to develop non-existent agricultural activities. Unfortunately, this also means that the potential for progress in the area is negligible unless huge investments are poured in, which is unlikely as refugees are settled in peripheral regions which have never been a priority for the government in Nairobi (de Montclos and Kagwanja 2000: 207).

Although refugee policy is undeniably rooted in practical considerations relating to security, politics and the state of the economy, policy has, on several occasions, developed as a consequence of official decree and arbitrary government proclamations. Following a pronouncement by President Moi in 1997, for example, hundreds of refugees were arrested and detained by police within a few short hours and threatened with repatriation.

This 'crackdown on illegal aliens' followed President Moi's public comment that

> ...foreign spies and criminals masquerading as refugees had invaded Nairobi. President Moi revealed that some of these criminals were engaged in incitement at the behest of local collaborators. Emphasising that the government would not allow foreigners to abuse the peace and stability in the country, President Moi said many of them were engaged in business as a cover up for their illegal activities (East African Standard 1997).

On another occasion President Moi threatened to 'relocate' refugees to Somalia and Sudan because they (refugees) were abusing Kenyan hospitality by indulging in acts of lawlessness. 'We have been very generous to the refugees but they are treating us in an unfriendly manner' he said (Nduru 1997). In 2002, the Kenyan authorities again threatened to repatriate hundreds of Ethiopian and Somali refugees rounded up in a police sweep in Nairobi. The refugees were accused of failing to register with the Government of Kenya, a statutory violence that was being enforced for the first time, which no refugee was able to comply with given the lack of a governmental registration service (Parker 2002).

In the context of institutional and judicial crisis that characterises the Kenyan state, policy makers and law enforcement officials often turn to presidential pronouncements to receive guidance on their future actions (Africa Rights 1996). Government officials also often operate within a legal framework of their own making or in response to requests by private individuals acting in complete disregard of the basic constitutional rights of the population (Verdirame 1999: 75). Finally, compounding the many shortcomings of this somewhat *laissez faire* approach to policy formulation, most officials and official bodies tend to have a limited interest

in the situation of refugees anyway, believing them to be the problem of the UNHCR. As a result of the vacuum left by the government's failure to take responsibility for the protection of refugees, UNHCR is now the 'judge' of who is a refugee, which has severely compromised its role as the protector of refugees.

The legal framework for refugee protection in Kenya

Kenya has been a signatory to the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Related to the Status of Refugees since 16 May 1966 and 13 November 1981 respectively. It is also a signatory to the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa.[53] Kenya, however, has not incorporated these international standards into domestic legislation. Parliament has been debating several versions of a Draft Refugee Bill since 1990.

The country has not formally enacted refugee legislation but applies international standards on an *ad hoc* basis, using various facets of domestic law. The main source of protection for refugees in domestic legislation is the Immigration Act, which applies to all non-citizens, including refugees. The Act provides that all non-citizens who enter Kenya without a valid entry permit or pass are unlawfully present and subject to arrest and detention by immigration officers. [54] The Act also describes a class of entry permit for individuals generally fulfilling the Refugee Convention definition (though not the OAU Convention definition) of a refugee. Under the

[53] Refer to Annexe Four: International and Domestic Instruments Relating to the Protection of Refugees in Kenya.
[54] See Immigration Act, para. 8 and para. 12.

Kenya Immigration Act, Cap 172 of the Laws of Kenya, 1984 Class M of entry, entry is permitted to:

> A person who is a refugee, that is to say, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, unwilling to avail himself of the protection of the country of his nationality and being outside the country of his former habitual residence for any particular reason, is unable, or owing to such fear, is unwilling to return to such country; any wife or child over the age of thirteen years of such refugee (ICJ 1998: 21).

This provision, if administrative procedures were in place to implement it, would allow asylum seekers to apply for Class M entry permits from Kenyan immigration officers at entry points. However, there are often no Kenyan immigration officers available to hear such applications either at the border or after an individual enters the country, even if he/she enters lawfully, for example, with a tourist visa. As a result, regardless of what the law says, there is no way for a genuine asylum seeker to ask for legal permission to enter or remain in Kenya as a refugee through the use of a Class M entry permit. Consequently, asylum seekers are 'unlawfully present' under the Immigration Act and subject to arrest and detention (HRW 2002: 56).

The Alien's Restriction Act, meanwhile, seeks to restrict the presence, and protect the rights of aliens in Kenya. This includes prohibitions on the entry of aliens into Kenya and requirements that aliens reside in designated areas[55]. Although the Aliens' Restriction Act was passed after Kenya became party to the Refugee Convention, there are no specific provisions contained therein regarding the status and rights of asylum seekers and refugees.

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[55] See Aliens' Restriction Act, Article 3, Para. 1(a), (c), (d)

The function of domestic standards relating to the protection of refugees is twofold. The first is to formulate domestic legislation that mirrors international standards. The other is to provide an internal legal and administrative framework for dealing with refugee matters. Although the content of domestic legislation may vary - and indeed there are significant differences between countries generally - the existence of international refugee protection standards establishes a duty in international law to bring domestic legislation into conformity with such standards. The process in Kenya, which relies primarily on *ad hoc* interpretations of certain acts of domestic legislature deemed relevant, clearly fails to meet these requirements. It is grossly inadequate in that the basis for refugee protection rests on an exception to the normal process of immigration. The existence of specific international standards for refugees outside that process reinforces that point. Refugees are different from ordinary aliens and it is impermissible to treat their circumstances of entry in the context of ordinary immigration laws intended for aliens.

The UNHCR Kenya Country Representative, Mr. Okoth-Obbo emphasised this point in a statement he made on the 'need for legislation to clarify rights and obligations of refugees and establish a management structure to care for them'. He added that the new law should also spell out refugees' rights to freedom of movement and employment (Daily Nation, 2003j). In response, the Vice-President and Minister for Home Affairs, Mr. Awori stated that the government would enact a new law to govern refugees in the country (Daily Nation, 2003j). According to Vice President Awori, the new bill would allow refugees to own land and engage in petty income-generating activities. He also noted that the government planned to move refugees from the camps to more hospitable places. How such a move would be effected

remains unclear, given the large numbers of refugees who would have to be resettled and the strain such numbers would place on new host communities. Under the new law, it was also claimed that refugees would have better security status including government and UN identity cards (Daily Nation, 2003e). It should be noted that these statements were made in February of 2003, one of many proclamations of change made as the new government continued to ride the wave of euphoria that had accompanied its election a year before. Two years later, the government is yet to enact this legislation.

A revised version of the refugee bill, known as the Draft Refugee Bill 2004, is currently under discussion. The Bill makes provision for government taking over the refugee status determination procedure, grants the right of appeal should status be denied, provides a framework for the management of refugee camps in the country and outlines the rights of refugees in Kenya (Draft Refugee Bill 2004). Interestingly, despite the Vice President's statement that the government plans to disband refugee camps and make provisions for refugee integration, the Draft Bill makes no mention of, and incorporates no short-term or long-term provisions for, the transfer of refugees from the camps.

In spite of the longstanding presence of refugees in Kenya, in the absence of refugee legislation it is evident that refugees lack clear legal status. They enjoy neither the basic freedoms theoretically available to nationals nor the rights enshrined in the 1951 Convention. Most do not have identity cards. Currently, their right to asylum in the country is, implicitly but emphatically, premised upon their complying with certain restrictive conditions, most notably, confinement to camps (Jamal 2000: 7-8).

Individual status determination

Prior to 1991, the Kenyan government used an *ad-hoc* administrative refugee status determination procedure to recognise refugees given that it lacked domestic laws providing for their rights and status. An Eligibility Committee, made up of representatives from the Ministry of Home Affairs, the Immigration Department and UNHCR observers, interviewed individual asylum seekers. The Committee usually heard individual cases and applied the Refugee Convention definition as provided for in the Class M Entry Permit category. Most newly arriving refugees were processed through a reception centre established in October 1981 at Thika, a town near Nairobi.

At governmental levels, however, the Office of the President, and the Ministries of Foreign Affairs, Home Affairs and National Heritage and Culture and Social Services often exhibited flaws in their administration of refugee affairs related to lack of institutional harmony and co-ordination. The disharmony was especially evident in relation to what were perceived as national policy issues, such as whether particular refugees ought to be *refouled,* that is, forcibly repatriated. *Refoulement* was, it appeared, acceptable in certain cases. One such case followed the collapse of the East African Community (EAC), which resulted in armed conflict between its members. 4,000 Tanzanians and Ugandans were expelled from Kenya in 1979, and 2000 Tanzanians, who had been working in the informal sector were expelled in 1980 and 1981 (Bascom 1998: 64).

The argument could be made, however, that the expulsion of the Tanzanians and Ugandans was not *refoulement,* since it was not certain whether these migrants were

refugees, given that not all refugees were formally documented during this period. It should be noted, however, that official statistics for the time do indicate the presence of 6,500 refugees in Kenya, of Ugandan and Ethiopian origin (US Department of State Bulletin, 1980) and some of those expelled could conceivably have fallen into this category.

A more specific incident in the 1980s, which indicates the acceptability of *refoulement* under certain circumstances, relates to a directive from the Office of the President to expel Ugandan refugees from the country. The Ministry of Education was a major consumer of the services of Ugandan teachers and did not know of the directive before it was made public. It subsequently faced numerous difficulties in addressing the ensuing staff shortage and the various claims of the expelled teachers (ICJ 1998: 50). The fact that refugees could be expelled by what amounted to presidential decree, points to the tenuous nature of refugee status in the country, and the somewhat ambiguous role played by the various institutions of government charged with responsibility for refugees.

Faced with an inefficient and uncoordinated administration, refugees began to lose their trust the body administering their assistance, which in turn mistrusted the refugees and the donor organisations. Eventually, the Committee lost the confidence of its sponsors and no further constructive work was possible. This is an illustration of the pitfalls that exist in the absence of a co-ordinated service, the major difficulty being that one agency, the Eligibility Committee, inadequately staffed, carried too heavy a load of responsibility.

As Collinson (1970) puts it:

> When people are hard-pressed and immersed in a plethora of seemingly endless problems, they tend to lose their perspective. It even extends to the rationale of their work - their *raison d'etre*. Under pressure (...) people have lost sight of the human nature of the material with which they are dealing.

Pressure on the government grew with the influx of refugees fleeing civil strife and drought from the neighbouring countries of Somalia, Sudan, Ethiopia and Uganda in 1991 and it suspended the process by which it ruled on applications for refugee status and asylum. The large numbers of new arrivals overwhelmed the Eligibility Committee, causing the government to ask UNHCR to set up refugee camps. It was felt that the number of refugees far outstripped the ability of the Kenyan government to ensure their well-being.

However, while there was an obvious need for an emergency response from the international community, the agencies involved usurped Kenya's refugee administration almost completely. The government's role in refugee status determination was surrendered to UNHCR and quickly forgotten (HRW 2002: 57). After the 1991 suspension, a handful of affluent individuals were effectively able to purchase refugee status but, for all practical purposes, an officially sanctioned asylum or refugee application process ceased to exist. However, in September of 1998 the government agreed to meet with the UNHCR to work out a procedure for officially documenting refugees and asylum seekers. The details of implementing this agreement are yet to be established (US Department of State 1998).

Currently, the National Refugee Secretariat under the Ministry of Home Affairs administers government involvement in refugee welfare. However, officials are persistently reshuffled and the Secretariat, for all intents and purposes, is defunct and unable and unwilling to cope with the refugee situation (RCK 2002: 1). The most problematic aspect of the new system was that the Government of Kenya ceased to be involved in recognising and protecting refugees in its own territory. Its acknowledgement of its duties was eroded to the point that in 1998 it refused to recognise the UNHCR protection letters issued by JRS (Verdirame 1991: 58).

UNHCR conducts status determination, providing services from its Nairobi offices. After interviews, the asylum seeker may be granted refugee status and be directed to a camp. In what are deemed exceptional cases, for example high security cases, some refugees receive permission to remain in Nairobi. Alternatively, the asylum seeker is rejected and instructed to depart from the country. Refugee status determination also takes place at the point of entry into the state, which is usually near the camps. The UNHCR Protection Unit Sub Office Kakuma monitors two borders points, Lokichoggio and Malaba and conducts eligibility interviews and *prima facie* screening for new arrivals through a Transit and Reception Centre (UNHCR 2003b: 1). Since the beginning of 1999, an average of 300 to 400 new arrivals per week were registered and accommodated in Kakuma Camp (WFP PRRO 2000: 6). Not all asylum seekers, however, pass through the reception centre. Large numbers make their way directly to Kakuma camp and request to be registered there (WFP PRRO 2003: 6). Furthermore, not all refugees in the country are officially registered, with an unknown number living outside the camps in cities and rural areas.

Although there have been recent attempts to improve the status determination system, it has continued to exhibit elements of dysfunctionalism, particularly with regard to the status of urban refugees, whose existence is not formally recognised. Asylum seekers are often subjected to lengthy delays, during which they are vulnerable to ongoing abuse. Most refugees are neither knowledgeable about the intricacies of the processing undertaken by UNHCR, nor about their rights and obligations, including the fact that the services provided by UNHCR should be free of charge (OIOS 2002: 7). The scheme is also marred by a sense of futility, since the outcome of the process - a letter recognising a particular individual's status - is routinely ignored and even destroyed by Kenyan police during the arrests and roundups of foreigners that occur on a daily basis (HRW 2002: 2).

There have been numerous allegations of corruption in the Kenyan refugee status determination procedure, which were eventually substantiated in October of 2001. The Inspector General of UNHCR reported that there was information available indicating serious wrongdoing by some UNHCR staff and their associates, who were involved in the trafficking of refugee documentation for fees ranging from US$1500 to US$6000 per refugee. There seemed to exist a well-established and organised criminal network serving as a major conduit in the movement of refugees out of Kenya (OIOS 2002: 5).

On the ground, this network extended from the lower levels of the organisation all the way through to the upper echelons of the UNHCR hierarchy. It was found that UNHCR security personnel illegally requested payments of Kenya shillings 50 to

Kenya shillings 100 (the equivalent of $0.68 to $1.35)[56] from refugees to facilitate their entry into the UNHCR Nairobi Branch Office. These same persons also requested and received money to move prospective refugees further up in the queues or to facilitate the passage of a refugee's case to higher-level authorities in order for the case to be considered for resettlement.

At a higher level, the criminal enterprise would arrange to substitute and resettle persons, including refugees not deserving of resettlement, in the place of deserving refugees, thus unduly depriving the latter of possible resettlement. For refugees who could not pay, and whose identities had been stolen by staff members and sold to persons not entitled to refugee status and resettlement, their wait for assistance would be never ending as they had been stripped of the one thing left to them - their identities (OIOS 2002: 9).

The refugee status determination procedure was open to abuse for several reasons. Refugees were not aware of their rights and even where they were, the UNHCR had no external reporting process for refugees who were aware that they were being victimised. Additionally, there was a problem of poor management within the agency as well as lack of co-ordination between different offices, which resulted in a lack of accountability.

[56] Currencies have been converted at the current (September 2005) average exchange rate of the US dollar to the Kenya shilling, which currently stands at US$1 to Kenya shilling 74.00

Encampment

The roots of Kenya's contemporary encampment policy are most commonly traced to the marked increase in the refugee population in the decades after independence. In mid 1983, UNHCR estimated that there were approximately 6,000 refugees in the country (Gorman 1987: 117). However, regional conflicts, primarily in Uganda, Somalia and Sudan brought large numbers of refugees to Kenya in the early 1990s. Kenya had been host to 14,400 refugees in 1990, but as a result of these conflicts, the number rose to 120,000 by 1991 (UNHCR 2000a: 311-313). By 1992, Kenya was providing asylum to about 420,000 refugees fleeing civil unrest in neighbouring countries. With time, the stabilisation of the situation in Ethiopia and in some areas of Somalia led to a gradual repatriation of 264,000 refugees and the resettlement of approximately 32,000 refugees. Although the total refugee population remained relatively stable in 1997 and 1998, persistent insecurity in Somalia and Southern Sudan led to a steady influx of refugees from 1999 onwards (WFP PRRO 2000:4).

As in other African countries, the situation in the camps where most recognised refugees were required to reside is dire. In Kakuma, the amount spent per refugee annually dropped from $54 in 1997 to $42 in 1999 (Jamal 2000: 4). In 2002, the funding support from UNHCR to implementing agencies was reduced by 20 per cent during the fourth quarter (ACT 2003: 4). This has had serious implications on all basic programmes, from food provision through to education. With regard to food provision, for example, it has been noted that around 80,000 refugees in Kakuma camp are lacking adequate food supplies. One reason has already been identified, that is, the lack of funding. Another important factor is that camp populations are not static. New influxes require assistance and protection, but also cause intermittent

shocks to the precarious food and economic security of a basically sedentary camp population (WFP/UNHCR 2000: 4). By the beginning of 2003, some 4000 refugees had to survive without even the subsidised daily rations, according to the Permanent Secretary in the Ministry of Home Affairs and National Heritage, Mr. Ali Korane and UNHCR Country Representative, George Okoth-Obbo. The latter stated that his organisation could no longer afford to distribute the recommended daily 2,100 calories for each refugee (Daily Nation, 2003n).

Another major problem faced by refugees in the camps is lack of security. Most refugees are usually settled a short distance from the border. Physical security is often threatened in refugee settlements because they are located in areas subject to attack by rebel groups. In addition, the border areas of northern Kenya, where the camps are situated, have always been insecure and weakly governed, characterised by banditry, cattle rustling, as well as violent clashes between the Kenyan army and local bandits. However, although hundreds of thousands of nationals have fled to safer parts of the country, refugees have had no choice but to remain in the designated camps (Harrell-Bond 1999a).

In 2002 alone, at least 27 refugees died violently (Daily Nation, 2003m). The UN System classifies the region as Phase III Security level[57], although both UNHCR and government officials tend to downplay security concerns.[58] The Kenyan police are

[57] There are five UN Security phases ranging from I to V with Phase V being the most severe. Phase III is the Relocation Phase. The Secretary General declares this phase on the advice of the DO. It includes concentration of all international staff members and their families, relocation of non-essential staff and families elsewhere, in or out of the country. Deployment of new staff must be authorised by the Secretary General (UNHCR Handbook for Emergencies 2000).

[58] For example, Dr. Saber Azam, Head of UNHCR Kakuma Sub-Office (IRIN, April 6, 1999) concedes that HCR is, in fact in Phase III security level, but goes on to downplay the particular security issues raised by the Oromo, allegations of conflict with the Turkana and accusations of the presence of extremist Hutu militias, although he admits to the loss of life in the camp over what he terms, 'financial dispute'. Also in an interview with Justus Mutie, Programme Co-ordinator, Kenya Standing Commission on Human Rights (Mutie, October 30 2000), he suggests that the majority of human rights complaints are as a result of violence between the refugees themselves. With regard to police brutality in the camps, which has been documented by several reputable human rights organisations, and where it was suggested that the government was responsible for redress against

entrusted with keeping law and order in the camp. However, as Kofi Mable, Head of UNHCR Kakuma Sub-Office, explained, 'They deal with crime but keep off culture.' This has several implications, most notably that women's security is often severely compromised. For example, UNHCR and Kenyan authorities do not intervene when girls in the camp are circumcised or coerced into marriage. According to Mr. Mable, 'We watch helplessly when parents drag their daughters out of school to forcibly marry them off because girls in these communities are regarded as a source of wealth. Most parents ask for at least Kenya shillings 1 million for their daughters'. It is not uncommon for refugees who have moved to Western countries to seek brides from the camps when it is time to marry. They are ready to pay any price for 'untainted, well behaved girls' (Daily Nation, 2003f).

Refugees' freedom of movement within the borders of Kenya is restricted by the encampment policy. The Government of Kenya, however, has never put the policy into writing. As a result, it does not conform to existing laws and lacks a legal basis. In addition, the policy is contrary to the provisions of the Kenyan Constitution, which expressly provides for freedom of movement in Article 26. At this point, it should be emphasised that there *are* exceptions to camp confinement policy, although they are also not enacted into law or regulation. Refugees who are exempted from the encampment policy include those undergoing resettlement interviews or processing; those who require specialised medical or psychological care not available in the camp; those who are pursuing educational opportunities not available in the camp and those with serious security problems in the camp (HRW 2002: 148).

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crimes committed by agents of the state, he countered saying that no such complaints had been brought before the Committee and he was, therefore, not in a position to address the issue.

However, there are no regularised procedures before impartial decision makers through which individuals can apply to be considered as one of the exceptions. Camp authorities do occasionally grant travel permission and exercise unfettered discretion in deciding which refugees will be allowed to leave the camps. Additionally, the Kenyan police are not informed of the exceptions to the camp confinement policy. In fact, the policy is often used as a rationale for police harassment along the way from Kakuma to Nairobi even if a refugee has been granted permission to leave the camp (HRW 2002: 149).

In spite of Kenya's efforts to restrict a large portion of its refugee population to camps, some integration has been possible. Ethiopian refugees have integrated at the highest rate. This is probably because their numbers are small and many come from urban areas and are relatively well off. They do not, therefore, pose a strain on local resources and are well equipped to adapt to the cosmopolitan communities that make up cities like Nairobi and Mombasa. Many Ethiopian refugees, unlike some of their illegal urban counterparts, do choose to register with UNHCR. However, they are motivated to do so more by the prospects of imminent resettlement rather than by the need for humanitarian assistance. In 2001, for example, according to UNHCR internal statistics, of the 14,000 persons of concern from Ethiopia in Kenya, almost 9,000 underwent status determination and were referred to refugee camps, but never went to the camps (Banki 2004: 14).

Somali refugees have also had some success in integrating locally, because they share a common ethnicity with Kenyan Somalis, although it must be said that both indigenous and foreign Somalis continue to experience certain levels of

discrimination. Sudanese refugees, however, are least likely to integrate. Their diaspora connections are few and most come from rural backgrounds and are, consequently, ill equipped to deal with urban life.

Although it is often argued that Kenyan refugee policy has radically shifted from open door to more restrictionist tendencies, the country's post independence refugee policy, particularly with regard to encampment, appears in many ways to be a continuation of the pragmatic approach adopted by the British colonial government. From 1936 to 1938, for example, three types of refugees entered, or attempted to enter, Northern Kenya from Ethiopia. Their movements had been precipitated by the Italo-Ethiopian war, which broke out in 1935. Kenyan colonial administrators, under guidance from the colonial office, responded to each of these three types of refugee with a pragmatic policy based on several key factors. These included local conditions (the lack of land and resources), the stage of fighting in Ethiopia, public opinion in the United Kingdom and Kenya, legal implications and the international situation (Wilkin 1981: 510).

The first group of refugees were Degodia, Gabra and Boran pastoralists living near the border. When they tried to cross over to the Kenyan side after their grazing grounds were affected by war, they were classified as 'local tribesmen' not refugees and were refused entry. Having what they considered sufficient problems with Kenyan pastoralists, mostly in relation to the poverty of resources in the harsh Northern Frontier District (NFD), colonial administrators felt that the entry of more nomadic people into the district might upset the already tenuous balance and lead to internal unrest.

The second group seeking refuge were Eritreans, who had deserted from the Italian army, refusing to fight fellow Africans. This group was classified as 'deserters', a decision based on a policy of not actively opposing large forces. The Eritrean 'deserters' numbered 415, probably more than the number of Kenya Police and Kenya Army Reservists (KAR) who patrolled the NFD in that area. Thus, although administrators were loath to welcome them, it was deemed a more prudent course of action to allow them to stay than to engender any conflict by attempting to *refoule* them. They were interned indefinitely in a military camp, near Isiolo.

The third group of refugees involved large numbers of Amharic-led remnants of the Ethiopian army. They were initially discouraged where their numbers were small. However, as their numbers continued to grow and they were classified as political refugees, they eventually had to be accepted. Imperial and colonial administrators could not have done otherwise, since world opinion at the time largely condemned Italian actions. They were finally admitted into the country, and were placed in a closely supervised camp under special civilian officers.

The total refugee population numbered 6,000 and the camp's living facilities were far superior to those of the average indigenous Kenyan in the 1930s. It is interesting to note how the Isiolo camp, which is perhaps the first documented refugee camp in the country, was described by a visitor in 1939:

> There were 1200 Abyssinian dwellings in orderly lines...a hospital of 300 beds consisting of medical staff of two European doctors, two Indian sub-assistant surgeons and some African dressers trained in laboratory work...Most of the routine nursing is entrusted to Abyssinian men and women...the school has over 1,000 children, including 381 orphans, being

> educated in manual work, reading and writing their own language and elementary arithmetic and religious studies... (Sequeira 1939: 330).

The conditions described are far better than those currently experienced by refugees in Kakuma, who lack adequate access to health care and schools among other things and have rarely been given the opportunity for employment, however basic.

By early 1939, it had already become clear that the refugee problem had to be resolved and that encampment was not a viable long-term solution. Permanent placement on the land for both the Ethiopians and the Eritreans was seen as the obvious choice. The only problem was where. The NFD was ruled out because of its harsh climate and its proximity to Ethiopia, which might encourage cross-border incursions. However, the refugees could not be settled 'up-country', in the central highlands, because it was essential that these prime tracts of land be preserved for European settlers. Eventually, Kilifi and Tsavo, near the eastern coastline were chosen. Ironically, by the time the resettlement had been completed, the 'refugee problem' had been resolved. Previously unwanted people had become 'allies', stopping the Italian advance into the NFD and driving them out of Ethiopia.

From the previous example, it can be seen that there are striking similarities in the manner in which authorities dealt with refugee influxes during both the colonial and post-independence period. Encampment appears to be the strategy of choice, with camps primarily being situated in isolated regions where it is thought that they are unlikely to have a significant impact on domestic politics. Both authorities displayed a reluctance to settle refugees in what were deemed to be more productive regions up country, or to integrate refugees with the local population. However, in spite of

their obvious reluctance to confront the refugee problem head on, they were influenced by international opinion and aware of their legal obligations, resulting, in both instances, in the adoption of what might be termed a 'minimum standard of engagement' approach.

A similar case of policy-making on a pragmatic basis was witnessed following the influx of large numbers of refugees into Kenya in the early 1990s. The largest flow of refugees into Kenya came from Somalia in 1992, as civil conflict in the south of the country intensified. Although not exactly welcomed with open arms, the Kenyan government was obliged to accept these refugees, partly because of its commitments in international law and partly because it needed the continued support of donor countries - many of which had suspended foreign aid to Kenya during this period pending the outcome of the country's first multi-party elections (Hyndman and Nylund 1998: 24). Not surprisingly, less than a week after winning the election in December 1992, President Moi announced that the refugees would be sent back to Somalia immediately. Once his political position had been assured, the international and domestic significance of the refugee population waned.

The use of double standards in the protection of refugees, both within and outside the camps, is one of the most striking aspects about the application of Convention principles. Whether or not the government restricts the activities of refugees, for example, seems to depend almost entirely on its own alignment and preferences. For example, successive generations of Ugandans in Kenya have been allowed to engage in political activities depending on whether they supported a party or faction supported by the Kenyan government. Many Rwandans who fled to Kenya during and after the 1994 genocide, were allowed to reside in Nairobi, without undergoing

any formal refugee status determination, and in spite of the fact that they did not meet the criteria for exemption from the camps, simply because they had the money or political connections.

Additionally the haphazard implementation of some provisions of the OAU Convention often results in restrictions on rights protected under other international conventions. For example, the application of the principle of safe location[59] means excessive restrictions on the right to freedom of movement of refugees. Kenya has selectively observed the principle of safe location, in the sense that although it has restricted the freedom of movement of refugees, thus going against international principles enshrined in the Geneva Convention, it has rarely sited camps at a reasonable distance from conflict areas, as required by the OAU Convention to which it is signatory.

Taking all of these factors into account, Kenya's refugee policy can be said to be characterised by three main features revolving around the principle of encampment: the maintenance of large refugee camps in remote areas close to the refugees' countries of origin; a determination to resist the integration of refugees into the economic and social life of the country; and an assumption that pending their repatriation, responsibility for refugees will be fully assumed by UNHCR and other members of the international community. Needless to say, these circumstances do not provide a very conducive environment for the protection and security of refugees.

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[59] For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin (OAU Convention, Article II, Para. 6)

The Kenyan state habitually modifies its approach to refugee issues, whether because of its status as signatory to the UN and OAU refugee conventions or because it realises that it has no real means of physically preventing an influx. Most important, however, is the need to prove its commitment to human rights and democracy, so as to ensure the resumption of foreign aid from donors who have questioned the country's commitment to such values. (Crisp 1999) This implies that, with some encouragement, the country will be much more willing to revise its approach to issues of refugee protection.

Conclusion

The government that came to power in 2002 has signalled a far more positive approach to refugees and refugee policy and has indicated that the adoption of national refugee legislation will bring with it more predictability in refugee protection. A dedicated governmental refugee management structure will be in place for the first time in decades, and it will also be possible to start exploring realistically prospects for self-sufficiency of refugees (UNHCR 2003a: 9).

For the first time in over a decade, then, Kenyan authorities would assume their responsibilities for refugee affairs, particularly in the field of refugee protection. This would resolve the situation where UNHCR currently bears responsibility for virtually every aspect of refugee management and co-ordination, including those that belong fundamentally to the state. At present, the core protection, monitoring, advocacy and capacity building responsibilities of the Office are severely compromised (UNHCR 2003a: 12). In the light of new revelations of corruption in the incumbent government, however, one must wonder whether the Kenyan state is

capable of effectively discharging the duty of protection, or whether the rights of refugees will once again be sacrificed in the name of personal aggrandisement?

The possible adoption of national refugee legislation in Kenya is a positive step forward. The importance of the international refugee regime and the need to advocate the incorporation of key standards of international refugee law into national refugee legislation in an effort to improve the *legal* status of refugees is undeniable. The process of domestic incorporation of international refugee law will not, however, provide an immediate solution to the problems of refugees in Kenya, particularly in the context of legal and institutional incapacity that currently exists in the state. This then is the merit of the basic-rights framework proposed in this thesis. It is able to provide a practical immediate *and* long-term strategy to improve the physical status of refugees. A rights-based framework would mean that fundamental needs are not at the mercy of changing budgets, policies and programmes, but are accepted as entitlements.

As far back as the 1970s, African states had endorsed the connection between human rights and refugee rights. At the 1979 Arusha Conference, Recommendation 7.4 affirmed the principle that 'human beings shall enjoy fundamental rights and freedoms without discrimination'. The need to view the legal problems of refugees in the wider context of respect for human rights was emphasised (Nobel 1987: 15). This statement supports the argument for the incorporation of a basic-rights framework as a possible alternative for securing the rights of refugees and creating a more effective protection regime. It also substantiates the acceptability of a rights-based approach in an African context in the face of arguments relating to human rights and cultural relativity.

The basic rights approach sees the individual as an active agent, rather than as a passive recipient. In the rights context, the refugee has rights that can be asserted and He or she is no longer a 'victim' waiting to be 'helped'. Instead, the refugee is in a position to challenge the balance of power by means of a more egalitarian and empowering ideology of rights and duties (Harris-Curtis 2003: 560). Engaging with refugees within the context of a basic rights framework would promote the development of refugee communities as well as host communities, which would ultimately ensure that they evolve in ways that lay the groundwork for durable solutions (Wilde 1998).

CHAPTER FIVE

NYUMBA USIYOLALA NDANI HUIJUI ILA YAKE*

RIGHTS, RHETORIC AND REALITY: REFUGEES' REFLECTIONS ON LIFE IN KAKUMA CAMP

In the preceding chapters we have been confronted by theoretical definitions and constructed categories from which, perhaps, we may have created an abstract image of 'refugees'. More often than not we tend to think not of 'the refugee' as an individual, but of 'refugees': refugees in their hundreds, in their thousands, a steady stream of humanity flowing across borders. As individuals, they are hapless souls, a peripheral anomaly. As a group they constitute a calamity, a catastrophe, a complex emergency, commanding centre stage. The media grab our attention with aerial shots of thousands of dilapidated tents strewn over a dusty landscape that spans kilometres. The humanitarian community is spurred into action. But the numbers are predictably over-whelming, and in the anonymity that is the group, the plight of the individual is diluted and dimmishes in significance.

This chapter will attempt to re-position the marginalized individual by placing an emphasis on the importance of considering the refugee as a human being rather than as an abstract category. Throughout the course of my discussions with refugees in Kakuma, I made an attempt to understand the context within which protection occurred and the viability of a rights-based approach to protection in protracted

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* The literal translation of this Kiswahili proverb is 'You cannot know the defects of a house you have never slept in'. In other words, it is the wearer who knows where the shoe pinches, or the person who is suffering who knows the cause of his/her problems.

camp situations. To this end, the chapter outlines the day-to-day realities of life as a refugee and describes the relationship between basic human rights and refugee protection in the words of the very individuals who lay claim to these rights.[60] It looks in turn at the specific rights identified by refugees as of importance to them: shelter, water, food, health care, education and security. In conclusion, it looks at the relationship between refugees and humanitarian agencies in an effort to highlight the importance of improved communication and co-operation between these two groups.

Any framework for the protection of refugees in protracted situations would benefit greatly from an understanding of refugees' perceptions of what is important for their general day to day survival, and their long-term well being. Refugees should not simply be characterised as passive, submissive recipients of aid. The portrayal of refugees as victims is more often than not an attempt to engender sympathy from an uninformed audience, as it is always easier to mobilise social concern on easily conceptualised and oversimplified issues, appealing to emotions such as guilt to raise funds (Harrell-Bond 1988).

However, the individuals I spoke to did not conform to the stereotype of the dependent refugee frequently perpetuated by humanitarian actors. The latter, it must be said, often have a vested interest in maintaining this relief model of refugee assistance, because it increases their capacity to draw on international funds (Crisp 2003: 4). Refugees did not just beg and complain and criticise. Many were angry, some were cynical, but all were determined to have their voices heard. They had

[60] Please note that all extracts from interviews have been cited word-for-word, which accounts for any grammatical or structural errors in each particular quote. I have chosen not to highlight specific errors in the actual body of the thesis in order to avoid distracting from the essence of the reference/excerpt. Occasionally, where I felt that some clarification was necessary, I inserted explanatory words or phrases into the body of the quote clearly indicated by the use of brackets.

numerous viable suggestions for ways in which to improve protection and enhance standards of living in the camp, ranging from the simple to the more complex.

'They need to increase the ration per person, provide proper medical facilities and recruit well experienced doctors to look after the patients. People in the camp are waiting for improvement but until now the camp remains the same,' said Omar.[61] Zahra suggested that 'creating (an) extra camp could solve the problem of overcrowding which has led to shortage of services such as education and health. It is also better to create friendly atmosphere with the locals to avoid insecurity in the camp'.[62] Some refugees still see humanitarian assistance as a sustainable solution to their plight, although they question the accountability of many of the organisations they have come into contact with. Bior suggested that 'to let the refugees live comfortable, it is the donors' teams to come by themselves to give food, water and medical facilities direct but not through mediators.' [63]

A larger number of refugees, however, emphasised the importance of self-sufficiency, which is understandable given the length of time many have spent in the camp completely reliant on external aid. To encourage self-reliance, many advocated moving the camp from its present site in Kakuma. 'UNHCR should resettle refugees in a fertile land where they will grow crops for their home usage,' said John. [64] Garang thought that 'the camp should be evacuated from here to a place with

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[61] Interview with Omar/Anonymous, Kakuma Refugee Camp, 06 February 2003. Please note that interviewees have been named only where they specified prior to the interview that they were willing to be directly quoted or identified. All other individuals were interviewed in an anonymous capacity and have been given pseudonyms for the purposes of this thesis.
[62] Interview with Zahra/Anonymous, Kakuma Refugee Camp, 06 February 2003
[63] Interview with Bior, Kakuma Refugee Camp, 26 February 2003
[64] Interview with John, Kakuma Refugee Camp, 05 December 2002

plentiful rain where the refugees can build their houses and cultivate their farms. With these being implemented, the lives of refugees can be improved.' [65]

Another popular solution was resettlement. Indeed, the idea that 'refugees should be resettled,' [66] was constantly repeated, although interestingly, most individuals I spoke to often noted that this was an alternative of last resort. In contrast to the popular perception that all African refugees want is to be resettled to the West, many of those I interviewed stated that they would prefer to stay where they were if only they had the opportunity to earn a living and better their circumstances. The West was portrayed as a harsh, alien and difficult environment, but was seen by many as their only option, given that there appeared to be no opportunities for integration locally. Manyok argued that 'it is better for refugees to be given identity card and allowed to work anywhere in Kenya, but Kenya itself has a problem of employment therefore the second option is to settle these refugees to any developed country to provide labour and support their life'. [67]

While refugees adopt a long-term approach to seeking solutions for their problems, UNHCR continues to adopt a minimum standards, emergency management approach in Kakuma, implying that the camp, thirteen years after its establishment, is still in targeted emergency mode.[68] This is despite the fact that, according to UNHCR, it has long been recognised that the Kenya programme is in fact a long-standing protracted situation (UNHCR 2003a). As a consequence of this mode of management, refugees are effectively barracked into the camp, in marginal and

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[65] Interview with Garang, Kakuma Refugee Camp, 20 January 2003
[66] Interview with Mabil, Kakuma Refugee Camp, 26 February 2003
[67] Interview with Manyok, Kakuma Refugee Camp, 15 January, 2003
[68] UNHCR does not have an official definition of the term 'minimum standards'. The phrase is usually taken to refer to the basic protection standards as laid down in the UNHCR Handbook for Emergencies, which identifies primary life-threatening problems as water, food, sanitation, shelter and health and lays out the minimum survival standards in its Toolbox Section. For a sample of minimum standards indicators, see Appendix Five.

difficult conditions where they have no opportunity to meaningfully fend for themselves, or realise any form of self-sufficiency and independence from international relief assistance. Unfortunately, over the years this assistance has been woefully inadequate both materially, as levels of aid continue to decrease, and structurally, specifically in terms of planning.

The most apparent shortcoming in the planning of the humanitarian assistance programme in Kakuma has been the tendency to adopt a sectoral rather than integrated approach. The sectoral approach involves delineating 'sectors' of operation. It is argued that this approach ensures a clearer focus and a better understanding of specific needs within the given sector, such as health care or education. The sectoral approach is also seen as more efficient and cost-effective where institutional and organisational cultures tend to be more similar within sectors than across, thus implying that it is better for one organisation to specialise in one area, such as water provision than to try and perform several different tasks (water, health care, food distribution).

On one level, this is understandable, given that services are provided by different agencies, each with their own mandate, strengths and constraints. However, this approach is found wanting on many other levels. Agencies compete for funds from the same donors, creating a frequently antagonistic relationship on the ground. This results in poor communication and the duplication of efforts due to lack of co-ordination, all to the detriment of their beneficiaries. Consequently, programming approaches become overly reactive depending on what the organisations' staff perceive as constituting the refugees' conditions vis-à-vis the donors' priorities (Mugenda 2002).

What is needed is a proactive approach that involves refugees in the identification of programming gaps and places more of an emphasis on the idea of sustainable assistance. As UNHCR itself admits, the life and conditions of the refugees in Kakuma across many of the key sectors, including food, health care, shelter and even education have thus far been the most perilous in any UNHCR programme the world over (UNHCR 2003a: 11). Yet, in spite of the obvious, self-acknowledged failures of the emergency management approach, the organisation persistently continues to prioritise minimum survival standards, which are only applicable in emergency situations and fail to offer a durable solution for long-term settlements. This approach has had the effect of locking UNHCR and its implementing partners into unproductive emergency management mode (Jamal 2000: 4) and contributes to the perception of refugees as a 'problem' rather than as a symptom of the much wider conflict.

A more enduring approach would recognise the positive role that refugees can play in their own communities and their potential impact on the host population. In Kakuma, for example, which is located in a peripheral area, medical and educational programmes could take into consideration the interests of both groups. Self-reliance could also be greatly enhanced if there was a move away from the existing economic maintenance of the camp in isolation and if attempts were made to adapt to locally prevailing market conditions (Boesch and Goldschmidt 1983: 29). Engaging with refugees would promote the development of refugee as well as host communities, which would ultimately ensure that both evolve in ways that lay the groundwork for durable solutions (Wilde 1998).

Unfortunately, humanitarian actors continue to typecast refugees as the problem, rather than as part of the solution. In the process, refugees become a convenient focus for action: the international community can be seen as 'doing things' and the specific problem can be 'dealt with' (Bakewell 2001). This creates a hierarchical relationship between agencies and refugees, with the latter feeling increasingly disempowered. In the course of my discussions with refugees in Kakuma, it became more and more apparent that the relationship between refugees and agencies was exceedingly discordant. There was a sense that they were unable to communicate with the very organisations mandated to protect them.

One example was that of the newly arrived Somali Bantu population, which had recently been transferred to Kakuma in preparation for their eventual resettlement to the United States of America. This group interacted primarily with the International Organisation for Migration (IOM), which was the agency that had co-ordinated their transfer from Dadaab to Kakuma. However, even though they regularly forwarded their complaints to IOM, the organisation would repeatedly tell them that it was not in a position to respond to their request, which would be forwarded to HCR but they never received any feedback.[69]

It was immediately apparent that there was undeniably a need to improve communication between the Somali Bantus and all implementing partners. The LWF Gender and Peace Units, for instance, had each employed one person in the community, which covered a huge area with a population of approximately 10,000 whose needs could not conceivably be met by two people. Additionally, the Somali Bantus rarely understood the functions of the various agencies. For example, they

[69] Focus group discussion with Somali Bantu Community Leaders, Kakuma Refugee Camp, 23 January 2003

were not aware of the existence of, and services provided by, Field Post III, which was situated a short distance away from Kakuma IV. Although they had seen the building that housed Field Post III, they had assumed it was a HCR office and had not realised there were caseworkers operating there that were in a position to deal with their complaints.

Although I consistently refer to 'agencies' when discussing the relationship between refugees and humanitarian actors, it should be noted that a large portion of refugees' complaints were directed towards one particular agency, UNHCR. Refugees often saw the implementing partners merely as intermediaries and UNHCR as the absentee benefactor. According to Sentayehu, 'HCR does not understand the problems of the refugees and the refugees have no access to the compound.'[70] Asha said that, 'Even when complaints were forwarded to HCR it still took months for any action to be taken.'[71] However, in spite of their criticisms, most refugees were willing to give credit where it was due. Many were unfailing in their praise of the UNHCR 'lost boys' resettlement programme. It was generally acknowledged that 'the organisation has done a lot to enable the most unhandled (vulnerable) refugees such as the minor group who came to the country with no relatives to seek refuge elsewhere, through resettlement to countries like United States, Australia and other developed countries'. [72]

However, the majority of refugees expressed acute dissatisfaction with both agencies and donors. It was said of the latter, 'When the donors come to evaluate the projects,

[70] Interview with Sentayehu/Anonymous, Kakuma Refugee Camp, 30 January 2003
[71] Interview with Asha/Anonymous, Kakuma Refugee Camp, 30 January 2003
[72] Interview with Anonymous, Kakuma Refugee Camp, 12 January 2003

they only go to the (UNHCR) compound and do not come to see the refugees'. [73] According to Peter, 'Kakuma refugee camp is the only place that the donors are saying it is the most favour camp but in return the refugees are complaining now and then. It has brought in the wonder to the world which could not say whether it is the refugees or the donors saying the truth'. [74]

There were also regular complaints of corruption. Lual stated that very often 'the boss employs unqualified members from his own tribe'. [75] Another group I spoke to was more precise. They stated that they did not blame the organisations as a whole, but their members of staff. According to Michael, in the Ethiopian camps, all their basic needs were met and there were no problems. He continued, 'Here it is so hard to even enter the compound if you have a problem you want to report. There were problems with the resettlement process for example, and there is so much corruption. For instance, according to HCR, 400 Ethiopians were resettled from Kakuma, but actually there were only 12 Ethiopians and the rest were people who bought Ethiopian identities because it is easier to get resettlement if you are Ethiopian'. [76]

Deng complained that 'officials employed from the top work for their own benefit that is selling the public medicine and employing unskilled personnel for their own benefit (nepotism) but not for public interest.'[77] Meanwhile Jacob noted how 'in 1992 (refugees) were given shelter, clothing and medicine but those services are turned

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[73] Interview with Anonymous, Kakuma Refugee Camp, 12 November 2003
[74] Interview with Peter/Anonymous, Kakuma Refugee Camp, 15 January 2003
[75] Interview with Lual, Kakuma Refugee Camp, 26 February 2003
[76] Interview with Michael/Anonymous, Kakuma Refugee Camp, 11 November 2002. Note that I was unable to verify this allegation, although other refugees present at this discussion agreed with this informant's point.
[77] Interview with Deng, Kakuma Refugee Camp, 26 February 2003

downwards due to lack of proper management both in those who work as managers and accounts under UNHCR'. [78]

I was also given several examples of incidents where refugees felt that the agencies had not fulfilled their protection duties. Locha recounted how 'one day when it was late in the evening, an expectant mother was laid by the road to wait any vehicle to take her to hospital. All of a sudden a (agency) car came which was not working with the health services. They hailed it to stop and they said, "My vehicle is not an ambulance". Are we to join hands to help refugees or not?' [79] Mayok recalled an incident three months prior to our meeting, where some refugees had lost their ration cards. 'The people were told if they wanted to get another ration card they would have to go to the field post. Then when they arrived at the field post, agency staff came with a lot of police and people were chased away, some were injured and others were put in jail at Lodwar'. He explained that, consequently, the reason that refugees were sometimes reluctant to talk was that they feared the repercussions.[80]

According to David, 'If the NGOs know such problems and are not doing anything about them, so they should stop cheating the refugees that they are serving them and let them survive on their own. I would strongly comment that if UNHCR is aware of such problems let it turn over a new leaf for betterment of individual's lives and if not, it is also part and parcel of the complications.' [81]

When discussing failures of protection, criticisms of the Kenyan state, responsible for the protection of refugees within its borders, cannot be omitted. Although most

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[78] Interview with Jacob, Kakuma Refugee Camp, 24 February 2003
[79] Interview with Locha, Kakuma Refugee Camp, 20 February 2003
[80] Interview with Mayok/Anonymous, Kakuma Refugee Camp, 06 November 2002
[81] Interview with David/Anonymous, Kakuma Refugee Camp, 03 February 2003

refugees placed primary responsibility for their protection with UNHCR and its implementing partners in the camp, they expressed reservations about the role played by the government on several occasions. Garang stated that 'the government is not much concern with the refugees in the northern Kenya'. [82] Criticisms most often centred on security concerns and the actions of the Kenya police. James said, 'It seems like the Kenyan police have such a big problem with refugees the way they treat them, and we are wondering why the state has not done anything about it. If they wanted to stop them there must be some way they can catch the perpetrators and discipline them, but it seems they are not bothered by the problem'. [83]

According to Oketch, 'Refugees here are not considered as human beings. We are in prison, and not given freedom. In Uganda, in 1975, I took refuge. We were given freedom, shelter and somewhere to plant something and enough water. The papers given there were respected. Here the papers are not respected and when you want to travel, all you hear is *toa kitu kidogo, toa kitu kidogo** until you have no money'.[84]

It was common to hear requests from refugees to be treated as equals with Kenyan citizens. Mayen asks the 'new Kenya government to provide us with good security as citizens and to share our life equally with citizens'. [85] This is a remarkable request given the often-precarious living conditions, especially with regard to personal security, faced by most Kenyans. Refugees and locals in Kakuma have a strained relationship, and many refugees appear to believe that the local community resents them. Indeed as one individual told me, 'The locals feel that the refugees are not

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[82] Interview with Garang, Kakuma Refugee Camp, 26 February 2003
[83] Interview with James/Anonymous, Kakuma Refugee Camp, 10 December 2002
* *Toa kitu kidogo* is a Kiswahili phrase, literally translated as 'give something small' and commonly used by Kenyan police to request a bribe.
[84] Interview with Oketch, Kakuma Refugee Camp, 06 December 2002
[85] Interview with Mayen, Kakuma Refugee Camp, 20 January 2003

human beings'. [86] Conversely, the Turkana community feels that the refugees benefit from a wide range of humanitarian aid, while they suffer silently on the sidelines.

In an effort to resolve this predicament, another refugee asks that Kenyans be guided and counselled on how to relate with refugees. He concludes, 'Refugees are just like fellow human beings and Kenyans should learn that. They should absorb them just as their fellow Kenyans.' [87] Placing slightly more emphasis on the importance of co-operation is Locha, who says, 'Let us join hands and help refugees because if you treat a refugee badly the same refugee will treat you one day badly'.[88]

'Most of the Houses are Naked'[89]

Shelter is a critical determinant of survival in the initial stage of an emergency, but beyond survival, shelter is necessary to enhance resistance to disease and provide protection from the environment (Sphere 2000: 176). According to UNHCR, shelter delivery has been one of the most acute problems faced by the Kenya assistance programme since the early nineties (UNHCR 2003a: 12).

In Kakuma, new arrivals are initially settled at the Reception Centre located in Kakuma III. New arrivals are only supposed to be housed at the Reception Centre for a maximum of four days. However, in practice, many of those arriving may remain here for many weeks, some for more than a year. The centre comprises half a dozen tin-roofed (*mabati*), concrete-pillared shelters, open to the elements, which do not

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[86] Interview with Malual, Kakuma Refugee Camp, 26 February 2003
[87] Interview with Anonymous, Kakuma Refugee Camp, 15 December 2002
[88] Interview with Locha, Kakuma Refugee Camp, 20 February 2003
[89] 'Most houses are naked, that is they are eaten up by white ants. As a result most people are suffering, especially during the rains.' Interview with Mayola, Kakuma Refugee Camp, 26 November 2002

provide any protection from the extreme heat, frequent dust storms and occasional flash floods. New arrivals sleep on thin straw mats on concrete floors and share a limited number of pit latrines and washrooms.

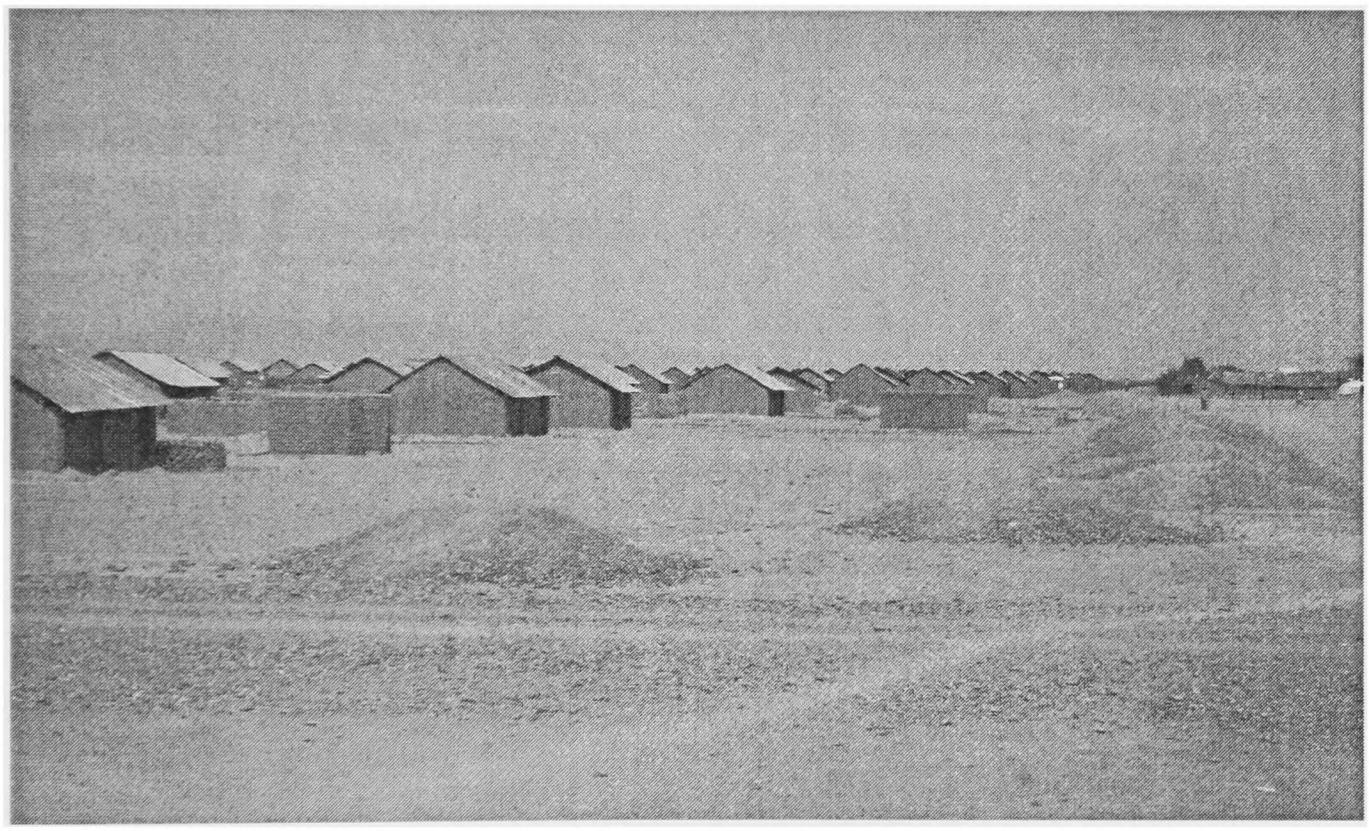
Anna, a Congolese woman residing at the Reception Centre, told me that, in her opinion, finding shelter was the biggest problem in the camp. Although rain is infrequent in Kakuma, there are periodic flash floods. Anna said that she could cope with the conditions but that she was extremely worried about the well being of her child. The shelters at the reception centre had no walls and during the rainy season the rain would come in from the sides and soak everyone inside. Even when it was not raining there was a lot of dust and dirt, which was not hygienic. [90]

Ashia[91] explained that life at the reception centre was very hard, especially for women. 'Most of the men there have nothing to do,' she said. 'They spend their time smoking *bhang*[92] and drinking illicit brews. At night there are a lot of problems. Security is not always tight. The women in the reception centre are concerned about rape, sickness and their children.' Ashia did not understand why men and women were compelled to sleep together under one roof. 'You come in and don't know anybody and are forced to sleep in close cramped quarters with complete strangers. It is going to lead to lots of problems.' She had moved her belongings from the communal shelter and was sleeping under a tree near the main administration block where she felt safer as the area was well lit and she was near the watchman.

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[90] Interview with Anna/Anonymous, Kakuma Refugee Camp, 21 November 2002
[91] Interview with Ashia/Anonymous, Kakuma Refugee Camp, 12 December 2002
[92] *Bhang* is a narcotic substance, similar to marijuana, but of lower quality, cheaper and more easily available.

Upon leaving the reception centre, the majority of the camp's population is housed in mud brick huts. Families are required to make the mud bricks, which are used to construct the walls of their homes, under the supervision of World Vision Kenya (WVK) staff. World Vision then assists with roofing, using either tin (*mabati*) or a woven flax-like material (*makuti*). Neither material is ideal for the climatic conditions. The *mabati* absorbs and intensifies the already unbearable heat, while the *makuti* leaks during the heavy rains.



Mud brick, *mabati*-roofed shelters in Kakuma IV

Photo © Sarah Charles

According to Miabek[93] 'the local building material, known as *makuti,* is eventually blown away by the wind and the plastic sheet is left alone and subjected to this dangerous heat of Kakuma. The organisation known as World Vision who took over the construction department have done something good of replacing *makuti* with iron sheet. This will minimize the issue of ant which affected the *makuti,* but the problem is that they are not fast (in building the houses)'.

In many houses the walls are cracking because the mud bricks are not very durable, and need to be well looked after. According to Oketch[94], 'when it comes to shelter, the organisation should abstain from building slum or ghetto-like structures. Strong plastered houses should be built for the refugees, as this will minimise the problem of homelessness. Also the organisation should set up building and construction centres. In these centres refugees should be trained on skills of constructing structures, as this will enable refugees to construct strong and everlasting houses for themselves'. Most 'temporary shelters' typify the 'ghetto-like' structures alluded to by Oketch. These are made of white or blue polythene sheeting. Some were constructed after severe flooding in the camp in early 2002, while others were built as alternative housing due to lack of roofing material. These shelters are even less durable than their mud brick counterparts.

Deng complained that the housing programme 'has changed from better methods to the worst ever known. Presently, most groups (houses) are not repaired simply because poor management from the staff concern *(sic)*'. [95] A family of one or two are sheltered in one *makuti*-roofed house. As most refugees are extended families, the

[93] Interview with Miabek, Kakuma Refugee Camp, 26 February 2003
[94] Interview with Oketch, Kakuma Refugee Camp, 26 January 2003
[95] Interview with Deng, Kakuma Refugee Camp, 10 February 2003

house becomes overcrowded'[96]. Meanwhile, according to Kosia[97], 'housing has been a problem since 1992. Construction has been done only two times up till now'. This may be explained by the process of construction, which was rotated in a cycle of zones and was affected by the process of renaming Kakuma into Kakuma I, II, III and IV. This delayed construction and some parts of the camp remained without new buildings and with worn out houses. Refugees consistently complained that there was not enough shelter. According to Garang, 'the agencies give building material only to a few people and tell the rest to build their own houses. Those who do not have enough money are sleeping outside and when it rains they suffer.' [98]

Another problem is overcrowding. The camp has been in existence for over a decade and in that time, family sizes have increased. On one trip around the camp, I visited a household, which consisted of one room, housing seven family members. The family had no blankets or mattresses and the children were all sleeping on the earthen floor. They also complained that they had no cooking utensils save for the one frying pan.[99] In addition, family composition has changed significantly with time, a factor that has not been taken into account by agencies. I came across several cases of fathers sharing a room with mature daughters and sons, and old women sharing rooms with mature and married children. There were children who had been fostered as minors, had matured and were still compelled to share a room with their foster parents, or young adults living with their in-laws, a worrying state of affairs because such living conditions often potentially exposed the individuals in question to sexual abuse.

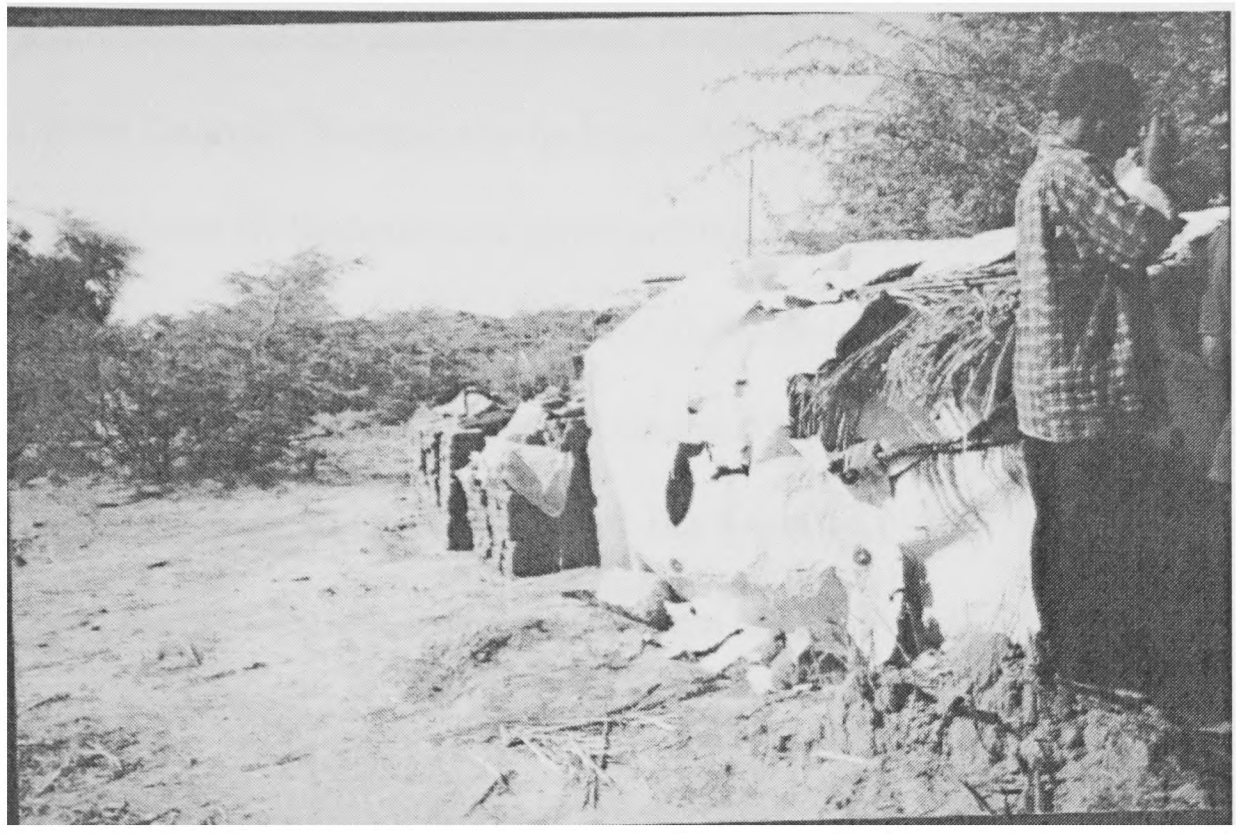
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[96] Interview with Thon, Kakuma Refugee Camp, 26 February 2003
[97] Interview with Kosia, Kakuma Refugee Camp, 19 February 2003
[98] Interview with Garang/ Anonymous, Kakuma Refugee Camp, 06 November 2002
[99] Interview with Anonymous, Kakuma Refugee Camp, 29 January 2003

Often, those lacking adequate shelter are also particularly vulnerable members of the community. Among those identified were single mothers, the elderly, the sick, disabled, widows/widowers and unaccompanied minors. Most communities within the camp were able to single out individuals living among them who had no shelter.[100] Some of the cases I came across included a 66-year-old grandmother staying with her daughter, five grandchildren, a single mother and her child in the same house. Another shelter I visited was home to a widowed mother of four small children. On one side of the house, the wall had completely collapsed, while the roof consisted of tattered plastic sheeting.

In some cases, vulnerable individuals or families were housed by fellow community members or had sought refuge in the compound of community churches or schools. One elderly single man slept in the church compound, another widow slept in the kitchen of a small café owned by a member of her community, and yet another man slept on a school veranda. Yet another, a single man, aged 62, whose house had collapsed, was simply sleeping in the open air next to the remains of his shelter. Some of the homeless had managed to procure materials, like old plastic sheets, used sacks, carton boxes, sticks and old blankets, which they then used to build their own haphazard 'houses'.

[100] Apart from individual interviews, I participated in a shelter assessment over two days, in an effort to make a more accurate appraisal of the problems refugees faced when attempting to access shelter. A total of thirty-two individuals and/or families identified by their communities as vulnerable were visited.



Permanent refugee shelter, Kakuma I

Photo © Annabel Mwangi

Adelino's[101] wife and children fell sick and died while they were fleeing from Sudan to Kenya. He appeared to be in his late sixties, although the combination of poor health and the hardships he had endured made it difficult to tell. His youngest child, who appeared to be two years old, survived the journey, and he carried her around the camp on his back in a makeshift sling. Adelino and his daughter were in dire need of shelter. He had been temporarily accommodated in a kitchen but was eventually chased away by the owner of the property. He was now constantly on the move, searching for shelter, and was often forced to sleep in the outdoors, risking his own and his daughter's health and safety.

[101] Interview with Adelino, Kakuma Refugee Camp, 28 November 2002

Amina, a nineteen-year-old disabled Somali woman, had recently been transferred to Kakuma from Dadaab. Because she had no relatives, she had travelled to Kakuma with her neighbour in Dadaab, and upon arrival, was registered on his ration card. She had been given a temporary shelter next to his but he had recently informed her that she could not continue to occupy this shelter. She was, therefore, faced with both the dilemma of having to find shelter and the question of how to provide food for herself given that she did not have an individual ration card[102].

In some instances, therefore, it appeared that the very structures that had been set up to protect refugees had been transformed into the root cause of their problems. In the case just mentioned, the agency had neglected to allocate Amina her own ration card for reasons that were not apparent. This deviation from the procedural norm had left her vulnerable to manipulation by her 'protector' and eventually rendered her homeless. Ironically, the very process that had been set in to place to 'identify' Amina and ensure her protection, that is card registration, had served to strip her both of her identity (as a refugee) and the right to protection that was associated with this identity.

'The Weaker go Thirsty'[103]

The provision of water to a town hosting 80,000 refugees and 30,000 locals situated in an area that might be best described as semi-arid desert is a daily challenge. Especially during the drought season, water demands are high, dust storms are rampant and the water table falls significantly. This reduces the amount of water that

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[102] Interview with Anonymous, Kakuma Refugee Camp, 28 November 2002
[103] Interview with Thon, Kakuma Refugee Camp, 26 February 2003

can be extracted from boreholes, forcing the camp administration to reduce the borehole yield and decrease pumping hours (LWF 2002d: 3).

Refugees are unable to access alternative water sources because of the extensive pressure on water reserves in the arid Turkana region. This pressure is exacerbated by the fact that people are rejecting their nomadic lifestyles, partly because of the fear of heavily armed raiders and, in Kakuma, due to the presence of the camp, which provides alternative opportunities for income generation. The rainy season, when huge amounts of water drain into the rivers Tarach and Lodoket from the hills in Kenya and Uganda, brings little respite. The two rivers, which border the camp, are seasonal and tend to meander resulting in heavy flooding, which causes mass soil erosion on riverbanks, on several occasions washing away boreholes, shelters and schools.

The UNHCR and Sphere guidelines for water consumption in a refugee situation are between 15 to 20 litres per person per day. At its highest, consumption in the camp is approximately 16.8 litres per person per day. However, although UNHCR guidelines are ostensibly being met, refugees still complain that this quantity of water does not allow camp inhabitants to meet their basic cooking, drinking and washing requirements and has also limited the opportunities for the cultivation of kitchen gardens or the rearing of chickens, which would enable refugees to be more self-reliant.

According to Garang[104], 'the shortage of water resulted in many time that people don't eat and they don't bath'. This complaint was reiterated by another refugee who

[104] Interview with Garang, Kakuma Refugee Camp, 26 February 2003

stated that 'the water supply is limited to some litres a day. Two or three groups are given one tap. A long queue can be seen composing of men and women. There is always a conflict at water points and it is the stronger ones that get water. The weaker go thirsty.'[105] Conflicts can be serious with women and children most severely affected. According to Majok, 'Women even go to jail because they fight over water'.[106]



Collecting water, Kakuma I, Zone 4

Photo © Annabel Mwangi

'Indeed no one can tell you that he is comfortable with the amount of water they get in their taps, says Aguer. 'In this case the tap should be open for an interval of two hours but is closed in one hour time. Some people from Zone 1, 4 and 6 fetch from

[105] Interview with Anonymous, Kakuma Refugee Camp, 11 February 2003
[106] Interview with Anonymous, Kakuma Refugee Camp, 12 November 2002

Don Bosco and schools like Napata Secondary and they do this by human transport (human porters). [107] Bior notes that 'water given per a day is not enough for the drink or the domestic use. This has even led to some problems where when they go to the riverbank to dig their borehole to get some water they are being mistreated by the local people. For example, they hit the men and even rape the women. This water they fetched from the riverbank have (sic) also created some health hazard.' [108]

In an effort to encourage greater community awareness of, and involvement in the process of water distribution, recent efforts had been made to form a number of refugee-run water committees. The formation of these committees was an attempt to decentralise responsibility from the Water Office operated by LWF and bring decision-making down to the community level. Consequently, if there were any water problems, the Water Committee would be in a direct position to trace the problem and communicate it to the Water Office. More importantly, it was hoped that greater community involvement would facilitate a better understanding of the problems faced in the provision of water.

Given the semi-arid, almost desert like conditions of the location of Kakuma camp, the refugees are particularly sensitive to the importance of water and their needs perhaps more strongly articulated. Louis spoke for most refugees when he said, 'they (the agencies) need to provide plenty of water so that we can tolerate this high semi-arid area.' [109] Most refugees repeatedly criticised agencies even when it was evident that water was largely unavailable due to constraining environmental circumstances.

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[107] Interview with Aguer, Kakuma Refugee Camp, 08 February 2003
[108] Interview with Bior, Kakuma Refugee Camp, 24 February 2003
[109] Interview with Louis, Kakuma Refugee Camp, 21 January 2003

There was definitely a need for a more co-operative relationship between the agency and the community in the area of water distribution. Some community leaders stated that they knew there was no water but they needed to be told this directly by the Water Office. One community leader noted that 'many of the young men in the community have threatened to go and beat up those in charge of the pumps simply because they feel sidelined and do not believe the Office is taking their concerns seriously.' [110] It was suggested that the Water Office should, therefore, hold meetings with the community in times of crisis and inform them of the existing problem and what steps were being taken to remedy it so that the community would have a sense of involvement.

The Bajuni, Barawa and Somali Bantu communities[111] were very happy efforts were finally being made to inform and involve the community in matters pertaining to water. According to the Bajuni community representative, their main problem was that water taps were switched on for a very short time. The Barawa community, meanwhile, indicated that they had only four tap stands in the group. The taps located in one section of the community were broken and needed repair. Most taps had only two outlets, which meant people would always get into fights around the collection of water because they had to wait their turn for long periods of time. The same issue was raised by members of the Nuer community who stated that 'the groups are very congested and there is a need for more taps in the community. Also the taps should have more outlets. Four is the ideal number. Usually when a tap has four outlets, the women use two, the men use two. With only two outlets, the men and the women are fighting every day over water.'[112]

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[110] Interview with Nuer Community Leader, Kakuma Refugee Camp, 12 November 2002
[111] Interview with community representative, Kakuma Refugee Camp, 14 November 2002
[112] Interview with Anonymous, Kakuma Refugee Camp, 12 November 2002

There were also complaints that the water was 'supposed to be distributed twice a day, in the morning and in the evening, but now water is only distributed in the morning.'[113] According to Susan, 'when the taps are switched on, they run for only an hour and this is not enough to allow every one to fill their *jerricans*.' Jane was adamant that taps were never switched on consistently, saying 'Although they are supposed to be open from seven a.m. to eight a.m. every morning, sometimes they are switched on at six a.m., other times at eight a.m. This means that many residents have to be up at six a.m. waiting in case the water is switched on early. Others miss their place in the queue altogether and have to go a day without water. And sometimes taps are only open for half an hour as opposed to the one hour that is required.'[114]

Perhaps one of the most significant observations was made by Mangok who noted that in the refugee community, one problem leads to another, and something that starts out as a minor dispute over water, can turn into a full blown conflict. He emphasised that no one should minimise the potential for conflict that can arise from lack of water. It would do many of the agencies in the camp good to remember that 'as the environment of this camp is concerned, water should be in plenty for water is the source of life'. [115]

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[113] Interview with Susan/Anonymous, Kakuma Refugee Camp, 12 November 2002
[114] Interview with Jane/Anonymous, Kakuma Refugee Camp, 12 November 2002
[115] Interview with Mangok, Kakuma Refugee Camp, 26 February 2003

'Kati Kati: Neither Breakfast, Dinner Nor Supper' [116]

A 1999 Joint Food Needs Assessment Mission and the WFP/UNHCR Evaluation Mission confirmed the total dependence of refugees in the camp on external assistance. Refugees in Kakuma receive all their food needs from the World Food Programme (WFP) supplied food ration[117]. They have to survive on a ration that totals 585 grams and contains approximately 2,100 kcal per person per day.[118] However, resource shortfalls have meant that WFP has not been able to maintain their targets and over the past two years, the ration has been an average of 1,760 kcal and went down to 776 kcal in May 2002 (WFP PRRO 2003: 6).

A portion of the ration (usually maize or flour) is sold or exchanged by about 40 per cent of the refugee households. The proceeds are then used to purchase firewood or charcoal, to grind whole maize, and to buy very small amounts of other food, including milk and sugar, meat and vegetables to complement the basic rations. Opportunities for petty trade or other income-generating activities both within and outside the camps to enable refugees to supplement their food reserves are highly restricted. Livestock rearing is not allowed in Kakuma, as the local communities prohibit the refugees from keeping livestock because of encroachment on limited grasslands (WFP PRRO 2000). Agriculture is also not feasible, given the hostile semi-arid environment.

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[116] 'The little food that is given to refugees has a change of world convention that food is taken twice or thrice a day. Refugees eat only one meal a day, especially at noon. This meal is neither called breakfast, dinner, nor supper. It is given the name kati kati because it is in the middle of the day.' Interview with Thon, Kakuma Refugee Camp, 26 February 2003

[117] UNHCR provides the budget for the standard food package that is provided to refugees and has contracted WFP to deal with the food pipeline. The Lutheran World Federation (LWF) draws up a budget for complementary food and then looks for donors, of which UNHCR is one. LWF then purchases complementary food, usually beans, to last the year.

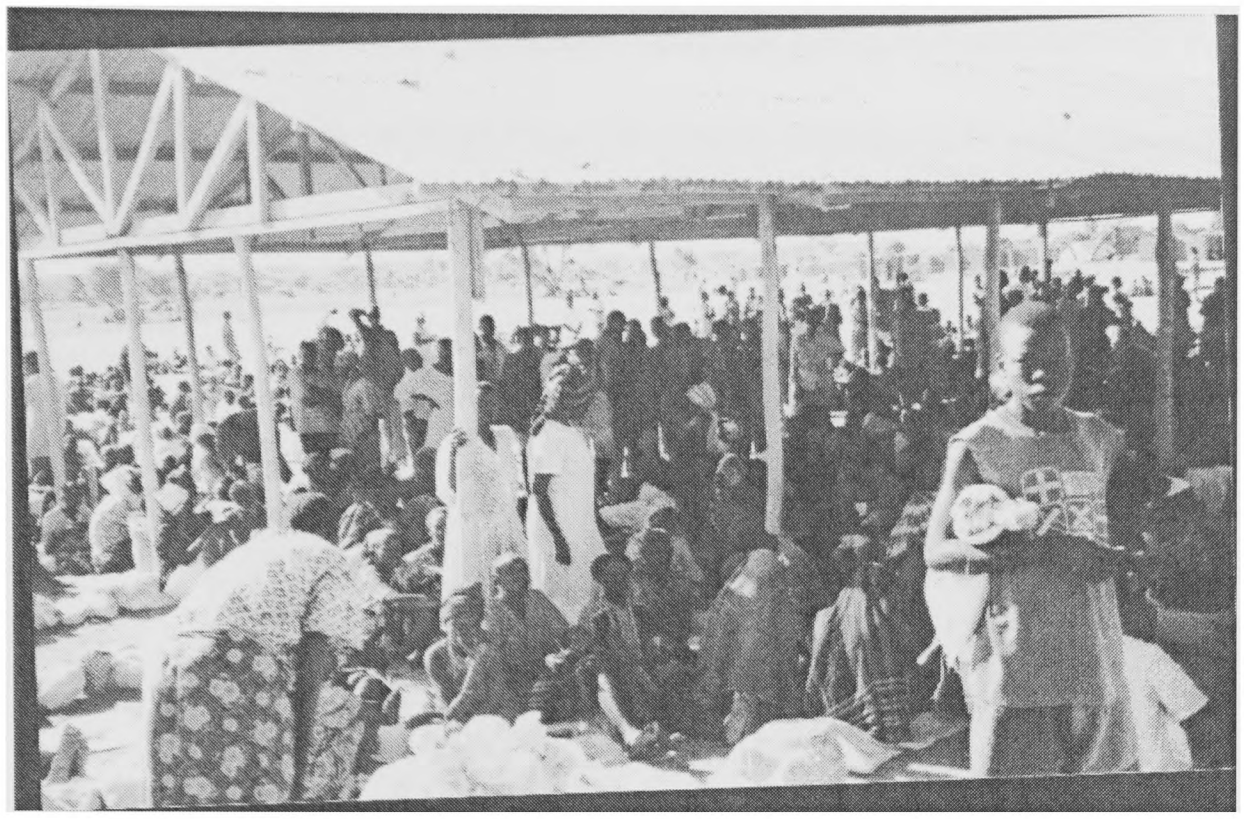
[118] The following is the percentage of needs met by the general ration: iron-81 per cent, Vitamin A – 101 per cent, B1 – 89 per cent, B2 – 64 per cent, C – 43 per cent and niacin – 112 per cent. In addition, UNHCR is supposed to provide iron and folic acid, together with Vitamin C, to all children and women of childbearing age through health care programmes.

According to Garang[119], 'the main item, which has the greatest impact on living standards, is poor feeding programmes because the food given is poor and inadequate and imbalanced.' For the duration of my stay in Kakuma, refugees received a full ration, although I was told that there had been previous occasions when they had received less than 1000 Kcal per day. The supplementary feeding program, available to high-risk groups in the camp, was under threat and the school feeding programme had been discontinued on several occasions.[120]

Many people complained that the food distributed per cycle was never enough to last the full cycle and was always exhausted three or four days before the next distribution, a fact that agency staff also acknowledged. Refugees often stated that the ration was only enough to ensure their survival rather than their well being. They complained that rations were monotonous and that the food being distributed was very different to their traditional diets and, consequently, they did not know how to prepare it.

[119] Interview with Garang, Kakuma Refugee Camp, 26 February 2003

[120] Interviews were conducted with individual refugees and a focus group discussion was also organised around the topic of access to food bringing together representatives from the different communities and zones in the camp. I also attended food co-ordination meetings and visited Food Distribution Centres (FDCs) during the distribution process.



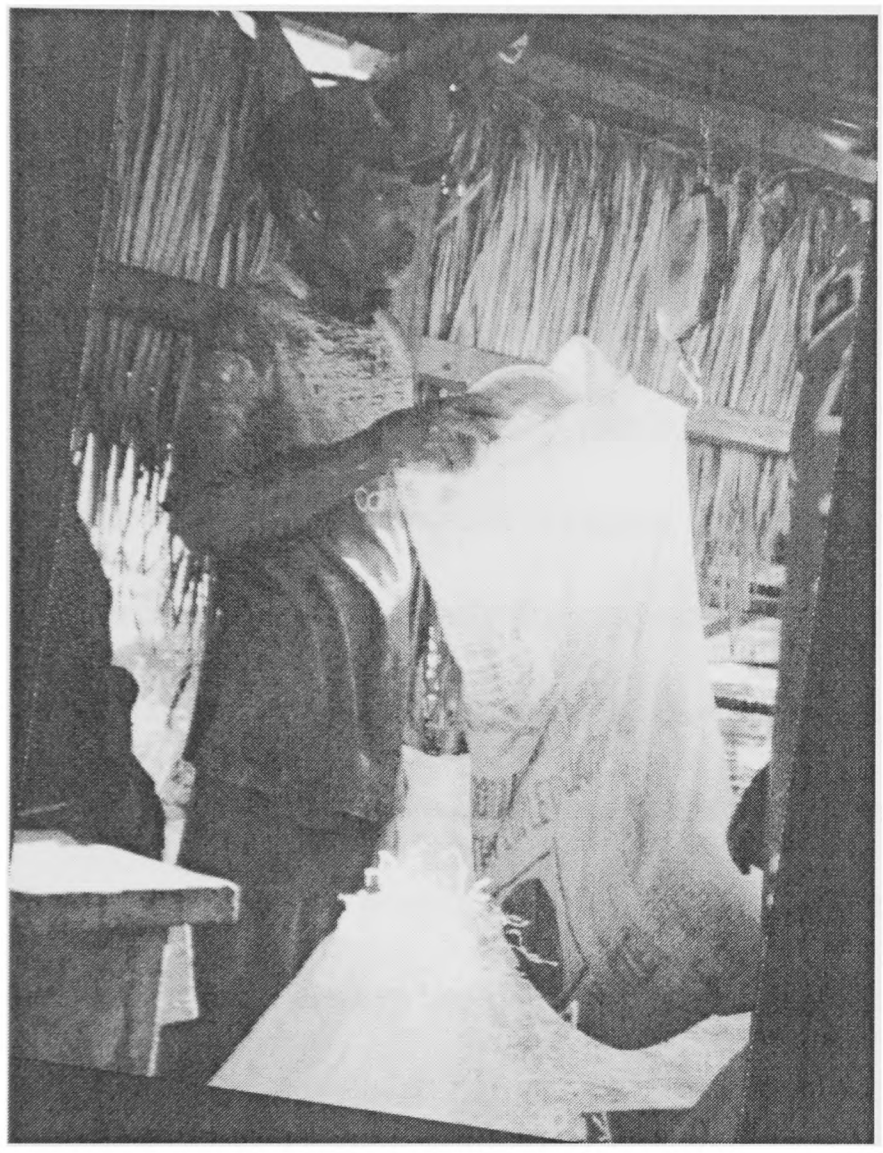
Waiting for food distribution to begin, Food Distribution Centre III, Kakuma III

Photo © Annabel Mwangi

Some members of the Somali Bantu community[121] stated that in Kakuma their children were dying of starvation. 'Yesterday alone three children died,' said Mahmoud.[122] The main problem, according to community members, was malnutrition. The children could not survive on maize and beans only and they were unable to access milk and other supplementary foods. Hassan noted that if they wanted different food, they had to barter their food aid, often at very unfair rates of exchange, which could sometimes involve trading four bowls of maize for a quarter kilogramme of meat. The community also complained that they could not get firewood to cook whatever little food they had. This was a common grievance in the camp. Alier criticised agencies saying, 'Last time, the time we came here, the

[121] Focus Group Discussion with Somali Bantu Community representatives, Kakuma Refugee Camp, 04 February 2003
[122] Although other members of the community concurred with this statement, I was unable to verify this information from any other independent sources.

firewood were distributed, but not today. They are not given so I don't know what is wrong today. The time we arrived here, they were distributed every two weeks. And now it can even reach three months.' [123]



Weighing rations at random checkpoint, Food Distribution Centre III, Kakuma III

Photo © Annabel Mwangi

There were also numerous allegations of 'under scooping'. However, the WFP representative[124] argued that these allegations could not be considered plausible

[123] Interview with Alier, Kakuma Refugee Camp, 26 January 2003
[124] Interview with WFP Representative, Kakuma Refugee Camp, 30 January 2003

given that according to post-distribution monitoring many refugees did not have a clear idea of how much food they were due to receive. Thus, she argued that refugees' complaints were not legitimate given that they had no idea how much food they were actually due. She did agree that there was a need to inform people about the ration they received, and make them aware of the random check procedure carried out at the exit of the food distribution centre, where they were able to check their rations if they thought under scooping had occurred.

Another very serious problem faced by refugees is access to the ration cards. As well as being a makeshift identity card, these ration cards are the only way in which refugees can claim their food rations. Several refugees protested that many people did not have ration cards and consequently had no access to food. According to James, HCR has often accused the refugees of being corrupt, 'recycling' cards and deceiving them, in an effort to claim more than their fair share of rations. However, he felt that the reality was that many people had no food because they had no cards. Even if one had a card, there was always the risk that one's name and number would not appear on the computer-generated distribution lists that were held at the distribution centre. Under such circumstances, rations could not be collected.[125]

One individual, who had been affected by the less than adequate ration card system was John, a twenty two year old male, who lived with three other young men and fostered three children. The 'family' of seven lived in a two-room house. John was unemployed, and therefore did not have a supplementary income. His foster children had not been allocated individual ration cards, which meant that the whole family had to survive on the rations intended for the four young adults who did

[125] Interview with Anonymous, Kakuma Refugee Camp, 04 November 2002

have ration cards. Without their cards, the three young children effectively did not exist. Thus, although they exhibited signs of malnourishment, they did not qualify for the supplementary feeding programme. If the children became seriously ill, John was worried that they might not survive because the hospital would only admit registered refugees, that is, those with ration cards. [126]

Another case, which serves to illustrate the relationship between power and access, especially in relation to access to food, is that of Atong.[127] An orphan, disabled from the waist down, she was shot while trying to escape from Sudan. Atong was living with a foster family, and her sole possessions were a mattress and two sets of clothes. She had her own ration card, but given her disability, she was unable to personally collect her rations. Instead, her foster mother who cooked for her and the rest of the family collected them. She, therefore, had no control over her own food reserves, and it seemed highly unlikely that she had access to her full ration.

'There Are Many Sick People in the Community'[128]

The International Rescue Committee (IRC) runs medical services in the camp. Facilities include a 90-bed hospital with a minor operating theatre and five first-level health care clinics (IRC 2003: 3). This hospital caters to the entire population in the camp, as well as some locals. It is staffed by three qualified medical doctors aided by clinical nurses and runs three ambulances. The five clinical centres in the camp, which deal with basic medical complaints, are staffed by national staff aided by refugee counterparts who work on a basic incentive. Medical care at these facilities is

[126] Interview with John/Anonymous, Kakuma Refugee Camp, 11 February 2003
[127] Interview with Atong, Kakuma Refugee Camp, 11 February 2003
[128] Interview with Somali Bantu Health Representative, Kakuma Camp, 04 February 2003

free for refugees upon production of a valid ration card. Clinics are characterised by long queues and overcrowding and patients often have to wait for several hours before being attended to by a medical officer.

It has been suggested that one way of overcoming this problem is to integrate refugee health care into the national health system. This is problematic, however, because the national healthcare system is itself not very well developed. Although at first glance the ratio of one health facility to every 13,604[129] refugees in the camp appears shocking, it compares favourably to the average ratio of one health facility to every 12,580 Kenyans (excluding Nairobi and Mombasa) (Dawa 1999: 71). A government that does not appear to see access to health as a basic right of its own citizens is in no position to formulate government policy on the provision of health services to refugees. Consequently, overall responsibility for the provision and supervision of health services is left to humanitarian agencies in the camp, which often have to cope with the additional burden of a host population unable to access health care outside the camp system.

Refugees in Kakuma often complain about access to medical treatment in the camp. Surprisingly, however, a relatively small group of refugees identified health care as a primary issue (in comparison to other identified basic rights) in the camp. Only 23 of the 127 respondents in Kakuma (or approximately 18.1 per cent of the total sample group) mentioned health care as an area of concern. The most commonly cited problems with regard to the health care sector are the lack of qualified personnel and the lack of medicines. According to Deng, 'medical (treatment) is quite a problem

[129] This ratio is calculated on the basis of a refugee population figure of 81,621 to six (one hospital, five clinics) health facilities in the camp. It does not take into account the fact that health centres are also open to the Turkana community. It is estimated that approximately 10% of beneficiaries on average will be from the local population, which would raise the total number of individuals accessing health facilities to approximately 90,000, and would result in a ratio of 15,000 to every health centre.

mostly because of the unqualified officials and lack of medicine'.[130] Many refugees worried that medical departments lacked professional personnel who have the ability to deal with difficult cases like operations. This was reiterated by Abass, who noted that 'People are dying in the camps simply because there are no curative drugs and qualified doctors to give the correct drugs to the patients. Moreover there are no good community services in terms of health programmes'.[131]

According to Chol Deng, 'the mortality rate is very high in the camp. This is because there is no much supply of medicines. The little medicines that are easily found are chloroquin, aspirin, paracetamol and oral salt which are probably uncurable to epidemic diseases like TB, typhoid, dysentery and many other dangerous diseases.'[132] Such complaints are numerous. Jacob states that early in 1992, the refugees were provided with proper medicine for early treatment but now they give only ORS (oral re-hydration salts) and quinine and 'a lot of refugees have lost their lives'. [133] According to Abraham, 'in most clinics in this camp, the only medicine given is chloroquin for any kind of sickness.' [134]

The inadequate number of health facilities in the camp is regularly mentioned. According to some refugees, the problem is a result of the population increase since the camp was established in 1992.[135] Many refugees are dying when they are affected by diseases because there is no treatment given in the main hospitals and most of the clinics, which is a result of missing facilities. The refugees should be given an

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[130] Interview with Deng, Kakuma Refugee Camp, 26 February 2003
[131] Interview with Abass, Kakuma Refugee Camp, 16 February 2003
[132] Interview with Chol Deng, Kakuma Camp, 26 February 2003
[133] Interview with Jacob, Kakuma Refugee Camp, 26 February 2003
[134] Interview with Abraham, Kakuma Refugee Camp, 26 February 2003
[135] Interview with Thon, Kakuma Refugee Camp, 26 February 2003

organisation, which can afford (to set up) all the medical facilities.[136] The donors claim that they bring medical facilities and medicine for the refugees but they are unseen to the victims. [137]



Weighing child at mobile health clinic for new arrivals, Kakuma IV

Photo © Annabel Mwangi

One group that is particularly vocal about the health situation in the camps is the Somali Bantu community. Health representatives spoke about the multitude of

[136] Interview with Atem Garang, Kakuma Refugee Camp, 25 February 2003
[137] Interview with Bior, Kakuma Refugee Camp, 20 February, 2003

problems faced by the group with regard to access to health care. The Somali Bantu community is situated in Kakuma IV, a considerable distance away from the nearest health facilities, that is, Clinic 5 and the main hospital. The nearest facility, Clinic 5, is supposed to cover Kakuma II, Kakuma III and Kakuma IV and Phase 2, which comprise a total population of over 14,000 people.

This huge recipient population means that the clinic is almost always overcrowded. Patients are given numbers on entry, which determines the order in which they are administered to. However, there were many complaints that, given the distance to the clinic, it was often difficult to get a number. Additionally, according to one community member, even if one were to wake up very early and managed to get a number it was still very difficult to access the full range of service, because 'if you are prescribed medication then you have to go to the hospital to pick up the medicine since it is not dispensed at the clinic. However, there is very little chance that you will get a number at the hospital because they only give out eighty numbers a day. If you are too sick to walk then you have to take a *boda boda,* which costs fifty shillings. There are many sick people in the community now who are unable to go to the main hospital and are just sleeping at home'.

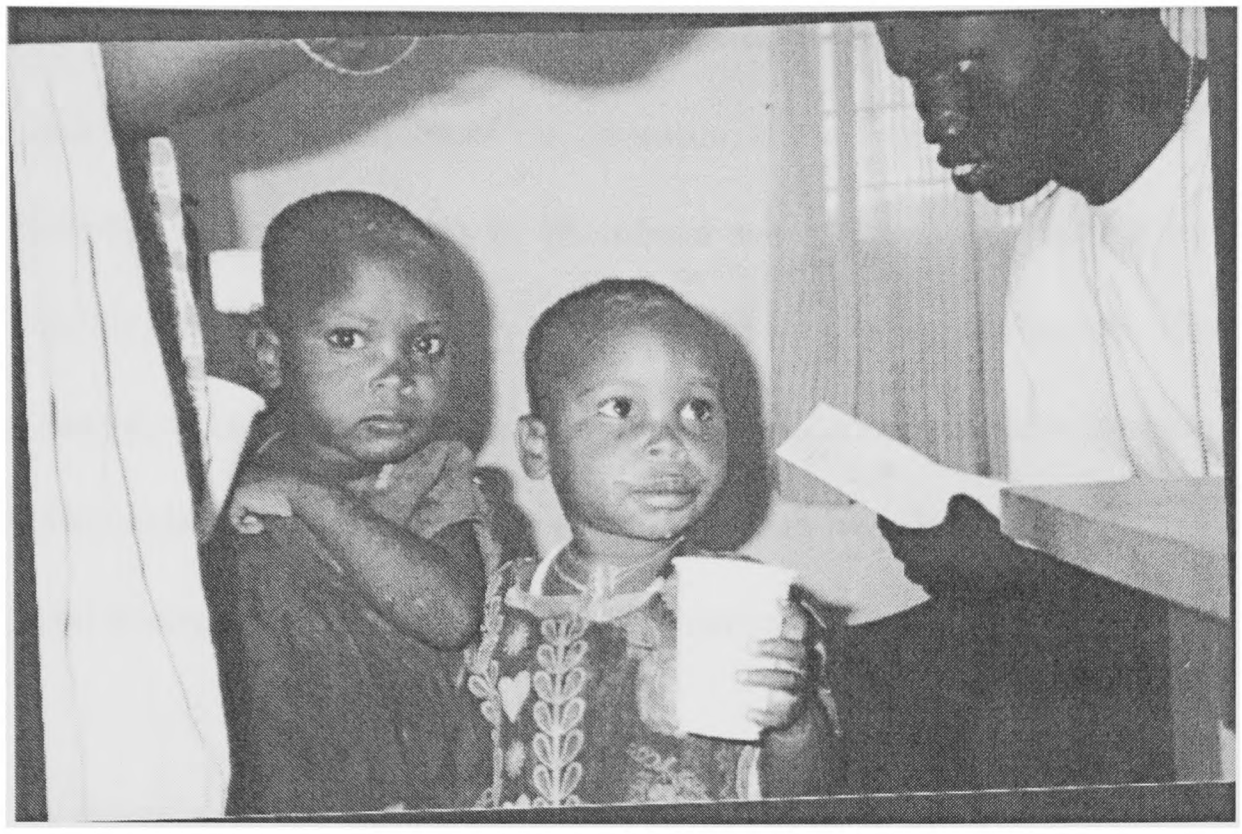
In particular, emergency situations are very difficult to deal with because of the substantial distances between the community and the hospital. Furthermore, there is only one security official that stays in the community at night and is able to communicate with the ambulance. Should a community member fall sick, therefore, this security officer has to be located before an ambulance can be called out. It should also be noted that the International Rescue Committee (IRC) only identified certain incidents as emergency cases, that is, women giving birth and scorpion or snakebite

victims. Thus, the ambulance may be raised but may not respond, if the victim does not fall under what is considered to be an emergency response category.

Refugees suggested that the agencies should consider setting up a separate clinic for Kakuma III Sudanese and Kakuma IV or, alternatively, they should increase the number of clinical officers and numbers at the existing facilities. The agencies should also recommend that ambulances carry other urgent cases as well, for example, asthma attacks, pneumonia sufferers and so on. This would prevent a situation where 'people die for a slight disease that cannot kill in some areas'.[138]

In addition, there were numerous complaints about the effectiveness of community health workers. According to the Somali Bantu community health representative, the community was visited occasionally by three health workers but 'they do not have anything in their hands, they just walk around and mobilise you to go to the clinic. They are just there to encourage you.' However, the effectiveness of certain service providers *was* recognised. These included health workers who provided vaccinations for children and mid wives.

[138] Interview with Majak, Kakuma Refugee Camp, 26 February 2002



Children receiving vitamins and deworming tablets, mobile clinic for new arrivals,

Kakuma IV

Photo © Annabel Mwangi

Perhaps the two most neglected areas of health care provision[139] related to the provision of services to the disabled and to individuals who fell within the ambit of the mental health programme. One such case was that of a severely disabled youth who had been partially disabled, from the waist down, since he was a child .[140] He was unable to speak and exhibited signs of hyperactivity. His mother explained that he had a pipe inserted inside his head, leading from the right side of his brain down through to his stomach. The purpose of the pipe was to drain water, which built up in his brain and could cause internal damage.

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[139] I include mental health as part of the health care initiative based on the World Health Organisation (1948) definition of health, which states that, 'Health is a state of complete mental, physical and social well-being, and not merely the absence of disease or infirmity.

[140] Interview with Anonymous, Kakuma Refugee Camp, 28 November 2002

This pipe had been inserted in Mombasa[141], where the family had previously sought refuge, and the doctor in charge of the operation there had continued to monitor the case. However, after the camps in Mombasa were closed down, the family was transferred to Kakuma, and the boy had received no further evaluation. His mother, a single parent, was worried because she felt his condition was deteriorating and she was unable to take care of him on her own. Her other two children had, consequently been forced to drop out of school to help take care of their brother.

Given the severity of the child's condition, it was notable that not only had the child not been examined upon his arrival in Kakuma, and on a continuous basis thereafter, but that the IRC appeared to be unaware of his case. It was possible that he may have required specialist treatment, for which he would have to be referred to a hospital outside the region, but in the basic clinical/emergency atmosphere, which prevailed in the camp, the short and long-term needs of this child had simply been by-passed.

As previously mentioned, the camp also has a Mental Health Programme, and the IRC must be commended for recognising the importance and centrality of mental health issues and trying to meet the needs of affected individuals. However, there is a long way to go, both in terms of sensitising the community and de-stigmatising the idea of mental illness. There is also the danger that those individuals that do not conform to what is deemed 'the norm' and have, consequently, been victims of discrimination are unable to access help in the form of counselling/ support services outside of the mental health programme. In such cases, individuals either have to try and cope with their problems on their own, or are forced into a situation where they

[141] Mombasa is the main coastal/port town in Kenya and was the site of several refugee camps, mostly housing Somali populations, which have now been closed down.

(and their community) characterise them as mentally ill, given that they are only able to seek assistance within the confines of the mental health programme. This may exacerbate the very problem they are trying to address, rather than solve it.

During my time in the camp, I was able to speak to, and gain the confidence of, one such individual, who had been experiencing numerous levels of harassment in Kakuma[142]. At our first meeting, he was very withdrawn and appeared unsure of the measure of confidence he could place in me. With time, as we established a level of mutual trust, he became more open. This individual had been forced to drop out of school where he had been subjected to unrelenting harassment from his fellow students.

After leaving school he had made an effort to support himself by starting up a small business (a little café). However, he experienced similar problems in the course of running this café. He was occasionally propositioned by, and had to put up with frequent verbal abuse and threats from, customers. One evening, as he was walking home after work, he was attacked by a group of men and sodomised. Immediately after the assault he went to the doctor, but he was too scared to explain what had actually happened and was simply given basic painkillers. He was eventually forced to shut down his business and, when I met him, was unable to walk around the camp on his own in the evening for fear of further attacks.

[142] In spite of our numerous conversations, we did not have any conclusive discussions on his particular 'status'. The interviewee was fairly effeminate, with a very slight build and high-pitched voice. He stated that when younger, he had often been mistaken for a girl. Because of his appearance and mannerisms, members of the community had accused him of being homosexual. He, however, stated that he was not homosexual, but 'he did not know what he was'. He was not generally comfortable discussing the issue in spite of the fact that this ambiguity was essentially the root cause of all the incidents that had occurred over the past few years.

He had been placed in a position where he had to compromise his entire lifestyle (leaving school, closing his business, restricting his movements), in order to be able to survive within the confines of the camp. Additionally, he was unable to access a support system that would help him deal with his individual problems, because such a system did not exist in Kakuma. He had attended some group therapy sessions at the JRS Safe Haven, where he was placed with a group of individuals who suffered various degrees of mental health problems ranging from mild depression to post-traumatic stress disorder to schizophrenia. Within such a highly diverse group setting, however, it was highly unlikely that his specific needs would ever be addressed. Furthermore, what was essentially a social problem, had now assumed the status of a mental health problem, which subjected him to further stigmatisation within the community.

In another environment, this individual may have initially been placed in some sort of protective facility, given the frequent threats to his life. Ultimately, he ought to have been granted further protection, possibly in the form of resettlement, based on repeated incidents of sexual discrimination given that there is little likelihood that the discrimination would cease in his present environment in the near future. In Kakuma, however, with its emphasis on short-term rather than long-term protection, both the health needs and the right to safety of this highly vulnerable individual, who did not easily fit into a tailor-made category of protection, had been compromised by an inflexible and static programming approach.

'Life Without Education is not Life'[143]

Africa is one of the few regions in the world where refugee numbers are not seen to be declining,[144] which implies that trained refugee manpower constitutes an important resource for African states. The potential contribution that refugees could make to their host states even before they return to their homelands would justify efforts made to improve the provision of education and would constitute a good investment in international understanding and human development.

The United Nations High Commissioner for Refugees has acknowledged this argument saying,

> It is impossible to calculate the immense costs that are incurred by depriving refugees of education. A refugee who goes without education cannot look forward to a more productive and prosperous future. A refugee who is unable to attend school or a vocational training course is more likely to become frustrated and involved in illegitimate or military activities. A refugee who remains illiterate and inarticulate will be at a serious disadvantage in defending his or her human rights. The education of refugees is an important but neglected humanitarian issue (UNHCR 2001: iii).

Education plays a key role in human development through its contribution to the enhancement of people's capacities to effectively improve their well being. The main objective of human development is the improvement of people's capabilities, opportunities and choices. This encompasses aspects of social development focusing

[143] Interview with Anonymous, Kakuma Refugee Camp, 07 November 2002

[144] As of January 2001, there were 6.2 million people of concern in Africa out of an estimated 22.3 million worldwide. This figure includes 3.5 million refugees, 1.7 million internally displaced persons and 0.9 million former refugees who have recently returned to their countries of origin. Out of the top 20 'refugee producing' countries around the world, nine are to be found in Africa. Twenty-five African countries have refugee populations exceeding 10,000, while 11 of those countries host refugee populations of 100,000 or more. According to the USCR, 10 of the 24 countries with the highest ratio of refugees to local population are members of the Organisation of African Unity (Crisp 2000:2).

on the growth of people in terms of skills, knowledge and the conditions of well being, which enable them to be productive so as to effectively influence their socio-economic and political environment. Equipped with such basic capabilities as skills and knowledge, sound health and conducive living conditions, people can expand their opportunities and shape their choices, thereby positively shaping their destiny (UNDP 2001: 43).

The provision of education as a basic right to girls and boys has been, and continues to be problematic all over the world, particularly in Africa, and refugees are as seriously affected as any other population, if not more so. However, according to Article 22 of the 1951 Convention, refugees, particularly refugee children, should receive basic training, and where possible, higher education and vocational training. The Universal Declaration of Human Rights also provides that **everyone** has a right to education.

Most refugees I met in Kakuma strongly emphasised the importance of education. [145] As one refugee put it, 'Education is something that a thief cannot steal. Money can be stolen but not education. Life without education is not life. If we learn and become an educated person we will overcome the problems of this world and make our lives better[146]. Education was seen to promote peace and stability among communities, and discourage hatred, racism or discrimination either by religion or colour.

[145] Administrators agreed that education was one of the most important sectors in camp administration. However, for them, education occasionally assumed negative connotations because it was seen as an important 'pull-factor', encouraging migration into the camp of individuals who were not seen as *bona fide* refugees.
[146] Interview with Anonymous, Kakuma Refugee Camp, 05 November 2002

According to Mayola, education plays a major role in the lives of refugees since it prepares them for self-reliance as they go back to their own country. [147] Most refugees cited education as 'the most developed sector in this camp compared with the rest such as health'. [148] Deng elaborated further, saying 'Studying is like digging in the field. Some say that the roots are bitter but the fruits are sweet and education is also like that. From the beginning of the studies you get more and more difficulties but when you succeed with it you will find that you are in the position of life. It is fair to say that education is our only answer to our difficulties in the future'. [149]

In Kakuma there are six pre-schools with a student body of 6,455, twenty-four primary schools with a student body of 21,307 and three secondary schools with a total student body of 2,332. Schools are run by the LWF and follow the Kenyan curriculum, using English as the main language of instruction. Classes run from 7:20 a.m. to 1:20 p.m. and comprise eight periods of forty minutes each. There is also an intermission during classes when porridge from the WFP feeding programme is distributed to pupils, although many schools have recently had their school feeding programmes discontinued.

Schools are plagued by low attendance and completion rates which can be traced to several factors, including the food distribution process, excessive responsibilities for children, early/forced marriages, early pregnancies, resettlement and so on. It is difficult to establish how completion rates in the camp compare to local standards, simply because there is very little information available tracking enrolment in the schools since their establishment. Figures on transition rates are also difficult to

[147] Interview with Mayola, Kakuma Refugee Camp, 23 February 2003
[148] Interview with Anoymous, Kakuma Refugee Camp, 03 December 2002
[149] Interview with Deng, Kakuma Refugee Camp, 07 November 2002

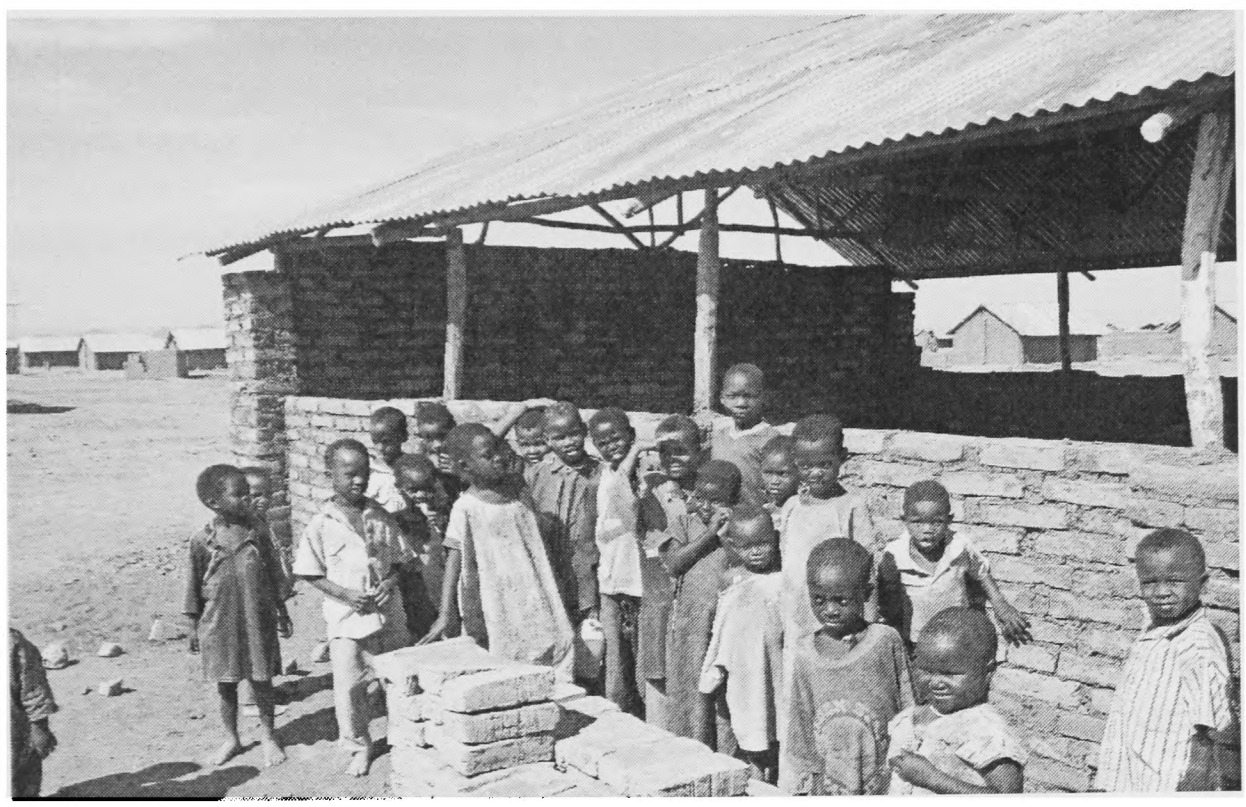
obtain. On a very basic level, however, given that there were a total of 1,382 candidates for the 2002 Kenya Certificate of Primary Education Exam (KCPE) and a total of 797 students enrolled in Form One the same year, it appears that transition rates are also low, given the limited number of spaces available in secondary school. However, this is simply a rough estimate, as there is no indication of how many candidates will actually pass their primary examinations and qualify for positions in secondary school.

Many teachers I spoke to were worried that holding morning classes only placed students in Kakuma at an obvious disadvantage to their counterparts in the rest of the country, who usually had classes running through the day. When interviewed, many teachers indicated that if classes were to continue through the afternoon they would be willing, if necessary, to work on the same incentive. They stated that the main reason they were not able to hold classes in the afternoon was because there was no food available in the schools, and hunger made it difficult for the children to concentrate on their studies.

One student sees the difference between refugee and state schools in a different manner. Deng says, 'Now compare this school to those of the government school (who) passed well rather than us, while the teachers are the same. For me, I can say it is because they are provide (sic) with electricity for which they can read at night. When compare the reading at the night time and the day time, you can understand better than the day time because the day time is too hot, it can even reach up to forty two degrees centigrade. So unless at night but the problem of light is limiting.' [150] As I so frequently found, in the course of the time I spent in Kakuma, it is often the

[150] Interview with Deng, Kakuma Refugee Camp, 26 November 2003

small, taken for granted, things that can potentially make all the difference to the individual.



Children outside Classroom, Kakuma V

Photo © Sarah Charles

Teaching staff are recruited both from both the refugee and the national community, although refugee staff are predominant. Many teachers I spoke to felt there was a lack of qualified personnel and insufficient training. In order to qualify as a primary school teacher, refugee staff must be able to produce a Kenya Certificate of Secondary Education (KCSE), or its equivalent, in which they will have attained a minimum grade of C-. National recruits, however, must be in possession of a nationally recognised Certificate of Education from, at the very least, a Teacher Training College. This discrepancy in qualifications often leads to inbred resentments between local and refugee staff, with the former feeling that the recruitment

procedure is biased in the favour of refugees and that, given their superior qualifications, they often have to bear the brunt of the classroom burden.

Refugee staff members have their own complaints. National staff are paid a taxable salary, which varies according to experience but is approximately Kshs. 17,000 per month (approximately US$230). Refugee staff, meanwhile, are paid an incentive ranging between Kshs. 3,000 and 3,800 per month (approximately US$40 to US$50). Many feel that this difference in payment is too great, although local staff argue that the difference is not that significant given that unlike their refugee counterparts, they have to pay for rent, food and taxes. Generally, however, both local and refugee staff agreed that low salary scales and incentives have led to low morale and lack of motivation amongst teaching staff. This had resulted in high mobility of staff, which inevitably leads to lack of continuity in teaching.

The ratio of pupils to teachers is extremely high. UNHCR guidelines place the pupil to teacher ratio at 40:1 but many teachers have to deal with classes averaging 100 pupils per stream. Many teachers complained about the shortage of classrooms and the poor ratio of textbooks to pupils ranging from 5:1 to 10:1. They added that many children only had access to two or three exercise books in total per term. According to Abass, 'refugees are suffering because the donors are not providing the needed stationery by their children in schools.'[151] There are also no reference books for teachers.

In terms of the gender balance, girls usually make up about one third of the student body from Standard 1 to 4. Close to the teens, early marriages begin to impact on

[151] Interview with Abass, Kakuma Refugee Camp, 10 December 2002

attendance rates, and by the time they reach Standard 8, about ninety per cent of girls drop out. On a positive note, however, there has been an improvement in the number of girls enrolled in schools in the past few years.[152] For those girls that are persistent and manage to continue with their education, there are still numerous obstacles to overcome, including lack of support from the community and occasionally from their own teachers and classmates. According to Ongwech, for example, 'one thing we girls are suffering from in schools is the lack of co-operation from the boys. Like we girls, we are weak in math but if we tell the boys to help us some boys are funny, they just ignore us. And this is what is discouraging some girls from the subject math, yet math is an important subject in education. If I know math I can get the most important job, like accountant.' [153]

Perhaps one of the most significant factors inhibiting the ability of refugees to access education is the relatively small number of secondary schools (three in total) in the camp. Upon the completion of primary education, refugees' educational options are dramatically decreased. This limits opportunities for a large percentage of students and decreases motivation. Thon stated, 'there are few educational institutions in the camp which has an effect of denying some students the right to education. They are crowded in classrooms. Those who are denied the right prefer to become criminals'.[154]

However, it is inspiring to see that some of the students have an attitude of determination and resilience, in spite of the difficulties they are faced with. One

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[152] See Appendix Seven for figures ratio of male to female students enrolled in primary schools in Kakuma Camp. The figures indicate a boy-girl ratio of 70:30 as compared to the national boy-girl ratio of 51:49. This indicates that the camp still has a long way to go in terms of meeting national standards of gender equity in primary schools. It should be noted that this figure does not reflect regional gender disparities at a district and provincial level.
[153] Interview with Ongwech, Kakuma Refugee Camp, 08 November 2002
[154] Interview with Thon, Kakuma Refugee Camp, 26 February 2003

student I spoke to said 'I promise not to surrender my education so that I will help bringing something about in my country. Most street boys wandering about are those who turn away from education hoping that they will gain something more than someone who is continuing, forgetting that danger is coming behind. It might be true that at school you have to face some problems like hunger, shortage of exercise books and textbooks, but all these problems will be overcome'.[155]

It is worrying to note that there is a visible lack of participation in, and support for, educational projects by community members, which is something of a paradox given the importance that many refugees attach to education. Many teachers complained that they did not feel they had enough support from parents in particular, and the community at large when it came to encouraging children to attend school, discipline of students and school improvement projects.[156]

Nevertheless, on a positive note, it appears that for many students in Kakuma, education is unquestionably a priority despite the many hurdles to be overcome and regardless of outside support. As one pupil said, 'as the world of these days, everyone wants to be educated and if you are not educated, I am sorry, life will be very difficult for you. Like me, where I am now, I am eighteen years old and I am still in Standard 7. I am not supposed to be in Standard 7 but due to some interferences (sic) that happen. I know that school can't become old, but a human being can. I can still struggle for it till I succeed to get a better future. Yes, I can say school is important for anybody in this world. Education brings development in any country and it makes people understand one another. Some people take the word

[155] Interview with Anonymous, Kakuma Refugee Camp, 04 November 2002
[156] Focus group discussion with teachers, Kakuma Refugee Camp, 08 November 2002

education lightly. They do not see the importance. Without education there is nothing you can do with your life'. [157]

'Refugees are being Tortured, Persecuted, Abducted and Killed'[158]

Any discussion of the protection of refugees cannot omit the central issue of security. It is impossible to quantify the amount of violence that takes place in and around Kenya's refugee camps. However, incidents involving death and serious injury occur on an almost daily basis. UNHCR reports on Kakuma have observed that 'the security situation in Kakuma has been constantly deteriorating' and that 'increasing incidents of inter-nationality and inter-ethnic fights, thuggery and banditry have resulted in a situation of hazard and risk' (Crisp 1999: 2).

Violence in Kakuma has been compounded by both chronic and new problems of insecurity in the region, which include competition for natural resources resulting in raiding among nomadic pastoralists in the area and a history of cross-border armed banditry over the last four decades in the Horn of Africa. The massive introduction of armaments into the Horn during the Cold War, the 46 year old civil war in Sudan, internal political upheaval in Ethiopia in the 1970s-1980s and civil war in Somalia in the 1990s has also had an impact on violence in the camp, most specifically in the form of an overspill of political strife in home countries to the refugee camps (Obura 2002: 5).

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[157] Interview with Anonymous, Kakuma Refugee Camp, 07 November 2002
[158] Interview with Majak, Kakuma Refugee Camp, 26 February 2003

Crime in and around the camp includes armed infractions within the camp, cattle raiding on the periphery of the camps, repeated incidents of sexual and gender-based violence and theft. Police reports list murder, manslaughter, rape, shooting, theft, arson, assault, abduction, strikes, rioting, accidents and substance abuse. The following table summarises some of the security problems faced by refugees in Kakuma.

Incidents	1999	2001	Change	1999-2001 Percentage Change
Riots	3	1	-2	Decreased by 67%
Theft	62	33	-29	Decreased by 47%
Child abduction	7	4	-3	Decreased by 43% after acute rise to 17 cases in 2000
Fighting/inter-clan clashes	29	20	-9	Decreased by 31%
Robbery	13	9	-4	Decreased by 31%
Assault	117	82	-35	Decreased by 30%
Shooting	9	9	0	No change after momentary rise to 10 cases in 2000
Accidents	4	4	0	No change, after momentary rise to 10 cases in 2000
Death	4	4	0	No change (and not reported in 2000
Arson	8	9	+1	Increased by 13% after sharp increase to 20 cases in 2000
Rape	7	12	+5	Increased by 71%, rise mainly in 2000
TOTAL	263	187	-76	Decreased by 29%

Figure 11: Analysis of security trends, Kakuma Camp, 1991-2001

Source: Obura PEP Evaluation Summary March 2002

According to Mabil, when the refugees first arrived the camp was relatively stable. However, 'as time goes the security which was very active throughout the day and night to safeguard the refugees from any hostilities of natives and other intruders seems to have lost its meaning. Right now unknown soldiers have killed over a

hundred refugees. Therefore, our lives are at risk every now and then.' [159] Bior states that, ironically, 'the refugees... were escaping from their former countries for their life and yet they are now still being killed by unknown during the night.' [160]

The complaints come thick and fast. 'This insecurity problem has wasted thousands of money from the sponsors but it is not improving. Ladies are raped, luggages are looted and people are even killed'. [161] Another refugee recalls how in 1997 one pastor was killed and one evangelist was wounded. The same year the refugees were attacked in the church while they were worshipping. 'Refugees are in critical condition' he complains. Aguer meanwhile, explains that insecurity has scared refugees and 'by so doing they don't walk at night, they fence their compounds and sleep scared at night.' [162]

It was a widely held belief that insecurity affects various categories of the population differently, with women and the youth the most directly impacted upon. During periods of high insecurity, movement was restricted and community members, especially women, stated that they were scared to walk around at night. The focus of the community was diverted from day to day life as people became caught up in trying to ensure their survival. The youth noted that they often had to be more careful because they found themselves targeted as suspects, often unjustly. This was because the security forces were on high alert and the youth were often the first to be questioned if any incident occurred because they were the ones expected to cause trouble.

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[159] Interview with Mabil, Kakuma Refugee Camp, 24 February 2003
[160] Interview with Bior, Kakuma Refugee Camp, 26 February 2003
[161] Interview with Deng, Kakuma Refugee Camp, 26 February 2003
[162] Interview with Aguer, Kakuma Refugee Camp, 28 February 2003

Interestingly, when asked to discuss security, most refugees identified conflict as originating from an external source, for example, the local police or the host community. However, when we discussed the more 'general' problems faced by refugees, when issues relating to insecurity often came up, a higher number of incidents originating from conflict within or between refugee communities were mentioned. Such incidents include abduction, which is common in the camp particularly within the Sudanese community.[163] Susan, a woman of Sudanese origin, recounted her story. She had been living with a man, with whom she had two children. However, they experienced domestic problems and eventually separated. She took custody of their two children, which enraged her partner who swore he would take back his children by whatever means. Susan's children were then abducted by unknown people and taken to Lokichoggio. However, she reported the matter to the police who found them in Lokichoggio and brought them back. Three months later another unsuccessful attempt was made to abduct them. At the time of our interview, Susan was squatting outside the LWF main gate, because she believed she and her children were in grave danger, and she had experienced problems finding secure accommodation.

Jane[164] was forced to marry a commander in Sudan. She escaped and came to Kakuma. There was an attempt to abduct her children and take them back to Sudan but the perpetrator was arrested. However, he was eventually released. Some time later her husband's relatives came into the camp at night and ordered her to release the children or go back to Sudan with them, both of which she refused to do. After a

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[163] It was also claimed that 'the Ethiopian government is known to be sending mercenaries and intelligence agent to track those they feel are a threat.' This was confirmed by a refugee caseworker who stated that although the specific identities of agents were not known, there was a distinct possibility that government agents did exist in the camp and could be in a position to abduct certain targets. The camp was not far away from the Ethiopian border so it would be easy for them to penetrate it.
[164] Interview with Jane/Anonymous, Kakuma Refugee Camp, 04 November, 2002

brief period of respite, unknown gunmen broke into her residence and threatened her. She was taken to the Equatorian local cell for custody, where she continues to reside.

Mary[165] was forced into a 'ghost marriage'[166] when she arrived in Kenya to the younger brother of her husband, who had died fighting in the SPLA. There was continuous conflict between her and her second husband. At one point, he tried to shoot her, and they were eventually transferred to Kakuma as a security case. They were housed in the reception centre, where her husband continued to be violent, until they were finally separated by staff at the centre. She was given her own accommodation but her husband followed her and beat her up. As a result, she was forced to leave her house and now has nowhere to live.

As can be seen from the previous stories, women are most often the victims of conflict. In addition to abduction and physical assault, there are also regular reports of rape of refugee women. These rapes occur most often when women walk long distances from the camp to collect firewood. Women have also been raped while collecting water from the *lugga*. Domestic violence is also commonplace. A range of factors contributes to the high incidence of violence against refugee women. These include conflict between various clan groups and/or with the Turkana host community, a high rate of alcoholism in the camp, lack of economic independence and an almost complete lack of social structure. Women and girls are in the minority in the camp and are out numbered three to one by men and boys in some age

[165] Interview with Mary/Anonymous, Kakuma Refugee Camp, 11 November 2002
[166] The Dinka people of Sudan practice the tradition of ghost marriage, which requires that when a man dies, or absents himself from home for too long, the family takes upon itself the responsibility to ensure that his name, and thus the name of his lineage is kept up. If he was married but did not have children, his wife has to be 'levirated' by a younger relative, most preferably a brother. If the man dies before marrying, a woman is offered to a brother or relative to bear children in the name of the deceased.

brackets. This dramatically compounds their degree of risk. The following table gives an indication of incidents of sexual and gender based violence in the camp during the 2002 period.

Type of SGBV	J	F	M	A	M	J	J	A	S	O	N	D	TTL
Domestic violence	20	42	22	37	33	92	52	26	18	23	16	25	**406**
Forced marriage	5	6	6	4	5	6	4	1	1	4	2	1	**45**
Early marriage	1	-	-	2	-	1	2	1	-	2	2	1	**12**
Spousal inheritance	5	2	1	4	1	2	3	5	3	-	3	1	**30**
FGM	-	-	-	1	-	-	1	-	-	2	-	-	**4**
Abduction	-	-	-	1	-	1	-	2	-	-	3	1	**8**
Threatened abduction	1	1	10	12	12	6	3	1	1	1	7	2	**57**
Ghost marriage	-	-	-	-	-	-	-	-	-	-	-	-	**-**
Rape	-	-	1	-	1	3	-	2	-	3	1	-	**11**
Attempted rape	1	-	8	-	4	2	6	-	-	-	2	2	**25**
Defilement	1	1	-	-	1	-	-	-	-	-	-	1	**4**
Attempted defilement	-	-	-	-	-	-	-	-	-	-	-	1	**1**
Sodomy		-	-	-	-	-	-	-	-	-	-	1	**1**
Sexual harassment	-	5	2	-	-	-	1	4	3	-	-	-	**15**
Sexual exploitation	-	-	4	-	2	-	-	-	-	-	-	-	**6**
Assault	2	-	2	-	-	-	-	-	-	-	-	-	**4**
Child abuse	1	3	2	-	1	1	-	-	-	-	-	-	**8**
Reproductive health	-	4	-	-	-	-	15	1	-	-	-	-	**20**
Suicide									1	-	-	-	**1**
Attempted Suicide								1	2	2	-	-	**5**
Insecurity										2	-	4	**6**
TOTAL	**37**	**64**	**58**	**61**	**60**	**114**	**87**	**44**	**29**	**39**	**36**	**40**	**669**

Figure 12: SGBV Statistics for 2002

Source: LWF Gender Unit Annual Report 2002a: 5

Although a system of mobile courts has been established, which has resulted in the successful prosecution of some perpetrators of sexual and domestic violence, the abuse and violence continue. There were few options available to women who experience recurrent violence. Currently, the main option is the Jesuit Refugee Service (JRS) Safe Haven, which can only provide safe accommodation to a maximum of 6 women at any one time and is, at best, a short-term solution. Women are only able to remain in the Safe Haven for a maximum of one month. Many then return to situations of ongoing domestic violence and community abuse.

In spite of the many threats to personal safety and their vulnerable position within the community, many women had adopted a positive and proactive attitude to their role in the improvement of community security. They noted that they were in a good position to promote peace between communities because they had more opportunities to meet each other (in market places, selling water, collecting firewood and so on) and hence forge friendships and stronger inter-communal ties than did men. They suggested that during these occasions they could take the first steps towards creating relationships between the two communities.[167]

Many women noted that men were often too set in their ways to make changes. They stated that 'the men are mostly concerned with their animals and do not want to be bothered about going around the community and trying to mobilise support'.[168] Consequently, they requested that sensitisation campaigns place more emphasis on targeting women because this would ensure that, in the long run, their messages reached a larger segment of the population and, consequently, were more effective.

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[167] Interview with Anonymous, Kakuma Refugee Camp, 12 February, 2003
[168] Interview with Anonymous, Kakuma Refugee Camp, 12 February 2003

In general, recourse to justice in the camp is limited, given that there is no fully functioning system for the administration of justice. There exists a flawed 'hierarchy' of dispute settlement tribunals, including 'local security' from which appeals move to 'bench court' and finally 'appeal court' (ICJ 1998: 48). Although these tribunals are mandated to call witnesses and deliver binding decisions, they are largely staffed by persons who do not have any legal qualifications.

The Sudanese community, for example, had a court system, which did not arrest criminals but detained them with the knowledge of LWF and the government. They had also created bench courts, which were set up at the request of the community. Although these courts were often criticised by agency staff for their methods and perceived lack of capacity, their members were given an incentive by LWF, which, the chairman was keen to point out, implied that they were recognised by the camp authorities. The Sudanese courts were, therefore, the chairman emphasised, operating as a legal entity.[169] The Ethiopian community also had a bench court known as the 'Elder's Advisory Committee' to deal with conflict within the community. Unfortunately, they complained that internal support for the bench court was not very strong.[170]

The Somali community on the other hand, faced many problems with regard to security in the camp because 'as they were divided in Somalia, so are they divided in the camp'.[171] Clans are at odds with each other so they do not co-operate between different groups. As a result, their security systems are not effective. Samia

[169] Interview with Gideon, Sudanese Community Chairman, Kakuma Refugee Camp, 10 February 2003
[170] Interview with Adamu, Kakuma Refugee Camp, 11 February 2003
[171] Interview with Chairwoman, Kakuma 1, Zone 5, Kakuma Refugee Camp, 10 February 2003

complained that 'local security is very weak because there is a lot of clanism. Even if the security catches someone from the community, his family will usually come and beat those responsible in revenge'.[172] However, it must be noted that the problem of clanism was not confined to the Somali community alone. Other communities had also spoken of the connection between increased clanism and insecurity. For example, according to Chol Deng, amongst the Sudanese, 'tribe and clan bonding became stronger in the camp leading to tribal and clan clashes'. [173]

In these circumstances, many injustices in refugee camps go unabated or are 'solved' through violent 'self-help' mechanisms. This is because the normal or ordinary court system also lacks resources, and especially expertise in refugee law, to handle the disputes. Many of the disputes relate to conflicts of laws of marriage, property, divorce and so on and cut across international jurisdictions. Many magistrates, lawyers and judges do not have any specialised training on these and related matters of refugee law (ICJ 1998: 49). Meanwhile protection officers are not accessible in sufficient numbers to work and live in refugee camps.

Although humanitarian agencies place most of the responsibility for poor security in the region on the Kenyan government, Verdirame has suggested that UNHCR and implementing partners are an intrinsic part of the security problem in Kakuma, 'administering the camps in ways which often appear to be in blatant disregard of international human rights standards' (Verdirame 1999: 75). However, there is also a possibility that there has been an overall misconception of the strength of presence of both UNHCR and implementing partners in the camp, as a result of budgetary

[172] Interview with Samia/Anonymous, Kakuma Refugee Camp, 14 February 2003
[173] Interview with Chol Deng, Kakuma Refugee Camp, 26 February 2003

constraints, given the fact that the primary responsibility for security in the camp lies with the Kenyan government.

Most refugees insisted that the Kenyan government bore the ultimate responsibility for security in the camp. According to Majak, 'refugees are being tortured, persecuted, abducted and killed within the interior of the camp and the Kenya government does not undertake any great care to remedy the lives of the people'.[174] Another refugee reiterates this stance, saying that, 'The locals come at night and attack people. If they are caught, they are taken away but we don't know where and whether they are actually tried. Even the police are involved, the KPR (Kenya Police Reservists), who are supposed to be here protecting us, but we actually call them legal thieves'.[175]

However, not all refugees place the brunt of the blame on the police. Some refugees believe that the police are unable to provide adequate security because they are constrained by poor facilities. For example, Makuet believes that the local guards are weak. He argues that in order to improve their efficiency, 'they need to be given radio call in every camp and zones as well. In case of anything the people will be in position to call for assistance from police'.[176]

Refugees made several recommendations for improving security in the camp. They cited the need for the construction of fences around different communities to control movement. They also argued that security should be formally organised at the community level rather than at the camp level because this would make security

[174] Interview with Majak, Kakuma Refugee Camp, 26 February 2003
[175] Interview with Anonymous, Kakuma Refugee Camp, 06 November 2002
[176] Interview with Makuet, Kakuma Refugee Camp, 22 February 2003

systems easier to manage. Currently, different zones and communities organise their own personal systems informally. Of these, the most effective security system within was identified as that of the Somali Bantu in Kakuma II. 'There are many thieves that come to Kakuma II, but they have been chased away by the Somali Bantu who work with community leaders, the police, LWF and HCR'.[177] The Chairman of the Somali Bantu community in Kakuma II emphasised that refugees needed to live in peace with the local community. According to the Chairman, 'we may put up fences like any others but the fences can still break. We need to co-operate'.

Many Ethiopian refugees noted that there should be more co-operation between refugees, LWF security officers and the police. Often, they said, certain suspects were identified but community members were scared to give information to the police regarding those suspects because they felt threatened.[178] All communities agreed that they should tell the truth about criminals resident in the community to police so that they may be apprehended. Gebre stated that 'most families have information about their children but they refuse to inform'.[179] William concurred saying that the Turkana have high esteem for the family and an individual who has committed a crime might be persuaded to hand himself to the relevant authorities rather than see his family suffering in custody.[180] According to another individual, 'when you go to the doctor and tell him you are sick, how can he tell you what is wrong with you unless you inform him where you have the pain so he can give you the medicine?' This implied that if the community wanted the security officers to deal with the problem, then they would have to give the relevant information directly/indirectly to security.

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[177] Interview with Chairman, Somali Bantu Community, Kakuma II, Kakuma Refugee Camp, 10 February 2003
[178] Interview with Anonymous, Kakuma Refugee Camp, 09 February 2003
[179] Interview with Gebre/Anonymous, Kakuma Refugee Camp, 20 February 2003
[180] Interview with Anonymous, Kakuma Refugee Camp, 12 February 2003

Some individuals suggested the formation of vigilante groups within the community, which could patrol at night with local weapons. There appears to be a well-established vigilante system operating in the camp, although it is not always formally recognised. Refugees asked that the IPs provide vigilantes with incentives as well as with proper communication devices. 'Many villages are often a great distance from the nearest police post and they cannot be expected to run to the post and come back with police and find the thieves still there. They need to be able to send an immediate distress call should a problem arise'. [181] Meanwhile, vigilantes from the Turkana community are registered in the District Officer's office, which suggests that they are officially recognised. They fall under the jurisdiction of the village elders. The chief of Kalobeyei suggested that local vigilantes should be given passes by the security office for easy identification. Such passes would also give them more authority within the community.[182]

Other refugees felt that the number of Kenyan police and Kenya Police Reservists (KPR) on patrol should be increased and requested that if a thief were caught by police, then he should not be released into the community without them being informed as had happened on previous occasions. [183] The LWF Turkana Programme Representative was surprised at this particular suggestion given that many believed that the KPR should be disarmed since it appeared that they might have some involvement in the numerous crimes committed in the area. Given that there 'has not

[181] Interview with Anonymous, Kakuma Refugee Camp, 20 February 2003
[182] Chief of Kalobeyei, Kakuma Refugee Camp, 11 February 2003
[183] Interview with Anonymous, Kakuma Refugee Camp, 10 February 2003

been a single person caught since the problems began, it looks like it is an in-house job'.[184]

Both refugees and Turkana voiced their more specific concerns about the problem of police corruption. Hassan complained that the police around the camp and along Kenyan roads are very corrupt, especially when they encounter refugees travelling by road.[185] What is needed is the provision of incorrupt security not police who will ask for *kitu kidogo* or something small and eradication of bribery.[186] According to Bior, members of the force should be recruited from different parts of the country, not from the region the refugees are in to reduce the risk of nepotism. 'Now the security is from the same region as the local people and they can not do anything even if they caught the criminal'. [187]

Another proposal for the improvement of security was the formation of a security committee that comprised both Turkana and refugees, enabling both groups to communicate about the movements of individuals within and between communities and come up with jointly acceptable solutions to security issues. Generally, both communities agreed that there should be better communication between hosts and refugees. Many complained that when there was a conflict only the top leaders were informed about possible solutions.[188] To this effect, one Turkana chief stated 'we have met many times and still there is no solution. Why? Maybe it is because the information has not been taken back to the community properly and they do not understand.' [189]

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[184] Interview with Head of Turkana Programme, Lutheran World Federation, Kakuma Refugee Camp, 11 February 2003
[185] Interview with Hassan/Anonymous, Kakuma Refugee Camp, 19 February 2003
[186] Interview with Lual, Kakuma Refugee Camp, 26 February 2003
[187] Interview with Bior, Kakuma Refugee Camp, 26 February 2003
[188] Interview with Anonymous, Kakuma Refugee Camp, 08 February, 2003
[189] Interview with Turkana Chief, Kakuma Refugee Camp, 10 February 2003

The Chief of Kalobeyei in Turkana noted that conflict over livestock was one of the major sources of insecurity between the host and refugee communities. [190] He reminded refugees that there was a 'cell' at the Drought Recovery Programme in Kakuma town, where animals could be bought. According to a Memorandum of Understanding (MOU) signed between locals and the agencies administering the camp, no animals were to be sold outside this cell. Any such sale would be a contravention of county council by-laws and would encourage cattle raiding on the part of the Turkana seeking to 'reclaim' their cattle. The chief indicated that individual refugees buying several animals and keeping them in their compounds encouraged the locals to raid the camp and steal these animals and caused insecurity. He advised refugees to buy one animal at a time and only when necessary, that is, for immediate slaughter. He cautioned refugees saying, 'the Turkana do not know how to break into banks, but they know how to break into any compound with animals'. [191]

Many members of the host community were convinced that they were more insecure than the refugees. One of the prevailing myths appeared to be that the local police focused all their attention on the camp because they received incentives for their work there. If something happened in the refugee community, they would arrive almost immediately whereas if anything happened in the host community it sometimes took days for the police address the problem.[192] It should be noted that local police are agents of the state and mandated to protect both refugees and locals.

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[190] Interview with Chief of Kalobeyei, Kakuma Refugee Camp, 10 February 2003
[191] Interview with Chief of Kalobeyei, Kakuma Refugee Camp, 10 February 2003
[192] Interview with Turkana Chief, Kakuma Refugee Camp, 10 February 2003

They do not receive any additional payment from implementing agencies for their presence in the camp.

Meanwhile, refugees were adamant they faced higher levels of insecurity than the host population. They insisted that the government control the flow of arms in the area because it was becoming very dangerous. The Turkana, however, did not think that complete disarmament was necessary or practical. They stated the need for a disarmament deal, which ensured that those on the borders did not suffer (because they need weapons to defend their wealth, that is, animals against cross-border armed raids) while those in urban areas were protected from proliferation of arms. It was ultimately agreed that the disarming of various ethnic groups, including the Turkana, would lead to an overall improvement in security in Kakuma. [193]

Most frequently emphasised, however, was the need for co-operation and mutual understanding between the host and local communities. This was reiterated by the Turkana District Commissioner Mr. Njenga, soon after his appointment, when he spoke to both members of the local and refugee communities in Kakuma. He acknowledged the existence of conflict between the two communities but urged them to 'understand that we are all human beings and to understand that the refugees have not come here to enjoy. They are here because they have no choice. It can happen to all of us. We need to understand that there are people here who were also district commissioners where they came from, and chiefs and executives and they are now refugees in this camp. God has given us the opportunity for peace and we should not make their lives more difficult...to the refugees I want to say, you

[193] Interview with Head of Security, Lutheran World Federation, Kakuma Refugee Camp, 17 February 2003

have been welcomed by the host community so respect them so that life can be more comfortable'.[194]

Conclusion: 'These People Make Business Out of Suffering'[195]

Creating Common Contexts for Refugees, UNHCR and Implementing Partners

According to UNHCR, in Kenya, the true scope of refugees' needs have been seriously short-programmed and distorted as the process of refugee protection has become more and more a resource, rather than a needs-driven, exercise (UNHCR 2004a: 8). In its 2004 Country Operations Plan, UNHCR states that, across the programme, priority will be given to ensuring that basic life saving and life-sustaining needs are met according to at least accepted minimum standards (UNHCR 2003a: 10).

Although UNHCR recognises that Kakuma does in fact constitute a long-standing protracted camp situation, it continues to apply emergency standards to programme management. The organisation has failed to account for the reality that is the scope of basic rights, protection gaps and programme shortcomings as envisioned by individual refugees and by so doing has effectively disenfranchised them, consistently portraying them as voiceless victims.

Yet, time and time again, I was surprised by the clarity with which individuals would express their needs, the conciseness with which groups would articulate their claims. The most common complaint among the people I spoke to was that their

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[194] Address by DC Njenga to host and refugee community representatives, Teacher Training College, Kakuma Refugee Camp, 12 February 2003.
[195] Interview with Anonymous, Kakuma Refugee Camp, 06 November, 2002

opinions were so very rarely solicited. An often-repeated request was, 'We ask that when you go back, you let our voices be heard'.[196] Needless to say, cynicism prevailed. One refugee stated, 'Here in Kakuma there are many problems which was facing refugees. Although I talk on them now I don't think whether anything will be possible because many talk on them and they are not solved'.[197] According to Mangok[198], 'In Africa, as a continent, there is no day you will not hear of people trooping out of their home country crossing the demarcation to look for greener pastures. In Kakuma, as a refugee camp, the reverse is true, in that the refugees got brown pastures rather than green ones. They have hoped for a better life, but the reverse is true'.

But scepticism can often conceal stoicism, and the refugees I spoke to were no exception. Although on the surface they appeared disillusioned and disbelieving, they still harboured hopes and dreams of a better future. They challenged stereotypes explaining that although many people thought that being a refugee was better than living in conflict, in many cases it was very risky[199]. 'As a refugee you have to face or meet consequences you never before met in your life' said Mayen Mayen Joseph.

They also spoke the language of rights. Mangok emphasised that 'as a human, whether refugee or not, one's rights should be respected and therefore treat the refugee as you would like others to treat you'. Refugees are human beings like any others around the world and they also deserve basic rights.[200] Rights were also

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[196] Interview with Anonymous, Kakuma Refugee Camp, 06 November 2002
[197] Interview with Deng, Kakuma Refugee Camp, 26 February 2003
[198] Interview with Mangok, Kakuma Refugee Camp, 26 February, 2003
[199] Interview with Lual, Kakuma Refugee Camp, 26 February 2003
[200] Interview with Chol Deng, Kakuma Refugee Camp, 26 February, 2003

referred to as 'things necessary for human life'[201], and were said to include food, health and education. These frequent references to the rights of refugees were significant given that prior to my arrival in Kakuma, I had questioned whether the term 'rights' and, consequently, the proposal of rights-based protection, would have any intrinsic relevance to refugees themselves. However, as we have seen in this chapter, refugees in Kakuma have a very strong perception of what their rights are, and a clear picture of what needs to be done to ensure that these rights are safeguarded.

[201] Interview with Anonymous, Sudanese community, Kakuma Refugee Camp, 05 February, 2003

CHAPTER SIX

ASIYEKUWAPO NA LAKE HALIPO[202]

THE MARGINALISATION OF THE CITIZEN AND THE ROLE OF THE STATE AS PROTECTOR OF RIGHTS

Much of the literature in the field of refugee studies focuses exclusively on 'refugees' and the 'refugee experience', which has led to a tendency to overlook the broader political and socio-economic context within which refugee operations take place. Most recent studies, especially those that focus on gaps in protection, tend to highlight poor security and lack of access to legal protection and to emphasise the tough economic conditions faced by refugees. My own research confirms the difficult conditions that refugees in Kakuma have to endure daily, especially with respect to their ability to access basic rights. Harrell-Bond and Verdirame (2005) in their most recent work also emphasise the violation of the full catalogue of human rights in Kakuma and note that, in the camps, the law of the host country virtually ceases to be applied.

The question I seek to answer, however, is to what extent the rule of law, from which protection from the violation of rights is derived, applies to *anyone* in the host country, whether refugee or citizen. Would the incorporation of a long awaited Refugee Bill into the national constitution have as substantial an impact on the protection of refugees in Kenya as has been anticipated? Verdirame acknowledges that although legal protection, especially through a Bill of Rights, is a cardinal

[202] The literal translation of this Kiswahili proverb is 'If you are absent you lose your share'.

element in the promotion of human rights, taken alone it is **not** sufficient (Harrell-Bond and Verdirame 2005: 27). As we have recently seen, even in the West where the human rights movement began and is, consequently, more deeply entrenched, the constitutionalism of fundamental rights is not an absolute guarantee against the deterioration of refugee protection. Non-legal factors, such as the political culture, socio-economic relationships, civil society or the mindset of the judiciary often play an important and widely underestimated role.

In Kenya, non-legal factors also play an important role in determining the state's role in the protection of rights. As is common on the rest of the African continent, a double standard with regard to the protection of human rights continues to persist. Decisions pertaining to the protection of fundamental rights and freedoms are commonly made in terms of political or economic calculation, not on the basis of any general ethical standard to be uniformly applied (Wiseberg 1976: 5). Consequently, although legislation specifically relating to refugees in the form of a Refugee Bill will establish the responsibility of the state in Kenya to provide protection in theory, the extent to which this will extend into practice remains to be seen.

The 1951 Convention requires state parties to extend the same standard of treatment to refugees that they do to nationals in some cases and, in others, as favourable as possible to that accorded to aliens generally in the same circumstances. However, as we will see, it is a mistake to assume that there are universal basic standards of treatment accorded to all nationals in all states and, consequently, to use these perceived standards as a benchmark for the safeguarding of refugee rights.

In this chapter, therefore, I will attempt to draw attention to the importance of understanding the contextual setting of refugee protection, by highlighting specific features of vulnerability in Kenyan society thereby outlining the physical, social and economic environment within which refugee protection takes place. In so doing, I hope to demonstrate firstly that practices relating to the protection of refugees are fundamentally a function of the environment within which protection occurs; secondly that the presence of refugees has a profound impact on state-citizen relations and thirdly that this influence can serve to fundamentally restructure relationships between citizens and their government.

Contextualising Refugee Policy

As has already been mentioned, hosts and refugees may have more in common than is initially assumed. In such circumstances, the distinction between 'insider' and 'outsider' becomes somewhat nebulous. By recognising that, in certain conditions, refugees and citizens are both 'absent' from the centre and have both 'lost their share' we are in a better position to develop a more integrative, development-oriented refugee policy. In this way, we can ensure that, as Harrell-Bond (2002b) puts it, in the future programmes are 'beneficiary blind'; resulting in an overall improvement of the quality of life of both refugees and host communities.

This section will draw attention to the fact that Kenyan citizens in general, and the Turkana in particular, often face many of the same difficulties as refugees in relation to their ability to access basic rights and the protection of the state. While refugees are undoubtedly a marginal group requiring special protection, it is important to

realise that many national individuals and/or groups are also marginalized or 'absent' from the centre, sometimes by virtue of their ethnic background, economic status or geographical location, or all of the above. As a result, they are unable to share in the benefits of citizenship, which are generally available only to a select minority. Particularly vulnerable in the Kenyan context are the landless, pastoralists, subsistence farmers, the urban poor, unskilled and semi-skilled casual labourers, households headed by people without formal education, female-headed households, people with disabilities, AIDS orphans and street children (UNDP 2001: 38).

All these people are citizens of Kenya and, by implication, fully fledged members of the state. And yet, despite the fact that the concept of 'citizen' in the liberal democratic state system is intrinsically linked to the issue of entitlement to rights, their entitlement to certain basic rights is not recognised largely because in Kenya, as in most of Africa, the state is inherently exclusionary and discriminatory.

This has resulted in multiple sites of 'inclusion' and 'exclusion' based on membership of a variety of shifting groups, categories and networks. As we shall see, this inevitably means that certain groups and individuals are very often designated as 'other' and discriminated against even when they are citizens and therefore, in theory, members of the state. Refugee protection occurs within this context of selective discrimination and exclusion.[203] Recognising, therefore, that in the Kenyan state rights and obligations have not been fully 'nationalised' (that is to say wholly

[203] It is important to note that corresponding sites of inclusion and exclusion exist within the refugee community. Consequently, it should be recognised that a clear distinction between 'citizen' and 'refugee' does not exist as such. This factor should also be taken into consideration when comparing the status of refugees to the status of Kenyan citizens. Some refugees in Kenya are better placed than others to access the centre and its associated resources and, in so doing, lay claim to a form of membership of the state, effectively shifting their status from 'outsider' to 'insider'. Some of the wealthier Ethiopian refugees, for example, live in the spacious middle and upper class suburbs of Hurlingham, Kileleshwa, Lavington and Gigiri in Nairobi and own large restaurants like the 'Blue Nile' and 'Motherland'. Other urban refugees, meanwhile, live in slums like Kibera, Kangemi and Mathare, sharing limited living space and are able to secure work only in the informal sector, if at all.

realised by members of the state), it is clear that it is particularly important to focus on refugees and their position in the host polity vis-à-vis citizens. In so doing, the tenuous relationship between identity and entitlement to rights is brought to light.

This chapter is primarily based on information derived from interviews conducted in Nairobi and Turkana District. As previously mentioned, I had initially hoped to conduct interviews across several provinces in Kenya, in order to ensure a more representative population sample. Unfortunately, due to both budgetary and time constraints, I was forced to restructure my research plan and to confine my study to Nairobi and Turkana. In an attempt to redress any potential shortcomings specifically with regard to representation, I made a concerted effort to incorporate subjects from each of the major divisional areas within Nairobi city, given the relationship that exists between place of residence and socio-economic status.[204] I also identified certain criteria, including gender, age, marital status, religious affiliation, ethnic background, educational background and occupational status, which I believed would also help in ensuring a more representative sample.

In as much as my final sample may to a large extent represent a cross section of Kenyan citizens, it does not claim to fully portray the considerable differences between urban and rural populations countrywide. There is a substantial difference, for instance, between Nairobi, my main fieldwork site, with a Human Development Index (HDI) of 0.783, and the poorest province in Kenya, North Eastern, which has a

[204] In retrospect, my insistence on including inhabitants of the various residential zones within the city, with the aim of accurately portraying socio-economic stratifications, may have inadvertently influenced ethnicity figures, because members of particular ethnic groups tend to congregate in particular residential areas.

HDI of 0.413 (UNDP 2001: xv).[205] The following figure gives a clearer indication of the degree of disparity that exists between the different regions in Kenya.

Province	Life expectancy (1999)	Adult literacy rate (1999)	Annual income per capita Ksh. (1999)	Life expectancy index	Education index
Kenya	54.7	70.9	16,406	0.495	0.642
Nairobi	61.6	82.2	78,644	0.610	0.756
Central	63.7	83.9	17,829	0.645	0.829
Coast	51.5	62.8	18,840	0.408	0.595
Eastern	62.3	66.5	15,131	0.443	0.687
Rift Valley	61.9	72.6	15,251	0.558	0.652
Nyanza	45.7	70.9	14,169	0.345	0.736
Western	52.4	74.6	11,191	0.457	0.753
North Eastern	52.4	64.2	17,212	0.457	0.460

Figure 13: Kenya Human Development Index 2001

Source: UNDP Human Development Report Kenya 2001

At this juncture, it is important to note that, although disaggregated HDIs at the national and provincial levels highlight disparities countrywide, they also conceal the differences within provinces, between urban and rural areas, between the sexes and among ethnic groups. Consequently, even in Nairobi, where citizens are (ostensibly) well placed to access the resources of the State, there are extreme disparities between the poor and the non-poor, which may to some extent be viewed as partly reflective of similar differences on a national level.

[205] The HDI developed by UNDP in 1990 measures the average achievement of basic human development in one single composite index. It is derived from a simple average of three components: longevity, educational attainment or the level of knowledge and a decent standard of living. Longevity is measured by life expectancy at birth, while knowledge is measured by adult literacy rates and combined enrolment rates. Decent standards of living are measured by per capita income. In numerical terms the index ranges from 0 to 1, where 0 indicates total absence of human development and 1 indicates the highest level of human development.

Inequality at a national level may, to some extent, be explained by differences in economic opportunities leading to a concentration of activities in specific areas. Kenyan development policies have tended to be biased towards high potential agricultural areas and, more recently, towards industry. They generally reflect a historical bias established by the colonial administration and retained by successive governments after independence. Thus, over an extensive period of time, priority has been given to the high and medium potential areas.

As evidence of this historical bias, one has only to look at Sessional Paper No. 10 of 1965, a document that greatly shaped Kenya's post-independence political and economic ideology. The paper states that:

> One of the problems is to decide how much priority we should give in investing in *less developed* provinces (emphasis added). To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities, and people receptive and active in development.

As a result of such policy directives, most regions that exhibit low human development are located in marginal areas of low agricultural potential, including the arid and semi arid lands, which comprise over 70 per cent of the country, within which Turkana district and Kakuma Refugee Camp are located.

This regional policy differentiation has created an exceedingly unequal society in which the poorest rural households spend, on average, US$ 6 a month, while the

wealthier urban households consume approximately US$ 130 a month. Even with the advent of the new National Rainbow Coalition (NARC) government in 2002, there appear to be no concrete efforts to introduce economic policies that might encourage the redistribution of wealth. When the NARC government came into power, it pledged itself to tackling Kenya's many social and economic ills but so far the emphasis appears to be on conservative stability rather than radical reform. This is not surprising when one takes into consideration the fact that NARC's key constituents are primarily derived from Kenya's middle classes, not the poor, which provides no incentive for the party to devise a clear strategy for tackling poverty and inequality (Andersen 2003: 241).

In the meantime, the poor, both in urban centres like Nairobi and peripheral rural areas like Turkana continue to suffer. In the following sections, I will first attempt to paint a picture of the day-to-day life of Kenyans living in a country where, from 1991 through 2002, the per capita income fell from US$ 271 to US$ 239 and absolute poverty rose from 48 to 56 per cent. Second, I will show how, in the midst of increasing poverty, while most of the country's basic social services and infrastructure decayed or collapsed, the numbers of refugees coming into the country began to grow (Barkan 2004: 2). And third, I shall show how, the influx of refugees, occurring during a period of intense economic, political and social upheaval, had an impact particularly on the host Turkana population, and no doubt contributed to significant shifts in the relationship between citizens, the state and the international humanitarian community.

Introducing the Field Sites: Turkana and Nairobi

The Turkana, who live in the vicinity of Lake Turkana, where much of my fieldwork was conducted, are exclusive pastoralists who keep multiple species of livestock, including cattle, goats, sheep, camels and donkeys. Since each species has distinct dietary needs, the Turkana are able to exploit different expanses of the range during any period of the year (Little 1985). In this way, they are able to take advantage of diverse land resources and environmental variability.

Their largest social groups usually comprise about fifty people and, consequently, social specialization is slight, with spontaneous war and raid leaders surfacing when the need arises (Kesby 1977: 104-5). The Turkana have a history of raiding their neighbours, who include the Pokot and the Karamojong. Raiding performs a specific economic function and is not simply a violent encounter between two opposed parties. When relations between the various groups are good, there is reciprocity in access to grazing and water resources during periods of stress. Access to key resources is governed by the host group's rules and regulations and the hosts, by agreeing to assist, expect reciprocal rights in the future. However, when the balance of power between rival groups competing over access to land and water is upset (as happened following the disarmament of the Turkana by the British in the 1950s and continues to happen in the contemporary Kenyan state), raiding rather than reciprocity can become the dominant mode of inter-tribal relations.

My second field site, Nairobi, the capital city of Kenya, was once the most important economic hub in East and Central Africa. The city's first boundary was officially defined in 1900 (Halliman and Morgan, 1967). Since then, it has been extended three

times, and the city's size has increased from 42 to approximately 690 square kilometres. The city has a population of 3 million, with the inhabitants of greater Nairobi estimated to number over 6 million (APHRC 2002).

From its early beginnings, the city was spatially designed to maintain three separate communities in three distinct areas of the city. Several small, separate sections reflecting the railway community's racial and socio-economic composition evolved and, by 1940, the pattern of racial segregation in Nairobi was firmly entrenched (White et al. 1984: 14).

Low density European housing was located on the highest ground to the west and the north of the central business district on large plots in Karen, Muthaiga and Westlands. The majority of Nairobi's Asian population lived in the residentially zoned areas of Ngara and Eastleigh, across the Nairobi River from the bazaar and commercial zones. Meanwhile, African housing was concentrated in Eastlands, Puwamni, Shauri Moyo and Kariokor, in 'native locations' located to the east of the railway and designed in the cheapest possible manner in an effort to keep them out of town or, at the very least, control their influx into town (Etherton 1971; Williams 1907; White et al., 1948; Halliman and Morgan, 1967).

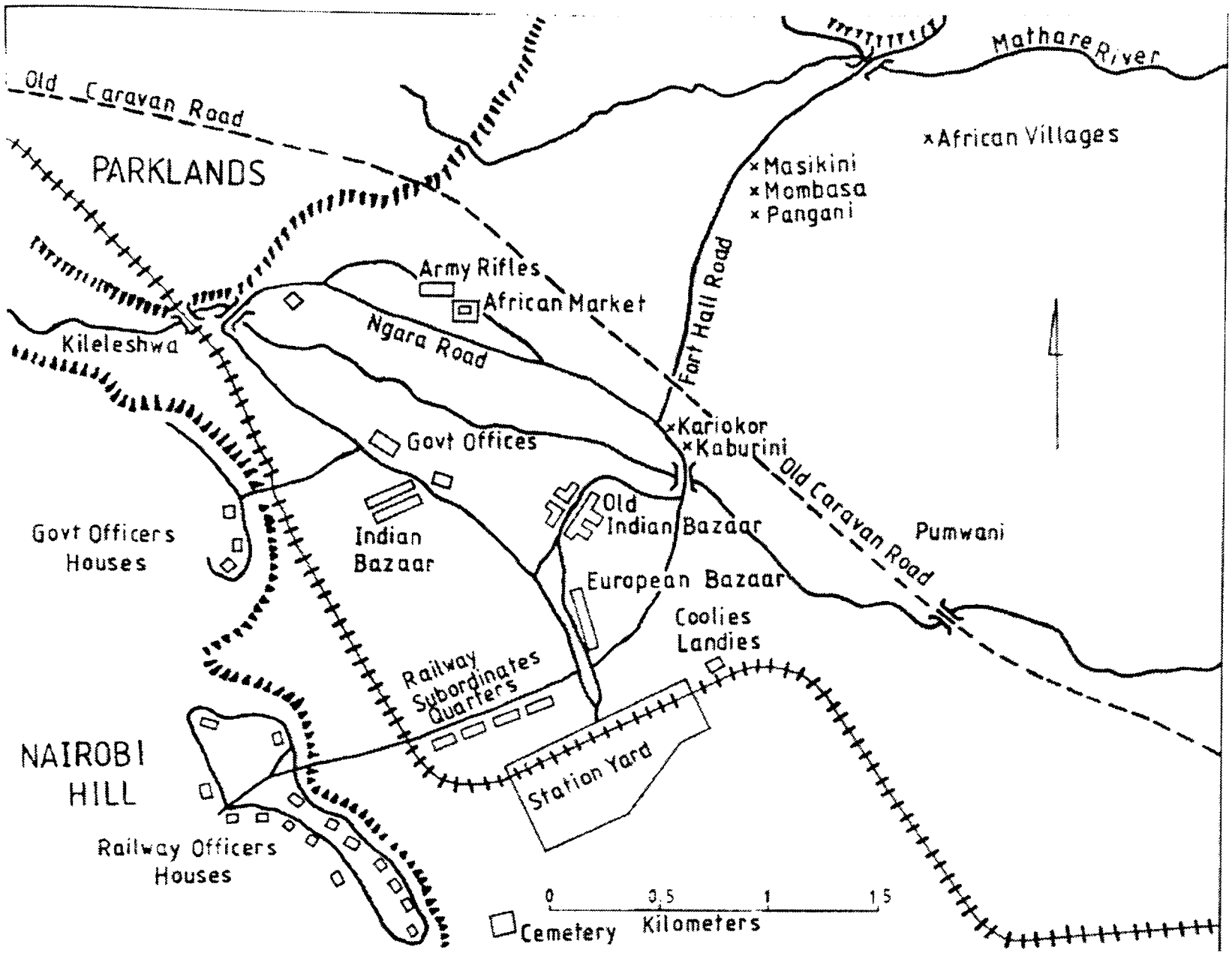


Figure 14: Early Nairobi

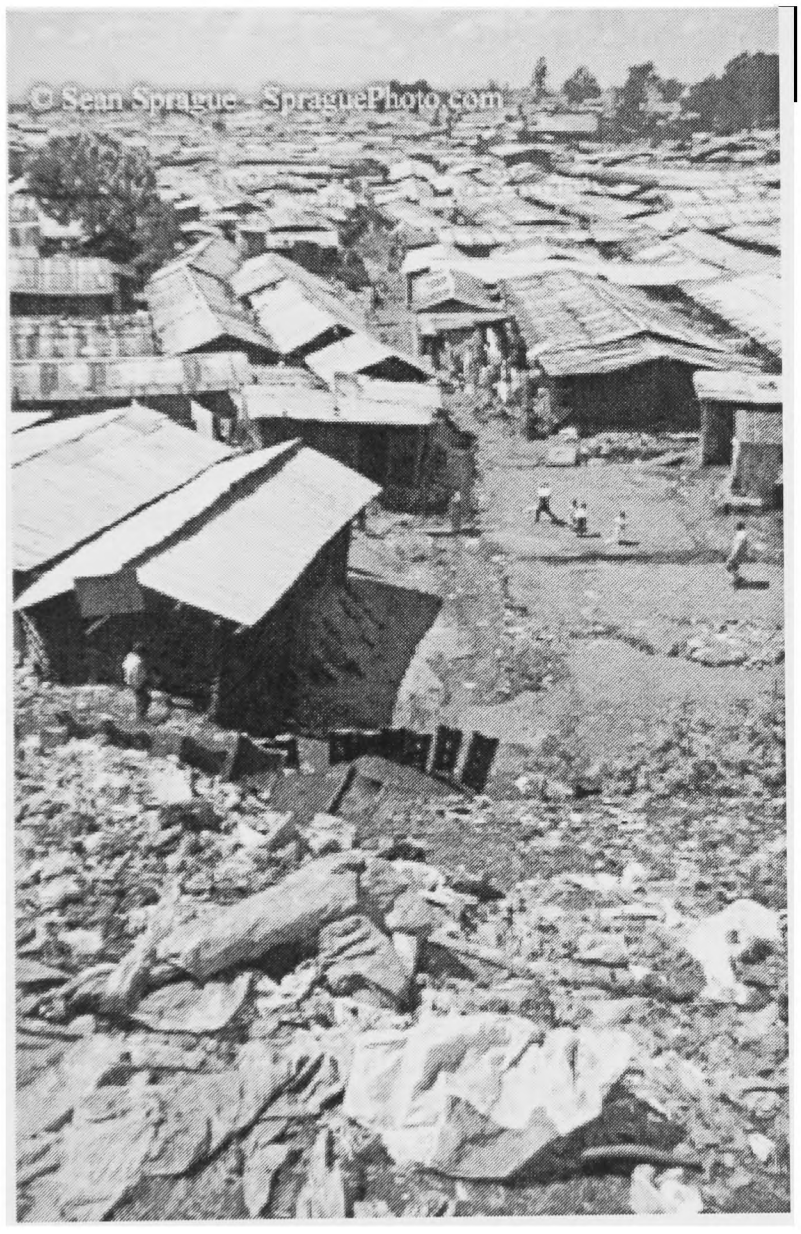
Source: Kahimbaara, J.A., The Population Density Gradient and the Spatial Structure of a Third World City: Nairobi, A Case Study

'We are six together: one room, no water, no electricity'[206]

The post-colonial system continues to encourage a society segregated along racial and/or economic lines and a poor distribution of economic opportunities, which reinforces the segregation (Kahimbaara 1986: 309). Housing shortages and

[206] Interview with Mary, Kariobangi, Nairobi 2002

overcrowded slums are a familiar feature of city life and there is a growing physical gap between the rich and the poor. The upper and middle classes now live in the areas formerly reserved for the European population, while the lower classes are concentrated in the former 'native' areas, in informal settlements that carry about 60 per cent of the city's population, but occupy only 5 per cent of the land (Basic Rights Steering Committee 1999:85; Republic of Kenya 2002a).



Kibera slum, Nairobi

Photo © Sean Sprague

Most of these informal settlements are devoid of basic infra-structural facilities and services such as clean water, sanitary waste disposal, access roads, electricity, telephone services, drainage, health and education services. Residents are often reluctant to put up better housing or improve existing structures because of a lack of secure tenure. Most people I spoke to confirmed the insecurity of tenure. Only 8 respondents (equivalent to 7.7 per cent of the sample population) stated that they owned their houses, although it should be noted that claims to 'owner occupation' should not be taken at face value. For example, one individual claimed to 'own' the single room mud shack in which he was living - but this claim to ownership was based solely on the fact that he had personally constructed his dwelling on an empty piece of land - in other words, he was an illegal squatter.

Over 90 per cent of respondents rented their accommodation, most of which was temporary in nature (constructed from tin, cardboard, thatched grass, mud and so on), overcrowded and lacking in basic facilities. Kamau lived in a two-room shack without water or electricity in the Eastleigh area. He shared this residence with seven other people, two of whom were children. Another household, with seventeen members[207], leased a temporary shelter comprising four rooms with no water, electricity or sanitation. This finding confirms World Bank observations that in Kenyan urban areas over 76 per cent of the poor and 80 per cent of the non-poor rent their dwellings.

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[207] Overcrowding is highest in houses occupied by the poor compared to medium income earners (Syagga and Ondiege 1995). The standard household size in Kenya is 4.6 people. Rural households (4.9) are on average larger than urban households (3.5). Poor households are significantly larger than non-poor households, particularly in rural areas, where the average size of a poor household is 6.4 persons (World Bank 2003: 2). 43 per cent of households have more than 2 people per living room, indicating overcrowding and out of these 16 per cent have more than 5 people per living room, indicating chronic overcrowding. 80 per cent of residents have only one room for all household functions and households may even rent part of a room where they are unable to afford the whole room (Basic Rights Steering Committee 1999).



Slum dwelling in Nairobi

Photo © Sean Sprague

This is in stark contrast to the rural areas, where 95 per cent of the poor and 83.5 per cent of the non-poor own their dwellings. In Turkana, however, where there is a history of neglect when it comes to housing and infrastructure, this figure is not borne out. Even in colonial times, the Public Works Department did not concern itself with housing in what was then known as the Northern Frontier any more than they did with the infrastructure. The District Commissioners in each station were given a lump sum annually and were responsible for their own districts. Each year, they worked out estimates for what they considered essential maintenance, which were in due course cut down at Headquarters, meaning that there was never enough money to do what was needed in a way that would last (Reece 1963: 23).

In the post-independence period, this state of affairs has not improved. Currently, most Turkana live in temporary dwellings constructed from mud and wattle branches. Around Kakuma camp, meanwhile, a somewhat ostentatious display of

the American flag in most homesteads is somewhat confusingly in evidence. Upon closer examination, this is exposed not as misplaced patriotism on the part of the Turkana but as a pragmatic recycling strategy. Discarded tins previously used to store food aid from America have been put to good use building more permanent weatherproof houses.

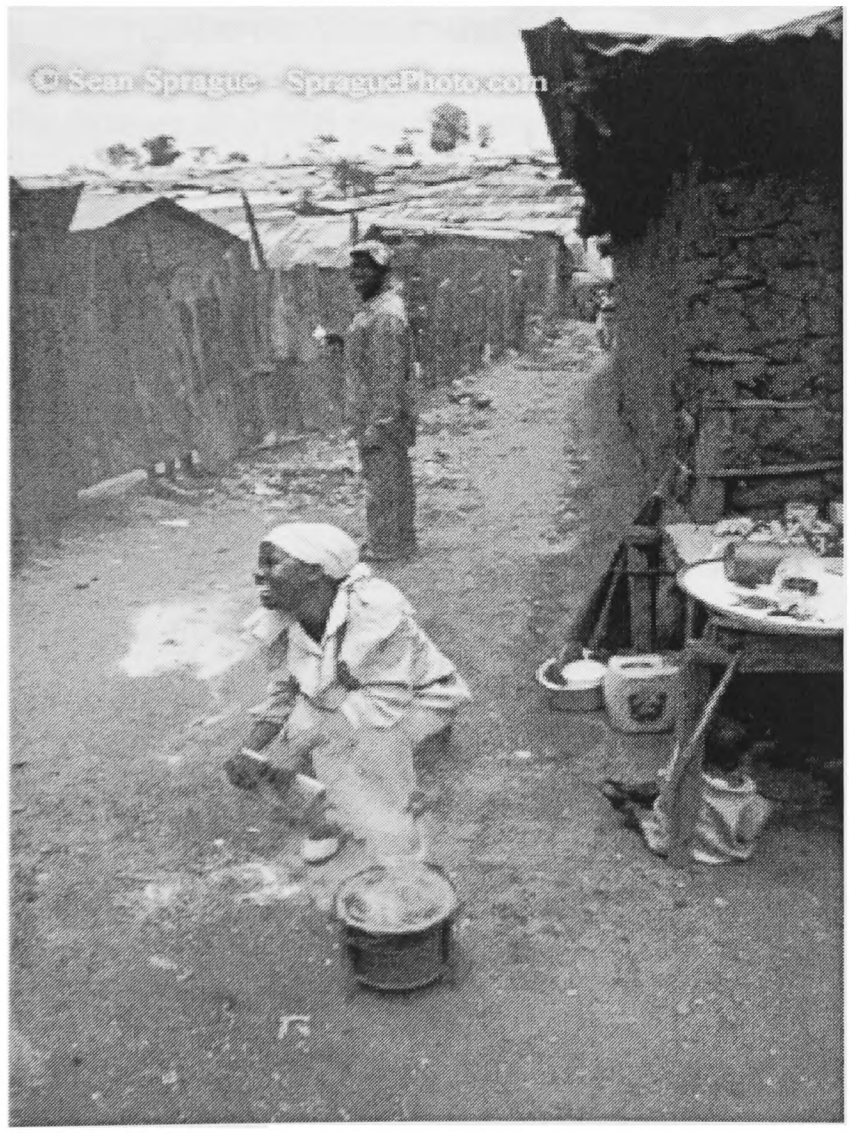
However, in spite of the considerable difficulties faced by Kenyans trying to access adequate housing, the large majority of respondents do not hold the government as in any way responsible for either providing, or creating a conducive environment for the provision of, shelter. One of the few exceptions was James in Nairobi, who stated that he believed that the government should 'set basic standards for all living rooms to have water and electricity inside...no sharing of facilities'. Simon thought it was the duty of the city council to put up habitable houses, while Njoroge, who lived in a single room with no water or electricity, said that he would like the 'government and the donors (to) improve sanitation, construct latrines and install water and electricity'. However, it seems there is still a long way to go before the Kenyan government can live up to Njoroge's expectations. Although it admits that it has the responsibility for creating the relevant enabling environment for shelter development, housing is still considered a consumption good and, consequently, a low priority investment (Syagga 1987).

Only porridge for supper but we are overfed compared to our neighbours[208]

Kenya faces food insecurity at both national and household levels. Since the 1980s, there has been a rapid decline in food production countrywide and the country has

[208] Interview with Kamau, Eastleigh, Nairobi 2002

increasingly relied on commercial imports and food aid to fill the gap between food production and consumption (Mwangi 1999: 35). Statistics show that close to a third of urban residents are food poor, meaning they are unable to attain the recommended food energy intake of 2,250 calories a day (BRSC 1999: 40). For many people, this is simply because they cannot afford to purchase food, as the price of even the most basic foodstuffs is very high when compared to the minimum wage of approximately US$ 30 a month (Regulation of Wages General Amendment Act 1996).



Woman cooking in the Kibera slum, Nairobi, Kenya.

Photo © Sean Sprague

In my own sample, 31 per cent of households spent less than 20 cents a day on food, while 33 per cent spent less than 40 cents. Some of these households were feeding up to 8 people on 20 cents a day and it came as no surprise, therefore, when many respondents stated they were underfed and struggled to get enough food to feed their families. Many people I spoke to usually ate only once a day. Commonly their one meal consisted of porridge, *ugali* (maizemeal) and *sukuma wiki* (kale), beans, yams, *matoke* (cooking bananas) or cabbage. According to Samuel, 'If we had more money we would wish to eat better food with meat'.

The situation is worse in rural areas than in the urban areas, with food poverty levels at 50.7 per cent in the former and 38.3 per cent in the latter (World Bank 2003). In rural areas food insecurity is primarily determined by landlessness or near landlessness, exacerbated by the high levels of unemployment in the country. About 10 per cent of the rural population is landless and in most cases, this 10 per cent comprises the poorest of the poor (World Bank 2003).

Landlessness is most often the result of insecurity of tenure, which enables land accumulation by salaried employees and powerful people at the expense of the poor. In post-independence Kenya, political patronage evolved into the most prevalent medium of regulating land use. The government gave land to political clients with a view to concentrating power and securing the loyalty of the elite (Kanyinga 1998). Consequently, in Kenya it is less true to say that 'some people are rich because they own large farms' than to say that 'some people own large farms because they are rich' (Hazlewood 1974).

The problem of landlessness is often compounded by the lack of arable land. The arid and semi arid lands make up about 80 per cent of the land surface and the districts with the highest food poverty in the country, including Turkana district are found here.[209] According to the District Consultative Forum, 'Because of poverty, most members of the Turkana community eat once a day' (Republic of Kenya 2001b: 7). Many Turkana are envious of the refugees, having witnessed regular food distributions, even though the latter also claim that they only eat once a day. According to John Ekai, 'these people are given free food, water, education and many other services that the Turkana can only dream of'. [210] This bitter resentment is interesting, given that the Turkana themselves have for a long time, also been recipients of food aid and other forms of assistance. As will become evident, however, assistance to the Turkana community has been considerably less organised and effective than that provided to refugees in Kakuma, which may explain the prevalence of the feeling of neglect among the former.

Famine and dependence on external assistance have long been a feature of life in Turkana. In the early 1960s, prior to independence, as an early response to food shortages, the British colonial administration imported maize meal to be sold at a subsidized price. When conditions deteriorated further, maize meal was provided free of charge to feed old people and children at famine camps. Next, free maize was distributed throughout those areas experiencing food shortage. The fourth measure was to provide food-for-work on road projects and locust eradication measures (Oba 1992: 18).

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[209] Turkana has food poverty levels of 81 per cent, which makes it the third worst district in national district rankings (Republic of Kenya 2002b: 20).
[210] East African Standard, Michael Owuor, *Kakuma refugee camp is where the money is*, January 2, 2006 available on http://www.eastandard.net/mags/society/articles.php?articleid=34683

The difficulty faced by the government in trying to provide assistance was that the Turkana were always on the move, following water and pasture. In a district of some 27,000 square miles, which at the time contained approximately 100,000 people, this posed a serious problem, which was eventually tackled by collecting all those in need of famine relief in three relief camps at Lodwar, Lokitaung and Ferguson's Gulf.

Famine relief was sought from the United States Government through its Agency for International Development and by the mid 1960s some 5,000 people were being provided for (Colonial Office 1962: 121). According to one source, over 30,000 people were registered at Lodwar and Lorugumu famine relief camps in the 1960s (Lokaito 1986). By the 1970s, these relief centres were being overwhelmed. In 1972, about 42,000 people were being provided with food aid, while in 1983-84, some 80,000 people (over 50 per cent of the total district population) were supplied with relief food.

Following a series of droughts through the 1980s and 1990s, the provision of relief food, which was initially seen as a temporary measure, has become an almost permanent feature of Turkana society. Although there have been some cursory attempts made by aid agencies and the government to provide alternative means of survival, such as farming and fishing, they have had little impact (Oba 1992).

Furthermore, there have been numerous problems associated with provision of aid by the government. The food distribution process has been extremely problematic, with excessive bureaucracy stifling relief efforts. Chiefs and councillors often have to

travel up to 200 kilometres to seek permission from administrators in Lodwar town to distribute food relief in their stores. And as evidence of the theft of food relief, by the very government officials to whom it has been entrusted, comes to light, the cynicism of a population long accustomed to the failure of the state to protect their rights becomes easier to understand (Daily Nation 1999).

This problem is not limited to Turkana district alone. Countrywide, food insecurity is often attributed to corruption within the government. The failure to keep or offload strategic reserves at critical times, and the exporting of grain from the country just prior to drought periods have, on several occasions, led to starvation in the country. Individuals enjoying political patronage have been allowed to export maize at critical times only for the same individuals to be given import permits and licenses to import it again.

Recently, opposition politicians accused some officials in the Kibaki government of profiteering from the current famine by awarding lucrative food-supply contracts to the politically connected. According to Billow Kerrow, a parliamentary member representing the North, 'In my constituency a lot of food was diverted...there are people who played politics with food and that is why people are dying'. [211]

Little seems to have changed since the Moi era when, in one instance at a KANU rally in Machakos town, relief food provided by international organizations for distribution to refugees was allegedly distributed to potential voters (Human Rights Watch 1997). In addition, relief food is often stolen and sold to local markets, where

[211] Kenya Faces Famine Amid Effects of Drought, Raymond Thibodeaux, Cox News, Washington Bureau, January 22, 2006 available on http://www.coxwashington.com/news/content/reporters/stories/BC_AFRICA_FAMINE22_COX.html

the cheaper imports end up distorting prices and dampening local production. In Garissa, for example, the Kenyan government spokesman Alfred Mutua and Kenya Anti-Corruption Commission officials recently confirmed the arrest of 24 traders who were caught selling relief food, most of it still in bags marked 'Not for Sale' (East African Standard, January 14, 2006).

In the face of widespread government incompetence, it appears that communities can do little more than rely on themselves. Unfortunately, in Turkana district mechanisms traditionally used to cope with food insecurity have been severely curtailed. Land that was once considered part of Turkana territory has been placed under more than one political entity, conflicting with indigenous land use practices (Oba 1992:6). In an environment where mobility is the key to survival, such restriction of movement inhibits the ability of the population to exploit key resource patches. The presence of foreign aid has also influenced land use patterns, with herders concentrating around food distribution centres. Thus, during 1982-83, the lower Tarach river area was used year round by 47 per cent of the herders, although only 3 per cent had listed a year round pattern as ideal (Fry and McCabe 1986: 8). Another possible explanation for changing land use patterns is that these centres, with their relatively high population density, are inevitably seen as more secure. Because of poor security, large tracts of land are abandoned, while secure areas become over-used (Conan 1982).

In urban centres, most people also felt that they could not rely on the state in times of food insecurity. Many people I spoke with did not believe that the state had a role to play in promoting food security and most had developed their own coping strategies to deal with food shortages. Occasionally, respondents were assisted by their

immediate community, for instance a pastor had been helped by his parish, a Muslim family had been assisted by members of their mosque and so on. However, the most common coping strategy among the urban poor, many of whom have migrated to Nairobi from rural areas, appeared to be small-scale subsistence farming. A large number of respondents owned or leased small plots of land, on which they kept cows, goats, pigs or chicken. These provided an alternative source of food, like milk, meat and eggs and in some cases supplemented their income.

'The City Council Must Give us Water'[212]

Although Kenya, at least in the non-arid areas, is well endowed with water resources, the availability of safe water is limited. Only 40 per cent of the rural poor have access to water supplies and of these, only 10 per cent have access to piped water. Demand is far outstripping supply, particularly if the needs of agricultural diversification are taken into account (Republic of Kenya 1995: 24) and unless things change, the country will soon be in a state of 'acute water scarcity'. Human activities, particularly in water catchment areas, are increasingly threatening forest cover, also resulting in diminishing availability of water. There has been a general decline in the volume of water bodies in the last 50 years and permanent rivers like the Tana, Mara, Athi and the Kerio have been reduced in volume by half (World Bank in Daily Nation, 2002b).

According to Epem Emuria, a pastoralist in Kalobeyei, 'Many of the traditional water sources have dried up. More and more of us are now dependent on 2 boreholes. A hand pump that previously served 4,000 people is now providing water for almost

[212] Interview with Tom, Ziwani Estate, Nairobi, 2002

10,000 people'.[213] Apem Esajait says, 'The water sources have all dried up. This has forced us to come to Oropoi centre, where the only borehole is pumping 24 hours per day. We cannot afford to buy more water to keep it running.'[214]

In the dry, degraded lands of Northern Kenya, water shortages are often the result of damage to waterholes particularly due to heavy population pressures. Turkana pastoralism was traditionally based on movement between wet season grazing, within what had been officially designated Turkana land, and dry season grazing, which took them into international territory. However, with the introduction of formal borders important water resources, which the Turkana depended on during drought years, were made inaccessible (Lamphear 1976).

Additionally, as regional insecurity increased, people began to huddle together and reject their nomadic lifestyles partly because of the fear of armed raiders. In the meantime, in small towns like Kakuma, the Turkana became increasingly sedentary because of the availability of new work opportunities, with humanitarian agencies or refugees, and the growth of market centres, which led to increased trading opportunities. All of these developments inevitably resulted in more people concentrating around one area and exploiting fewer water resources.

Although, as I have just mentioned, the arrival of refugees led to increased opportunities for the Turkana, the same refugees have added pressure on environmental resources, particularly water, in the region creating a lot of animosity between the two communities. According to the Turkana, the resulting scarcity of

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[213] ACT News Update – Kenya: Good response now will help communities endure the drought, 15 February 2006 available on http://www.alertnet.org/the news/fromthefield/222031/114001019777.htm
[214] *ibid.*

water means that the men are now forced to drive cattle up to forty miles from pasture to water source, while the women often have to dig as deep as 18 feet into dry river beds or walk as far as fifteen miles to access water (Costello 2000:1). Refugees, on the other hand, are bitter because they are forced to rely primarily on water sources in the camp, which are strictly rationed. Many complain that when they try to access water outside the camp, they are prevented from doing so, often quite violently, by their Turkana neighbours. The Turkanas' response to this grievance is to point out that, unlike the refugees, they have no alternative source of water and, consequently, they have no choice but to defend their scarce resources.



Boys collecting unsafe drinking water

Photo © Sean Sprague

In the urban areas, meanwhile, only half the population has access to safe water. A decline in public resources for investment in new water projects, operation and maintenance has greatly reduced the role of the public sector in the provision of water (Republic of Kenya 2002a: 86). As a result, private water carriers comprising numerous unlicensed water vendors who tap water illegally from pipelines and drill boreholes without permits, largely control the water supply in East Africa's capitals. Often, as was noted by Martha Karua, then Minister for Water Resources, these illegal water vendors collaborate with officials in the Ministry of Water (Daily Nation, 2003c). The private sector is growing much faster than public water utilities, the latter being either poorly managed or having failed to expand with the growth of the population (The East African, 2002).

Almost all my respondents stated that they had difficulties accessing water and had to share water facilities, including washrooms and toilets with neighbours. Many had to buy water from vendors for domestic use. Wairimu lived in a single room with three people, all of whom shared 'a bathing shelter, water supply and latrine with the neighbours'. Paul lived in a single room *mabati* house with his wife and 3 children. They shared water facilities and a latrine with their neighbours. Most respondents placed responsibility for the provision of water and improved sanitation facilities on landlords. Some believed it was a communal responsibility, and thought that the community should construct more latrines. However, some, like James, believed that it was the responsibility of 'the government to set standards for all living rooms to have water and electricity inside, that is, no sharing of facilities'. In the course of my fieldwork, water provision was consistently one of the few areas where respondents directly identified the government, or at least local government in the form of the city council, as ultimately responsible for the provision of a service.

'There are no Drugs in Hospital Anymore'[215]

Following budgetary constraints partly due to reduced donor support, but largely due to poor governance and the phenomenal rise in the demand for health care[216], the delivery of health services in the country has been largely eroded. As a proportion of total government expenditure, the health budget since 1980 has averaged only 8 per cent of the total budget. This is equivalent to approximately 2.3 per cent of the country's Gross Domestic Product (GDP). [217] Of this, 67 per cent goes to curative health, 13 per cent to rural health and only 6 per cent to preventive health. The only health benefits scheme in place, known as the National Health Insurance Fund, draws its funds primarily from Kenyans in salaried, formal employment, leaving out over fifty per cent of the country's labour force. Thus, in the absence of comprehensive solutions, a small fraction of society is being forced to shoulder the health care burden of an entire nation.[218]

As the quality of health facilities at provincial and district hospitals, health centres and hospitals deteriorates, many Kenyans have begun to seek private health care despite the prohibitive costs of the private sector. Many private clinics have proliferated, unmonitored and largely unregulated, in the sprawling slums and numerous housing estates of Nairobi. They are housed in small, dilapidated buildings, often have very poor standards of hygiene and are understaffed and

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[215] Interview with Ruth, Kayole, Nairobi, 2002

[216] This has largely been a result of the emergence of HIV/Aids. Current estimates indicate that approximately 2.2 million Kenyans are HIV positive. The majority of Aids cases fall into the 15-49 year age group who form the core of trained and productive manpower (Republic of Kenya 2002a: 67).

[217] For purposes of comparison, in 2003-2004, the health budget of the United Kingdom was 7.6 per cent of the GDP. This still leaves the UK short of spending levels in France, where the health budget comprised 9.6 per cent of the Gross Domestic Product, in Germany, which devotes 10.7 per cent of GDP to health and in the USA, where 13.9 per cent of GDP is dedicated to health care.

[218] In the 2000-2001 fiscal year, remittances to the NHIF totalled Kenya shillings 2.2 billion. Even if this amount were to be trebled, by forcing current Fund members to pay more, it would not be able to cover the basic needs of the more than 30 million Kenyans (Daily Nation, 2003k).

overcrowded. Yet, where they exist, many Kenyans still prefer them to their public counterparts.

In Nairobi, with the exception of one respondent, all the people I spoke to used 'private clinics' for various reasons. According to Anne, for example, she does not go to government health centres because they do not dispense the proper medication. She says, 'regardless of whether one is suffering from malaria or headache, they always dispense panadols (sic). I have never thought of going there even when suffering from a minor cold'. Many people complained that there were usually no drugs available at government clinics. Several claimed that they had been denied medical treatment due to lack of money. In the words of Ali, '*tunafinywa*', which means 'we are being exploited'. Waweru noted that 'even to get a card stamped at the health centre they ask you for money, money', while Joseph complained that many clinical personnel were corrupt, asking for payment for tasks they were supposed to perform for free.

In rural areas, the main health care problem relates to access. Poor access is often due to the remoteness of the location, which discourages medical staff from working there, as well as poor private health sector investment. Currently, only 42 per cent of the rural population has access to health facilities within 4 kilometres and 75 per cent within 8 kilometres. In Turkana District, low population densities, poor communications and the unpredictable movements of the nomadic population combine to hamper the provision of medical services. In addition, the geographical remoteness of the region makes the political costs of failing to provide health services much lower than the costs of failing to provide services for the urban population (Harragin 1993: 2).

As a result, the average distance to the nearest health facility is 50 kilometres. The area has a doctor to patient ratio of 1:75,000 (Republic of Kenya 2002b: 10). Given the lack of health care facilities, it is not surprising that many Turkana continue to rely to a large extent on their own healthcare practices.[219] On the surface, this preference for traditional remedies is not similarly evident amongst urban populations. Most of my respondents did not admit to using traditional healers but their assertions are somewhat questionable, especially given the numerous traditional healers that exist in Nairobi, some of whom claim to originate from as far afield as Tanzania, so high are the demands for their services. On the rare occasion that my respondents did admit to consulting traditional healers, they stated that they did so because they were readily available or, as Onyango explained, 'because they cure and are efficient (and are also cheaper)'.

'The Teachers are Reluctant to Teach'[220]

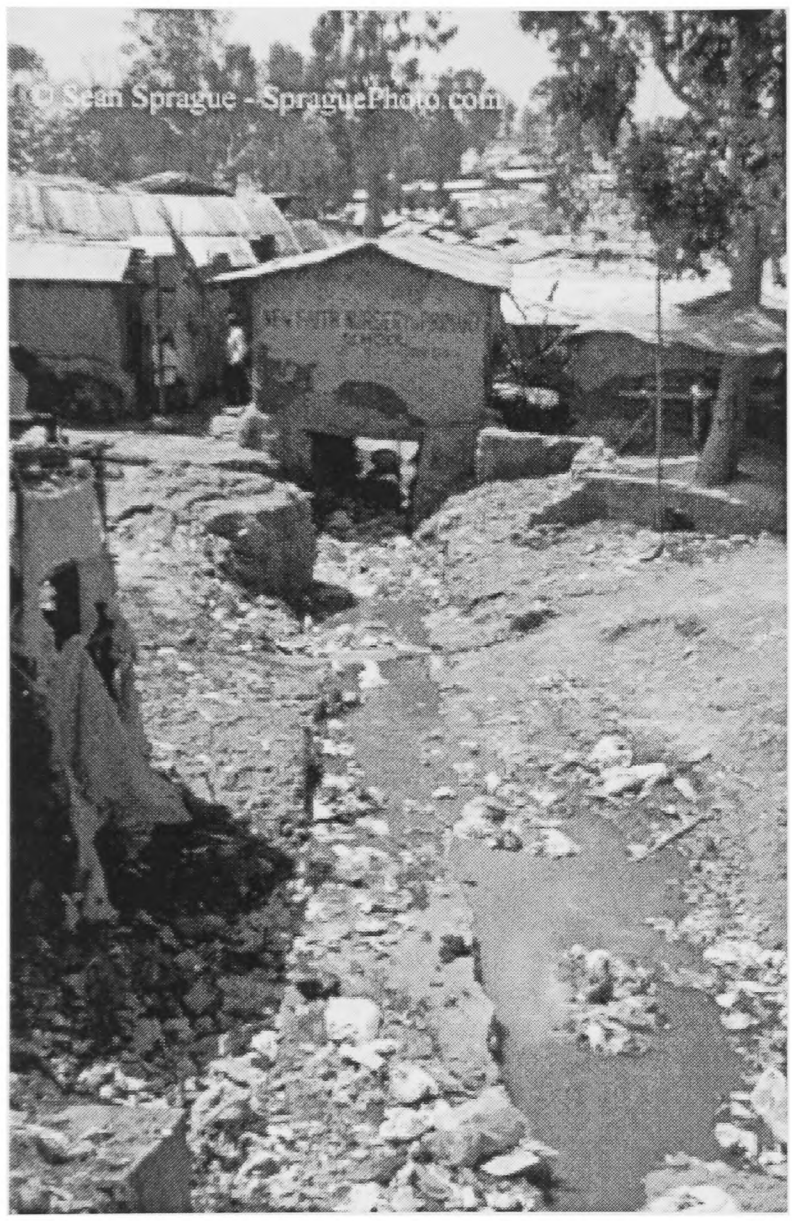
Although Kenya has ratified and is signatory to many of the international conventions and declarations pertaining to education, the Constitution is silent on education as a basic need and basic right. There are therefore no domestic legal obligations on the government to offer education for all.

In Kenya, most people, particularly the poor, see education as a major vehicle of development (Daily Nation, 2003p). Unfortunately, the reality is that many Kenyan

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[219] The Turkana divide illnesses into those caused by God (*ngidekesiney ka Akuj*), which are seen as natural, and those caused by witchcraft (*ngidekesiney ka ekapilan*) (Shelly 1985). Western medicine is considered as part of the natural world and thus coincides with Turkana beliefs. Traditional medicine does not exist as a self-contained unit (see Kleinman 1980) and patients often rationalise an episode of illness in more terms of more than one explanatory model (Reynolds Whyte 1989).
[220] Interview with Samuel, Dandora, Nairobi, 2003

children have limited or no access at all to education. Of those who do manage to access primary education, only half finish the primary education cycle, and only one third of these join secondary education (Basic Rights Steering Committee 1999: 20).



Nursery and Primary School, Kibera Slum, Nairobi

Photo © Sean Sprague

In spite of the recent introduction of 'free primary education' by the incoming National Rainbow Coalition government in December 2002[221], many parents still find

221 The Ministry of Education disbursed KShs. 15 million to the 17,000 plus primary schools. an additional 2.4 million shillings was to be disbursed to schools to purchase teaching and learning materials such as text books, desks, chalk, dusters, teaching guides and to support extra-curricular activities. however, although this was a commendable start, it was estimated that some 5 billion shillings was needed

it difficult to meet the costs of educating their children. However, despite the difficulties they face, it is fair to say that parents will spare no expense when it comes to education, with many of my respondents spending between 30 and 75 per cent of their income on schooling. The highest quoted figure of expenditure on education as a percentage of income was 80 per cent, which indicates the value of education to most Kenyans.

During the course of my fieldwork, it became apparent that many parents still had to pay to some extent for their children's 'free education'. Often, this was because they elected to send their children to private, rather than to public schools, the former being seen as providing a higher standard of learning. The most common complaints about the public school sector related to understaffing, poorly motivated staff and inadequate facilities. However, even those parents that did send their children to free public schools still had to bear numerous associated costs, including uniforms, school lunches, text books, exercise books and so on. Such costs could often be prohibitive as in the case of Jane[222], a single mother with three children, none of whom attended school, simply because she could not afford to pay any of the associated costs.

Such constraints on the ability to access education have serious implications on enrolment and completion rates. Further compounding the problem of lack of access is the existence of educational inequalities between urban and rural areas, which

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to fund the free and compulsory primary education programme. State funding fell far short of requirements and then Education Minister, George Saitoti conceded that the new programme would face several challenges, including having to deal with an increading number of adult learners seeking access to primary education (Daily Nation, 2003g).

[222] Jane is a widow with 6 dependents, 3 of whom are children. All seven members of the household live in two rooms. She has no formal educational qualifications and her children seem set to follow in her footsteps, caught up in an endless cycle of poverty. It has been noted that the relationship between poverty and the head of household's education achievement is high. In Kenya, 77 per cent of household heads of the poorest 20 per cent of the population had not completed primary education. Over half of these have no schooling at all. This can be compared to the upper 20 per cent of the population, where 60 per cent of household heads have at least a primary education, and over half of them have completed secondary education or above (World Bank 2003: 2).

hinder any efforts made towards balanced social development. Although primary school enrolment rates are higher in rural than in urban areas,[223] this pattern changes significantly when we look at secondary school enrolment rates, where urban areas fare considerably better than their rural counterparts. This trend may be partly explained by the recent collapse of rural income bases, including agriculture, pastoralism and tourism, which have led to increased poverty in the rural areas, making it harder for families to keep their children in school.

The situation is even worse in famine prone districts like Turkana, where special measures have had to be put into place to improve school enrolment. These include school feeding programmes, primarily supported by the World Food Programme, which have led to an increase in enrolment in both primary and secondary schools (Republic of Kenya 2002a: 57). According to a local district education officer in Marakwet, the feeding programmes are very important, especially for children in the lower primary classes (Daily Nation 2003m). Other strategies that help improve retention rates are the provision of alternative rites of passage to replace the practice of circumcision as well as the provision of grants to lower the costs of boarding schools.

The latter is particularly important to nomadic populations whose constant movement severely restricts the ability of the youth to attend schools. Rebecca is a student in her last year of primary school at a boarding school that is part of the school feeding programme in Lodwar, Turkana district. The facilities are overcrowded - students sleep four to a bed, while the less fortunate spread blankets

[223] This disparity may be explained by the phenomenon of street children, urban poverty and juvenile delinquency in the urban areas. It may also be related to the fact that many urban parents send their children to boarding schools, which are relatively cheaper than those in urban centres.

outside. Yet, according to Rebecca, the sacrifices are worth it. 'I would rather be in school', she says. 'I can learn here. And at home there is not enough to eat.'[224]

In Kenya, education is accorded significant status by the local population because it is seen as the key to securing employment. This link between education and employment is particularly evident in the context of rapidly urbanizing societies, where the relationship between education, poverty and inequality is strengthened, as the urban economy becomes more monetised and formal than the rural economy. In principle, the growth of knowledge-intensive production and trade in wealth creation places individuals with a low level of education at a fundamental economic disadvantage (Watt 2003).

However, it is interesting to note that this principle does not necessarily apply in the Kenyan context. Only 12 of my respondents had a university degree. Of these 12 who should theoretically have held a competitive advantage over their counterparts, 8 were unemployed. I believe that this trend might be explained by the fact that there is currently little or no employment to be found in the formal sector, which has largely failed to meet the challenges of employment creation and income generation. Sadly many university graduates have unrealistic expectations about the availability of opportunities in the formal sector and, with their traditional degrees, often see themselves as overqualified for, or lack the entrepreneurial skills required to engage with and compete in, the informal sector.

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[224] *Kenya: regional disparities threaten progress towards education for all* available on http://www.ungei.org/infobycountry/kenya_209.html

In Nairobi, the majority of my respondents who did state that they were employed, included hairdressers, hawkers, newspaper vendors, mechanics, shoe shiners and salesmen, all of whom were self-employed. This is in line with observations in the 2001 Kenya Human Development Report, which notes that the informal sector is the major pool of employment in the country. It has largely overshadowed the formal sector in terms of employment creation and has averaged 10 per cent annual growth in employment. Unfortunately, productivity growth has been low, precipitated by the lack of technological skills and institutional support.

The education system in Kenya has often been criticized for failing to produce graduates that can be readily absorbed into the existing job market. The broad and inflexible curriculum, which is mainly assessed through examination, demands the memorization of facts at the expense of developing higher cognitive skills such as reasoning and problem-solving (Abagi 1997b, ARA Sage 1995, CESA 1994, Karani et al. 1995, Republic of Kenya 2002a: 55). With specific reference to the Turkana, it has been noted that the institutional representation of pastoralism contributes to poor communication with and poor circulation of knowledge to pastoral societies, which is why so many pastoral communities are reluctant to send their children to school (Kratli 2001).

For the Turkana education is important because it seen as a way of accessing resources outside the pastoral circuit, particularly sought after by the growing number of households whose entitlements within the pastoral setting have been eroded and who feel increasingly vulnerable to destitution. This is interesting because it means that contrary to the common explanation, the rise in school enrolment figures in the region is likely to be an indicator of the increased

vulnerability of the Turkana rather than a sign of 'development'. However, education is also perceived as a government initiative and, consequently, like many other government ventures, is something to be approached with caution based on past experiences of relationships with the state. It is potentially helpful but ultimately unpredictable and therefore not trustable.

'The police do not care. They just want kitu kidogo'[225]

Crime rates in Kenya have skyrocketed since the early 1990s, particularly in the urban areas. Reported cases of crime in Nairobi in 2003 stood at 77,340, an increase of approximately 10 per cent from the previous year. The increase in crime can be partly linked to the massive amount of small arms circulating in the region, more specifically to illegal transfers from Somalia to Kenya, in response to which the Kenyan government temporarily closed its border and banned all flights to Somalia in 1999 (Daily Mail and Guardian, 2000).[226]

One obvious way to combat the increasing crime rate is to recruit more police. According to the former Police Commissioner Peter Nyaseda, the main problem facing the police force is that they do not have enough officers to cope with the demands of a rising population and as a result forces have been overstretched (Daily Nation, 2003d). There is currently only one police officer per 850 people, down from the UN standard of one per 450 people that Kenya once met. However, many see the police as part of the problem and not necessarily as part of the solution. Once highly

[225] Interview with Simon, Ruiru, Nairobi 2002

[226] In the late 1990s, it was found that nearly 70 per cent of all weapons used in crimes in Nairobi were US made colt pistols originating from Somalia (Mogire 2003). Presently, a new AK-47, another weapon of choice, can be sold for as little as Ksh. 10,000 (US$ 135), while a single bullet costs roughly Ksh. 50 (US$ 0.70). Arms are also available for hire for three day periods, ranging from US$18 for a .38 calibre police-issued handgun to US$120 for a sub-machine gun.

respected, the police are now regarded as one of the most corrupt arms of government (Barkan 2004: 5).

Many of my respondents confirmed this perception. Peter stated that he had been the victim of a robbery but had not reported the incident or sought any assistance from the police because he did not think he would get any help from them. Karega stated that the Kenya Police Reservists (KPR) in Kakuma should be disarmed because they appeared to be involved in many of the crime incidents in the area.[227] However, other members of the community I spoke to actually believed that the KPR should be given more arms so that they could perform their duties more effectively. In Nairobi, Damo stated that he would go to the police if his security was threatened but that this would be 'just a formality as the police never take any action'. Teresiah, who had been the victim of an attempted rape, reported the incident at a local police station. The police officers had turned on her and accused her of provoking the incident by 'dressing in tight clothes'.

Many people recounted incidents where they had sought help from the police and had been asked for *kitu kidogo* (something small), that is, a bribe. According to Benjamin, the system is 'corrupt, confused and full of disorder. They ask for bribes starting from the lowest level officer to the senior most officers'. Njoki recounted how she had been forcibly displaced from her land in the Rift Valley during the 1992 clashes. She was never compensated and had '...forgotten about the land because she does not know who to go to for help. Everyone is so corrupt'.

[227] Interview with Karega, Kakuma, 11 November 2002

In Turkana District, the availability of illegal arms has exacerbated insecurity (Oba 1992: 11). During the 1970s, the Turkana, in collaboration with elements in the government, began to employ increasingly sophisticated raiding methods using heavy guns, military trucks for transport and large-scale networks of smuggling extending into Sudan. Raiding evolved into something of a military operation using conventional war tactics and involving thousands of livestock (Osamba 2000: 7).

As raiding become more lucrative, cattle warlords, complete with armed militia to protect their interests, began to emerge. Warlords created strong and heavily armed private armies that, apart from providing local security, also go on cattle raids (Osamba 2000: 13). As a result, raiding has undergone a fundamental transformation, from a cultural practice to an international commercial venture organized and bankrolled by cattle warlords. With the proliferation of arms and armed conflict in the region, the government began to lose its monopoly on legitimate violence and state control over northwestern Kenya has increasingly been compromised.

Not surprisingly, therefore, the Turkana identified security as the most important priority for their community. According to Lokolar, 'the government should control the flow of arms because the area is becoming very dangerous'.[228] However, although most Turkana agree that there is a need for arms control in the region, many were quick to point out that this did not mean complete disarmament. According to Etuuny, 'those on the borders need their weapons to defend their wealth (animals)'. [229] Many people I spoke to no longer believed that the state would ensure their security. It was a common perception that the local police were focusing

[228] Interview with Lokolar, Kakuma, 11 November 2002
[229] Interview with Etuuny, Kakuma, 11 November 2002

all their attention on the camp 'because they are getting incentives there but if anything happens in the local community it takes days for the police to go to the place with the problem'. [230]

Instead, the Turkana believed that their main source of protection was local vigilante groups. In order to improve their efficacy, Eregai states 'the vigilantes should be given communication devices. Many villages are far away from the nearest police post and they cannot be expected to run and come back with police and find the thieves still there'. [231] There were also requests that the vigilante groups should be given incentives by local humanitarian agencies. One chief indicated that he thought that UNHCR or LWF should pay the vigilantes, because 'we do not have money to pay them'. [232] In response, an LWF member staff member noted that the agencies were only in the area for the duration of the refugees' presence. 'If they leave, we leave as well'.[233] He indicated that the Turkana would therefore have to come up a more long-term, viable solution for supporting their vigilante groups. They could not expect to rely on the agencies forever.

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[230] Interview with Lokuru, Kakuma 19 January 2003
[231] Interview with Eregai, Kakuma, 06 December 2002
[232] Interview with Turkana Chief, Kakuma, 17 November 2002
[233] Interview with LWF staff member, Kakuma Refugee Camp, 12 November 2002

Conclusion: The Impact of Refugees on State-Citizen Relations

It is important that we address not only the impact of national concepts of membership, identity and rights on refugee protection, but also the impact of refugees on broader social and political processes. Refugees have the capacity to bring considerable material and rhetorical resources to bear in what are often politically and economically peripheral areas. Exchanges between refugees and locals can have a profound effect on the relationship between citizens and the government. Ultimately, the presence of refugees can have a strong impact on the host community and their perceptions of the legal and administrative responsibilities of the state.

In Turkana district, the stage for political conflicts, environmental degradation and food insecurity was set decades ago (Oba 1992: 1). The current increases in conflict appear to be deeply rooted in colonial history, particularly in the struggle between pastoralists and the state. Conflict is also linked to the creation of chronic forms of poverty in conjunction with the process of commodification. This is not an inherent feature of marginal areas but part of the process of differentiation and marginalisation of pastoral societies.

The district in which Kakuma camp is located has a long history of poor administration. During the colonial period, Turkana was seen, as it is now, as a hardship posting. Very few colonial officers were posted to the region and, as a result, the administration was always more or less weak and ineffective. According to Gerald Reece, a former colonial District Commissioner in the region, one of the main problems was that there were no white officers living in the midst of the Turkana and getting to know them by walking amongst them continuously and

meeting them at their *ekitoingikiliok*.[234] The result was that the few administrators who were posted to the region were hard-pressed to understand the social and political structure of the populations they were charged with administrating. A similar lack of understanding has been noted for present day administrators as well as for extension staff running development projects in the region.[235]

Few government and development staff are posted to Turkana. When they are, the posting is often regarded as a punishment, which leads to an extremely negative attitude towards, and isolation from, the local people (Akabwai 1992: 5). In addition, instead of using the *ekitoingilikiok* as a potential point of contact with the local population, government officers use *barazas* (public meetings), which usually take place in towns, as a way of delivering messages to the public. Meeting are usually conducted in Kiswahili, which very few Turkana speak and the audience is very limited, consisting mainly of settled/urbanised Turkana and the few pastoralists who may have been passing through town conducting their errands. Limited effort is made to communicate with community leaders and to involve the Turkana in the decision making process. According to one Turkana chief I spoke to, 'the role of the community is not considered. All the people should be involved in making decision'.

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One of the primary misconceptions of the Turkana's social and political structure relates to the practice of raiding. In colonial times, raiding was seen as 'troublemaking' rather than as a survival strategy. When the Turkana 'caused

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[234] The *ekitoingikiliok* is the community 'parliament' or the 'tree of men' where an *adakar* (group of pastoral households) conducts its meetings. Members of an *adakar,* who may number from 10 to 20 heads of families, meet daily under the tree of men to discuss community problems.

[235] The representation of pastoralism as a fundamentally flawed way of life, and pastoralists as troublemakers, continues in post-independence Kenya. 'Pastoralism' and 'modern life' are seen as mutually exclusive, the latter begins where the former ends.

[236] Interview with Turkana Chief, Kakuma, 22 February 2003

trouble', detachments of the King's African Rifles (KAR) rounded up their stock until they 'listened to reason'. These punitive expeditions may have achieved their objectives in the short term (although not without considerable injustice and oppression) but, in the long term, they only served to contribute to the persistence of a cycle of raiding. Time and again the stock was rounded up on such a scale that whole families and clans were impoverished, and left with no means of recovery short of further raiding (Reece 1963: 236-7).

In addition to confiscating their stock, the British administration prohibited Turkana from crossing international borders. Those who violated these restrictions were punished by an instant fine of 20 per cent of the total livestock found trespassing (Lamphear 1976). Such measures seriously threatened the Turkana system of natural resource management by making important pasture and water resources inaccessible. In the contemporary Kenyan state, the Turkana continue to feel the pressure of restricted movement across borders.

It is often claimed that the government has neglected the North. What is not made clear is that government engagement and disengagement in Turkana has always been dictated by purely strategic, pragmatic considerations. During the colonial period, the principal factor influencing British expansion into Turkana was Ethiopian claims to the regions of Turkana and Karamoja. There was also concern that the Turkana threat was forcing other tribes southward, thereby posing a serious challenge to colonial settlers in the White highlands (Muller 1989). Expansion necessitated engagement. Encroachment necessitated marginalisation.

Historically, this process of marginalisation involved the severe restriction of movement into and within the Northern Frontier District (NFD). Permits to reside in the NFD were required for those who were not registered residents of the region. Those who *were* residents required travel passes to visit another township or one of the trading centres. These restrictions were deemed necessary to keep down the number of 'undesirables' settling in the townships, where they caused trouble. They were also justified as a preventative measure against possible incursions by bandits, on the grounds that, with thousands of miles of unmanned frontier it was easy for bandits to slip over the border to escape punishment in their own country (Reece 1963: 42).

Strategic engagement and disengagement is still evident in the contemporary Kenyan state, although it assumes a different form. Although restrictions on movement have been lifted, increasing insecurity serves to restrict the movement of many Turkana. The marginalisation of the North is often cited as evidence of political ineptitude and/or disinterest on the part of the central state. It is often assumed that 'less state' equates to more violence. However, this assumption fails to recognise that the state is often a key actor in situations of conflict, and that 'more state' could conceivably, therefore, mean more violence.

Any analysis of conflict in the region should therefore include the state as one of the key actors. It should also consider the 'benefits of conflict'. According to Keen (1994), war (or conflict) does not so much lead to the breakdown of society as to its reordering in particular ways. Not all the members of the affected community, that is, are victims. There are many who gain real political, material or psychological benefits. Conflict can be a self-perpetuating process, in which each party aims to

enjoy the benefits (money, power, impunity, etc.) that result from the conflict, rather than to 'win the war' (Keen 1997).

Politicians may facilitate conflict in the North by **not** intervening (Fratkin, 1994a). Or they may directly promote conflict by propaganda or even as a form of political competition in the run up to elections (Amisi 1977). Or raids may be used to generate funds for political campaigns. Or harassment of the local population by the military, when they get involved in conflicts, may cause people to sympathise with the bandits (Ibrahim and Jenner, 1996).

At a local level, victims of violence become easy prey of political manipulation. Growing distrust of central government, generated within the context of injustice and violence, makes it easy for local leaders to manipulate the population (Nyukuri 1997). This lack of trust derives from the fact that, in many parts of northern Kenya, the state is technically present (for example, through the army and the chief system) but ineffective (for example, soldiers have no ammunition or fuel for their vehicles). Inaction on the part of the state is particularly dangerous because, from a local point of view, the state is never absent. Its ineffectiveness is therefore likely to be seen as deliberate discrimination, rather than as weakness or incompetence.

For instance, people in the Loteere area of Turkana district say that they have been asking 'the government' (that is, local politicians and administrators they meet in Lokiriama or Lodwar, the nearest administrative centres) for specific interventions for decades, without result. Their priorities are water, a road, a school, a dispensary with a health centre and improved security. But what seem to them like endless talks and negotiations have had no effect. They were asked to contribute to the

construction of a road by clearing a few kilometres of bush, which they did, but the bulldozers never arrived and now the bush is growing back (Kratli 2001). Not surprisingly, they have lost trust in government officials and are hoping that an international aid agency will fill the void.

In Turkana district, one might reasonably expect that the government's access to additional resources from the international humanitarian community, combined with the citizen's increased demands on the state as a result of the impact of the refugee influx would make the state more accountable to its citizens. Instead, as previously mentioned, the Turkana no longer look to the government for protection, but are directing their demands and accusations increasingly towards international actors.

According to Akiru, 'these people (agencies) should help us. We are helping them by giving our land to the refugees. They should also thanks (sic) us by helping us.'[237] One chief requested that Turkana leaders be given gate passes[238] so that they could have access to agency compounds to discuss their problems. He noted, 'they (refugees) have gate passes. When they have a problem they can go to see somebody. But when we have a problem, we cannot see the people to help us'.[239] With the *visible* presence of refugees and international organisations on the ground, new sets of expectations have emerged. Many Turkana now feel that international relief agencies have a *duty* to help the local population.

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[237] Interview with Akiru, Kakuma, 09 December, 2002
[238] A gate pass is required to access to Compound 1 (UNHCR/IOM) and Compound 2 (all other implementing partners) in Kakuma Refugee Camp. Gate passes are normally distributed to community leaders and case workers. All other refugees have to apply for a gate pass, usually through their community leader, in order to gain access to either compound. Nobody can access the agency compounds without a valid gate pass.
[239] Interview with Turkana Chief, 11 November 2002

A people that were once marginalized now appear to find themselves at the centre of a sizeable humanitarian project. And although this position may be seen as a merely physical presence, giving them little political leverage, the Turkana **are** finding new ways to assert and reposition themselves vis-à-vis both the state and the international community. In Kakuma, the members of the Turkana community set up TERA (Turkana Environmental Resource Association), to act as the sole supplier of firewood to the camp. Although seemingly a small step, the formation of TERA mobilised many members of the Turkana community and greatly increased their leverage with international agencies. Firewood, which is in scarce supply given the harsh, arid environment of Turkana district, is an essential resource within the camp and, through its monopoly of this resource, TERA became a powerful lobbying front for the Turkana community. Unfortunately, TERA has been criticised for what many see as elements of corruption within the association, with some Turkana claiming that they were 'forced' to sell their firewood to TERA and others noting that very little profit trickled down to members of the community.[240]

Regardless of the long-term impact of TERA, however, the Turkana community has definitely established itself as a force to be reckoned with. Agencies now formally acknowledge the importance of establishing a good working relationship with the Turkana, particularly in order to minimise tensions between the refugees and the host community. In its ACT Appeal for Kenya in 2004, LWF notes that 'LWF working with UNHCR and the Kenyan Government have a moral obligation to also assist the Turkana communities around the camp with some basic social needs such

[240] Interview with Alinga, Kakuma, 27 November 2002

as the provision of clean water.'[241] This statement indicates that international humanitarian actors are indeed beginning to recognise the need to co-operate with and incorporate the Turkana in their assistance programmes in Kakuma. It marks a considerable departure from previous proclamations, as recently as 2003, when agency staff noted that 'we look after the refugees and the government looks after the Turkana'. [242]

The change in attitude is evident on the ground. NGOs have expanded access to health care and educational facilities to the Turkana. WFP has created a food for work programme that allows Turkanas to work for food assistance as a part of the Turkana Rehabilitation programme. And LWF has been working with Oxfam GB to distribute food relief to Turkana communities affected by famine.

Needless to say, the state is also influenced by the presence of refugees in Turkana district. The prominence of international actors in the region has provided new opportunities for administrative laxity and local politicians rarely miss an opportunity to blame international actors for the problems facing the Turkana. This 'transnationalisation of responsibility' as it has been dubbed by Landau (2001) feeds into a similar process occurring within the wider national regime of government practice. Government officials have become skilled at playing the 'blame game', with one common example being the tendency to trace the root of existing harsh economic conditions to structural adjustment programmes and donor conditionality rather than to the poor economic policies and massive corruption that exist locally. In so

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[241] *Act Appeal Kenya – Refugee Assistance in Kakuma* – AFKE – 41, Geneva 9 February 2004 available on http://www.reliefweb.int/rw/RWB.NSF/db900SID/OCHA-64CGTK?OpenDocument

[242] Interview with Anonymous, 20 February 2003

doing, they identify the international community as responsible for the country's problems and, consequently, as morally responsible for remedying them.

This somewhat one-dimensional argument is often given credence by what is, at times, the over-simplistic vilification of international actors, which has gained some measure of currency in studies pertaining to the shortcomings of refugee protection. With specific reference to Kakuma, it has, for instance, been argued that the international community has been 'selectively compassionate' in relation to the assistance provided to refugees in the camp vis-à-vis the local population (Aukot 2003: 75). I would argue that to take such an approach, without acknowledging the mandated duty of a humanitarian agency like UNHCR to protect a particular population (refugees), in effect pits refugees against locals and compounds, rather than helps to solve the problems of protection.

It should always be remembered that the Kenyan state has primary responsibility for its citizens, including the Turkana, not to mention that, as a state party to the 1951 Convention, it also has a duty to protect refugees within its borders. This does not excuse the failures of the international humanitarian community. It simply makes the point that an approach that focuses primarily on the shortcomings of 'the international community' may create a pretext for removing from the state its obligation to be accountable to its citizens, as well as to refugees.

Harrell-Bond (1986) notes that

> ... to improve respect for refugees' rights can help to improve the human rights situation for the population as a whole. Any investment in promoting the rights of refugees is an investment in a more just society.

In Turkana, the mere presence of refugees has served to improve the basic human rights of the Turkana, by giving them access to better health care and education, employment and new trading opportunities. Less than a decade ago, there was no major settlement in the area. Now Kakuma town consists of a main street lined with small shops and stalls, selling a variety of goods including fruits, vegetables, *mitumba*[243] and spare parts. The Turkana sell firewood, meat and vegetables to the refugees. Some of the better off refugees, particularly in the Ethiopian and Somali communities employ Turkana as domestic servants. Some Turkana are employed by humanitarian agencies in various capacities, including as cleaning staff, cooks and security personnel.

The shifting tide of expectations from the state and humanitarian actors both on the part of refugees and citizens may, however, result in the reduction of the role of the state rather than in increased accountability and a more just society. As one interviewee said 'those from Kenya (government) do not help us, maybe those of UNHCR will help us'.[244] As popular understanding of cause and responsibility is redirected from the state to international actors, the prominent presence of the latter, rather than extending and institutionalising a set of standardised, codified linkages

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[243] *Mitumba* are second hand/used clothes that are sold at market stalls all over the country. Imported in large bales from overseas distributors, clothes sell at a fraction of the cost that they would in stores and are highly popular with all consumers.
[244] Interview with Napokol, Kakuma, 10 January 2003. Note that the Turkana often do not perceive themselves as 'belonging to Kenya' Thus, for example, when they travel anywhere outside the borders of Turkana land, they state that they are 'going to Kenya'.

between the state and those seeking its protection, may result in a situation in which the state is entirely excluded from citizens' and refugees' daily lives.

What is politically significant often lies beyond the sphere of formal politics, and international and transnational actors may be as much a part of a regime of governmental practice as legislature, police or courts (Landau 2003: 23). As we have seen in the context of Turkana, this means that the presence of refugees and international actors is likely to structure government policies for refugee-affected areas and to restructure the host population's relationship with, and responses to, refugees and the state. But although the presence of international actors can be beneficial to marginalized communities, particularly when it comes to increasing their awareness of their rights, these actors can sometimes usurp the power of the state, making it less accountable to its citizens.

Finally, it is important to note that the use of power to dominate through exclusion (the government 'excluding' the Turkana) can simply be replaced by its use to dominate through inclusion (international agencies 'including' the Turkana) (White 1996). As the Turkana increasingly turn to international organisations like the UNHCR to protect their welfare, a restructuring of power relations occurs. Although the Turkana may perhaps be less marginalized, by virtue of their proximity to, and ability to access, more resources, they are also increasingly drawn into a 'relationship of reliance' with the UNHCR, which in Kakuma exhibits all of the characteristics of a *de facto* state, with none of the corresponding checks and balances on its power.

CHAPTER SEVEN

ENGA KABLA YA KUJENGA[245]

REFUGEES, THE STATE AND HUMANITARIAN AID AGENCIES: THE DYNAMICS OF POLITICS, POWER AND PROTECTION

The presence of large refugee populations on the African continent has, over time, become an important political issue both domestically and internationally (Loescher/Milner 2005: 10). Domestically, the highly politicised nature of refugee movements in Africa substantially increases the security risk that refugees present to the host country and significantly impacts the way the state reacts to refugees. The inability of the African state to insulate itself effectively from the effects of conflict, as well as the regional dynamics of many conflicts in Africa, also has a profound impact on the domestic formulation of refugee policy and on the protection of refugees. The latent instability of the African state and its peripheral place in the international system makes it especially vulnerable to external shocks, such as refugee movements.

At an international level, the refugee has been further politicised as a result of changes in the policies of, and situations in, countries of asylum and resettlement.

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[245] Literal translation: Survey (make a foundation) before you build. Meaning: You cannot build a house without surveying the land and making sure the house has a firm foundation to stand on. Similarly, you cannot hope to solve a problem without understanding the cause(s) of the problem and the context within which your solution would have to be applied

Many Western countries now claim that their bureaucracies can no longer support the institution of asylum in its traditional form (Ghosh 2000; Weiner 1995, 1997). They maintain that the system has been 'abused' by asylum seekers who have no legal right to protection and, in response, they have sought to limit migration by enforcing strict 'closed door' policies. As a result, many African states now realise that options for the resettlement of refugees from their continent to the West are few and far between.

As the right to asylum becomes ever more compromised in the West, the vast majority of refugees remain in the South and the largest migrations are south to south. Of the 26 states hosting at least one refugee per 100 citizens, 21 are among the worlds poorest. And while Western states spend approximately $12 billion every year to process the refugee claims of the 15 per cent of the world's refugee population 'flooding' their countries, they contribute only 1.2 billion to meet the needs of the other 85 per cent of the world's refugees who remain in the comparatively poor states of the South, in what appears to be a rather miscalculated cost-benefit analysis (Hathaway 1999: 11).

In the meantime, states in the South struggle to meet the needs of their growing refugee populations. More and more, they are looking towards the closed-door policies of the North to provide a blueprint for future action. Kenya is no exception to this trend. However, the legitimacy of the West's move towards restrictionism and, consequently, the value of incorporating a similar approach to policy-making in the Kenyan context is questionable.

It has been argued that many states' restrictionist policies are not rooted in reality but stem from calculated self-interest on the part of politicians, doing little more than contribute to xenophobia and racism (Chimni 1998, 2000). The observation that there is a significant disconnect between the reality on the ground and the rhetoric of politicians may serve to explain why, for example, the popular media continue to focus on the 'threat' and 'crisis' of migration and to report 'floods' and 'invasions' of immigrants[246] at the same time as UNHCR's Population and Data Unit notes that between January and June 2004, the world's 30 most industrialised countries received a total of 180,710 asylum applications, a decrease of 22 per cent when compared to the same period in 2003, when 230,610 applications were submitted.

In an effort to counter this contradiction in the figures, Western governments insist that the decrease in asylum applications provides evidence that increasingly restrictive measures have contributed to curbing migration flows and are, therefore, an undeniable necessity. In response to this claim, it should be noted that although the number of asylum seekers has indeed declined, the number of illegal immigrants has increased (Ruggiero 1998). Control measures, it seems, are not having the desired effect. Instead, it appears that by restricting legal channels of migration for those who may be genuine candidates for asylum, countless possibilities are being opened up for those who profit from the trafficking and smuggling of humans.

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[246] Some examples of newspaper headlines in the United Kingdom pertaining to immigration include 'Asylum war criminals on our streets', Daily Express, May 25, 2003; 'Asylum: Tidal Wave of Crime', Daily Express, May 19 2003; 'We Can't Cope With Huge Gipsy Invasion', Daily Express, January 19, 2004; 'Handout UK: How many refugees are living in YOUR town?' News of the World, January 21, 2001.

It is therefore important to recognize that although inspired by Western closed-door policies, the restrictionist leanings of Kenyan refugee policy differ from their Western antecedents in several ways. Whereas refugee policy is increasingly a matter of 'low politics' in the West (Gibney 2001) rooted in hostile public attitudes and the dynamics of electoral politics, policy-making in the Kenyan context is still at the level of 'high politics', with the decision-making process constrained by the state and state actors.

Public opinion has a marginal influence on policy making because, as has previously been noted (Chapter 3), in Kenya the general populace participates in politics less for the purposes of contributing to the decision-making process than for the purposes of ensuring that one's community is more effectively linked to the centre, thereby gaining access to resources. Consequently, policymaking occurs at the state level and is rarely as influenced by public opinion as it is in the West.

Some would question this distinction, given the numerous recent references to the increasingly xenophobic tendencies of the Kenyan population (Campbell 2004; Horst 2003; Hyndman 2000). I would argue that, upon closer examination, it is evident that these purported 'xenophobic attitudes' are in fact a myth, propagated by a government that occasionally chooses to use refugees as political pawns.[247] In reality, the majority of the Kenyan public is seldom aware of, or makes reference to, the presence of refugee populations who are truly 'out of sight and out of mind'.

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[247] For example, media reports in Kenya rarely make direct reference to the negative perceptions of refugees amongst the general populace. Most negative references to refugees are direct quotes from government officials and rarely a reflection of popular opinion. Thus, for instance, Moi is quoted saying Somali refugees have abused their welcome by bringing illegal firearms into the country and were to be blamed for the current state of insecurity (July 29, 2001); Somali refugees are contributing to crime and insecurity in Northeastern Kenya (May 05 1999); Moi blames refugees in Kenya for crime; calls for their relocation (November 9, 1998); After arbitrary arrests of refugees Police Commissioner King'ori Mwangi says Kenya is for Kenyans (December 14, 2002) and so on.

The most commonly cited example of outright hostility towards a refugee population makes reference to the allegedly unsympathetic attitude of many Kenyans towards the Somali refugee population. However, it should be noted that although xenophobic behaviour does admittedly exist, it is directed to the Somali population as a whole rather than, as is often claimed, being specifically directed towards refugees. This observation in no way seeks to excuse the intolerance but, for the purposes of understanding local attitudes towards refugees, it is important to acknowledge that there are no distinctions drawn between indigenous Somalis and Somali refugees.

The antagonism is historical and has its roots in past attempts by the Somali population to distinguish themselves from the 'native' black African population during the colonial period (El-Safi 1981).[248] To this day, a large majority of the Somali population in Kenya continues to exhibit racist attitudes towards the indigenous population, depicting them as 'inferior', black' and 'slaves', exacerbating tensions between the two groups. The Somali example, therefore, does not provide conclusive evidence that refugees are indeed becoming a subject of 'low politics' in the Kenyan state or that the roots of restrictionism lie in an increasingly xenophobic population.

In reality, rather than being the objects of discrimination, most refugees outside the camps, especially those of Ugandan, Ethiopian and Central African origin, are highly integrated into the community, contribute significantly to the informal economy and rarely enter into conflict with the indigenous population. Needless to say, there is

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[248] The founder of their clan was supposed to have been the cousin of the Prophet Muhammad; this claim was adhered to in order to gain an Asiatic status, which would put them on equal terms with the Indians and Arabs in the colony. Although the British administration in Kenya refused to acknowledge this claim, because of the Somalis role in the administration as soldiers and policemen, Somalis were eventually given the right to call themselves non-natives in General Clause Ordinance Cap. 2 Revised Laws of Kenya which read, 'Native shall mean a native of Africa not of European or Asiatic Origin but shall not include a Somali or Swahili'

more potential for conflict in a camp setting but even here, as has been mentioned, the Turkana recognise the 'value' of refugees. Despite the animosity often expressed, the two groups are often inter-dependent. The refugees exchange food rations for firewood, meat, vegetables, sugar and milk from the Turkana. Some Turkana also work as domestic servants in the homes of refugees. And Turkana and refugees intermingle at schools, adult education classes, health centres and even churches. These are reassuring observations, insofar as they indicate that the Kenyan populace is still receptive to the presence of refugees in the country and that, in the long-term, local integration may yet prove a possible alternative to encampment.

As we have seen, it is important to understand that although the evolution of refugee policy in the Kenyan state in many ways follows in the footsteps of its Western counterparts, it is particularly defined by the specific context within which it is has developed. For example, it is clear that restrictionism in the Kenyan context has not developed in the same way as it has in the West. In the following sections, I will attempt to provide a clearer understanding of the interplay between domestic and international actors and their impact on the protection of refugees. To this end, I will outline the relationship between refugees and the Kenyan state and highlight the aims of Kenyan refugee policy. I will also examine the relationship that exists between refugees and UNHCR drawing attention to failures in protection and recent efforts by the agency to improve its assistance programmes.

Refugees and the State in Kenya

As we have seen in the course of this thesis, refugee policy in Kenya has consistently been formulated pragmatically and, as such, retains a significant element of

continuity. Although the relief system of the pre-1991 period has been the subject of growing nostalgia (Crisp 2000; Verdirame 1999; Rutinwa 1999), close examination indicates that the Kenyan state has always balanced practical considerations with legal obligations when making policy decisions, and that even during the so-called 'open door' era certain restrictive attitudes towards refugees did exist.

Thus, for example, although camps are cited as a recent development and given as an example of the increasingly restrictionist stance of the state after 1991, encampment was feature of Kenyan colonial state responses to refugee influxes from Ethiopia as far back as the 1930s. Meanwhile, in the 1980s, often referred to as the period during which the Kenyan state maintained its most liberal response to refugee movements, *refoulement* continued to be deemed acceptable insofar as it allowed the state to divest itself of 'undesirable' elements. More recently, although the state can be justly criticised for its emphasis on the confinement of the majority of the refugee population in large camps in remote areas, one cannot overlook the fact that local integration has been a possibility (albeit informally) for large numbers of urban refugees who continue to integrate fully into the host community.

The concurrent existence of both positive and negative attitudes towards the refugee population points to the need to avoid painting a 'before' and 'after' picture of refugee policy in Kenya. It is important to understand that while Kenya's refugee policy may be framed in security terms, in reality, it is rooted in a practical quest for flexibility. There is no black and white, but rather a murky, grey, 'in-between' where various conflicting policy directives are possible as long as they meet the needs of state elites and are seen to be politically expedient.

The case of the Badassa refugees illustrates the fluid nature of the Kenyan state's attitude towards refugees. In the mid 1990s, following the cessation of their stay, which affected all Ethiopian refugees who had fled their country prior to 1991, a small group of about 60 Ethiopian refugees who had settled in Badassa in Northern Kenya were given two options: return to Ethiopia or seek authorisation from the government to be allowed to stay in the country in accordance with the country's immigration law. The two options they were given are particularly interesting, in that the latter quite clearly deviates from the avowed policy of encampment that was, by all accounts, in place at the time.

The Badassa refugees had settled in the country as farmers in the late 1960s and comprised 42 families living in Badassa Refugee Settlement Scheme in Marsabit district. The group consisted of 68 former soldiers of Haile Selassie who decided to seek asylum in Kenya when Selassie's government was overthrown. According to one member of the group, Endale Tadesse, 'We were asked to decide where we wanted to live and since we were farmers in our country, we chose to settle in Marsabit, where there was ideal land for farming.' The refugees were eventually settled at the Badassa Refugee Resettlement Scheme, located within Marsabit Forest and Marsabit National Park - 13 kilometres southeast of Marsabit Town. The area and its surroundings is the only part in northern Kenya where the land is arable. The resettlement programme was facilitated jointly by the government and the UNHCR. The Catholic Relief Services (CRS) acted as the lead agency.[249] In all respects, the group was self-settled and integrated into the local community, a clear deviation

[249] All Africa Global Media (2005) *Ethiopian Refugees Worry over Expulsion* available on http://www.usaforunhcr.org/archives.cfm?ID=3556&cat=Archives

from the official policy at the time, which required all refugees to be settled in designated camps.

Following the government's declaration, the refugees decided to follow the second option, that is, to stay in the country. They immediately wrote to the then Ministry of Home Affairs, Heritage and Sports, which was under the Office of the Vice President, for authority. In response, the Ministry on May 18, 2000 wrote a letter to the refugees which stated:

> The government is working on this issue and you will soon be informed of the modalities to follow in applying. Meanwhile, let your members continue with their daily life and living peacefully with the locals until you are informed of the next course of action. [250]

Following this, the refugees say, the government never sent any further communication on the matter. Their presence was all but forgotten until 2005, when the Kenyan government accused 11 refugees of being members of the Oromo Liberation Front (OLF) and *being unlawfully in the country.* They were charged in court with the offence after police raided their homes at the scheme last month. Police first confiscated all their identification documents before taking them to court.

The refugees did not deny their Ethiopian nationality, but did deny any connections to the OLF. According to Taddesse, 'We are from the Amharic speaking groups, while the OLF rebels are from the Oromo speaking groups. The two are quite different'. They were also troubled by the prospect of being returned to Ethiopia, a

[250] ibid.

country many have no connection with, having spent most of their lives in Kenya. Getacho Bogala says 'I left Ethiopia in 1976 with my father. I was only a 16-year-old. We were coming to seek political asylum after the government of Haile Selassie, which my father served as a military officer, was overthrown.' Bogala says he has never gone back to his country of origin. As further proof of integration, many of the refugees have married Kenyans. Some have their children working with the government. Others are studying in Kenyan schools - both primary and secondary and yet others are in local colleges and universities.

The Kenyan state publicised its intentions to repatriate the 11 accused. In response, many local leaders protested. In a letter to the Immigration Minister, the Marsabit Catholic diocese says, 'It is quite questionable to accuse these people of being unlawfully in the country when the Kenya government is fully aware of their presence for the past three decades and the same government is the one that settled them in Badassa together with the UNHCR'.

The Badassa case quite clearly illustrates the changing nature of refugee policy in Kenya. Refugees in Badassa were allowed to self-settle, inter-marry, work and educate their children. They were given identity cards, which entitled them to freedom of movement. At the same time, refugees in camps around the country were confined to the camp compound, dependent on UN rations, with restricted movement and no access to proper identification. However, in as much as the Badassa refugees were allowed to integrate, they were never accorded formal status, which allowed the government to revoke their status as and when it desired.

The multi-faceted, fluid nature of the policy making process *must* therefore be taken into account when formulating any potential response to protracted refugee situations. A more perceptive understanding of the politics of refugee policy construction would go some way towards explaining the government's reluctance to incorporate international refugee law into domestic legislation in the form of a Refugee Bill, which was proposed well over a decade ago. At first glance, it is difficult to understand why the Kenyan government has delayed the passing of the Bill for so long. After all, the Bill not only improves the situation of refugees but, significantly, provides an increased role for the state particularly with regard to status determination. It also improves the rights of refugees by entrenching them in the law, which is an important step in making their experience in protracted camp situations tolerable.

The proposed Refugee Bill includes provisions for protection from *non-refoulement*, for documentation, for exemptions from punishment from illegal entry and for general state protection. In addition, the bill would give the government responsibility for registering refugees in and out of camps, freeing HCR of this compromising task. Furthermore, it would give them access to land to cultivate food and would allow them to participate in the economy legally, though in a limited capacity (Turton 2005: 9).

However, it is also clear that a Refugee Bill might severely constrain the ability of the state to renegotiate its position on refugees as and when it chooses. Without a doubt, it would make the state considerably more accountable to the refugee community in theory. Having said this, even if the Bill were to finally be incorporated, it remains to be seen whether refugee rights will ever be worth more than the paper they are

written on, given the Kenyan government's somewhat dismal record of recognising and protecting the rights of its own population, which are well laid out in the Kenyan constitution but noticeably less well upheld on a day to day basis.

The government has failed to protect the rights of citizens on several fronts, most notably with respect to the provision of security. And as this thesis has attempted to show, the environment within which refugee protection takes place greatly influences the manner in which protection evolves. UNHCR cannot reasonably be expected to provide effective protection or security for refugees when state insecurity exists and where the justice system is ineffective and non-functioning. In a direct reflection of the lack of security countrywide, violence in the camps is common and justice often denied.

When a Kenyan run mobile court system was introduced in Dadaab, the UNHCR protection officer noted that 'the high insecurity in Dadaab region and its environs remains a stumbling block to the functioning of the court' (Crisp 1999: 23). Although it is tempting to accord blame to UNHCR, which functions almost like a state in the environment of the camp, the provision of security is the one area for which the Kenyan state is exclusively responsible. It should be recognised that not only do conditions of insecurity directly compromise the protection of refugees, but they also have a significant impact on the quality of programming on the part of humanitarian agencies. For instance, in both Kakuma and Dadaab, agency compounds are located at the periphery of the camp to give staff better access to safety, isolating the staff from the very population whose interests they are there to serve.

In further attempting to understand the dynamics of refugee protection in the Kenyan state, it is also important to have a clear and concise awareness of how the relationship between politics, power and policy-making influences the creation of the protection regime and to locate this interplay of factors within the particular socio-political environment within which they occur. In the Kenyan context, this awareness helps us begin to understand why the state chooses to establish and maintain camps well past the emergency phase of the refugee influx.

It has been argued that the Kenyan state seeks to contain refugees in camps in the borderlands in order to reduce the potential insecurity to the state and its citizens. Indeed the Kenyan government itself often frames its approach to refugees in strict security terms. In its Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, the government states that it will 'increase surveillance and strengthen immigration points at the border entry points to curb the large influx of refugees and illegal firearms.' Politicians also adopt an anti-refugee stance, evidenced in official documents such as the Kenyan government's Interim Poverty Reduction Strategy 2000-2003, which frames refugee issues in the context of their being a threat to security, specifically by bringing small arms into Kenya (Turton 2005: 10).

Black (1998: 6) observes that patterns of refugee settlement are most commonly determined by the perceived political and security implications of settling refugees in particular areas. He argues that no government would be happy with the dispersed settlement of refugees in a border area if it makes that area vulnerable to attack by the parties to the conflict from which refugees have fled in the first place.

Consequently, governments prefer to control the movement and settlement of the refugee population that would otherwise self settle by setting up camps.

Although the Kenyan government might argue that the camps were set up to pre-empt any possible breaches of security in exposed borderlands, this argument is unconvincing given that the government did not have to worry about the self-settlement of refugees in the vicinity of the border. Given the choice, most refugees would not have stayed in this region, not only because they fear for their own safety[251] being in such close proximity to their countries of origin, but also because the harsh climactic conditions in the region greatly impede self-sustenance. The pattern of refugee settlement in this case was solely determined by the Kenyan state. This then raises the question: why did the Kenyan government choose to settle refugees in the remote camps of Kakuma and Dadaab?

Most likely, the primary consideration was that the camps would ensure control over an otherwise highly mobile population that might, simply by virtue of its presence, challenge the domestic balance of power. In addition, the camps are seen as the ideal way to maintain the high international profile necessary to attract resources. While on the one hand it is important for the state to maintain the high international profile associated with the 'emergency camp', it is important to understand that the remote setting of camps like Kakuma and Dadaab serves another purpose. Somewhat paradoxically, their isolated location ensures that while they remain on the global radar, domestically, the camps maintain a low profile, rendering refugees almost

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[251] As previously mentioned, refugees live in a high state of insecurity (see Chapter Five, particularly section on security, 'Refugees are Being Tortured, Persecuted, Abducted, Killed). During interviews, this state of insecurity was often linked to the proximity of the camp to the border with countries of origin. Many refugees noted that the location of the camp significantly increased their vulnerability to forced recruitment, kidnapping, abduction and so on.

invisible to the local population and containing any potential impact they might have on domestic politics.

In Kakuma, unfortunately, the presence of international aid agencies is often taken, by the government, to mean that it is absolved of responsibility in the region. According to an official with the relief group Action Aid International, 'The biggest assumption is that there is a large UN presence in the area and therefore, the government does not need to concentrate on these areas. It is a gross assumption'.[252] The resulting absence of the state, as well as the weakening of public institutions that would otherwise be occupied with the protection of refugees, has meant that refugees are often left without an effective interlocutor to mediate power relations between humanitarian organisations, like UNHCR and refugees. The unfortunate result of this state of affairs is that there are no checks and balances present to harness the power of humanitarian agencies in the camp environment.

The encampment policy should also be seen as part and parcel of the effort to resist the integration of refugees. This explains why the Kenyan state continues to portray the camp as a temporary solution, disregarding the fact that camps like Kakuma have been in existence for over a decade. Unfortunately, the assumption that refugees are only a 'temporary aberrance' or 'in transit' means that Kenyan camps continue to be managed in emergency mode, with little provision for building local capacities or developing refugees self-reliance (Loescher 2001; Zetter 1995). This contributes to the perception of a dependent refugee population, encouraging the portrayal of refugees as needy victims. The image of the needy refugee is further promoted by the state, and exploited for the purposes of attracting humanitarian

[252] Sudan Tribune/Agence France Press, 'Drought stokes fears of tribal conflict in northwest Kenya', 30 January 2006

assistance. Needless to say, recognising refugee capacities and their right to livelihood is often entrenched in the impasses of local/regional politics.

Ignoring refugees may be construed as a passive act, yet it is very often active, part of a strategy of deterrence by a state that aims not to gain a reputation as a county that provides incentives for migration. In divesting itself of responsibility for refugees and encouraging UNHCR to take full control of the refugee programmes, from status determination through to assistance and protection, the Kenyan state, is in effect, distancing itself from any issues of accountability that may arise from more direct interaction with the refugee population. However, keeping in mind the flexible nature of refugee policy in Kenya, this is not to say that the state does not, under any circumstances, interact with refugees. On several occasions, the state has taken active measures to deter migrants, including numerous police raids, removals, involuntary repatriations, relocations and resistance of integration into Kenyan society (Verdirame 1999).

Perhaps one of the most active deterrents to the refugee presence in the Kenyan state has been the police and the judiciary. There has been a lot of inconsistency in the conduct and practice of the police and the courts in Kenya when dealing with refugees. When any refugee is arrested, either because he is found outside the camp or without any permit to stay out of the camp, the police and immigration officials tend to treat the refugee as they would any other alien despite his or her status. At such times, the refugee is either handed over to the UNHCR or sent back to the refugee camp. Alternatively, he/she may be charged before a criminal court for the offence of being in the country illegally.

Where the refugee pleads guilty to such a charge, as is usually the case, the court has most often ordered that the refugee be taken back to the refugee camp. In recent times, however, the practice has been to convict the accused and sentence him or her to serve some months in prison in addition to, or as an alternative to, the payment of a prescribed fine. In some instances, after the sentence is served or the fine is paid, the accused is ordered to be repatriated back to his or her home country, in total violation of the principle of *non-refoulement*. The police usually carry out this repatriation order, escorting the convicted refugee up to the No-mans Land in the border and ordering the person to go over to his or her home country.[253] Once again we see that the state, and agents of the state, do not have a single, consistent approach to refugee protection in Kenya.

More recently, however, there are signs that the Kenyan state is slowly beginning to move away from its *laissez-faire* approach and to take on a more active role in refugee protection. On 14 February 2006, the Kenyan government began registering migrants in Mombasa, Kisumu and Nakuru, as well as in the North Eastern Province bordering Ethiopia and Somalia. The official objective of the registration process is to determine the number of migrants living in urban centres and to regularise their immigration status.

Launching the exercise in Nairobi, Immigration Minister Gideon Konchellah said the census would enable the government to improve the welfare of refugees and to

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[253] The Constitution of Kenya Review Commission/ Ahmed Issack Hassan (2005) Refugees in Kenya and the Constitutional Review Process: The Way Forward available on http://www.kenyaconstitution.org/docs/07d048.htm

improve security. In the past the government has conveniently blamed the rising wave of crime on the presence of irregular migrants, bringing in easily obtainable weapons from neighbouring countries.

Ms Norah Ochieng, a Regional Advocacy Officer with JRS Eastern Africa notes that previously, 'Many refugees with valid UNHCR papers have been arrested and detained. With this registration process, we hope that documents issued by the Kenyan government will be more familiar to the authorities than the UNHCR papers have been and that the number of refugees arrested will decrease'. According to Ms. Ochieng, there was also hope that with legitimate documents the refugees would be in a position to register their businesses and work legally in the country.

Despite recent moves on the part of the government to incorporate a more liberal approach to refugees in Kenya, there is very little chance that the Government of Kenya would accept a change from camps to self-settlement. The sheer size of the refugee population that would require dispersal is a problem. With an unemployment rate of approximately 40 per cent,[254] the government is more concerned with decreasing unemployment among its own citizens than ensuring sustainable livelihoods for the refugee population. There is too much at stake including security for its own people, valuable land, scarce resources and political stability. Although as we have seen, refugee policy in the country is highly flexible and adapts to fit the circumstances, the policy of encampment as a whole is here to

[254] CIA World Fact Book 2001 available on http://www.faqs.org/dics/factbook/geos/ke.html

stay. Questioning should not, therefore, be around whether camps should exist but around how to improve them. This is not to imply that camps are a non-questionable assumption, but simply to recognise the reality on the ground.

Refugees and UNHCR

The veil of humanitarianism often camouflages the broader political and economic interests of the humanitarian community. Consequently, attempts to critically understand refugee protection regimes and the structure of humanitarian assistance programmes cannot and must not be guided by an apolitical framework.

Humanitarian assistance has for a long time been defined and defended as a non-political activity.[255] However, as is well known, humanitarian actors are not necessarily guided by philanthropy and altruism. Individual organisations often have vested interests and specific agendas, including donor approval of programmes, institutional control and adherence to mandates.

In the case of UNHCR, the fact that refugees are a matter of high politics in the international arena has considerably reduced the autonomy of the organisation. Protection and assistance regimes are largely influenced by the interests of largely Western donor nations, which may not necessarily coincide with humanitarian needs (Telford 2001: 44). In response to the suffering of the Kurds and the Kosovars, for instance, the political and military stakes for Western governments were seen as so

[255] UNHCR's mandate specifies that the work of the organization 'shall be of an entirely non-political nature...humanitarian and social and shall relate, as a rule, to groups and categories of refugees (UNHCR Statute, para 2). Its Mission Statement states that it is mandated by the United Nations 'to lead and co-ordinate international action for the worldwide protection of refugees and the resolution of refugee problems (UNHCR Statute, para. 1). Similarly, its Statute refers to the UNHCR assuming 'the function of providing international protection' (UNHCR Statute para. 1).

high that a swift and overwhelming response was called for. Often, however, complex emergencies have a tendency to be forgotten when Western states have no vested interest in the affected regions, as is often the case in Africa.

While the major donor countries have always exercised undue influence over UNHCR, the latter was never seriously constrained in its operations during the Cold War period because most states had an interest in upholding the core principles of international refugee law. Today, UNHCR's financial dependence is being used to prevent it from protesting too much against the erosion of basic protection principles (like the growth of policies of containment and legitimisation of the practice of *refoulement*) or taking the initiative to adopt creative measures to implement its mandate (Chimni 2000: 15).

Currently, UNHCR's main funding problem is not primarily related to donor influence on a political level, but stems from the severe shortfall of funding it faces for all its programmes. This year, UNHCR got $800 million in pledges but has a budget of $1.4 billion. Previously, this has resulted in dramatic budget cuts on the part of the organisation, which have inevitably had a negative effect on assistance programmes. In 2005, UNHCR threatened to suspend the repatriation of hundreds of thousands of Burundi refugees from Tanzania due to lack of funds.[256] In Benin, one month after an appeal for urgent humanitarian assistance, there had been no response from donor governments.[257]

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[256] Funding Crisis Threatens Return Hopes of Thousands of Burundian Refugees, October 28, 2005, UNHCR: Geneva available on http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4362556c4

[257] *Significant Funding Shortfall as Refugees Continue to Arrive in Benin*, Press Release, AFR/1192 IHA/1054, 14/06/2005 available on http://www.un.org/News/Press/docs/2005/afr1192.doc.htm

Lately, there are signs that UNHCR is beginning to look for more innovative ways to source donor funds. Recently, executives from the Council of Business Leaders for UNHCR, a fundraising body launched at the World Economic Forum in January 2005, visited Dadaab Camp in North Eastern Kenya. The group included managers from Microsoft, Merck, PricewaterhouseCoopers and Nike. The latter has already donated $430,000 for a pilot project supporting education for girls in Dadaab (Reuters 2006). UNHCR, it seems, is seeking to broaden its donor base and seeking private sector support to meet increasing needs.

UNHCR's mandate to ensure the protection of refugees to some extent involves pressuring governments into action and co-operation. However, the fact that UNHCR receives funding from states and needs their permission to enter and work in sovereign state territory compromises the ability of the organisation to put any effective pressure on states to improve the status of refugees. Indeed, the organisation has often been forced to take on state's agendas of deterrence, repatriation and sometimes containment. Loescher (2001: 28) notes that UNHCR has regularly co-operated in the containment of the internally displaced within countries of origin and the enforcement of repatriation programmes that are often less than voluntary in order to demonstrate its relevance to states.

In Tanzania, for example, President Mkapa called on the international community to remove Burundian refugees from Tanzania, saying he was fed up of being accused of supporting Burundian rebels. In an effort to preserve relations with the Tanzanian state, UNHCR responded to his call for refugees to be protected in safe zones in their own country in lieu of granting asylum. Meanwhile, in Kenya, in response to President Moi's announcement in 1992 that refugees would be returned to Somalia,

HCR set up a Cross Border Operation on the Kenya-Somalia border (Hyndman and Nylund 1998). This was essentially a preventative measure meant to avert border crossings and encourage repatriation.

More recently, the integrity of UNHCR in Kenya has been put further into question given its failure to criticise the government for the violations of the human rights of refugees. These violations are primarily security and protection-related and include police harassment, arbitrary arrest and detention, intimidation and sexual abuse (Bartolomei et al 2003; Refugee Consortium of Kenya 2003). Yet, in spite of widespread acknowledgement of the failure of the Kenyan state to provide adequate security, not least by refugees themselves as has been mentioned several times in the course of this thesis (see particularly Chapter Four on the rights of refugees), UNHCR refuses to be drawn into a debate about possible alternatives to security provision in the camp.

This may be due to the fact that UNHCR itself has recently found itself being seriously questioned about its ability to ensure security in the field. As refugee crises become more intractable, the scope and effectiveness of the Office, particularly with regard to ensuring the integrity and security of refugee populations, have clearly been compromised. The complexities of many new humanitarian emergencies diminish the UNHCR's core role in affording protection [258]to the persecuted and severely impinge upon its ability to remain apolitical. This inconsistency was particularly evident in the case of Rwanda and the Great Lakes. UNHCR's continued provision of services in refugee camps harbouring militants and genocidaires

[258] Like many constitutional terms adopted in international conventions, it should be noted that the meaning of the term 'protection' was never clearly defined. The scope of the term is, therefore, contested. Consequently, some might argue that humanitarian assistance constitutes the very foundations of effective protection.

contributed at least partly to the heightened risks faced by refugees as the camps were used not only for recruitment and training of militants, but also as bases for cross-border raids and military attacks (Goodwin-Gill 1999: 299). Although the situation in Kakuma is not as dire, there have been allegations that many SPLA soldiers periodically come down to the camp for R'n'R (rest and relaxation) and that the SPLA continues to recruit in the camp.[259]

With specific reference to protection in the Kenyan state, it should be noted that UNHCR is particularly compromised, having become both the determiner of refugee status and the protector of it, compromising both its autonomy and its protective role. Understanding the politics of protection is therefore crucial. To ignore the political facets of humanitarianism is to obscure the critical issue of where and with whom power rests, missing a critical point in the process of empowering people (Kathina 2002: 160). This point is particularly relevant to the Kenyan context, where non-state actors challenge the primacy of the state, resulting in what has been termed an 'extra-territorial' sphere. Any attempt to trace the evolution of refugee protection, therefore, must incorporate an understanding of who holds the power within this sphere.

UNHCR primarily expresses its power through the creation of a 'refugee narrative'. Refugees are portrayed as recipients of charity and welfare, or as 'victims' or 'problems'. On the numerous occasions I was informed by agency staff that refugees were 'liars', 'greedy', that they 'have no morals' and that '(I) should never believe a word they say'.[260] The belief in dependency and its associated notion of the 'pull' of

[259] Interview with Ngor, Kakuma Refugee Camp, 21 January 2003
[260] Interview with Anonymous, Kakuma Refugee Camp, 15 February 2003; Interview with Anonymous, Kakuma Refugee Camp, 02 November 2002; Interview with Anonymous B, Kakuma Refugee Camp, 05 November 2002

relief is highly debilitating, especially where the agency calculates the volume of relief on the basis of 'pull avoidance', rather than actual need (Harrell-Bond 1999b: 148).

In Kakuma, the notion of pull avoidance was particularly in evidence in the attitudes of relief agencies towards schools, which were seen by many as a primary pull factor in the camp. I was informed that on several occasions, UNHCR personnel had discussed the possibility of closing down secondary schools in Kakuma to 'encourage' those refugees who were coming to Kakuma to 'look for an education' to return to their countries of origin.[261] This view was espoused in spite of the fact that there were only three secondary schools in the camp that did not even begin to cater for the number of students graduating from the camp's 24 primary schools, let alone cater for individuals coming from outside the camp.

Harrell-Bond (1986) notes that the refugee narrative more often that not assigns refugees a supplicatory role, and is so powerful that refugees eventually take on the assigned attitude of dependency and develop a 'dependency syndrome'. To some extent this is true, but as I have previously noted, refugees in Kakuma did, on occasion, adopt an attitude of dependency that was largely utilitarian but was in no way embedded in their identity.

The balance of power within the environment of the protracted camp has been altered as a result of the shift from protection to long-term international humanitarian aid. UNHCR has become largely aid focused and in so doing has

[261] Interview with Anonymous, Kakuma Refugee Camp, O6 November 2002; Interview with Anonymous, Kakuma Refugee Camp, 04 November 2002

created a distance between itself as the provider of aid and refugees as the recipients. In order to make the aid machine work, UNHCR has exchanged rights for control. The structure of control is facilitated by, and entrenched in, the bureaucracy that a large camp environment creates, evidence of which can be seen in the monitoring of mobility through the issuing of travel passes, head counts and so on. Although humanitarian discourse speaks of empowerment and self-reliance, the concepts are difficult to realise given the ideology of power and control continues that exists in the camp (Hyndman 2000).

Communication between UNHCR staff and refugees is also seriously hindered by the bureaucratic structure of the camp and the situation is further compounded by perennial staff shortages. In Kakuma for instance, for a long time there was only one UNHCR protection officer, which undoubtedly placed pressure on the organisation. In addition, the fact that Kakuma is a hardship post means that many people approach their jobs with the notion that they will do their time and then move on to a better post. This 'transit mentality' decreases incentives to make permanent changes to camp problems. Difficult and stressful working conditions in the camp lead to a high staff turnover, which affects the quality of programming as well as UNHCR's institutional memory. The lack of institutional memory further diminishes the possibility of finding and successfully implementing efficient solutions. The difficult working conditions in Kakuma also result in exhausted and cynical staff who, having become habituated to high levels of violence and insecurity, are unable to function in a positive and effective manner. The end result is a lack of action and much less innovation by UNHCR for the benefit of refugees.

Although staffing problems may serve to explain some organisational shortcomings, they in no way account for, or excuse, the severe restrictions placed on refugees trying to contact the agency charged with their protection. In Kakuma, for example, refugees were only given access to the UNHCR compound for three hours, one day a week, to voice any grievances to, or seek advice from, agency staff. Before being granted entry to the compound they had to obtain a 'gate pass', usually only possible through their community leaders or case workers. In order to obtain this pass, they had to 'prove' that their problem warranted entry into the compound and a meeting with agency staff - a long-winded, complicated process that, not surprisingly, left most refugees believing that UNHCR had no interest in them or their problems.

Many refugees opt to deal with implementing partners in the camp instead. Many of the other NGOs in Kakuma also faced similar staff constraints but, nevertheless, allowed access to their compounds from 9:00 to 17:00 hrs every day of the week. In the case of the latter, a gate pass was still required to facilitate entry into the compound, but this was easier to obtain and just the fact that there were extended consultation hours meant that refugees stood a higher chance of gaining entry into the compound.

The other alternative for refugees wishing to communicate with UNHCR staff was to meet them within the camp itself, but this often proved a frustrating experience as well. Many staff members of the implementing partner agencies walked around the camp while performing their duties, thus maintaining regular one-on-one contact with the refugee population. Most UNHCR staff, however, were driven around the camp in air-conditioned 4X4 vehicles, effectively insulated from the outside world.

One incident I witnessed, epitomising the poor quality of the relationship that currently exists between UNHCR and refugees, took place at Food Distribution Centre III. A group of about twenty refugees had been denied food rations for a variety of reasons, ranging from their names not appearing on the official computer printout used on the day of distribution to missing ration cards. Implementing partners were in charge of the food distribution process but were not empowered to deal with these complaints. UNHCR staff are required to be present during the food distribution process for the express purpose of dealing with any complaints.

On this particular occasion, the refugees waited for four hours in the sweltering heat before the UNHCR staff vehicle finally drove into the distribution centre. As the refugees hurriedly began to organise themselves into a queue, putting their documents together and preparing to state their case, the UNHCR vehicle drove once around the compound and made an immediate exit. UNHCR staff had made the requisite appearance and it was obvious that there would be no consultations taking place that day.

It is not only refugees who have a problem communicating with UNHCR. Contact between UNHCR and its implementing partners in Kakuma is also a serious problem that greatly impacts on the quality of programming. To facilitate communication between the two, UNHCR is required to hold monthly coordination meetings as well as weekly security briefings. Recently, the monthly coordination meetings have grown less and less frequent and the only remaining source of coordination occurs at an individual staff level to assure that the day-to-day activities can be completed. Other organizations in the camp do not assume responsibility for

initiating these meetings out of fear that they will be perceived as usurping UNHCR authority.

In general, many NGO staff in Kakuma complain that their ability to influence decisions related to the camp is limited. They note that the Head of the UNHCR Sub-Office is often inaccessible and that the Sub-Office most commonly communicates with them only when they have donors coming for shortstop visits for whom they need reports prepared.[262] It is unfortunate that NGOs have such limited decision making power in the camp. For the most part they have more contact with the refugee population than UNHCR and, as such, are perhaps best placed to make recommendations for programming improvements that would most closely coincide with the needs of refugees. This can clearly be seen in their attempt to create a more co-operative working relationship with the refugee population, through the implementation of a refugee counterpart programme,[263] which is one of the most significant steps taken towards refugee empowerment in Kakuma.

In general, UNHCR appears to be concerned with dependency as a problem but not with its responsibility for the legal and structural causes of it. Efforts to promote self-reliance are few and far between. Don Bosco offers some vocational courses including tailoring, carpentry, plumbing, mechanics and typing. There have been some attempts to translate vocational skills into income generating activities, but this has been difficult given the limited market. There is a micro-finance programme, which in 2002 financed 29 small businesses in Kakuma, a figure that represents

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[262] Interview with Anonymous, Kakuma Refugee Camp, 01 December 2002

[263] The refugee counterpart programme assigns positions to refugees which mirror positions within implementing partner structures, for instance, Education Officers in the LWF team will liaise with Education Officers from the refugee community. There are also counterparts for water provision, food distribution, health care and so on. Their role is to act as a liaison between implementing partners and refugees. They have unfettered access to the IP agency compound and are also well-placed to understand the dynamics of decision making within the camp.

under 3 per cent of the camp's population (UNHCR 2002: 174). There have also been some attempts at small-scale gardening, but given lack of access to land and poor rainfall, very few individuals have been able to successfully cultivate, and benefit from, kitchen gardens.

The organisation has not made a concerted effort to accord agency to refugees and to encourage them to make the best of their adverse conditions and mobilise around their rights. Like many other camps, Kakuma is essentially constructed using a top-down approach, giving little opportunity to refugees to be involved in the decision making process (Karadawi 1982). In order to facilitate their involvement in decision making, refugees must have a good understanding of what rights they are entitled to and have credible knowledge of the situation they are in. Unfortunately, in Kakuma, knowledge or information has often been withheld. Whether information has been withheld purposefully or unintentionally is up for debate, although there are some indications that in some instances it is the former rather than the latter.

Thus, for example, I was informed how on one occasion the UNHCR relocated a refugee from Kakuma to Dadaab, claiming that he had been inciting the refugee population. The individual in question had been holding informal meetings for refugees, where he had given brief lectures to them on the rights of refugees under refugee law. Rather than recognising the potential for refugee empowerment that stemmed from such a 'grassroots approach' to rights education (or perhaps because they recognised the immense potential), UNHCR chose to exile the refugee.[264]

[264] Interview with Gebre, 01 February 2003, Kakuma Refugee Camp

In response to allegations that it has not actively made efforts to transfer power to refugees, UNHCR would claim that it *has* recently begun to make concrete attempts to educate the refugee population in the camps on their rights. Although the organisation has begun information dissemination campaigns in the camps, these are mainly targeted at refugee community leaders, who are then expected to pass this information on to their respective communities (Turton 2005: 30). However, whether community leaders actually pass this information on to community members is questionable - their commitment to information dissemination has yet to be proven. In addition, it should also be noted that the legitimacy of community leaders and, consequently, any information they may dispense, is in itself contestable.

The importance of refugees understanding their rights, and of understanding refugees' perceptions of their rights, has repeatedly been emphasised in this thesis, particularly in the fieldwork component of this study. The importance of developing mechanisms through which refugees can provide their own definitions of loss, impoverishment and development and thus become respected stakeholders in the planning process cannot be overstated (Dwivedi 2002). Humanitarian assistance programmes should cater to the actual, rather than the assumed rights and needs, of refugees (Beyani 1995). They should also recognise the resources that refugees bring with them and try and incorporate them into programming.

In Kakuma, for instance, there were several trained doctors and medical personnel among the refugee population who were not allowed to work within the clinic or hospital because they did not have a license to practise in Kenya.[265] Both the clinic and hospital continued to be severely understaffed in spite of the fact that there were

[265] Interview with Mohammed S., 12 November 2002, Kakuma Refugee Camp

well-qualified individuals present in the camp ready and willing to offer their services, even if it meant working beneath their station. Instead, UNHCR ploughed resources into giving basic medical training to unskilled refugees. Refugees made similar complaints about the organisation's inability (or rather what they perceived as their conscious decision not) to utilise other skilled workers, including engineers, mechanics, plumbers and so on, preferring to employ indigenous staff.

More often than not, as we can see from the examples above, aid organisations like UNHCR consider refugees objects: objects to be helped, aided, developed, pitied and controlled. A 'narrative of dependency' is created, and as agencies fulfil this narrative by creating a domineering and 'parent-like' policy towards refugees, the narrative becomes reality. I contend that a 'narrative of agency' could shape an 'identity of agency' and, in the process, shape reality. If the policy maker, the implementer and the refugee see 'refugee' as an identity with agency and action, perhaps both policy and the refugees' reaction to situations will be different.

The importance of agency for refugees should not be underestimated. The experience of displacement is not just about the loss of place, and the pain and bereavement associated with this loss. Displacement is also about the struggle to *make a place in the world,* a place that makes action meaningful through the shared understandings of those who have been displaced (Turton 2004: 26). However, this struggle cannot be realised without agency. In order for refugees to take an active role in the delineation of space and in the 'creation' of a place to call their own, a refugee regime that challenges the power dynamics of the current relationship between the state, humanitarian actors and their beneficiaries is called for.

There is no denying that circumstantial factors can always block self-sustainability – but an ethos of agency is the key to the internalisation of an attitude of assimilation as well (Kibreab 1993). Signs of power and identity reclamation among the refugee population are already evident: in the form of often-illegal self-settlement that occurs in the larger cities of Kenya, the flow of remittances from outside the camp, the self-help system that exists among the Ethiopian community in Kakuma[266], the creation of vigilante groups to improve the security of refugees in the camp and so on. In an effort to influence decision making, refugees resort to strikes – during my time in the camp I witnessed one such protest outside the UNHCR gates where refugees were calling for increased access to the agency compound. Unfortunately, more often than not, these strikes are ineffectual given that UNHCR has significantly higher bargaining power than the refugees, which leaves the latter unable to successfully agitate for better respect for their rights.

UNHCR may not always be in a position to ensure the enjoyment of fundamental rights, but the organisation should, at the very least, acknowledge their violation when it occurs. In addition, the agency should be aware that in spite of its limited efforts to incorporate participatory methods in its assistance programmes, there is often an inherent conflict between the different approaches used in the delivery of relief and the delivery of community services. These approaches operate according to a different but equally legitimate logic. On the one hand, the delivery of relief necessitates a bureaucratic approach focusing on efficiency and logistics. It forms a central component of the ideology of control, which is part and parcel of most assistance programmes (Harrell-Bond et al. 1992: 206). The delivery of community

[266] For example, the wealthier members of the community who can afford to buy food continue to claim their food rations and then redistribute them at no cost to the poorer members of their community. This is a system that is not found amongst other communities, where there may also be portions of the group that are better off than others, but the former continue to claim and consume/barter these food rations. Interview with Abebe, 15 January 2003, Kakuma Refugee Camp.

services, on the other hand, requires an approach that necessitates fostering a relationship of trust between and within the refugee community and the aid agencies. It also requires an understanding of the political, social and economic contexts of the communities in order to ensure that power relations are equalised, rather than reinforced (Heeks 1999: 4; Cooke and Kothari 2001: 3). Each approach, however, also distributes power through different structures. Unfortunately, as we have seen, this leads to overall inconsistencies that are damaging to the success of the overall programme (Hyndman 2000: 144).

Conclusion: Political Humanitarianism

Protracted refugee situations are not inevitable but are rather the result of political action and inaction, both in the country of origin (the persecution and violence that led to flight) and in the country of asylum (the response to the refugee influx) (UNHCR 2004b: 1). This thesis has focused primarily on the experiences of refugees in protracted camp situations. It recognises the need for 'durable solutions', which are the cornerstone of refugee protection. It notes, however, that the Convention does not make the enjoyment of fundamental rights conditional upon finding such solutions. The Convention explicitly recognises nearly all the basic rights, immediately upon a refugee's flight. Consequently, we should not wait for durable solutions before working to ensure that refugees are able to exercise these rights (UNHCR 2004a: 2).

As the leading international voice on behalf of refugees, UNHCR has a responsibility to acknowledge, and take active steps towards narrowing, the gap between the standards set forth for the treatment of refugees and the situations they actually face

(UNHCR 2004a: 3). In addition, UNHCR needs to critically review its operations in emergency situations and/or protracted refugee crises. As Goodwin-Gill (1999: 248) succinctly states

> One would be a fool to imagine that you can ever "do" protection without being pragmatic, or that the practical application of principles never calls for compromise. The art of protection resides precisely in the ability to be flexible, while remaining close by, and faithful to, the core of fundamental principles.

Effective humanitarianism, therefore, depends not on avoiding politics but rather on creatively participating in constructing political interests (McFarlane and Weiss 2000: 5). As previously noted, the Kenyan state has a flexible approach to refugee policy, balancing legal obligations with practical considerations. Although, at first glance, Kenya exhibits a restrictionist stance towards refugees, built around a policy of encampment, closer examination indicates that numerous opportunities exist for self-settlement and integration. UNHCR needs to be aware that there is 'room for negotiation' with the state and take this into account when formulating its programming strategy.

I believe that a basic level of political awareness among humanitarian actors is an absolute necessity in protracted camp situations. The humanitarian community cannot function effectively if it works against the state. It must work with it. In the Kenyan context, although technically confined within limits of a policy of encampment, humanitarian actors like UNHCR can significantly improve both their ability to communicate with the state and their bargaining power simply by asking

key questions like: What are the interests of the government? Does rhetoric conform to reality? Can ulterior motives be detected in the policies of the state?

It has long been acknowledged that agencies involved in delivering humanitarian assistance in emergency situations need to be aware of the wider political context in which their efforts are taking place (Frelick 1997: 11; de Waal 1997; Slim 1998; Macrae and Zwi 1994). The debate around the politics of humanitarianism, however, has commonly been restricted to situations that can be classified as complex emergencies, and revolves around the politics of food distribution, access to dispossessed populations and so on. However, although Kakuma cannot technically be classified as an emergency situation, the camp *is* managed using emergency standards, as is the case in many other protracted camps.

I would argue that, as such, many of the arguments brought forth in the aforementioned debates on the politicisation of humanitarian action, particularly those relating to neutrality, the influence of humanitarian assistance on the political economy of the recipient population and the political considerations of donor governments are of relevance to an analysis of protection in protracted camp situations. In the case of the latter, to assume that it is possible to separate politics from humanitarianism prevents an examination of the effects of local, national and international politics on refugee policy (Harrell-Bond 1986: 17).

CHAPTER EIGHT

CONCLUSION: THE POLITICS OF TRANSNATIONALISATION - REORGANISING SPACE, POWER AND PROTECTION

Confinement in refugee camps has become an increasing reality for refugees on the African continent. Until attempts to address, and provide legitimate alternatives to, encampment policies are successful it follows that we should seek to lessen the impact of camps on affected populations. This thesis has argued that there is a need for a shift in emphasis from relief to human rights protection, through the incorporation of a 'rights-based approach', which would result in the enhancement of the protection of refugees in protracted situations in both the immediate and the long-term.

As noted in Chapter Four of the thesis, the rights-based approach is not a novel idea but rather builds on earlier proposals for durable citizenship to the plight of refugees on the African continent and reflects recently proposed frameworks[267] for improved refugee protection. The rights-based approach outlined herein, serves as a check against the violation of the basic rights of refugees. The key difference between the rights-based approach, as outlined in the thesis, and the needs-based approach that

[267] There are currently two main frameworks for improving refugee protection in protracted situations, which have been prioritised by UNHCR (UNHCR 2004b: 1). The first is known as Development Assistance for Refugees (DAR) and aims to facilitate burden-sharing with the host country, compensation for the burden to the host community and development of the host country and host community. The second, Development through Local Integration (DLI) aims to solicit development assistance with the aim of attaining a durable solution in terms of local integration of refugees as an option but not an obligation for the state (UNHCR 2003a: 3-4).

characterises current refugee protection regimes, is that the former entails an element of entitlement that the latter lacks.

In an effort to address the feasibility of applying a rights-based approach to protracted refugee situations, this thesis has outlined the roles of two main actors, the state and humanitarian agencies, in the refugee protection regime. On the one hand, it argues that both actors would benefit substantially in the long-term from the incorporation of a rights-based regime. It also acknowledges, however, that both states and humanitarian agencies have considerable material and political interests at stake in the needs-based regime as it currently exists and will doubtless be resistant to change.

The African state has resisted the incorporation and implementation of a rights-based refugee regime primarily because it is seen to place a severe strain on the host country. Admittedly, the pressures of a rights based regime *can* be difficult for the poorer countries of the South to bear. And although at first glance humanitarian agencies seem willing to make the transition from a needs based to a rights-based approach, upon closer examination, it appears that they are not entirely ready to implement the principles and practices of a participatory and empowering approach either. UNHCR, for example, claims to have adopted a community-development approach but still makes reference to 'dependency' and 'vulnerables' in its operational manuals and is yet to develop a participatory management structure (Bakewell 2003: 17).

Most studies of refugee protection in Kenya so far have examined the roles of both the state and UNHCR, but have tended to focus exclusively on one at the expense of

the other. The two actors are often portrayed in direct opposition to each other - much of this clichéd imagery has been discussed in the course of this thesis. This includes the image of the harsh, restrictionist state doing its utmost to prevent the integration of refugees. Or, alternatively, the struggling state doing the best it can with limited resources while powerful transnational actors usurp its authority behind the scenes. Then there is the image of UNHCR fighting to fulfil its mandate in the face of extreme opposition from the Kenyan state. Or of UNHCR, the judge and jury, compromising the rights of the very people it is mandated to protect.

This thesis has attempted to present a more balanced picture of the politics of protection in the Kenyan state. It has noted that the distinction between aid and politics collapsed a long time ago. It has shown, through the example of Kakuma, how non-state actors are increasingly involved in shaping social and political outcomes in marginalized areas. This suggests that some form of interaction and dependency must have emerged between state and non-state actors to make their activities both possible and necessary.

As we have seen, in Kakuma, UNHCR has become the object of expectations as well as dissatisfaction in the camp. As refugees sense that they are progressively being excluded from the realm of the nation-state, they have turned to the international community (as represented by UNHCR) for recognition. Consequently, some have argued that, in the transnational/ extraterritorial space of the camp, territorial sovereignty

> is being diminished on a spectrum of issues in such a serious manner as to subvert the capacity of states to control and protect the internal life of society,

> and non-state actors hold an increasing proportion of power and influence (Falk 1997: 125).

It should be noted that this trend has been observed previously, particularly with regard to the role of developmental NGOs in the developing world. Indeed, the increasing influence of non-state actors has been an important feature in much of international relations since the 1970s (Bull 1977). Because they assume responsibility for aspects of public competence and challenge state sovereignty, the growing presence of non-state actors is often portrayed as responsible for the weakening of states. As a result, it is claimed, we must seriously begin to reconsider the role of international actors in the South, especially with regard to their expansion 'at the expense of the state' (Kathina 2002: 163).

I do agree that UNHCR may, on some level, fulfil the role of 'the state' within the environment of the camp. And there may indeed be similarities in the ways in which both refugees and citizens seek recognition from the UNHCR and the nation-state respectively. However, the camp is not, and never will be, a microcosm of the nation-state (Turner 2004: 235). Quite simply, although UNHCR *may* appear to have superseded the power of the state, it is obvious that the organisation could not maintain a presence in the country without the acquiescence of the state and, as such, is not as powerful as it is assumed to be.

Similarly, although the state appears to be absent in Kakuma, and Turkana district as a whole, it is conceivable that what we are actually witnessing in the north of Kenya is not the absence or weakening of the state but the extension of government power through non-state actors and the non-territorial networks of international assistance

(Duffield 2001). The Kenyan state is repositioning itself and learning to govern at a distance though new and more indirect means. With this in mind, it is perhaps not so difficult to conceptualise that a political relationship of reciprocity *could* exist between humanitarian actors and the state they are operating in.

To summarise then, this thesis has emphasised the importance of understanding the evolution of the socio-political space within which the protection of refugees occurs and refugee policy evolves. It has highlighted the importance of breaking out of the territorial trap, in an effort to call attention to contemporary forms of human organisation and to underscore the complex relationship that exists between international and transnational actors and the state, which helps define the direction of domestic policy.

Through extensive fieldwork, I have also identified the existence of numerous protection gaps, which suggest the need for a significant restructuring of policy and programming on the part of both the state and UNHCR. To this end, I suggest that if the longer-term needs of refugees are to be met successfully, a rights-based approach, framed in developmental terms must be incorporated into programming from the planning stage. One option would be to focus on refugees as potential 'agents of development'. The assistance delivered by UNHCR to refugee settlements could be better used if considered in a productive way as a start-up motor and a pull factor for additional investments and assistance by development agencies. Refugees could also be integrated into the development planning process of the Kenyan state so that they can receive more attention and 'investment' from donor countries, bilateral development banks and other financial institutions.

A developmental approach would also involve creating better linkages between UNHCR's activities and national development plans, particularly poverty alleviation initiatives (UNHCR 2001a: 3). It is possible that host governments would be more inclined to accept large refugee populations if they were assured that assistance would not merely be directed towards refugees but at refugee population areas bringing benefits to both camp refugees and the local community hosting them (Chalinder 1998: 11). In this way, refugees would be seen as a positive political asset, both at the national level and in the refugee hosting regions (UNHCR 2001a: 2).

On a practical level, this approach entails the establishment of a close working relationship between the government and humanitarian agencies, which would benefit both refugees and the host population. Recognizing that much of the tension in Kakuma is a result of unequal services for refugees and local communities, UNHCR and its implementing partners should work with the Kenyan government and the Turkana community, as well as other development donors, to explore avenues for the development of infrastructure and food assistance for Turkanas.

Local government, in particular, needs to be more proactive in influencing the development agenda in the region. Local government officials must realize that although the presence of UNHCR has facilitated growth in the area, the agency's mandate relates specifically to refugees. They should, therefore, be fully aware of the fact that if refugees were to begin leaving Kakuma in large numbers, as is anticipated with the recently signed Sudanese Peace Accord, donor funding and the NGO presence in the region will drastically decrease.

UNHCR and its implementing partners also need to be more creative in the interpretation of their mandates to assist and protect. Most humanitarian agencies in the camp focus on relief, not local development. Meanwhile, many development donors in the country are hesitant to invest in Kakuma because of security risks and the "temporary" nature of the camps. I believe that humanitarian agencies in the camp should make a concerted effort to expand programming to serve the local population, by increasing co-operation with the latter outside the immediate environment of the camp. Rather than developing new programs and seeking new funding for them, they should attempt to create partnerships with other NGOs that already have relationships and networks in the Turkana community. Meanwhile, development agencies should invest in low-risk, long-term projects that will benefit the local community as well as the refugee community, some obvious examples being schools, health centres and boreholes.

Finally, all actors should engage refugees in designing, implementing and evaluating programs. Refugees, particularly refugee counterparts and community leaders, should also be included in any working groups, taskforces, and committees. Projects should be as participatory as possible and should attempt to identify and include refugees who have specific knowledge and abilities to improve different aspects of their communities. This will allow us to finally move away from the image of the needy refugee, to confront the stereotype of the dependent refugees and to question the legitimacy of protection policies premised on the supposed 'helplessness' of the refugee.

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APPENDIX ONE

PERSONAL INFORMATION SHEET

1. Interviewee Number: _____
2. Gender: Male/Female
3. Date of Birth/Age: _____
4. Place of residence: _____
5. Nationality: _____
6. Ethnic Group: _____
7. Religious Affiliation: _____
8. Marital Status: Single: _____ Married: _____ Divorced: Widowed: _____
9. No. of Dependants: Nuclear: _____ Extended: _____
10. Formal Educational Background: None: _____ Primary: _____ Secondary: _____ Vocational: _____University: _____ (please elaborate on qualifications obtained)
11. Any Other Qualifications/Training: _____
12. Current Occupational Status: Unemployed: _____ Self-employed: _____ Employed: _____
13. Any Previous Occupations: _____
14. Other Interests/Activities (e.g. women's group, community centre, trade union etc.):

    _____

    _____

GENERAL BACKGROUND QUESTIONS

REFUGEES

1. Do you have any rights as a refugee? Are you aware of your social, political, cultural and economic rights as a refugee (this will be broken down into simpler questions relating to food, health, education etc.)?
2. Do you have any obligations as a refugee?
3. What kind of protection do you think should be afforded to you as a refugee in Kenya?
4. Who should ensure your protection (i.e. Kenyan state, UNHCR, camp administration, police)?
5. What are the main problems you feel you face individually as a refugee in Kakuma?
6. What are the main problems you feel are faced by refugees in general in Kakuma?
7. Do you feel there is any discrimination towards you either as an individual or member of certain group that denies your ability to access your basic rights? Explain.
8. How do you feel your status compares to that of local Kenyans (e.g. based on observation of host community)?
9. How do you feel your current status as a refugee could be improved (in terms of physical security, access to goods and services etc.)?

INTERVIEW SCHEDULE I: REFUGEES

ACCESS TO FOOD

1. How many members does your household comprise of?
2. How many adults (above the age of eighteen) and how many children?
3. How much food would you estimate your household consumes on average per week?
4. Do you think the food available to your household is adequate?
5. How/where do you obtain food for consumption?
6. If food is obtained from UN rations, is this allowance supplemented in any way? If yes, how?
7. Do you buy any food?
8. If yes, how much money do you spend on average on food every week?
9. Do you have any access to land?
10. If yes, how did you access this land?
11. Do you grow any of your own food?
12. What portion of your household consumption is derived from domestically produced foodstuffs?
13. If you were able to access land would you farm it?
14. Would you prefer to be allowed to grow your own food?
15. Do you own any livestock (chicken/goats/sheep/pigs/cattle/camels)?
16. How did you acquire your livestock?
17. Are any of these being raised for household consumption?

ACCESS TO SHELTER

1. Describe your current living arrangements (temporary/permanent shelter, number of rooms, sanitation, electricity, water supply etc.).
2. How do these compare to your previous living arrangements (prior to being a refugee/in another refugee camp/for the duration of your stay in the camp etc.).
3. Have there been improvements in the living conditions in the camp since your arrival? Please elaborate.

4. How do your living conditions compare to those of the host population living around the camp?

5. Do you think any improvements can be made to living conditions in the camp? Please elaborate.

HEALTH

1. Do you have access to a doctor(s) in the camp?

2. How far away is the nearest doctor/medical officer/nurse/clinic?

3. Do you go for regular medical check-ups? If yes, how often?

4. Do you have to pay for treatment at the clinic? If yes, do you think the fees are reasonable/affordable?

5. How would you describe the standards of health care in the camp?

6. How long do you have to wait on average before being attended to when you visit the clinic?

7. If medication has ever been prescribed, did you have to pay for it?

8. Did you come across any difficulties obtaining the medicine?

9. What do you think could be done to improve the standards of health care in the camp?

10. Do you ever use traditional medicine/visit a traditional healer?

11. Do you prefer traditional healers/medicine to clinics/doctors? If yes, why?

EDUCATION

1. What level of education have you reached? Primary/secondary/training college/university?

2. If the latter, what formal qualifications do you have?

3. Do your children go to school/do you go to school?

4. How far away is the nearest school?

5. How many other pupils are there in the school?

6. Do you have to pay any fees? If not, do you have to pay any other money towards education e.g. building fund/uniform/school books etc.?

7. What percentage of your income on average goes towards school fees/supplements?

8. If you do not send your children to school/do not go to school, why not?

9. How do the school facilities in the camp compare to those outside the camp?

10. How do the school facilities in the camp compare to school facilities in your country of origin?

11. How would you describe the quality of education offered in the camp (poor/average/good/very good/convertible in country of origin etc.).

SECURITY AND JUSTICE

With reference to security:

1. Do you feel secure in the camp? If yes/no why?

2. Have you ever felt that your physical security was threatened in any way? Explain.

3. Where do you feel the main threat to your physical security comes from (other refugees/host community/camp authorities/police)?

4. Do you think some people are safer than others in the camp? If yes, who are these people and why do you think they are better protected?

5. Do you find that certain areas of the camp are safer than others? If yes, why do you think this is the case?

6. Is there anyone you can go to discuss perceived/actual threats to your security in the camp? If yes, who?

7. Have you ever interacted with the aforementioned authority? How would you describe the interaction?

8. How would you describe the relationship between security agents and refugees in the camp?

9. Do you think security forces in the camp are sufficiently aware of the rights of refugees and of their role in ensuring the security of refugees?

10. Do you think the relationship between the security forces and refugees could be improved?

11. What do you think should be done to improve safety/security for refugees in the camp?

With reference to legal systems and access to justice:[268]

1. Why were you detained/arrested/imprisoned? What crime(s) were you accused of committing?

2. Were you informed about your legal rights at the time of arrest and/or prior to court proceedings?

3. Did you have access to legal representation in the course of your trial?

4. How many times were you allowed to meet with legal counsel?

5. What language was the trial conducted in? Did you understand the language used? If not, was there a translator present?

6. Would you say you had a fair trial? If yes/no, why?

7. How would you describe the conditions of your detention?

8. How would you describe the attitudes of prison wardens towards prisoners/detainees?

9. Were you given adequate food/water during your detention/imprisonment?

10. Were you allowed any visitors during the course of your detention/imprisonment?

PERSONAL FREEDOMS (ASSOCIATION/EXPRESSION/RELIGION)

1. Are there any churches/mosques in the camp?

2. If yes, how many?

3. Do you attend any religious centre?

4. Are there adequate measures in place for you to freely practice your religion?

5. Do you belong to any association e.g. women's group, political party etc.

6. If yes, how regularly do you meet?

7. Where do you meet? Who organises the venue?

8. Do you have to pay for use of the venue?

9. Do you need a license/permission to meet?

10. If yes, where/from whom is this license/permission obtained from?

11. Have you ever encountered any problems in trying to organise meetings (obtaining license/ intimidation during the actual meeting etc.)?

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[268] The interview schedule is being constructed under the assumption that the interviewer will not be granted access to prisons and, therefore, will not be able to conduct interviews with refugees currently imprisoned. All interviews on this subject will, consequently, be conducted with individuals who have, at one point, been detained/imprisoned/arrested but have since been released.

INTERVIEW SCHEDULE II: CAMP ADMINISTRATION

ACCESS TO FOOD

1. How much food is provided to refugees on a weekly basis?
2. Does this ration conform to the recommended daily allowance for adults and children?
3. If no, why not?
4. How often is food distributed in the camp?
5. How is the food distribution process organised?
6. Who is food distributed to (ie heads of household, women etc.)?
7. Is there any risk that rations do not reach their intended recipients? If yes, please elaborate.
8. How do you ensure that there is no diversion of food rations and that the refugees' basic food requirements are met?
9. What problems are faced in the provision and/or distribution of food by the camp authorities?
10. Are there any provisions made for refugees to supplement the food rations they receive?
11. Do refugees have any access to land to grow food to supplement their diet? If no, why not?
12. Are refugees allowed to keep livestock (to supplement their diet)? If no, why not?

ACCESS TO SHELTER

1. Who is responsible for the provision of shelter to refugees?
2. Does the Kenyan state make provisions for/contribute towards the provision of housing for refugees?
3. Are houses/shelters constructed on a temporary/permanent basis?
4. How many individuals on average live in each house/shelter?
5. Would you say that living conditions in the camp are overcrowded? Please elaborate.
6. Would you say the camp has adequate housing? Please elaborate?
7. What could be done to improve housing in the camp?

8. How do you think the shelter provided to refugees in Kakuma compares to shelter provided elsewhere?

9. How do you think it compares to housing available to Kenyans from a similar socio-economic background, based on your observation and comparison?

HEALTH

1. Who is responsible for the provision of medical care for refugees in the camp?

2. How many health centres are there in the camp?

3. How many doctors/nurses?

4. How are the health centres distributed around the camp?

5. Are they easily accessible to refugees?

6. Are medical centres in the camp equipped to perform emergency/technical medical operations?

7. If not, what alternatives are there for refugees (e.g. evacuation to other hospitals)?

8. How does the distribution of medical centres within the camp compare to the distribution of centres in a similar area outside the camp?

9. How do facilities in the camp compare to those elsewhere in the country (medical equipment, number of beds, hygiene, staff etc.)?

10. Is health care subsidised for refugees?

SECURITY AND JUSTICE

1. Who is responsible for security in the camp?

2. How many police posts are in the camp?

3. How many police officers are on duty in the camp?

4. Do police officers receive special training on how to deal with the specific needs of refugees?

5. Can police officers communicate adequately with the refugees (are there officers who speak any of the main refugee languages/do they have translators etc.)?

6. Have you ever had any complaints about security in the camp?

7. Who/where is the first point of contact should refugees need to make complaints about the state of security in the camp?

8. Have you ever had any complaint about the conduct of police in the camp?

9. Who is responsible for disciplining officers in the case of complaints about their conduct from refugees/

10. What do you think could be done to improve security in the camp?

INTERVIEW SCHEDULE III: UNHCR AND IMPLEMENTING AGENCIES

1. Are refugees aware of their rights? Please explain.

2. Have you conducted any rights awareness training in the camps? If yes, what did these programmes involve? How were the participants identified?

3. If no, why not?

4. Are refugees in Kakuma able to adequately access basic goods and services e.g. food, health care, education etc. as guaranteed to them under the Universal Declaration of Human Rights and the 1951 Convention?

5. How are distribution systems/rights awareness programmes set up? What is organisational structure in the camp?

6. Who is in charge of implementing programmes?

7. Are refugees involved in the decision-making process vis-à-vis programme structure, resource distribution, programme implementation etc.?

8. Does the Kenyan state co-operate/aid/contribute to the protection of refugees in the state in general, and in Kakuma in particular? Please explain.

9. How do you think the ability of refugees to access goods and services within the camp compares to that of citizens in Kenya to access the same? Please explain.

10. How do you think the quality of service-provision in the camp compares to the same countrywide? Please explain.

11. Have you observed any disparities in the ability of different refugee groups to access goods and services (e.g. based on ethnic category, socio-economic status etc.)?

12. Have you observed any disparities in the manner in which different categories of refugees (ethnic background, socio-economic status, religion etc.) are treated by the Kenyan state/agents of the state? Please elaborate.

GENERAL BACKGROUND QUESTIONS

CITIZENS

1. Do you categorise yourself primarily as a citizen of the Kenyan state, resident of a particular region, member of a particular ethnic group? Please explain.

2. Do you have any rights as a citizen of Kenya? Are you aware of your social, political, cultural and economic rights/entitlements as a refugee? * This will be broken down into simpler questions pertaining to access to food, healthcare, education etc.

3. Do you have any obligations as a citizen of Kenya?

4. What kind of protection do you think should be afforded to you as a Kenyan citizen by the state?

5. Who should ensure your protection (state, police, community etc.)?

6. What are the main problems you feel you face as a citizen of Kenya?

7. What problems do you feel are faced by Kenyans in general?

8. Do you feel there is any discrimination towards you either as an individual/member of certain group (religious, ethnic, political) that denies you the ability to access your basic rights? Explain.

9. How do you feel your status compares to that of other Kenyans?

10. How do you feel your current status could be improved (physical security, access to goods and services etc.)?

INTERVIEW SCHEDULE IV: CITIZENS

ACCESS TO EDUCATION

1. How many members of your household are minors (under the age of eighteen)?
2. How many of them attend school on a full time basis/have received some formal education (to what level)?
3. If none, please explain why.
4. How did you decide which of your children to enrol in school (one possible factor is the preference of male over female children)?
5. Do you have to pay for (i) primary and/or (ii) secondary school?
6. If yes, what percentage of your income goes towards school fees?
7. Do you consider this affordable?
8. If no, do you have to pay any subsidiary costs e.g. uniforms, building funds etc.
9. Where is the nearest school located?
10. Do your children attend this school?
11. Yes/No. Please explain (Facilities, teaching staff, cost,, ethnic/racial affiliations etc.)

ACCESS TO FOOD AND LAND

1. How many members does your household comprise of?
2. How many individuals are you responsible for outside your house (extended family obligations)?
3. How many adults and how many children (below the age of eighteen)?
4. How much food do you estimate your household consumes on average per week?
5. Do you think the food available for household consumption is adequate? Please explain.
6. Do you have any access to land?
7. If yes, how did you obtain this land (inheritance, lease, bought)?
8. Do you produce for personal consumption or to supplement your income?
9. If no (access to land), would you like to be able to access land in some capacity?
10. What factors prevent you from accessing land?

11. Have you ever experienced any food shortages (as a household/community)? Please explain?

12. If yes, what steps were taken to alleviate the problem (as an individual/ household/ community)?

13. Did you ever have any external help when you experienced food shortages (government grant/ aid schemes)/

14. Has land ever been forcibly appropriated from you?

15. If yes, please explain the circumstances.

ACCESS TO HEALTH SERVICES

1. Do you have access to health services?

2. How far away is the nearest nurse/doctor/clinic/hospital?

3. Do you visit your doctor for a regular check up? If yes, how often? If no, why not?

4. Do you have to pay for treatment at the medical centre?

5. If yes, do you consider this affordable?

6. Have you ever been denied medical treatment because you were unable to afford payment?

7. Approximately how long did you have to wait for medical attention on your last visit to the health centre?

8. How much time was personally allocated to you during your last visit to the centre?

9. Were you prescribed any medication?

10. If yes, was it free or did you have to pay?

11. If yes to the latter, did you consider it affordable?

12. Are you satisfied with the treatment you have received on your last couple of visits to the medical centre? Please explain.

SECURITY AND JUSTICE

1. Have you ever felt your physical security to be threatened in any way?

2. Did you feel like you could seek help from the relevant security agents?

3. If no, why not?

4. Did you feel like you had been personally victimised? If yes, why (socio-economic background/ethnic background/political affiliation)?

5. (OR) Have you ever had any encounter with security agents? How would you characterise these encounters (helpful, violent, neutral)?

6. Have you ever been detained/arrested/imprisoned? If yes, please elaborate by answering the following questions.

7. Did you have access to legal counsel?

8. Were you informed of your rights?

9. Were you able to understand the language in which legal proceedings were carried out?

10. If not, was there an interpreter present?

11. Did you feel that legal proceedings were efficient/fair? Please explain.

12. How would you describe prison conditions (food, healthcare, attitude of prison wardens etc.) in the course of your detention?

13. Were you allowed any visitors in the course of your detention?

14. Were you ever subjected to torture/inhumane treatment?

15. Would you characterise the Kenyan legal system as fair? Please elaborate.

FREEDOM OF ASSOCIATION, RELIGION ETC.

1. Do you have easy access to a place of worship (mosque/church/temple)?

2. Do you feel adequate provisions are in place for you to freely practice your religious beliefs?

3. Are you a member of any association (women's group, community group, church group)?

4. Have you ever encountered any discrimination within this association?

5. Do you need to obtain a special permit/license to meet?

6. If yes, has this permit ever been denied to you? On what grounds?

APPENDIX TWO

LIST OF FOCUS GROUP DISCUSSIONS

Somali, Somali Bantu, Barawa, Oromo, Ugandan, Congolese, Nuer), January 25, 2003

Community Leaders Meeting (including Protection, New Area, Ethiopian, Sudanese, Ethiopian Community Meeting, February 02, 2003

Food Committee Meeting, January 30, 2003

Francophone Community (Rwanda, Burundi, DRC, Uganda) Meeting, February 02, 2003

Heads of Secondary Schools Meeting, November 06, 2002

Head Teachers Meeting, November 04, 2002

Nuer Community Meeting, Kakuma I, Zone 5, November 12, 2002

Protection Area and Kakuma II, Phase II Group Meeting, November 15, 2002

Refugee Women's Group Meeting, February 12, 2003

Somali Community Meeting, February 10, 2003

Somali Bantu Community Meeting, Kakuma IV, February 04, 2003

Somali Barawa, Bajuni and Somali Bantu Meeting, Kakuma II, Phase 2, November 14, 2002

Somali Barawa Community Meeting, November 08, 2002

Sudanese Community Meeting, February 10, 2003

Sudanese Community Meeting, Kakuma III, February 05, 2003

Sudanese Community Meeting, Kakuma II, Phase 2, November 09, 2002

Sudanese Community Meeting, Kakuma II, Zone 2, November 02, 2002

Host and Refugee Community Meeting, February 11, 2003

Turkana Community Meeting, February 02, 2003

APPENDIX THREE

COMMUNICATION WITH CENTRAL BUREAU OF STATISTICS

Reference No CBS 68/13/01

CENTRAL BUREAU OF STATISTICS MINISTRY OF PLANNING AND NATIONAL DEVELOPMENT
P.O. Box 30266 Nairobi, Kenya
Telephone: Nairobi 333970 Fax: Nairobi 333030, 216134 Telegraphic Address: HERUFI

14th October 2003

Department: 00 44 (0)
1865 270275 St. Cross
College,
St. Giles Rd.,
Oxford OX1 3LZ
Email: skyediver00@yahoo.com

Re: Request for Demographic Statistics for Nairobi

This is to acknowledge receipt of your email message requesting for demographic data on ethnic groups in Nairobi.

Unfortunately, and as a matter of Government policy, we are under strict instructions to suppress all data records on ethnicity and religion. For this reason, we are unable to offer any assistance regarding this matter.

We do however, appreciate your need for such data and for this reason we sincerely apologise for our inability to assist. Please bear with us.

Thank you,

F. M. Munene
DEPUTY DIRECTOR/

HEAD, POPULATION & OTHER SOCIAL STATISTICS

APPENDIX FOUR

INTERNATIONAL AND DOMESTIC INSTRUMENTS RELEVANT TO THE PROTECTION OF REFUGEES IN KENYA

The Universal Declaration of Human Rights

Prohibits discrimination on grounds that include national or social origin, property, birth or other status. The Declaration states that everyone has a right to freedom of movement and residence within the borders of each state which can however be limited by the host country for reasons of security. Most important is the provision that everyone has the right to seek and enjoy in other countries, asylum from persecution (Article 14).

The 1951 Convention Relating to the Status of Refugees

Adopted by the United Nations in July 1951. This is the most authoritative, comprehensive and universal legal instrument relating to refugees. It lays down standards of protection, treatment and rights. The 1951 Convention defined the term 'refugee' thereby ascertaining who qualifies for refugee status and, consequently, protection and assistance. The Convention also makes provision on the rights and obligations of refugees relating to movement, religion, education, housing, employment, identity papers and travel documents, personal security and other rights. It does not guarantee a right of asylum or right of entry, but obliges state parties not to impose penalties for illegal entry on a refugee provided they report to the authorities without delay and show good cause for the actions (Article 31). It specifically provides for the principle of *non-refoulement* in Article 33, which states that

> No contracting state shall expel or return a refugee to a territory where his life or freedom would be threatened on account of his race, religion, membership of a social group or political opinion.

The 1967 Protocol Relating to the Status of Refugees

With the passage of time, new refugee situations and problems emerged making it necessary to make the provision of the 1951 Convention applicable, particularly to refugees outside Europe, without limiting the potential beneficiaries and agencies to the 1952 cut off date. Adopted by the UN General Assembly on 31 January 1967, the Protocol, requires states acceding to it to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention (Article 1: 2).

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

The Convention adopts the definition of refugees in the 1951 Convention Relating to the Status of Refugees but extends eligibility for refugee status to persons fleeing

their home countries for reasons attributable to external causes as well as internally caused disruption. This was based on the fact that the 1951 Convention definition emphasises the determination of refugee status on an individual basis, which is impracticable in most cases in Africa where refugees arrive en masse in the host country. The Convention declares that the granting of asylum to refugees is a peaceful and humanitarian act and should not constitute political tension (Article 11, Para 2). It adheres to the principle of *non-refoulement* and under Article V sets out the principle of burden sharing of the refugee crisis in the spirit of African solidarity and international co-operation (See Article 11: 4). It contains important protective measures like the obligation to situate refugee camps away from international borders for security and the obligation to refrain from using refugees as instruments of subversion against their own country.

The 1965 Convention on the Elimination of All Forms of Racial Discrimination

Defines persecution to include distinctions based on 'race, colour, descent or national or ethnic origin'. The Convention seeks to prohibit discrimination of any kind, which triggers off trans-frontier movements of persons from the threat of persecution to safety.

The African Charter of Human and People's Rights

Provides legal support for the protection of the fundamental rights of refugees.

The Declaration on Territorial Asylum

Adopted by the UN General Assembly in 1967. Confirmed the traditional view of asylum: that it is the sovereign right of a state to grant or deny it. Article 1 provides that 'Asylum granted by the state in the exercise of its sovereignty...shall be respected by all other states'. It also provides for the principle of *non-refoulement*. In practice, the right of asylum is a right that vests in the state and not an obligation of the state, while the right of *non-refoulement* is a right inherent in an individual.

Domestic Legislation

Kenya is party to all the principle international conventions relating to the rights of refugees. The Convention and Protocol relating to the Status of Refugees as well as the OAU Convention have not been formally incorporated into domestic law. The issue of refugees is considered within the framework of immigration rules, particularly under the Immigration Act, Cap 172 and the Alien Restriction Act, Cap 173 of the Laws of Kenya. The Immigration Act adopts the definition of refugees as contained in the 1951 Convention. The Alien Restriction Act makes provision and has been used exclusively in prohibiting entry of aliens into the country as well as restricting them to certain places or districts (See Section 3: 1).

APPENDIX FIVE

SAMPLE MINIMUM STANDARDS INDICATORS

Clean Water	Minimum survival allocation Minimum maintenance allocation	7 litre/person/day 15-20 litres/person/day
Food	Minimum food energy requirement for populations totally dependent on aid	2100 Kcal
Shelter	Minimum shelter area Minimum total site area	3.5 m2/person/day 30 m2/person/day

Source: Toolbox section, UNHCR Handbook for Emergencies

APPENDIX SIX

EDUCATION RELEVANT INTERNATIONAL CONVENTIONS BY DATES OF RATIFICATION BY KENYA

International Conventions/ Covenant	Date Adopted by International Body	Date of Ratification/Accession by Kenya
The Charter of the United Nations	**February 13, 1946** by the UN General Assembly	Date of Accession, **July 1, 1965**
The Convention on the Rights of the Child	**November 20, 1989** by the UN General Assembly	Date of Ratification, **July 30, 1990**
The Convention on the Elimination of All Forms of Racial Discrimination Against Women	**December 18, 1979** by the UN General Assembly	Date of Accession, **March 9, 1984**
The African Charter on the Rights and Welfare of the Child	**July 1990**, the Council of Ministers of the Organisation of African Unity (OAU)	**July 1990**, signed by Kenya's representatives
*The World Declaration on Education for All (Jomtien)	**March 1990**, by the Inter-agency Commission and Governments	**March 1990**, signed by Kenya's delegation
*The World Summit for Social Development (Copenhagen)	**March 1995**, by Governments and NGO Representatives	**March 1995**, signed by Kenya's delegation
*The Beijing Declaration: A Platform for Action (Beijing)	**September 1995**, by Governments and NGO Representatives	**September 1995**, signed by Kenya's delegation

*These are declarations based on international meetings of government representatives, international donor agencies and non-governmental organisations.

APPENDIX SEVEN

ENROLMENT FIGURES BY GENDER FOR PRIMARY SCHOOLS, OCTOBER 2002, KAKUMA CAMP

SCHOOL	ENROLMENT IN REGISTERS	
	BOYS	GIRLS
Awiel	620	233
Bhar el Naam	883	375
Buma	460	259
Cush	513	234
Dropout girls	0	626
Fashoda	678	239
Fuji	628	312
Horseed	586	369
Imatong	860	193
Jebel Marra	691	268
Juba	553	116
Kadugli	704	160
Malakal	525	271
Ngundeng	1175	323
Nile	415	104
Nimule	614	227
Palotaka	464	206
Raja	899	351
Rajaf	669	284
Shambe	656	249
Sobat	615	124
Torit	468	22
Unity	881	569
Wau	394	242
TOTAL	**14951**	**6356**

Source: LWF/DWS – Kakuma Field Office, Education Department, School Statistics Data Bank

NOTES