The shrinking refugee space in Kenya
Contents

Refugee Insights no. 25

A Word from the Executive Director

Shrinking Asylum Space in Kenya

Xenophobia and the Challenges of Managing Asylum System in a “Securitised” Environment

Local integration as a durable solution to refugee problem in Kenya: Myth or reality?

Why a Strict Encampment Policy Could Jeopardise Effectiveness of Future Voluntary Repatriation

The Blurred Line: Preserving the Asylum Space in the Context of Increasing Insecurity

Elusive Peace Pushes South Sudanese Back to Camps Two Years after Independence

RCK in Pictures

Promoting Peaceful Co-Existence between Refugees and Host Communities

Enhancing Advocacy through Experiential Learning: a Visit to Kasarani Police Station

Nairobi Women Prison: a Model Prison in Kenya

Promoting the Rights of Internally Displaced Persons in Kenya

Regional Highlight

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A Word from the Executive Director

Dear Reader,

It is my pleasure to invite you to this new edition of refugee insights. Much has happened in the sector since the last newsletter was published. The Kenyan asylum space has shrunk with the imposition of the encampment directive in April of 2014. All refugees are now required by law to reside in designated areas known as refugee camps in Dadaab and Kakuma. But what is the effect of such a policy in Kenya?

The article titled ‘Why a Strict Encampment Policy Could Jeopardise Effectiveness of Future Voluntary Repatriation’ explores the effect of this policy on attainment for durable solutions for the Somali case load. It argues that the encampment policy stifles the ability of refugees and asylum seekers to ply their trade outside the designated area and thus may not be able to fully contribute to the reconstruction of their country effectively.

This year has also been the year that the Refugee Consortium of Kenya launched its inaugural course on regional forced migration matters. Articles titled ‘Nairobi Women Prison: a Model Prison in Kenya’ and ‘Enhancing Advocacy through Experiential Learning: a Visit to Kasarani Police Station’ detail the experience the participants of the course had during the course. They provide the details about two of the sites that the participants visited as part of their experiential learning about how the Kenyan justice system works.

It is my hope that you will enjoy this edition as much as we have enjoyed compiling it. Happy reading.

Lucy Kiama
Xenophobia and the Challenges of Managing Asylum System in a “Securitised” Environment

Xenophobia refers to fear or hatred of strangers or foreigners by host communities. In extreme or pervasive forms, it manifests in public policy and practice.

Why is it important to discuss the topic of xenophobia, especially in the context of refugees and asylum seekers? Kenya hosts over half a million refugees and many foreigners from neighbouring countries. This is in the face of heightened security threats as a result of terrorists attacks by the Al-shabaab militia from Somalia. This has complicated the hosting of refugees especially from Somalia as they are suspected to be involved in terrorist activities.

This suspicion was more apparent during the recent security operation “Usalama Watch,”1 Where, the Kenyan Government, jolted by increasing terrorist attacks on civilians in Mombasa and Nairobi, did several swoops to weed out those suspected to be involved in terrorist activities. This operation mainly affected refugees of Somali descent residing in Eastleigh. Besides government swoops, other communities viewed them with suspicion.

For the two decades that Kenya has hosted refugees from over seven countries, the Government has applied a combination of camp oriented as well as regulated urban self-settlement (regulated in that there must be proven reason to seek urban settlement) policy. During this period, refugees have made significant strides in improving their livelihoods, especially by engaging in income generating activities as is the case of Somali refugees in Eastleigh.

To tackle xenophobia towards refugees, two questions must be addressed: What is the driving force behind xenophobia?

What should be done to address the problem? Xenophobia in most part has been fueled by a number of myths and misconceptions regarding refugees and asylum seekers:

**Myth 1: Asylum seekers and refugees are an economic burden**

Refugees and asylum seekers have often been perceived as economic burden by host communities. Although these populations often require support, it is never entirely the obligation of the host state; the international community usually provides enormous support towards the welfare of refugees. In fact, in areas where refugees are hosted, significant efforts have been aimed at expanding refugee support programs to encompass the local communities so as to avert conflicts resulting from competition over resources and opportunities.

**Myth 2: Asylum seekers and refugees are a threat to national security**

This perception is premised on recent terror attacks by the Al Shabaab terrorist group that led to refugees of Somali origin to be perceived to be engaged in terrorist activities.

Despite allegations of terror cells operating within refugee camps, so far, there has been no evidence to substantiate this claim. It is however instructive to note that terror networks have taken advantage of large numbers of refugees in Kenya, especially in urban areas, to perpetuate their acts of terror.

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1 Security watch
Myth 3: Asylum seekers do not contribute positively to national development

This particular view is increasingly becoming baseless as many refugees engage in income generating activities during their extended stay in the country. Those living outside camps invest in businesses and pursue employment opportunities, while various organisations support those living in camps to engage in income generating activities so as to reduce their dependence on aid. Additionally, many refugees have enrolled their children in public schools and many more continue to enroll in universities and colleges to acquire education.

Through these initiatives, refugees contribute to national development by creating employment opportunities, and remittances made to their families in camps.

To counter these myths and misconceptions, there is need to increase awareness among all stakeholders including policy makers and the public on the truths about refugees and asylum seekers.

The primary principle remains that refugee protection is essentially civilian in nature. Hence, any limitation of refugees’ rights should pass the test of reasonableness and justifiability set out in Article 24 of the Constitution of Kenya 2010.

Inclusion of refugees in day to day life, by creating an enabling environment for them to take part in national development, is paramount in reducing their alienation by the public. This reduces unwarranted suspicion by the public, empowers refugees to engage in income generating activities and reduces dependency as well as tackles isolation of refugees that results from encampment policies.

In conclusion, tackling xenophobia should be viewed as part of the refugee agenda. The burden to confront it lies with not only the government but organisations dealing with refugees. Robust advocacy initiatives will be required as well as sustained campaigns to inform and educate the public on the realities regarding refugees.
Local integration as a durable solution to refugee problem in Kenya: Myth or reality?

By Dinah Makambi

Political conflicts in various parts of the global south have metamorphosed into recurrent conflicts that continue for extended periods. As a result, the desire by refugees to return to their countries of origin has remained just a dream. In addition, emerging trends such as global terrorism, coupled with security concerns have slowed the processes of resettling refugees and reduced the number of those being admitted in traditional resettlement countries. Because of the huge influxes, governments of host countries have been reluctant to assimilate or naturalize refugees as they view them as a socio-economic burden to the countries.

The refugee situation is never meant to be permanent; drafters of international, regional and domestic refugee legal instruments never envisaged a permanent refugee situation. As such, these instruments provide options for refugees to find a more durable solution for their status. The three forms of durable solutions envisaged are voluntary repatriation, local integration and resettlement. Failure to find acceptable durable solutions among these three options has combined to result in protracted refugee situations worldwide.

According to the 1951 UN Refugee Convention, restoring refugees to dignity and ensuring the provision of human rights includes an approach that would lead to their assimilation in the host society. But what exactly does local integration mean? Does it mean that one has to be documented as a citizen of that country, or does it merely refer to a refugee’s place of habitual residence and work for gain is within the boundaries of the country?

According to Alexandra Fielden, local integration as a durable solution combines three dimensions. Firstly, it is a legal process, where refugees attain a wider range of rights in the host state. Secondly, it is an economic process of establishing sustainable livelihoods and a standard of living comparable to the host community. Thirdly, it is a social and cultural process of adaptation and acceptance that enables the refugees to contribute to the social life of the host country and live without fear of discrimination. Fielden argues that, local integration need not be termed so where a refugee becomes a naturalised citizen of his or her asylum country, but where a refugee can acquire the three elements of local integration without actually being naturalised. However, Rosa Da Costa looks at local integration as a purely legal phenomenon. She argues that local integration is a process that should lead to permanent residence rights and ultimately, the acquisition of citizenship and that beyond securing legal rights, the economic and socio-cultural dimensions of life in the country of asylum are also integral to successful integration. In this article, we interrogate local integration from Da Costa’s perspective.

The constitution of Kenya 2010 and the Kenya Citizenship and Immigration Act, 2011 have envisaged and appreciated the need for people who are interested in acquiring Kenyan citizenship to go ahead and do so. However, there are several challenges that refugees and other forced migrants face in their quest to attain Kenyan citizenship. Article 15 (3) of the Constitution of Kenya, 2010 provides as follows: “A person who has been lawfully resident in Kenya for a continuous period of at least seven years, and who satisfies

References:
2. Article 34 of the 1951 Convention Relating to the Status of Refugees, Adopted on 28th July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950; entry into force 22 April 1954, in accordance with article 43
4. Ibid
6. Da Costa adopts the definition of local integration according to UNHCR, Local Integration, Global Consultations on International Protection, EC/GC/02/6, 25 April 2002 that stated that, “First, [local integration] is a legal process, whereby refugees are granted a progressively wider range of rights and entitlements by the host State that are broadly commensurate with those enjoyed by its citizens. These include freedom of movement, access to education and the labour market, access to public relief and assistance, including health facilities, the possibility of acquiring and disposing of property, and the capacity to travel with valid travel and identity documents. Realisation of family unity is another important aspect of local integration.”
the conditions prescribed by an Act of Parliament, may apply to be registered as a citizen.”

But how practical is it for a refugee who has met the requirements of citizenship through registration as per Article 15(3) of the Constitution of Kenya to seek local integration as a durable solution in Kenya, especially in instances of protracted emergencies?

While Kenya has historically dealt with numerous prolonged refugee situations, the previous decade has seen a greater influx of refugees. As at 31st January 2014, Kenya had approximately 607,223 refugees and other forced migrants. The conflicts within the region have led to protracted emergency situations as refugees are unable to return to their countries of origin. For example, some refugees came to Kenya as early as 1991 and have never returned to their countries, while those born in the country only hear of their countries of origin through their parents and grandparents.

According to the Kenya Citizenship and Immigration Act, 20118, a person who has attained the age of majority9 and capacity and has been lawfully resident in Kenya for a continuous period of at least seven years may on application and capacity and has been lawfully resident in Kenya for a continuous period of at least seven years may on application be registered as a citizen if that person has satisfied the following conditions:

a) the person has been ordinarily resident in Kenya for a period of seven years, immediately preceding the date of application;

b) has been a resident under the authority of a valid permit or has been exempted by the Cabinet Secretary, in accordance with section 34(3)(h) and who is not enjoying the privileges and immunities under the Privileges and Immunities Act (Cap. 179);

c) has resided in Kenya throughout the period of twelve months immediately preceding the date of the application;

d) has an adequate knowledge of Kenya and of the duties and rights of citizens as contained in this act;

e) is able to understand and speak Kiswahili or a local dialect;

(f) understands the nature of the application under subsection (1);

(g) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;

(h) satisfies the Cabinet Secretary that he or she intends to reside in Kenya after registration;

(i) has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya; and

(j) is not an adjudged bankrupt.

Most of the refugees resident in Kenya satisfy most of these conditions. However, how practical is it for a refugee to attain citizenship in light of these requirements? Section 13(1) (c) requires a person to have been a resident under the authority of a valid permit. Section 2 of the same Act defines a permit as prescribed under section 40 of the Act, which provides that any person who is not a prohibited immigrant or inadmissible person under section 33 of the Act is entitled to a permit. Registered refugees are entitled to a class M permit, which allows them to work thus participate in nation building. However, the process of obtaining a work permit is long and torturous for the refugees and only a few refugees get the permits. In as much as many refugees are qualified and talented and could go a long way in contributing to the nation’s economy, this opportunity is not easy to come across. This is further exacerbated by the current encampment policy, which has compelled all refugees to stay in the camps, making obtaining the work permit a near impossibility for any refugee.

Additionally, according to Rule 10 of the Kenya Citizenship and Immigration Regulations, 201211, besides the work permit, one must produce a passport number, tax clearance certificate and certificate of good conduct/pole clearance certificate in order to apply for citizenship. All these documents are difficult for refugees to obtain. Refugees ordinarily use Convention Travel Document and only a few have Passports. In addition, most refugees born in Kenya have neither conventional travel documents nor passports. This disadvantages them when applying for citizenship. For one to obtain a tax clearance certificate, they must have a personal identification (PIN) number. For one to obtain a PIN number they must have a work permit. Without the work permits, they are not able to proceed in their application.

While on paper it looks like refugees are able to obtain Kenyan Citizenship, the truth is that the process of acquiring citizenship makes it more of a myth than a reality.

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8 Section 13(1) Kenya Citizenship and Immigration Act
9 Or a person who is over 18 years old
10 Between January 2012 and November 2013, the Government of Kenya issued 29,374 permits to foreigners. Of this number, only 70 were refugees. See Obala Roselyne, 2013, ‘30,000 aliens granted work permits’ at www.standardmedia.co.ke last visited, 14th August 2014.
11 Regulation Gazetted by Legal Notice No.64 of 15th June 2012.
Increasing insecurity and repeated acts of terror in Kenya have put the government in a dilemma where on one hand, it is under immense pressure to bolster national security and on the other hand, it is expected to uphold its international obligation of providing a favourable asylum environment. For decades, Kenya has provided a conducive asylum environment for persons fleeing situations of persecution and generalised violence in neighbouring countries. This is demonstrated by its decision to grant asylum to the thousands of Somali nationals who were fleeing the scathing drought and famine of 2011 in the face of growing threat of insecurity from the Al-Shabaab militants.

Currently, the asylum environment in Kenya is undergoing immense policy and administrative changes following increasing insecurity in various parts of the country. Since September 2013, following the tragic Westgate mall attack by terrorists, there have been calls by government officials and members of the National Assembly to repeal the Refugees Act, 2006 and subsequent closure of the refugee camps. This push is because the spiraling insecurity in the country has been linked to the presence of refugees especially of Somali origin in Kenya’s urban areas.

In March 2014, the Government through a Gazette Notice Vol. CXVI-No. 39 issued by the Ministry of Interior and Coordination of National Government, officially gazetted Dadaab and Kakuma as designated areas for hosting refugees and asylum seekers. This in effect changed Kenya’s asylum policy and practice to a strict encampment regime. As a follow up, the government through the Office of the Inspector of Police launched a massive security operation dubbed “Usalama Watch” with the objective of eliminating persons living in Kenya illegally.

In late 2013, a joint Committee on Administration and National Security; and Defence and Foreign Relations tabled a report before the National Assembly in which they recommended for the repeal of the Refugee Act 2006. They noted in their report: “The Act is redundant and cannot deal adequately with emerging issues of terrorism. A new law should be developed to guide the handling of the refugee phenomenon in the country.”

These new developments within Kenya’s asylum regime raise...
a pertinent question: “How do we preserve the institution of asylum and refugee protection in the context of counter-terrorism?” To address this question, one needs to situate it within the global discourse on ‘Global War on Terror’ and to interrogate the provisions of the 1951 Refugee Convention and its attendant 1967 Protocol as well as the 1969 Organisation of African Union Convention. To begin with, it is important to acknowledge that in the contemporary world we live in, the threat of terror for most states is real and states are increasingly becoming concerned of home-grown terror cells such as Al-Shabaab for the case of Somalia and Kenya and Boko Haram in Nigeria. However, even in the context of growing terror threats and generalised insecurity, it is equally important to debunk the myth and false narrative that continuing to host refugees and asylum seekers is the cause of increasing insecurity in the country.

In the Kenyan situation, the Government through the Ministry of Interior and Coordination of National Government used this narrative to explain the increasing cases of insecurity experienced in various parts of the country. However, the Government has not brought forth evidence or prosecuted a single case in the Courts of Law where a refugee or an asylum seeker has been a perpetrator of insecurity.

Although this discussion on national insecurity is an emotive one with many innocent persons killed in the ensuing terror attacks, it is important to separate the facts and myths in this debate. As a matter of fact, the regime and institution of asylum is civilian in nature. The institution of asylum derives its existence from the universally agreed principle of the right to seek and enjoy asylum as set out in Article 14(1) of the 1948 Universal Declaration of Human Rights. The granting of asylum is, by its very nature, a humanitarian, peaceful and non-political act which provides a structured framework for the protection and assistance of those who are fleeing persecution, violence, forced displacement or serious human rights violations, including situations resulting from terrorist acts. This is a principle which the United Nations High Commissioner for Refugees (UNHCR) and humanitarian actors firmly believe in and do urge the Kenyan Government to be mindful of its international and national obligation to uphold a favourable asylum environment even in the context of counter-terrorism efforts. While addressing a session of the UN Security Council’s Counter-Terrorism Committee, Ms. Erika Feller, Assistant High Commissioner for Protection at the Office of the United Nations High Commissioner for Refugees noted: “…although the threat of terrorism is real and present…the positive dimensions of migration and refugee contributions to host societies are in danger of being lost in the debate over security and border control.”

One of the negative impacts of the unbalanced nature of this debate is that the general public has developed xenophobic tendencies towards refugees and asylum seekers. During operation Usalama Watch, there were numerous reported incidences of harassment of refugees and asylum seekers particularly of Somali and Ethiopian ethnic origin. In other instances, refugees reported cases of extortion by law enforcement officers and individuals masquerading as security officers. Human Rights Watch in a statement noted: “Kenyan police and security forces are using abusive and discriminatory tactics in the name of national security, targeting entire communities.”

The situation during the operation Usalama Watch became so unbearable that there were a number of Somali refugees who opted to return to Somalia, a situation which can best be described as induced return or for the less unforgiving refoulement. UNHCR Kenya confirmed that there were five (5) cases of duly registered Somali refugees who were deported to Somalia by the Government of Kenya.

The legislative frameworks regarding national security does not help this situation. Article 32 of the 1951 Convention provides that: “The Contracting States shall not expel a refugee lawfully in their territory, save on grounds of national security or public order. The expulsion of such a refugee shall only be in pursuance of a decision reached in accordance with due process of the law.” The challenge with this double-edged provision is two-fold: First, whereas it provides a safeguard that any expulsion shall be based on due process, globally there has not been a universally accepted definition of what encompasses ‘National Security’ as well as the concept of ‘Terrorism’. This means that member states have the liberty to define and utilise the concept of national security as they deem fit for their national interests and in the context of preserving public order. This situation was witnessed in Kenya at the height of the Usalama Watch security operation where arrested persons (including refugees) without documentation were huddled together, detained at various police stations and taken through a rigorous process of verification and screening.

Secondly, with regards to due process of the law, during the Usalama Watch operation, persons arrested were not subjected to the due process of the law. Many were huddled through the screening and verification process and those found to be refugees or asylum seekers were relocated to either

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2 Term was coined during George W. Bush’s administration in post 11th September 2011. The administration declared a worldwide war on terror involving open and covert military operations, new security legislation and stringent efforts to block the financing of terrorism.

3 http://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups

4 http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463e21123b&td=53b397e48
Dadaab or Kakuma refugee camp; while other undocumented persons were deported without an opportunity to appear before a court. Article 33(2) of the 1951 Convention is very clear as it prohibits expulsion or refoulement of a refugee in “any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership to a particular social group or political opinion.” It is noteworthy that many of those expelled are among those asylum seekers who did not get registered as refugees when the Government stopped registration of asylum seekers in urban areas in December 2012.

From the foregoing, what is the way forward? First, there is need for State actors and the general public to find a proper balance between bolstering security and upholding and preserving conducive asylum space. It must be appreciated that for refugees and asylum seekers to enjoy a favourable asylum space, there must be enhanced security within the country of asylum. In which case, there must be enhanced cooperation between the Government and humanitarian actors in the fight against terrorism and bolstering asylum management processes.

The Kenya Government should put in place effective border control measures and properly document all foreign nationals and those seeking asylum. More importantly, the Government should commence registration of new arrivals and undocumented persons within the urban areas.

Additionally, there is need to strengthen capacity of law enforcement officers, judicial officers and immigration officers to understand the dynamics of forced migration. This will enable them to differentiate between forced migrants and illegal migrants. There is also need to increase awareness among Kenyans on refugees and asylum seekers so as to debunk the myths and false narratives regarding refugees and asylum seekers.

In conclusion, it is important to acknowledge that this debate will not end any time soon, particularly with the increasing incidences of insecurity and repeated acts of terror. However, it must also be underscored that despite the challenging environment that the Government of Kenya finds itself in, it must strike a balance between enhancing national security and protecting refugees and asylum seekers rights.

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By Jane Ebenyo

Just two years after independence, South Sudanese are back in Kakuma Refugee Camp. The camp, which was established in 1992 and situated in the Turkana County, north western part of Kenya, 120 kilometers from Lodwar hosts refugees from Sudan, Ethiopia, Democratic Republic of Congo, Burundi, Rwanda, Eritrea and Uganda. However, the majority of refugees hosted in Kakuma refugee camp are from South Sudan and Somalia.

In the recent past there has been a large influx of refugees into Kakuma from South Sudan due to civil war in South Sudan. The re-emergence of the politically instigated crisis in South Sudan began mid December 2013 after Salva Kiir, an ethnic Dinka, accused Riek Machar, a Nuer, of a coup attempt. The conflict that started in the South Sudanese capital, Juba, before spreading to other key states, took an ethnic dimension, pitting President Salva Kiir’s Dinka tribe against militia forces from rebel Riek Machar’s Nuer tribe. Thousands of people were killed and more than one million displaced by the war. Over 94,000 civilians were forced to live in eight UN bases in the country, while many others fled to neighbouring countries particularly Kenya, Uganda and Ethiopia.

Over the past six months, refugees fleeing violence in parts of South Sudan have been arriving in Kakuma camp in large numbers to seek asylum via the Nadapal border, with the majority being from Jonglei and Central Equatorial states. The number of asylum seekers registered by Department of Refugee Affairs (DRA) has increased since war broke out in South Sudan.

Talks to resolve the conflicts delayed due to boycott, and other technicalities by both the government and the rebels. Salva Kiir and Riek Machar finally agreed to ceasefire deals on 10th January 2014, both committing to immediate cessation of hostilities. Despite this step, people are still fleeing South Sudan due to the fear of being massacred and the famine that threatens the country. The Unite Nations High Commissioner for Refugees, Refugee Consortium of Kenya (RCK), International Rescue Committee (IRC), Medicine San Frontières (MSF), DRA are some of the agencies that monitor refugee movements along the border. RCK has particularly been working to ensure that the asylum seekers are not forcefully repatriated and that during the screening process, human dignity is upheld and that there are no cases
Elusive Peace Pushes South Sudanese Back to Camps Two Years after Independence

of extortion by police officers at border points. Lutheran World Federation (LWF) has been playing a key role in refugee management and has established reception centers to accommodate new arrivals. LWF’s main challenge has been providing shelter for new asylum seekers, forcing many to stay at the camp’s reception area. RCK on various occasions has received complaints from asylum seekers on inadequate housing; cases that it referred to National Council of Churches of Kenya (NCCK) which is primarily concerned with the provision of shelter to refugees. The inadequate housing has been occasioned by funding gaps and over stretching of already available resources due to the large influx.

The refugees at the camp do not always live peacefully with each other. Revenge- motivated inter-tribal clashes or inter-clan conflicts always occur. The latest being between two Dinka clans (Dacwek and Ayual) in June 2014, which left three people dead and many injured. There is need for more sensitization campaigns to educate the refugees on the need for peaceful coexistence.

There is also need to promote and encourage observance of fundamental human rights without discrimination. International treaties including the 1949 Geneva Conventions, which South Sudan has ratified, require parties to a conflict to ensure that people responsible for serious crimes are prosecuted.

Human Rights Watch’s experience over the past 20 years in many countries suggests that peace without justice often fosters renewed cycles of violence. There has never been accountability for serious crimes in Sudan, including in the 2005 Comprehensive Peace Agreement, which ended the long civil war in Sudan and eventually led to the creation of South Sudan as an independent nation.

The influx of large number of refugees into the Kakuma camp has stretched it beyond its carrying capacity of 100,000 people. As such a new site has been identified at Kalobeyei, 35km from Kakuma, to accommodate the new arrivals. According to the UNHCR, about 16.7 million U.S. dollars would be required to set up the new camp. Even though it is critical to ensure that displaced South Sudanese access accommodation when seeking asylum, focus should shift to finding sustainable solutions to issues affecting South Sudanese such as fostering political stability and enhancing economic development.

Jane is an intern at the Legal and Social Justice Programme in Kakuma.
RCK staff during a debriefing exercise in Nairobi

A sensitization forum for Members of Parliament on the Refugee Bill and the Kampala Convention in Naivasha
The Commissioner for refugee Affairs delivering a speech during a sensitization forum on the Refugee Bill 2014 held in Naivasha.

A participant from the Human Development Council in Juba South Sudan receives a certificate after a training on protection programming.

Participants working on a group project during a workshop in South Sudan.

The Commissioner for refugee Affairs delivering a speech during a sensitization forum on the Refugee Bill 2014 held in Naivasha.
Enhancing Advocacy through Experiential Learning: a Visit to Kasarani Police Station

By Lucy Kiama and Oscar Muriuki

Refugee Consortium of Kenya conducted an inaugural regional course on forced migration in Nairobi from 4th to 9th August 2014 as part of its mandate to build the capacity of government and non-state actors on protection of forced migrants. The course aimed to equip participants with skills to identify contemporary advocacy issues as well as provide a platform for regional participants to share best practices.

To promote experiential learning, RCK organised a field visit to enable participants to interact with forced migration issues. The team chose to visit Kasarani Police Station due to its significance during the security operation “Usalama Watch” which mainly affected refugees and asylum seekers of Somali descent. Kasarani Police Station served as the hub for the multi-agency screening exercise conducted at the Safaricom Stadium. The station is integral to operations concerning refugees and other classes of migrants because of its proximity to Kamiti Maximum Prison and since it detains those who have completed their sentences for being illegally in the country as they await deportation orders from Department of Immigration.

RCK team paid a courtesy call to the officer commanding the station, who shared his experiences in handling refugees. He underscored the need for actors in the refugee protection sector to foster relationships with security personnel.

From our visit, it was clear that more needed to be done to sensitize the police on refugee protection. This will forestall future violation of refugees rights witnessed during Usalama Watch operation.

We also noted the increasing openness of National Police Service towards civil society owing to the realisation that cooperation among players is critical to creating a suitable asylum space.

We further noted lapses in immigrant detention procedures. Despite significant strides in building capacity of police and courts on immigrant detention, many of these cases still lead to jail terms and fines for being illegally in the country. It was apparent from the visit that policy measures do not respond to the daily challenges of detaining economic migrants, asylum seekers and even persons who have been trafficked. The current practice of holding individuals as they await deportation orders creates a situation where persons who have served their sentences continue to be held as convicts in prison. An alternative facility should be created to serve

Clients being attended to at Mama Fatuma in Eastleigh.
as a holding area for persons who have already served their time. Increasing the capacity of officers to identify persons who have been trafficked and smuggled will improve the response of government officials.

Feedback from participants indicated that similar challenges are experienced across the region. This calls for coordinated approaches to tackle the challenges facing refugee protection. In addition, there is need to develop policies that take cognizance of the unique mixed migration flows in the region. This is needed both at national and regional advocacy forums. The policies need to be alive to the fact that asylum seekers and economic migrants enter the country via similar routes. The distinction is in the reason for movement and the required response. In the case of asylum seekers and victims of trafficking, immediate protection is needed. As for persons smuggled, there is need to implement laws curtailing such movements, especially the Citizenship and Immigration Act, 2011.

Child immigrant detention also emerged as a key problem in Kenya. RCK through the International Detention Coalition has prioritised it as an advocacy agenda and plans to increase awareness of the problem during the International Day to End Child Detention on 20th November 2014.

In conclusion, the Kasarani visit provided us with an opportunity to understand the dynamics of asylum seekers and refugees detention in Kenya, enabling us to prioritise advocacy issues required to address the problem. As remarked by one of the participants: “...only when you experience the cells do you fully appreciate the reality of detention and its burden on the government.”

Promoting Peaceful Co-Existence between Refugees and Host Communities

By Esther Mubati

In Kenya, various organisations both local and international have been assisting refugees to access a range of services including shelter, food and other social amenities. However, these organisations have in the recent past been accused of not enhancing collaboration and peaceful co-existence between refugees and host communities. The organisations have been accused of focusing their projects and efforts on refugees at the exclusion of host communities, a situation that has disadvantaged host communities. Many host communities prefer to be refugees to receive assistance given to refugees by both government and humanitarian agencies. For example, the Turkana in Kakuma feel that the refugees are given a special treatment by the Government and humanitarian organisation while neglecting them. This is echoed in Ekuru Aukot’s article “It is Better to Be a Refugee Than a Turkana in Kakuma”: Revisiting the Relationship between Host and Refugees in Kenya in which he highlights the challenges that Turkana community leaving in Kakuma face.

He notes that the host community feels that they are in the same situation as the refugees, especially the ones that fled drought, famine and conflicts, since Turkana is an arid area that frequently experiences drought and has no infrastructure, yet refugees receive assistance from the Government and humanitarian agencies while Turkana don’t. Additionally, while refugees have access to schools, hospitals, boreholes and even opportunities for employment, host communities lack access to some of these amenities. This inequity has resulted in hostility between the host community and refugees.

Promotion of peaceful co-existence between host communities and refugees requires addressing of these inequalities by ensuring that host communities too access assistance and social amenities.

Particularly, the Kenyan government must ensure access by host communities to social amenities, infrastructure such as roads, security and food. In addition, the government must consult local communities before putting up a refugee camp in line with section 16 (2) of the Refugees Act, 2006 as well as ensure equal distribution of national resources to enable the development of infrastructure and social amenities in the host community.

Lastly, all stakeholders must take steps to promote peaceful co-existence between host communities and refugees.

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By Edmund Lang’at

When the RCK Annual Regional Course on Forced Migration planning committee settled for Nairobi Women Prison as one of the places for experiential visits, I immediately knew that I wanted to visit the place. I was curious to find out how prisons looked like and especially women prison, how orderly they were, if indeed they were rehabilitation centres. More importantly, and related to the objective of our Annual Regional Course, was my desire to know how foreigners, especially refugees and asylum seekers, were treated in the prison.

On the day of the visit, 24 participants and I left the Kenya School of Government (the venue for the RCK Annual Course on Forced Migration) at approximately 9.30am in the morning for Nairobi Women’s Prison. We arrived at the prison an hour later. While at the gate, our first impression was that although the prison was heavily guarded, the atmosphere was relaxed. The guards were warm and received us well. We were instructed to leave our cell phones, cameras and other electronic devices at the entrance of the main prison. Inside the prison, we saw inmates dressed in stripped black and white. On looking keenly, we also noticed a handful of women in blue dresses. We were later told that the women dressed in blue were “trustees” because they had demonstrated exemplary behaviour and had served longer sentences. They also served as “eyes” for the prison wardens within the hostels and the prison compound. This recognition is one of the ways that the prison rewards good behaviour among the prisoners at the same time motivating others to emulate this example.

Suddenly, all eyes were on us, the prisoners temporarily stopped minding their business as Inspector Vena Kerubo started explaining to us the prison system. She indicated that the prison is divided into two sections: the Remand Prison and the Main Prison. Our tour of the prison started with a visit to the women hostels. The hostels were clean and neatly arranged; we were not sure if that was the norm or it was because we were visiting. The hostels looked like one of those boarding school hostels with double-decker beds arranged in a big hall. An addition for this hostel was a television (TV) set, but during the time of our visit the TV set had been withdrawn since the members were on punishment. Inspector Kerubo informed us that the section of the prison that we were visiting held prisoners serving various sentences and that there was a different section for remandees—prisoners who were undergoing the judicial process and had not been sentenced.

We also visited the prison industry where women prisoners received training on carpentry, weaving, knitting, baking and curving among others. Proceeds from the sale of these items are invested back to the industry and a quarter is saved under the prisoner’s name and is given to the prisoner when the sentence is completed. Ms. Kerubo organised for a meeting with three asylum seekers and refugees: two were sisters of Somali origin who were serving a 10-year sentence each for robbery with violence; one elderly lady from Somalia who was acting as a translator for the two sisters was serving 25-year term for second degree murder. Among these prisoners was a young lady from Uganda who was not more than 20 years of age and had just completed her six-month sentence for being in the country illegally. During our visit, the prison staff requested RCK to help with translation services to deal with language barrier that they often encountered.

One of the questions that kept recurring during the visit was: “What happens to women who came to the prison while expectant?” To answer this question we were taken to a day care centre within the prison. The centre was no different from other day care centre. It was neat; there was an area with small tables and seats for the children as well as an area designated for children to sleep during the day. The centre also had a playing room filled with toys. Visitors were not allowed into the day care centre with shoes; instead, clean sandals were provided for use while in the day care centre. Once the children attained the ages of three, the prisoner’s relatives were allowed to take them home. Newborn children spent as much time as possible with their mothers.

The prison provides adult prisoners with opportunities to enhance their education. Interested prisoners are provided with adult’s literacy classes as well as computer classes. Prisoners who need to access health facilities are allowed to go to those within the prison compound; only prisoners in need of specialised healthcare services are taken to health facilities outside the prison compound. In addition, there are counselors who visit the prison on a daily basis and provide counselling services to prisoners in need.

The visit to the prison exposed participants to practical aspects of the course, making it an all-rounded course. At the end of the visit, RCK donated sanitary towels and tissue papers to the prison.

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Internal displacements in Kenya have occurred periodically throughout Kenya’s history, as a result of diverse causes including politically-instigated violence; land and boundary disputes; natural disasters such as drought and other impacts of climate change; development projects such as the construction of dams, roads and hydro-electric power plants; cattle rustling; conflicts over access to water and pasture; environmental conservation projects; activities of local-level armed groups/gangs; and cross-border incursions. In early 1990s, when Kenya transitioned to a multi-party system, displacements occurred primarily in cosmopolitan regions. However, the problem has since spread to nearly all parts of the country – including international border areas and arid lands inhabited by pastoralists. The frequency of displacements in Kenya has been rising over the last two decades, yet durable solutions have become increasingly difficult to achieve. Internally displaced populations have often times found themselves in protracted state of displacement.

The main and most devastating cause of internal displacement in Kenya is politically-motivated ethnic violence, which tends to recur during general elections held every five years. Since the introduction of multi-party politics in 1991, ethnically-heterogeneous regions of the Rift Valley, Nyanza, Western and Coast have experienced violence in which some members of ‘indigenous’ tribes have been pitted against migrants constructed as ‘outsiders.’ Claims that migrants acquired other communities’ lands unjustly through patronage networks have often undermined respect for their land and property rights. These claims have been used by politicians to mobilise ethnic militia to forcibly displace ‘outsiders’ and dispossess them of their land and property. Hundreds of thousands of households have been displaced during elections: 300,000 in 1992; 150,000 in 1997; 20,000 in 2002; and over 660,000 in the 2007 post-election violence.

According to government records, over 660,000 people became internally displaced during the 2007 political crisis, while over 640 families crossed the border into Uganda as refugees. Out of the more than 660,000 people displaced, the government considers that over 300,000 or around 47 percent have been ‘integrated’ into communities across the country. The use of the term ‘integrated internally displaced persons (IDPs)’ is widespread in Kenya, referring to those

Promoting the Rights of Internally Displaced Persons in Kenya

By Kefa Magenyi

RCK staff attending to IDPs in the field.
IDPs living outside of camps with relatives and friends or in rented accommodation usually in urban and peri-urban areas. While this article also uses the term in this way, it is important to point out that this does not imply that ‘integrated IDPs’ have necessarily found a durable solution. The Inter-Agency Standing Committee Framework for Durable Solutions considers sustainable local integration in another part of the country as a durable solution when “internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.” As explained below, it is not at all clear whether ‘integrated IDPs’ in Kenya no longer have needs related to their displacement. In fact, because they are much less visible than IDPs living in camps, it is difficult to determine what their needs are. Moreover, those who are ‘integrated’ joined the old caseload of IDPs, including those who had not found a durable solution since their displacement in the 1990s.

The multiple causes of displacement suggest that the number of IDPs in Kenya remains significant, yet solutions are elusive for many. Following the formal closure of camps in 2010 and widespread public perception that persons still claiming to be displaced are imposters or ‘fake IDPs,’ there are only a few officially-recognized IDP settlements. The majority of Kenya’s IDPs live outside of camps in central, Rift valley and Nyanza regions. While the role of county governments in managing internal displacement is peripheral due to government practice, it is local authorities that bear the brunt of the negative impacts of influxes of IDPs.

Internal Displacement Policy and Advocacy Centre (IDPAC) has been carrying out activities with local IDP leaders and IDP groupings in Kenya with the aim of developing policies on internal displacement of persons as well as serve as the leading institutional focal point on information dissemination, advocacy through enhanced community participation and alternative dispute resolution. It seeks to enhance community participation and in particular the participation of internally displaced persons in advocacy activities that help champion their rights in line with the internally displaced peoples Act, 2012. To achieve this goal, IDPAC has rolled out a sensitisation campaign to acquaint victims of displacement as well as the county governments on the provisions of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 (IDP’s Act 2012).

IDPAC further led a joint historic prayer meeting with key stakeholders that included among others the county government leaders of Nyandarua; Internally Displaced persons Network; integrated internally displaced persons leadership and members of public of Nyandarua county and Olkaloo. During this meeting, IDPAC made an appeal to leaders present to table an Act in parliament on IDPs. This appeal was granted when Senator (Eng.) Muriuki tabled IDP issues in the floor of the Senate through a question on 27th February 2014. Participants called on the leaders to push for the compensation and resettlement of the remaining internally displaced persons by the national government. The Nyandarua integrated internally displaced persons appealed to the leadership of the county to introduce a motion in parliament on the grievances of IDPs. Similarly participants urged leaders to endeavor to consult the victims of displacement at all levels, and asked the Ministry of State for Devolution and Planning to constitute the National Consultative Coordination Committee as per the IDP Act 2012 within 21 days.

Additionally, IDPAC, together with Inform Action, Kenya Human Rights Commission and the National IDP Network in Nyamira, participated in a peaceful demonstration to empower displaced communities to demand for their rights to compensation and resettlement from the concerned institutions. This in turn helped in rapid responses and mitigation efforts to conflicts or general issues affecting the displaced persons in Kenya. The bulk of the demonstrators were the post-election violence victims of 2007-2008. The victims presented a Memorandum to the president through the county commissioner.

In conclusion, although progress has been made to enhance advocacy on IDPs issues in Kenya, more still needs to be done to compel the Kenya government to find lasting solutions to IDP-problem in Kenya. Particularly, IDPs need to be properly integrated and compensated. More importantly, factors leading to internal displacement need to be addressed to avert future internal displacements in Kenya.

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Kenya has officially adopted a strict encampment refugee management practice. From March 2014, all refugees and asylum seekers are required to reside in designated camps: Dadaab and Kakuma. This policy seeks to regulate the residence and movement of refugees and asylum seekers for security reasons. Could this policy adversely affect the effectiveness of voluntary repatriation as a durable solution? This article argues that a strict encampment policy does adversely affect the effectiveness of voluntary repatriation.

Voluntary repatriation is one of three durable solutions to refugees’ displacement; the other two are third country resettlement and local integration. Voluntary repatriation is where refugees, with free and informed consent, move back to their countries of origin once they feel safe to do so. Once they choose to go back to their countries of origin and move across the border, they cease to be refugees. But how is voluntary repatriation affected by a strict encampment policy?

Skills of refugees need to be nurtured if voluntary repatriation is to be effective. This is especially true where they were displaced by war or ethnic conflict. These skills can only be nurtured if refugees and asylum seekers are provided with an enabling environment. This environment requires that refugees to have access to work and own property in their country of asylum—something that a strict encampment policy may not allow.

A strict encampment policy adopted by Kenya has the propensity to keep refugees and asylum seekers dependent on aid. In the camps, even the able bodied rely on food rations and other aid provided by aid agencies. This in turn negatively impacts their ability to contribute positively to their society in their country of origin and may have difficulties settling on return.

The Somali caseload is a perfect example of how liberal policy prior to March 2014 empowered refugees by allowing them to engage in economic activities. Somali refugees are among the most enterprising refugees in Kenya, with an annual turnover of their businesses in Nairobi alone estimated at KShs.500m. With the signing of a tripartite agreement between Governments of Kenya and Somalia as well as the United Nations High Commissioner to have them voluntarily return to Somalia, the skills and competences they acquired while in Kenya will be useful in reconstruction.

In conclusion, the strict encampment policy poses a risk to the gains made in empowering refugees to engage in economic activities following the liberal policy that allowed them to live in urban centres. If the encampment policy fully takes root in Kenya, it will perpetuate dependency among refugee population which will negatively impact their ability to participate in national reconstruction on return to their countries of origin.

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Kenya

Inter-clan clashes

On 23rd August 2014, Citizen Television reported that at least one person had been killed and dozens wounded in fresh inter-clan fighting in Rhamu District, Mandera County. The fighting between the Degodia and Garre clans had displaced tens of locals who sought refuge at government buildings. Mandera county commissioner Alex Ole Nkoyo blamed the conflict on area politicians, saying that the fresh clashes had been politically instigated.

The clashes started when armed men attacked a lorry that was ferrying passengers who were travelling from Ndakaba to Rhamu town. The fresh attacks came after President Uhuru Kenyatta ordered area leaders to reconcile the warring communities.

National Cohesion

In October 2014, leaders from two warring clans in North Eastern region signed an agreement to end the perennial clashes which had led to loss of lives, displacement and destruction of property. The agreement was signed in the presence of the National Cohesion and Integration Commission Chairman Francis ole Kaparo and Garissa Senator Yusuf Haji, who were recently appointed by President Uhuru Kenyatta to head a committee spearheading peace efforts in the region. This came less than a week after Mr. Kaparo was sworn into office as the National Cohesion and Integration Commission chairman. The leaders signed the agreement to end the fighting during the committee's second meeting. Ibrahim Hussein, the chairman of the Council of Elders of the Degodia community, and Sheikh Ali Noor, chairman of the Garre community, warned that those who would violate the agreement would face sanctions to be prescribed by their respective communities.

Somali Repatriation

The first phase of the voluntary repatriation of Somali refugees is set to start soon despite the number of volunteers being only a third of what was expected when the registration started. Various factors slowing down the return of those who have volunteered to go back to Somalia include insecurity, lack of income generating opportunities and the uneasy relations between Kenya and Somalia over the recent crackdown on illegal foreigners. Following the signing of the Tripartite Agreement between the Governments of Kenya and Somalia and the United Nations High Commissioner for Refugees (UNHCR) in November 2013, the Kenyan Department of Refugee Affairs launched the registration on 15th July 2014 with the objective of repatriating 80,000 refugees by December this 2014 and 200,000 by the end Of 2015.

However, only 3,000 had registered with UNHCR by August 2014 to return voluntarily compared to the target of 10,000. Those willing to return to Somalia will be supported both materially and financially. Somalia’s Jubaland administration offered 10,000 acres (4,047 hectares) of land on which the Kenyan Government requested donors and development partners to build schools, hospitals and facilities to cater for relocated refugees.

South Sudan

According to United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) South Sudan Crisis Situation Report No. 55, as of 25th September 2014, fighting still continued in Renk, Upper Nile State. This caused population movement northwards to the Sudan border, as well as to the south of Renk. The total number of people displaced was yet to be determined, but some 150 people were sheltering at the United Nations Mission in South Sudan (UNMISS) base in Renk while others were reported to be returning to their homes. Assessments were planned in the surrounding areas.

The situation in Nassir area of Upper Nile State was tense, as it was in Bentiu and Rubkonka, Unity State areas with continued unconfirmed reports of impending attack. In Jonglei State, the uncertain security situation stalled assessment and response operations in Pigi/Canal County.

Delivery or relief services resumed as of 25th September 2014, but in Kamel, rather than Kaldak as previously planned. In Bor town, southward in Jonglei continued clashed impeded delivery of humanitarian assistance. Clashes and criminality were ongoing in Lakes State, with some 665 people sheltering in various locations in Rumbek. Another 230 had reportedly left the city for other areas.