WHILE EMPOWERING WOMEN, DON’T FORGET THE MEN AND BOYS

REFUGEE PROTECTION IN A REFORMED CONSTITUTIONAL ORDER

TOWARDS REPARATIONS AND RECONCILIATION - WHAT NEXT AFTER THE TJRC HEARINGS?

REDEFINING PROTECTION
EXAMINING THE WAY WE ADDRESS THE NEEDS OF REFUGEES AND OTHER FORCED MIGRANTS
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Refugee Insights no. 20

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Printed by:
Pann Printers Ltd.

The views expressed in Refugee Insights are the authors’ and do not necessarily reflect the official policy of RCK and its affiliates. Refugee Insights is published by the Refugee Consortium of Kenya, a non-governmental legal aid and policy development organisation based in Nairobi, Kenya. RCK is committed to advocating for the rights of refugee and other forced migrants.

This publication is made possible through the support of the Danish Refugee Council (DRC).
Dear Reader,

RCK invites you to the 20th edition of Refugee Insights. In this edition, under the theme “Redefining Protection”, we take a deeper look at the circumstances of displaced persons and how this affects their protection.

In the articles, “While Empowering Women, Don’t Forget the Men and Boys” and “Family - the Basis of Protection,” our psychosocial counsellors interrogate the role of socialisation and displacement in the perpetuation of protection against violence and the role of the family in providing the social support that becomes even more necessary in displacement situations.

“Refugee Protection in a Reformed Constitutional Order” analyses the current and proposed legal frameworks governing refugee protection. “The Effects of Operation Linda Nchi” portrays the current situation in Dadaab and “Stabilising Somalia” argues the necessity of a diversified but coordinated approach to ending instability in Somalia with the broader goal of solving the protracted displacement situation of a large population of Somalis.

In the wake of the International Criminal Court proceedings and the countdown toward the next general elections, RCK continues to play an active role in advocacy and policy development, participating in the development of the National Reconciliation Agenda with the Truth, Justice and Reconciliation Commission (TJRC). The article, “Towards Reparations and Reconciliation,” suggests what should be in the TJRC report when it is finalised.

As the constitutional dispensation progresses, we remain engaged in the review of laws and policies affecting the protection of refugees and other forced migrants. We continue to partner with and enhance the capacities of relevant actors and we continue to monitor developments on the ground and in the media to promote refugee protection.

The events of last year, including drought-induced displacement and Kenya’s incursion into Somalia, continue to affect the displacement situation in Kenya and it is with this in mind that RCK begins this year with a focus on reaching out to as many refugees as we can, taking our legal and psychosocial services from our legal aid office to the communities, for instance, or making use of radio programmes where access to, or mobility within the camps is restricted.

RCK is committed to our motto of “keeping hope live” and we will adapt our approaches to live up to this as much as we possibly can.

We welcome your comments and thoughts on the issues presented.

Happy Reading,

Lucy Kiama,

EXECUTIVE DIRECTOR
NAIROBI: The Refugee Consortium of Kenya (RCK) is deeply concerned over the Kenya Government’s plan to move more than 600,000 refugees based at the Dadaab camps to areas alleged to be “safe havens” in Somalia, as reported in both the Standard and Nation newspapers on January 23, 2012. We fear that these planned relocations may amount to the forced return of refugees, subjecting them to further risk of insecurity.

RCK appreciates the concern that the Government has in restoring security in Kenya and specifically in the refugee camps based in the North Eastern region in order to eliminate any potential terrorist attacks. We commend the efforts and sacrifices that the Kenya security agencies have had to endure for our collective security including that of persons living here as asylum seekers and refugees. We laud the on-going profiling exercise which should enable the Government to distinguish persons living within the refugee population who might be a danger to the security of the country.

However, we are concerned that the blanket condemnation of refugees and asylum seekers as a threat to our national security could lead to increased harassment and heightened xenophobic attitudes towards refugees by the Kenyan population. We argue that this is misinformed and urge the Government to put measures in place to address the security problem instead of presuming refugees to be the cause. We have noted an increase in police-round ups, arbitrary arrests and harassment of refugees and people of Somali ethnic origin by security officers in the Dadaab camps, in Nairobi and other major towns in Kenya. These violations have also been documented by other human rights organizations and highlighted by the media.

We strongly remind the Government of its obligation under the Constitution which extends rights to all persons living in Kenya including refugees and asylum seekers. Article 29 of the Bill of Rights of our Constitution provides that every person has the right to freedom and security of person. Article 29(d) includes the right not to be subjected to torture in any manner, whether physical or psychological. Section 18 of the Refugees Act 2006 specifically provides for the non-return of refugees, their families or other persons.

No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or be subjected to any similar measure if as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where - the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion or the person’s life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously affecting public order in part or the whole of that country.

Kenya is also obligated under Section 16 of the Refugees Act to protect the rights of refugees and their family members in Kenya, in line with the obligations contained in the international Conventions to which Kenya is party.

The article reports that the Permanent Secretary of Internal Security stated that the relocation would be done in liaison with UNHCR and the international community. We question the modalities in relation to this relocation and the process informing this conclusion. We are totally opposed to any relocation of refugees and asylum seekers lawfully living in Kenya without regard to the due processes and without involvement of other stakeholders in the decision making.

Refugees are equally affected by the same threats that the Kenyan Government seeks to eliminate. As a matter of fact, they have fled into Kenya because of dangers to their lives brought about by insecurity in their own countries including elements such as Al-Shabaab. The inability to be protected in their countries of origin causes them to seek asylum in Kenya and in other countries. It is the responsibility of countries of asylum to ensure this protection by not subjecting them to further human rights abuses such as undue harassment, revocation of refugee status and forceful return.

We remind the Government that these interventions should be conducted with an application of human rights and humanitarian principles, and that the interests of national security do not preclude adherence to the law and to due process owed to every individual.
What is the impact of conflict on men and boys? Before conflict, men have culturally assigned gender roles as breadwinners, decision makers, role models and protectors of their families. Conflict disrupts this arrangement and the countries of asylum to which displaced persons flee also impose changes in the roles of displaced men and women.

In camp settings, the role of men as providers is taken over by agencies that provide shelter, food, water and other non-food items, and because there are limited livelihood opportunities, they therefore become dependent on relief. One Somali man shared with RCK the notion that he is just one of many refugee men who experience this. “Back in Somalia I used to have lots of cows and camels and I used to provide for my family. Now that am here in Kenya, I have to beg agencies to give me shelter and mattresses for my family. I feel like a failure.” Another man reported that he had been very prominent before he had to flee. Now he has lost all his property and status and is reduced to running a small business in the camp.

Young men report that limited opportunities to engage in income-generating activities leaves them feeling hopeless. One man shared how he was considering forfeiting his refugee status for Kenyan citizenship because the pressures of getting a job to provide for his family are too great.

Conflict entails the loss of persons, whether through death or separation. Men often feel that they have failed as protectors. These experiences are distressing to men because they feel that they do not live up to the societal expectation of who a man is and what he should do. They experience different kinds of loss in addition to fear and loneliness: the loss of status, the loss of a means of income and the loss of power.

By September 2011, there were close to 453,257 (UNHCR) registered refugees living in the Dadaab refugee camps which were initially designed for 90,000 people. This constrains the already limited resources in the camp and increases the risk of sexual violence and exploitation. The risk of gender-based violence (GBV) arises in emergency situations because of the breakdown of social structures. With an increasing refugee population, protection mechanisms become strained, especially in the outskirts of the camps. Women are routinely attacked when they leave the camps to collect firewood. The daily frustrations of camp life, unemployment and alcohol abuse create an environment which fosters GBV. Interventions aimed at curbing GBV include: victim assistance programmes, media awareness campaigns, the provision of legal aid and support groups, among others. RCK has been including men and boys in its trainings on GBV in recognition of the role they play in both perpetuating and protecting against GBV.

The United Nations terms violence against women as gender-based violence as it acknowledges that such violence is rooted in gender inequality and is often perpetuated by cultural norms, institutions and the lack of or the inadequate enforcement of laws. There are many causes or factors that promote and sustain violence in the camps such as religious, social, political and cultural beliefs which promote inequality.

Gender-based violence exists in three forms: physical violence, psychological violence and sexual violence. Perpetrators of GBV are predominantly men. Women and girls are often the victims who experience sexual abuse, harassment and exploitation by men usually known to them.

This discussion exposes the role of circumstance: displacement and even the situation of prolonged encampment as a factor which brings about increased incidences of GBV. Prior to displacement, men had a socialised role that they felt was irreplaceable. They subscribed to an often hegemonic understanding of masculinity where women should be oppressed and men should be violent or engage in risky behaviour (engaging in unsafe sex or reckless driving) and should not admit to being sick as a means of asserting power.

Encampment challenges this expectation of masculinity and men hesitate from seeking services that would help them because they do not believe it is their role to do so. Counselling,
for instance, is sought more by women than by men even if men and women are equally affected by traumatic experiences and are undergoing psychological distress.

Additionally, men and boys are more likely to be recruited and used in armed conflict, whether voluntarily or involuntarily. They are involved in actual fighting, spying and carrying goods, among other roles. Boys may also face harassment or brutality from police. To this effect, studies reveal that witnessing, experiencing or perpetuating violence may lead to short-term impacts, particularly in boys, such as fear, distress and gaining a distorted view on violence and the value of human life. Longer-term effects include emotional disturbance like guilt, doubt and anger.

Thus, displacement due to conflict often leads to shifts in gendered roles and responsibilities for both men and women. Programmes mainly target women and equip them with skills to make them financially independent which is a positive change for women. Men who cannot carry out their gender roles may react to these changes with depression, alcoholism and an escalation of violence against women in public and in private.

Recommendations

There should be more studies in this area of discussion: how encampment and forced migration affect gender roles and how this influences gender-based violence. Stories of what men have undergone during and after conflict are limited. We need to hear more of men’s stories and appreciate the difficult situations they face during forced migration. As we empower women we must support men too because conflict and encampment affect males and females differently.

Engaging men and boys has emerged as a vital strategy to end GBV in camp and post-conflict settings in general. A comprehensive approach that considers the social, cultural, economic, religious and political issues is most effective. The level of involvement should include working with men to identify changes in their roles in the camps and how it affects them. There is a need to create an environment that supports men who wish to adopt positive behaviour to sustain this.

It is also important to provide the boys in the camps with role models who can model positive behaviour that supports respect for human rights for all. This can be done by identifying interested peers and providing peer education that reinforces gender equality.

RCK will continue to develop inclusive and specialised approaches in its programming so that refugees and other forced migrants, both men and women, can enjoy their rights and live in dignity.

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**Recent and Up-coming Events**

- **Protection Monitoring Mission (Rift Valley and Western Regions)** 23rd – 26th April
- **Refugees United Community Forum** 23rd April, Kayole, Nairobi
- **Kayole community forum** 27th April
- **TJRC National Reconciliation Conference** 2-3rd May, Nairobi
- **Monitors refresher training** 02nd May, Nairobi
- **Community forum** 3rd May, Kawangware, Nairobi
- **Community forum** 9th May, Eastleigh, Nairobi
- **Community forum** 11th May, Kangemi, Nairobi
- **Training for government officers on Refugee Protection** 9-11th May, Machakos
- **Training for Department of Refugee Affairs officers** 15th May, Nairobi
- **Refugees Act Seminar** 16th May, Divine Word Church, Kayole
- **All Staff Debriefing** 30th – 31st May
- **Universal Periodic Review Retreat** 6-9th June
- **World Refugee Day Commemoration Mass** 17th June, Nairobi
- **World Refugee Day Film Screening** 18th June, Alliance Francaise, Nairobi
- **World Refugee Day** 20th June
STABILISING SOMALIA: Options for Peace and Stability

Somalia is a country that is widely viewed as having the worst displacement situations in the world. By early July 2011, the UNHCR had estimated that a quarter of Somalia’s population was displaced either internally or externally as refugees. For a country with an estimated population of 9.9 million people, such a high proportion of displaced persons is quite alarming in terms of both the number of people affected and their humanitarian and protection needs. The intriguing aspect about the Somalia situation is that the protracted displacement has been complicated by a multiplicity of factors which include: two decades of recurrent acute drought, insecurity occasioned by Al Shabaab militants, lawlessness, political instability and a breakdown in socio-economic structures. For many people, whenever the word “Somalia” is mentioned, the question of whether peace and stability is possible comes to mind and if so, what options are there to achieve this? Can durable solutions be achieved to address the protracted displacement situation?

Over the years, the international community has attempted to carry out various interventions in an effort to address the chronic political instability and the dire humanitarian crisis in Somalia. However, the majority of these interventions have not borne much fruit in terms of stabilising and restoring peace in Somalia since most of them have been either humanitarian or militaristic. For instance, the 1992 UN intervention in Somalia, brought about by UN Security Council, Resolution 794 approved the formation of a United Task Force (UNITAF) whose mandate was to use all necessary means to guarantee the delivery of humanitarian aid and to stabilise the situation in Somalia. This intervention led to the outbreak of gun battles between the local militia and peacekeepers. The subsequent military operations which were led by the United States of America resulted in heavy casualties and the eventual withdrawal of UN soldiers from Mogadishu.

The international community also attempted to stabilise Somalia in 2004 by backing the establishment of the Transitional Federal Government (TFG) which has since its inception become the internationally recognised government of Somalia. The establishment of the TFG came about after a series of international peace conferences and diplomatic negotiations between the different major factions in Somalia. However, this intervention is perceived to have failed because the TFG has not received popular support from the Somalis as it is viewed as a western-backed government and its era has been marred by political bickering by the different factions among the Members of Parliament. This political bickering has hampered its objective of creating political stability and charting the way forward for drafting the country’s Constitution as envisioned in the Transitional Federal Charter.

Kenya, as a key player in the region, also intervened to restore stability in Somalia under Operation Linda Nchi which specifically seeks to eliminate the threat of Al Shabaab following the multiple kidnappings and attacks in Kenya which they were reported to have been responsible for. In the recently concluded London Conference on Somalia, on the 23rd February, 2012, the members of the international community agreed to inject new momentum to the political process in Somalia by strengthening the African Union Mission to Somalia (AMISOM). To this end, troop-contributing countries were called on to add more troops to AMISOM and to help Somalia develop its own security forces. A careful analysis of these interventions reveals that they are short-term interventions which do not address the root cause of the unstable situation in Somalia which continues to engender displacement.

1 http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper79.pdf?view
2 http://www.state.gov/r/pa/ei/bgn/2863.htm#people
4 http://amisom-au.org/about-somalia/somali-peace-process

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**Approaches to Achieving Peace and Stability**

Achieving sustainable peace in Somalia and durable solutions for the protracted displacement situation can only be achieved through a long-term, multi-pronged approach that addresses; the role of the international community in developing sustainable interventions for Somalia’s political instability; how durable solutions can best be achieved through militaristic interventions and the question of return and reintegration as other interventions to address the socio-political environment are being sought. The ideal approach to restoring peace in Somalia including eliminating the threat of Al Shabaab is one that adopts a combination of humanitarian, development-oriented, diplomatic and militaristic approaches, in harmony and for no other interest than to restore stability in Somalia.

After the Kampala bombing in 2010, Ugandan President Yoweri Museveni, called on African leaders to team together to “kick Al Shabaab out of Africa.” Kenya itself has adopted this mindset through the issuance of threats by the Ministers of Internal Security and Defence. It is the tone of such statements and warmongering that encourage the radicalisation of Al Shabaab, providing them with a free media platform to parade their own strength and preparedness for war. Such perspectives only aim to treat the symptoms of the crisis without tackling the real problems. There is need for a paradigm shift that addresses the problem of terrorism at large, as the Al Shabaab is not only a threat to Somalia or to Kenya but to the whole of the Horn of Africa region and beyond.

For a country whose economic infrastructure has been severely damaged by years of civil conflict, terrorist attacks and recurrent drought, the international community needs to strategise on how to capacitate the next Somali government to rebuild and restore the country's infrastructure.

The Turkish Government has engaged Somalia in this way by being the first country in 20 years to open an embassy in Mogadishu and by commencing various development-oriented projects including the reconstruction of roads, the international airport and hospitals. The Turkish Prime Minister, Recep Tayip, during his visit to Mogadishu last year, announced Turkey’s commitment to invest and rebuild the infrastructure of Somalia. It is such efforts and interventions that should be lauded by the international community and that should provide the impetus for other countries to contribute financial resources to support the development of Somalia. Rebuilding infrastructure and restoring livelihoods will lead to a durable solution that addresses the protracted situation of poverty, unemployment and lack of access to social services such as education. In so doing, the vulnerability of young Somalis being recruited by the Al Shabaab is reduced. Further interventions targeting the youth should include disarmament, peacebuilding and deconstructing the propaganda and brainwashing to deter against conscription. The challenge, however, is the unavailability of access to alternative media sources and constructive information that can emancipate the minds and hearts of impressionable youth.

As the mandate of the TFG comes to an end in August of this year, the international community needs to take stock of what has been achieved in the seven years that it has been in existence. This exercise would benefit by looking at the lessons learnt and charting a way forward for a comprehensive political solution. One of the lessons that the international community should have learnt by now is that imposing a government upon a people does not solve the political crisis but only serves to further destabilise the political situation, as has been the case with Somalia.

As a way forward, the international community should advocate and support the establishment of an inclusive and participatory process that charts the roadmap for a political solution that will guarantee sustainable peace in the country. The Inter-Governmental Authority on Development (IGAD) Assembly of Heads of State and Government recently endorsed a Grand Stabilisation Strategy for South and Central Somalia during their 20th Extra-ordinary Session. The strategy aims to use an inclusive process to determine political and administrative arrangements in the liberated areas at district and regional levels, while building on existing structures, so that as Somalia goes through the next phase (when the TFG mandate ends), international actors support the Strategy’s implementation mechanisms in the hope that it will result in the restoration of democracy and rule of law in Somalia.

One way of implementing this strategy and making the process inclusive and participatory for all key actors, is to involve various Somali clan leaders in the negotiation process for a Somalia National Government. It is only by creating an inclusive and participatory process of negotiation and consensus building that a legitimate governing system will be established and will be accepted by the majority of Somalis. Such a process will create the basis upon which a national governing body can be elected. An arrangement such as this, would provide the people of Somalia with an alternative leadership option and a chance to stabilise the political situation.

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Refugees dialogue with RCK and Jesuit Refugee Services (JRS) staff at a community forum on April 18th, 2012, Eastleigh, Nairobi. Community forums allow agencies to disseminate information to refugee communities and to keep in touch with current refugee issues.

Law enforcement officers, civil society representatives, RCK and UNHCR staff after a training session on refugee and IDP protection from 28-30th March at Nyali Beach Hotel, Mombasa. RCK seeks to promote protection for refugees and other forced migrants through partnerships.
RCK staff at an Inter-Governmental Authority on Development (IGAD) workshop on the 29-30th March in Nairobi, Kenya to review and validate the Study on State of Play on Migration and Population Displacement in the IGAD region.

- Aerial view of Dagahaley outskirts in the foreground, Dagahaley camp and the Ifo extension in the background. With nearly 500,000 refugees, Dadaab is the largest refugee camp in the world. Brendan Bannon, IOM/UNHCR, October, 2011.
In 2011, refugees fled Somalia in such numbers that the existing camps in Dadaab, Kenya could not hold them. They settled on the outskirts of Dagahaley and Ifo in self-built structures. These are at the edge of Dagahaley and the refugees here are being moved to Ifo extension, a tented camp that opened in August 2011, that is closer to services, schools and health centres. Brendan Bannon, IOM/UNHCR, October, 2011.
Driving through Dadaab in the North Eastern region of Kenya. The local populations are mainly pastoralists. Since the establishment of the refugee camps in 1991, Dadaab has also been home to the largest refugee camp in the world.

RCK, Department of Refugee Affairs (DRA) and Taveta Prisons staff on a monitoring mission to the Coastal region find victims of smuggling serving sentences for unlawful entry and presence.
FAMILY – THE BASIS OF PROTECTION

“The family is a haven in a heartless world.” – Attributed to Christopher Lasch

“What can you do to promote world peace? Go home and love your family.” — Mother Teresa

The family is one of the primary agents of socialisation. Family members teach children the norms, values, beliefs and ideals of society. One is reminded of what their family and culture has done for generations. This could be through stories told or journals written. The children learn at an early age what is good and bad, what is right and wrong. They develop specific habits, traits of character, attitudes and values.

When mothers recommended counselling for their children at RCK, it was difficult to respond to some of the concerns raised by the children such as: “Who will take care of Mom when I’ve finished with school?” Only a family member can answer such questions in a loving, reassuring and practical manner. A counsellor may respond and say that it is a right for a child to go to school, or to be fed but if the child is not living with a family or in a family setting where love and stability is found, they may not feel safe, they may not trust the information that they have been given.

The family and each family member has a role to play. They are recipients and providers of love. This may be difficult to give when individuals in the family are undergoing grief from the losses that they have experienced during displacement. Displaced families that lack male heads may experience more feelings of insecurity as women in some communities are not considered heads of households. This is typical of many refugee communities where the children of female headed households are called orphans.

Amina’s Story:

When Amina entered Kenya from Somalia, she could not locate her family members, and the women she found herself with urged her to continue walking towards Nairobi without looking back. They boarded a lorry and came to Eastleigh, Nairobi. Amina was accommodated by a family that agreed to host her.

The family was close-knit — they laughed together, shared stories with her about the history of their clan and tried to make her feel as much a part of them as possible. But Amina never felt like she could fit in. She did not find the same things funny, she was used to eating from one big plate instead of each person eating from an individual plate, she missed hearing bedtime stories from her father instead of watching TV until bedtime and she missed praying and going to the mosque, which her host family did not do much.

Amina would often tell them how things were done in her family but as much as they tried to accommodate her, it still never felt like home. Every time a bus came in from Garrissa, a transit point from the Dadaab refugee camp to Nairobi, Amina would try to find out if anyone had heard about or seen any member of her family. Her
host mother was very understanding. She encouraged her to look for them, accompanying her routinely to the bus stop to make enquiries. She tried to get Amina’s teachers to spend as much time with her as possible to improve her low grades. Failing this, Amina’s host mother brought her to RCK for counselling because it seemed Amina was always lost in her own world.

RCK counsellors worked with Amina and her host mother to try to understand why she felt so alone.

One day, they learnt that Amina’s mother had been spotted near a neighbouring town and that she had also been trying to locate Amina. Amina was so anxious to find her, after receiving the news that she could not sleep and she kept asking to be taken to her family. On the day her mother came to meet her, Amina smiled and her whole face lit up, making her appear like a totally different girl. She looked so radiant as she jumped up and down, it seemed she had springs on her feet. Amina was finally home.

Many look forward to starting a family to replace in some way the one that they had lost. They try to replicate the character and feel of their families by aiming, for example, to have the same number of children that their parents had had. This is a way that helps them to move on and to channel their grief into building new families to which they can dedicate themselves.

Amina continues to receive counselling together with her recently-found family. Her school performance has improved greatly and so has her relationship with other children. Her host family has become a second family for her that she has finally opened up to.

She is content. She has found what was lacking; her family, her feeling of safety which allows her to feel confident. Amina is finally home.

Refugees living in urban areas often come together to help new arrivals locate a host family on the basis of clan or location of origin. In displacement situations where friends and families are often separated, this is an attempt to reassemble families.

At RCK, counselling often continues until grief or feelings of unhappiness no longer inhibit the ability of clients to carry on with their lives as normally as possible. For many young women, this means until they have established families of their own. Many look forward to starting a family to replace in some way the one that they had lost. They try to replicate the character and feel of their families by aiming, for example, to have the same number of children that their parents had had. This is a way that helps them to move on and to channel their grief into building new families to which they can dedicate themselves.

The family unit provides a home for its members. Parents provide protection and care for the children. All family members depend on each other for comfort, protection and peace. It is the family that provides the mental and emotional fulfillment and support especially in difficult times. This is what had been missing in Amina’s life. This is why she felt doubly displaced. Counselling Amina and other young women in her situation is a journey. There are many cases of relapse especially at times when there is news of new arrivals only to find out that none of the new arrivals is a family member or anyone known to them. But there are also many stories of hope, like Amina’s, where the reunion of families helps to rebuild lives.
REFUGEE PROTECTION IN A REFORMED CONSTITUTIONAL ORDER

We live in very interesting times. If you pay even casual attention to street conversations, everyone appears to know something about the constitutional dispensation and the legal protections envisaged by it. Many are eager to offer a comment or two about various provisions affecting their rights.

The Constitution

Promulgated on the 27th August, 2010, the Constitution contains an elaborate Bill of Rights which contains various categories of rights. In this regard, the Constitution borrows heavily from various international instruments on human rights. Although the Constitution does not directly talk about refugees (or asylum seekers) as a matter of constitutional interpretation, any reference to ‘persons’ or ‘anyone’ in the Constitution extends the benefits of its provisions to non-citizens including refugees and asylum seekers. Furthermore, the Constitution acknowledges the general rules of international laws, treaties and conventions ratified by Kenya as part of its laws.

As to the enforcement of the Bill of Rights, the Constitution has extended the rules regarding the right to sue (locus standi) beyond direct sufferers of injury. It now recognises the right of persons acting on behalf of others who cannot act in their own name: acting as a member of or in the interest of a group or class of persons; a person acting in the public interest; and an association acting in the interest of one or more of its members. This provision provides a fundamental infrastructural arsenal for public-spirited actors to institute legal proceedings to enforce the rights of vulnerable groups such as forced migrants. This stands in stark contrast to earlier times when the rules on locus standi frowned upon litigants with no direct personal interest in legal controversies. As late as 2007, in a legal dispute on various issues including the right to equal representation in the composition of the National Constitutional Conference, Justice Ringera ruled that enforcement of rights under section 84 (repealed Constitution, now Article 22) applied specifically to the violations of individual rights and could not be stretched to include community or group rights. Though, this strict approach had started to lose grip with some judges, the general perception on originators of public interest suit, was that they were frivolous trouble-shooters. In another interesting case Maathai v Kenya Times Media Trust Ltd, the High Court, while affirming that only the Attorney General could sue on behalf of the public, noted that:

…the plaint may have been brought on moral or social grounds… The plaintiff (Wangare Maathai) has strong views that it would be preferable if the building of the complex never took place in the interest of many people who had not been directly consulted. Of course, many buildings are being put up in Nairobi without many people being consulted. Professor Maathai apparently thinks this is a special case. Her personal views are immaterial… (she) has no locus standi.

Article 22 of the Constitution now does away with this impediment thereby giving more room for the enforcement of the rights through public interest litigation.

Omolo Joseph is the RCK Assistant Programme Officer, Advocacy and Capacity Enhancement Programme, based in Nairobi
The Kenya Citizens and Foreign Nationals Management Service Act (Service Act)

Assented to by the President and commenced on 30th September and 4th October, 2011 respectively, the Service Act establishes the Kenya Citizens and Foreign Nationals Management Service (the Service) to administer laws relating to various issues including the management of refugees. The Act establishes a superstructure of equivalence with the present Ministry of Immigration and Registration of Persons with a board, directors and committees. The service shall be responsible for the implementation of matters relating to citizenship and immigration, births, deaths, marriages, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register.

Though the Service is headed by a Director General (section 3), the clustered issues (including management of refugees) would probably be administered by directors appointed by the service (section 16). The Refugees Bill, 2011 confirms this in article 10 where it requires the Service to appoint a Commissioner to be in charge of refugee affairs with an equal status as a director under the Service Act (article 2).

The Service Act also establishes a tribunal to determine disputes, under the Act entitled the Kenya Citizenship and Immigration Service Appeals Tribunal with powers to review decisions of the board and directors. Under the Refugees Bill 2011 (article 21), the tribunal has powers to review the decisions and actions of state or public officers.

For its efforts to harmonise and synchronise management of refugee issues with other related departments, the Service Act deserves commendation. However, the general manner in which refugee issues are dealt with under the Service Act would most probably tend to undermine refugee issues. Refugee protection is not a popular sector and when put in competition with ‘more appealing issues’ like the registration of citizens (as done under the Service Act) risks being easily pushed to the periphery either through a skewed appointment process for the Commissioner or through the denial of resources.

The Refugees Bill

Though not among the scheduled legislations in the Constitution, the Refugees Bill, 2011 was developed and has been discussed together with other legislative instruments relevant to the work of the Service. On 17th February, 2012 RCK organised a stakeholders’ forum to consolidate further proposals for inclusion in the Bill (coming after another stakeholders’ forum hosted by the Commission on the Implementation of the Constitution in November, 2011 in Naivasha.). The Bill has proposals that will change the management structure for refugee affairs in both negative and positive ways. They include:

Recognition of urban refugees

The Refugees Bill does not appear to recognise urban refugees and asylum seekers. In article 2 it defines the host community only as those residing within a radius of around 50 kilometres from an area designated as a refugee camp. Further, article 14(2) recognises designated places as refugee camps and reception centres.

Definition of and Qualification for refugee status

Article 3 introduces a different criterion from the Refugees Act 2006 and the UN 1951 Convention. These two instruments talk about ‘being outside’ the country of one’s nationality, while the Bill talks about proof that one “is in Kenya”. This criterion of ‘is in Kenya’ puts a higher burden on applicants who must show that not only are they outside their country of nationality but also that they have entered Kenya.

The Bill has a shorter period within which an applicant is required to report their entry into Kenya. While the 2006 Act gave a 30-day allowance, the Bill has reduced this to registration ‘without unreasonable delay’. This requirement is very ambiguous and may be interpreted differently by different Government officers to the disadvantage of refugees and asylum seekers.

Administration

The Act shall be administered by a Commissioner appointed under the Service Act. The Bill does not provide guidance on the qualifications for appointment of a Commissioner. This stands in contrast with the position under the 2006 Act that set out minimum qualifications for appointment as a Commissioner. The position of the Commissioner was supported by a committee.

The Bill does not set up a refugee-issues focused appeal process. Appeals under the Bill are directed to the Appeals Tribunal which sits in appeal over various other matters under the Service Act.

Exclusion

Article 4(4) of the Bill introduces a new ground for exclusion of applications by asylum seekers. This exclusion seeks to deal with ‘asylum-hopping’. It bars application from persons formerly registered as refugees in other countries unless they
can prove that there has been ‘serious breach of peace’ in that original country of asylum. While this provision may help reduce the influx of asylum seekers into Kenya by locking out unmerited applicants, it does not have a sufficient safeguard for asylum seekers who face persecution in their first country of asylum. Reference to ‘serious breach of peace’ may not adequately and accurately capture the scope of circumstances that entitles applicants to asylum.

**Removal**

Article 8 shortens the period within which a person whose asylum application has been rejected is required to leave Kenya. It reduces this period to 30 days, from 90 days under the 2006 Act. Thirty days is an extremely short time and may not allow an asylum seeker sufficient opportunity to make arrangements for return or relocation to a third country of choice.

**Revocation of Refugee Status**

In article 16(1) (d) and 16(1) (e) the Bill expands the grounds upon which refugee status may be revoked to include commission of crime in Kenya after recognition. Under the 2006 Act, revocation could only be initiated for breach of national security, improper grant of recognition or loss of basis for protection as stated in sections 19 and 20 of the 2006 Act. These new grounds for revocation create an unnecessary nexus between obedience to criminal laws in Kenya and asylum. It establishes a regime of double punishment for refugees by making them suffer loss of their refugee status and punishment under the criminal justice system.

**Offences**

Article 22 of the Bill has enhanced the penalty for offences under the Act tenfold for the fine and thrice for the custodial sentence. The prescribed fine of Kshs 200,000 is very high and both penalties have been arbitrarily adjusted.

The Bill also introduces a new offence for persons who apply for asylum after the expiry of their legal status in Kenya through a regular admission. This provision seeks to deal with applications made out of desperation or designed to defeat the purposes of immigration laws. The provision, however, imposes a blanket condemnation and does not allow room for bonafide applications. In any case, overstaying one’s visa is already an offence under the immigration laws. Creating a secondary offence under the Bill does not serve any good purpose.

Presently, the Refugees Bill, 2011 is under review and consultations. Hopefully these initiatives will lead to its refinement to bring it in line with good practices on refugee protection, as embodied in the international laws while capturing the spirit of the Constitution.

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**THE EFFECTS OF OPERATION LINDA NCHI**

**How this affects the Operations and People in Dadaab**

As we drive through Kambioos Refugee Camp in the scorching midday sun, I cannot help but wonder what may be going through the minds of the occupants of the tents that are neatly arranged in rows and clearly partitioned, albeit into small spaces. This is what approximately 13,000 forced migrants have been calling home for about eight months now. Kambioos is one of the five refugee camps within the greater Dadaab Refugee Camp. Children are playing, oblivious to their surroundings, and women go about their household business. As we drive on, a truck carrying huge water tanks passes us. This truck supplies water throughout the camp.

Today I am excited because I am going to meet with some of the members of the community for a legal awareness forum, where we can talk about the rights and duties of refugees and about the laws that apply to them. We enter a primary school where the meeting is to take place. The school is made of timber. One side of the school is complete. The other side is still under construction.

After the forum, I meet one Safiyo Hussein Maalim who speaks fluent Kiswahili. She gives a big smile but carefully avoids eye contact. I can tell she is shy. She tells me in Kiswahili, “I have lived in the Hagadera Refugee Camp since 1995. A friend of mine taught me Swahili there.” She continues, “I went back to Mogadishu in 1996. By that time there was relative security and I was able to live there with my family. My father was a farmer and he would plant different food crops and sell the harvest in...
the market. It was not plenty but enough to help us through the year. I came back to Kenya in 2011, when insecurity became too much to handle”. Our conversation shifts to life in Kenya and how it has been so far. I realise that this is no ordinary woman. She is knowledgeable and intelligent. We talk about different issues and eventually our conversation moves on to Kenya’s military offensive dubbed Operation Linda Nchi which was alleged to secure Kenya’s borders after a series of incidents including the abduction of humanitarian workers from Ifo, Dadaab Refugee Camp towards the end of last year.

A Necessary Evil?

Every country has a duty to protect its own people from external aggression, whether the aggression is from another country or from a militia group. When the Al Shabaab militias were perceived to be a threat to the national security and the sovereignty of Kenya, the Government took swift action against the group. This action did not come without reactions and it certainly did not come without consequences.

In addition, the incursion led to retaliation by suspected Al Shabaab militias, targeting mainly security officers in Dadaab and its environs. These series of events severely affected humanitarian operations in the refugee camps, making service delivery grind to a near halt. At one point services being delivered were limited to those categorised as ‘life saving’ only. Other activities such as registration of new arrivals and issuance of movement passes for refugees, who wanted to travel outside the designated areas, were halted by the Government. These events occurred just after the camp had experienced an influx, when most refugees were fleeing from a deadly mix of conflict, persecution, drought, and famine in their country. Kenya’s Department of Refugee Affairs, the department tasked with registration of refugees, issuance of movement passes and travel documents among other responsibilities, halted the registration of refugees and asylum seekers. This move is tied to the Operation since the Government made the decision to halt the registration around the time when the military offensive began.

To date, registration has not resumed but new arrivals continue to make their way into the country from Somalia, and especially into the camps. As a result of the non-registration, many refugees are issued with food tokens by UNHCR, as opposed to ration cards. The tokens allow access to limited services such as food and tarpaulins and only for a limited span of time. They are forced therefore to share limited resources with the registered refugees. In addition, the lack of registration puts both adults and unaccompanied minors at risk. Refugees who have not been registered are often arrested and charged with the offence of being unlawfully present in the country.

Furthermore, the refugee community has been exposed to insecurity as there have been alleged reports of police harassments and police brutality within the camps. Some refugees have been targeted by Al Shabaab elements who have infiltrated the camp. Towards the end of last year, two community leaders in Hagadera and Ifo were targeted and killed by suspected Al Shabaab elements.

As a result, some refugees have resorted to going back to Somalia, citing insecurity in the country and stating that it is safer to go back to their country than to stay in Kenya, as they fear for their lives. There have also been cases of discrimination by the host community who stereotype refugees to be Al Shabaab. “Sometimes the host community is hostile to us. They say that we are a burden to them and that all these agencies provide services to us but not to them. They also say that we deplete their resources,” Safiyo says.

The Government offensive may be deemed to be a blessing to some and a curse to others. While the Government has a duty to protect its borders and to ensure the safety of its people, it should not do so at the expense of those it has undertaken to protect, neither should it create new vulnerabilities or exacerbate the situation of already vulnerable populations.

Dinah Makambi is the RCK Assistant Programme Officer, Legal and Social Justice Programme, based in Dadaab.
Taking Stock: Where are we now?

A relative calm hangs over Dadaab, and humanitarian workers are urged to be vigilant in ensuring that they remain cautious of potential threats. Security is not taken lightly and everybody is trying their level best to be secure. One thing is certain, that Dadaab may never be the same again. Humanitarian workers are obliged to deliver much needed services to the host community as well, and do so with great caution and tact. In so doing, they are looking to new and more innovative ways to continue service delivery even in situations where movement or access to and around the camps is limited. This includes building the capacities of refugees themselves to enable them to deliver these services with minimal or no supervision. Other strategies include disseminating information through radio programmes and short message services on cell phones.

Operation Linda Nchi is well into its seventh month and the Kenya Defence Forces have started working under the African Union peacekeeping force, AMISOM, a move which has been supported by several stakeholders including the Inter-Governmental Authority on Development (IGAD). During a recent summit held in Addis Ababa, humanitarian agencies were urged to encourage voluntary repatriation of refugees to “liberated areas” in Somalia by AMISOM and Kenya Defence Forces (KDF).

As the Government of Kenya carries out its engagement across the border to ensure that Al Shabaab is weakened, efforts should be made to ensure that the welfare of refugees remains within the focus of the Government agenda. It is commendable that the Government is making an effort in refugee protection by ensuring that the security of all: the refugees, the host community and humanitarian agencies and refugees are protected. As a matter of urgency, however, the Government needs to resume the screening and registration of refugees as part of the process of improving security. Registration would allow the Government to know who and how many persons of concern are present, how to better inform interventions given an understanding of the numbers, and the ability to screen new arrivals for health and security reasons.

As for refugees, life goes on. Safiyo is just one of thousands of refugees living within Dadaab. In her case, she is just grateful to be alive and living in a peaceful country. “You do not know the value of peace until you go through war,” she tells me.

I look at the direction of the driver and he hints that our time to head back to Dadaab has come. We have to head to the meeting point to get the security escort as is the norm. Before I leave, I ask her about her thoughts on Operation Linda Nchi. She looks away and stares bleakly into the horizon, as if in deep thought and then she says, “All I want is for my country to have peace so that I can go back home. No one wants to live in such conditions.” She points towards the direction of a small tent in a loosely-fenced compound.

I bid goodbye to Safiyo and head back to the Dadaab camp. Our conversation has left me with a great deal to ponder about. My hope is that AMISOM and the Transitional Federal Government will provide the much needed reprieve for Somalia so that eventually the sons and daughters of that soil will be able to go back, rebuild their land and their lives.
Towards Reparations and Reconciliation: What next after the TJRC hearings?

RCK has been engaged in efforts aimed at achieving durable solutions for internally displaced persons (IDPs) in Kenya for the past five years including enhancing cohesion within and between communities. RCK provided legal and psychosocial assistance in the Molo and Kuresoi Districts immediately following the post-election violence (PEV) of 2007-8 and throughout much of 2011. The organisation also conducted peacebuilding and reconciliation activities in Eldoret, Uasin Gishu District, to support efforts made by the Government to resettle IDPs within their communities. Other transitional justice interventions that RCK has been a part of, include working with the Transitional Justice and Reconciliation Commission (TJRC).

The mandate of Kenya’s Truth, Justice and Reconciliation Commission (TJRC) is soon drawing to a close with the Commission expected to submit its final report and recommendations by May 2012. Established by the TJRC Act of 2008, the Commission was mandated to investigate and make requisite recommendations regarding gross human rights violations and other historical injustices committed in Kenya between December 12, 1963 and February 28, 2008.

The TJRC has carried out its mandate by, among other things, collecting individual statements and memoranda from the public, conducting public hearings around the country and thematic hearings in Nairobi. The TJRC is currently in its report-writing stage and as we anticipate the submission of its final output, it is essential to recognize that the Commission has been encumbered with numerous challenges that will have a considerable bearing on the expected report.

The TJRC commenced its operations in August 2009 and was immediately plunged into controversy arising from challenges as to the suitability of its Chairperson, Ambassador Bethwel Kiplagat, a matter that to this date remains the subject of legal proceedings. The Chairperson was rejected by the victims as well as his fellow Commissioners, resulting in a leadership and credibility crisis that saw the Commission’s operations paralyzed for close to a year. The TJRC was further plagued with financial and resource constraints that saw it operate without a Secretary and Secretariat for its first nine months with its operational staff being hired in September 2010. These challenges had a ripple effect on the work of the Commission, leading it to request for a time extension as provided for within the law. The TJRC was further accused in various quarters of proceeding with haste and secrecy to avoid further scrutiny and criticism. The most detrimental legacy of these challenges, however, remains the erosion of public confidence in the work of the TJRC.

Despite these adversities, the TJRC, in temporarily resolving its leadership problems, has enjoyed a resurgence and has been able to conduct its work to the point of near conclusion. Some of the stated achievements by the Commission thus far include: The collection of 30,000 individual statements and 600 memoranda from communities and organizations; conducting public hearings in various parts of the country; and conducting thematic hearings on the basis of 14 identified themes. It is in the face of these considerable undertakings by victims and the public that we must consider the prospects of the work of the TJRC to advance transitional justice, despite the limitations associated with its processes. Indeed, the ultimate test for the TJRC and its contribution to transitional justice lies in its final report.

In order to vindicate itself from the embattled process it has undertaken thus far, it is incumbent on the TJRC to prepare a holistic final report, one that remains true to the voices of the victims captured in statements and public hearings while remaining irrefutable in the face of objections by perpetrators and detractors. The report must provide a historical record and perspective on how certain practices give rise to conflict. Such a record must be based on sufficient evidence to support the claims made and the persons they are made against. The report should provide a comprehensive mapping of the human rights violations identified while also articulating the in-depth experiences of vulnerable groups such as refugees and IDPs. This approach would ease the process of identifying and recommending appropriate reparations for victims.

The TJRC must ensure consistency and coherence between its inquiry, findings and recommendations in order to avoid charges of unsubstantiated claims and of witch-hunting. In instances where perpetrators are identified, the Commission must demonstrate regard for due process or procedural fairness, as failure to do so will result in constitutional challenges by named perpetrators – an experience witnessed in the case of Liberia.

The recommendations on reparations must be premised on a comprehensive reparations programme: one that identifies beneficiaries or guidelines for their identification; provides
for an assessment of the needs and desires of victims; identifies agencies responsible for undertaking the reparations; and sources of funding for the reparations programme.

In order to aid the process of implementation, it will be essential for the TJRC to prescribe timelines to its recommendations recognizing that they shall not all be achievable at once. For example, Sierra Leone’s truth commission report categorised its recommendations into priority areas. It is also imperative that the TJRC integrate its recommendations to the ongoing national reform agenda in order to harness much needed impetus and existing resources. Recommendations on land and internal displacement, for example, would readily benefit existing policies and programmes on land reforms and resettlement of displaced persons.

On considerations of criminal accountability, the TJRC in recommending prosecutions must also consider judicial and police reforms as well as the protection of victims and witnesses. In light of the constitutional provisions on leadership and integrity, the TJRC must consider lustrations in respect of public officers or persons seeking public office if they are deemed to have committed human rights violations. In Liberia, for example, the truth commission recommended that 49 individuals, including the former President, be barred from seeking public office for a period of 30 years. The objective would be to restore confidence in public institutions and sound the death knell for impunity.

In order to further reconciliation at various community levels, the TJRC should consider recommendations on traditional dispute resolution mechanisms. Recognizing the value of community structures such as the church and community elders in resolving disputes, the TJRC should recommend a framework that allows for use of these structures alongside the formal justice system. Kenya’s cultural diversity suggests that various communities will employ different approaches to dispute resolution methods, however, any application of these structures should exclude discriminatory practices or those repugnant to human rights.

Lastly, the TJRC must recommend the memorializing of fundamental incidents identified within their historical record such as the Wagalla Massacre and Nyayo House Torture Chambers. This could be done through the preservation of relevant sites and opening them up to the public, creation of museums or naming of public spaces. However, such measures need to be informed by appropriate messaging, with care to avoid any offensive or divisive symbolism.

Should a final report by the TJRC be alive to these core aspects, it would re-energise the transitional justice agenda and set the stage for a robust implementation phase to be advanced for by the victims, civil society and public at large. On the other hand, if the TJRC falls short and succumbs to providing ambiguous recommendations or allows its leadership wrangles to derail the submission of its report, then Kenya will have lost a pivotal opportunity in its history to address fundamental challenges that threaten to unravel its already fragile national cohesion.

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1 The cases filed in respect of this matter include: (1) High court of Kenya at Nairobi; Miscellaneous Application Number 470 of 2009; Republic (Ex-parte Njeru Kathangu & Others vs TJRC & Bethwel Kiplagat and Another and (2) High Court of Kenya at Nairobi, Judicial Review Case No. 7 of 2012, The TJRC versus the Chief Justice and Bethwel Kiplagat. The latter is currently before the Court of Appeal following its dismissal before the High Court.

2 TJRC Progress Report to the National Assembly as at June 24, 2011.


4 Jucontee Thomas Woewiyu et al Vs The Truth and Reconciliation Commission through its Chairman, Jerome J Verdier, Class Action: Petition for Declaratory Judgment, (Feb. 1, 2010). The petitioners in this matter sought a declaratory judgment rendering the ACT that established the Truth and Reconciliation of Commission of Liberia together with its final report unconstitutional for all intents and purposes.

5 The Sierra Leone Truth Commission categorised its recommendations as follows: “Imperative” for those whose implementation was required immediately; “Work towards” for those whose implementation schedule was less stringent but required a reasonable time frame and; “Seriously Consider” for those whose implementation required an evaluation and therefore did not have conceivable timelines. See Chapter 3 of the Sierra Leone TRC Report available on http://www.sierra-leone.org/Other-Conflict/TRCVolume2.pdf as accessed on April 10, 2012.

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In the last few months severe drought, exacerbated by poverty and conflict, hit at least four countries in Eastern Africa early this year: Djibouti, Ethiopia, Kenya and Somalia - displacing hundreds of thousands of people. In Somalia and Ethiopia the year began by some of its citizens making the dangerous journey to Yemen. Others from these two countries headed for South Africa where they faced arrest, deportation and detention. Among other Innovations, the humanitarian response in drought-affected countries across the Horn of Africa saw an escalation in the use of cash transfers. As the magnitude of the drought crisis gained international attention, familiar laments emerged about the failure to heed warnings issued months earlier and learn from previous famines by building resilience to inevitable weather shocks.

Congo: Refugee Crisis

The UN refugee agency (UNHCR) had scheduled an organized repatriation from the northern Likouala region to the Equateur Province of the Democratic Republic of Congo (DRC) in late April. This was for the 120,000 plus refugees who have been fleeing across the riverine border, but this was indefinitely postponed because of logistical and financial issues since some areas are only accessible via the Ubangi river; others can only be reached by footpath.

According to the UNHCR, most refugees live along the stretch of the river and want to return home only if peace is restored. About another 1,000 of the refugees have returned across Ubangi River of their own will.

The refugees have also expressed concern about returning to an area with a heavy presence of DRC government troops and about the lack of official reconciliation efforts. It is unclear whether calm will prevail when the refugees finally return to Equateur. “People are ready to be reconciled. We must wait for the refugees to return so that the different leaders can meet each other. We can’t really talk about true reconciliation when the people concerned are not here,” declared Rigobert Moupundo, president of the National Commission for Refugees in the DRC.

The presence of Forces Armées de la République Démocratique du Congo (FARDC) remains a cause for concern in Equateur. “There is no longer any security problem in the region, except harassment related to the presence of the FARDC, but this is the same across DRC in general,” said Muriel Cornelis, technical assistant for ECHO in Equateur Province. The national army has often been accused of involvement in human rights abuses in the country.

According to the UNHCR, in addition to 120,000 refugees in the DRC, 20,000 people have fled to the Central African Republic. Of the 60,000 internally displaced in the interior of the northeast of the DRC, 30,000 have since returned home.

South Sudan: Little Hope for Returnees

After decades of war-forced absence South Sudanese returned in their hundreds of thousands, by train, bus and plane; but coming home to the world’s newest state, the Republic of South Sudan, appears to be the beginning of yet another chapter of struggle and destitution. On one of the main roads in Wau, a railhead town held by Khartoum throughout the 1983-2005 civil war which devastated much of what was then called southern Sudan and which put two million people to flight, there is an old poster that reads: “Vote for separation to become first class citizens in your own country and say bye-bye to repression and marginalization.”

The returnees, however, feel that the fruits of their struggle are not yet ripe, because they still undergo a considerable amount of struggle and pain, living in warehouses in the railway station, which is filled to capacity, and under conditions that are not favourable for human habitation.

Their return was fuelled by the lack of a sense of belonging because they felt like foreigners in Khartoum and faced constant discrimination. “We were not welcomed; if we built a home we would be chased away after two or three years. This happened many times,” John explained. Most of them were very optimistic about moving South but found a different reception and life was not as they expected.

Another 120,000 southerners were expected to return voluntarily from Sudan. And the exodus was considerably larger: southerners living in Sudan, even those who were born there, were denied Sudanese citizenship when the country split in two, and were given a deadline of 8 April to “regularize” their status or leave.
Somalia: Terror after the Al Shabaab

Although Al-Shabaab insurgents announced their withdrawal from the Somali capital, Mogadishu, in August last year, insecurity in the Somali capital has continued, as evidenced by incidences of targeted killings and regular bomb blasts.

Although the Government of Somalia still controls most of the areas where these incidences occur, efforts have been made to stop a re-emerging pattern of targeted killings against civil society actors.

“Many of the recent killings, including the bomb blasts, have been blamed on them,” one journalist said. “The so-called defectors are the biggest contributors to the current wave of insecurity. Journalists have become the easiest target, because government officials are tightly guarded, so perpetrators look for easy targets. Unfortunately, journalists are accessible yet high profile. The government security forces still dismiss the claim that defectors are involved in the insecurity.”

Khalif Ahmed Ereg, head of the National Security Agency in Benadir region (Mogadishu and environs), claimed that defectors could not have carried out the attacks. “These are people who are in our hands. We know where they are and what they are doing at all times.”

According to the Committee to Protect Journalists, Somalia is the most dangerous place in Africa for journalists. Even the displaced in the city had not been spared, according to a civil society source. “They get robbed, raped and even killed sometimes. It is really tragic that seven months after Al-Shabaab has been driven from the city we are still living in fear.”

There are an estimated 400,000 internally displaced people in and around Mogadishu, with more coming into the city as they flee the fighting between government forces supported by the African Union, Ethiopian and Kenyan troops on the one side and Al-Shabaab in southern Somalia on the other.

Kakuma was initially designed to accommodate 100,000 people, and currently accommodates some 91,000, according to the UN refugee agency (UNHCR). There has been a rising flow of refugees since the violence began both in parts of Sudan and South Sudan. The biggest worry is that Kakuma could reach its full capacity by June 2012. An estimated 4,500 refugees have crossed into Kenya since the beginning of the year, many of them from South Sudan and Sudan, according to the UNHCR.

“Since the military clashes began, 500-800 refugees from both Sudan and South Sudan have been streaming into Kakuma every week over the last few weeks,” said Martin Pepela, refugee programme manager for local NGO Refugee Consortium of Kenya.

Providing shelter for the newly arriving refugees has been the greatest challenge. Many have been forced to stay at the camp’s reception area, Pepela told IRIN. “There is no shelter for the newly arriving refugees and this has been a big challenge.”

UNHCR has begun talks with the Kenyan government on the setting up of a new refugee camp capable of hosting 100,000 people. UNHCR Spokesperson, Emmanuel Nyabera said a site near Kakuma had already been identified. However, negotiations between the Government and UNHCR to extend the Dadaab refugee camp in eastern Kenya took years to finalize, and officials say it might be a while before any new site in Kakuma is ready.

One source of refugees is South Sudan’s Jonglei state. At least 140,000 people have been affected by inter-ethnic conflict there, and some civilians have fled across the border to Kenya, according to aid workers. Some of those now in Kakuma fled from South Kordofan and Blue Nile, Sudanese states on the border with South Sudan where rebels have been fighting government troops since July 2011 in the case of South Kordofan, and September 2011 in the case of Blue Nile. In early April forces from both countries engaged in direct conflict. South Sudan has consistently denied Khartoum’s accusations that it is supporting the rebels across the border.

In all, some 140,000 civilians have fled South Kordofan and Blue Nile, mostly to refugee sites in South Sudan.
REDEFINING PROTECTION
EXAMINING THE WAY WE ADDRESS THE NEEDS OF REFUGEES AND OTHER FORCED MIGRANTS

TOWARDS REPARATIONS AND RECONCILIATION - WHAT NEXT AFTER THE TJRC HEARINGS?

WHILE EMPOWERING WOMEN, DON'T FORGET THE MEN AND BOYS

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