



Refugee Insights

Newsletter of the Refugee Consortium of Kenya

Issue No. 24, 2014



Sexual & Gender-Based Violence

- Cultural and Religious Misconceptions that Negatively Affect Refugees



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A Word from the Executive Director

Entrenched harmful cultural practices and radicalised religious beliefs have had a negative effect on accessing legal justice for SGBV survivors among the refugee community. The article titled Sex and Gender-based Violence describes the various cultural and religious elements that prevent victims from accessing justice. It also provides measures to redress these hindrances.

In addition to the avenues for legal intervention, psychosocial support is another important avenue for both the clients and those that provide services to them. In this issue, two articles address these elements providing insights on the limitations of legal intervention for SGBV survivors and ways through which humanitarian officers in the refugee sector can minimize secondary trauma that they acquire in the course of offering service to persons of concern. It is hoped that our donors and partners can learn about the innovative ways that RCK uses to support SGBV survivors.

Finally, the issue would not be complete without touching on the South Sudanese crisis that has resulted in an influx of people in Kakuma refugee camp as well as in neighbouring Uganda. Though the article Declaration of Prima Facie Status is not in line with the theme, it still provides a good read for those following the conflict. The article makes a case for group-based determination of South Sudanese asylum seekers.

I hope that this edition will be an interesting read for you.

Happy Reading!
Lucy Kiama.

Dear Reader,

Welcome to issue 24 of the Refugee Insights. This edition continues with the sexual and gender-based violence (SGBV) theme of issue 23. It assesses the various avenues for intervention available to SGBV survivors that have sought help in our legal outreach clinics.

The publication of this issue has been made possible by the funding provided by the Swiss Development Agency (SDC).

Sexual and gender-based survivors invariably interact with the legal system after experiencing violence. The law in Kenya provides a mechanism for the prevention of SGBV, the punishment of perpetrators and redress for victims. However, as the article Legal Battle against Gender-based Violence describes, the application of the law does not always yield results for refugees, asylum seekers and other persons of concern (POC), especially if they are unaware of their rights and also as a result of continued adherence to harmful cultural practises among the refugee community.

Legal Battle against Gender-based Violence Forced Migrants in Kenya

By Patricia Mundia

Patricia Mundia is an Assistant Programme Officer in the Legal and Social Justice Programme with an interest in children's rights. She is an advocate of the High Court of Kenya



Prior to the enactment of the Sexual Offences Act 2006, cases of sexual and gender-based violence (SGBV) were not effectively addressed by the law in Kenya. This could be attributed to a plethora of reasons, among them; a narrow definition of sexual offences, an inadequate legal framework as well as discretionary sentencing by the courts. In addition, cultural influences were infused in both the formal and informal justice systems. Strict rules of evidence, which required corroboration of testimony given by victims was intimidating and as a result, psychosocial support and witness protection was needed but was not available to victims.

Extraordinary advocacy efforts saw the lobbying for the development and coming into force of the Sexual Offences Act (SOA) in July 2006. This legislation is as far reaching as it is progressive because it broadens the definition of sexual offences. Despite the popular assumption that SGBV is meted against women and girls, the scope also includes men or boys who can be victims of sexual offences perpetrated by both men and women. The Act has raised the penalties for several crimes and includes services such as psychosocial support, witness protection and forensic evidence.

However, realizing the full implementation of the Act has bottlenecks. Among those cited by the Government of Kenya are the cultural attitudes and practices that condone sexual violence hence hindering reporting of sexual violence cases and ultimately the operation of the Act. Another bottleneck is the lack of multi-sectoral collaboration among the various actors in the implementation of the Act and further the lack

of knowledge both by members of the public and some actors on the provisions of the Act.¹

In light of the challenges mentioned earlier, forced migrants² are likely to be even more marginalized. This is because they are immigrants and have little or no knowledge of the laws protecting them in their country of asylum. Forced migrants fall within the protection ambit of the SOA and the Constitution of Kenya, 2010. The principle of the rule of law provide for equal protection of the law. However, challenges in accessing these rights range from language barriers, lack of proper documentation as well as physical security needs.

Women and children are at a greater risk as they are more vulnerable and therefore targets of sexual violence. Heshima Kenya, in a report titled, 'The Moved and the Shaken: How Forced Relocation affects the lives of Urban Refugee Women and Girls'³ notes that some of the constant worries faced by most female refugees in Kenya include, but are not limited to, finding insufficient food for their children, harassment, exploitation and violence. Unaccompanied girls are especially vulnerable due to limited coping mechanisms and lack of family support. Further, it is noted in this report⁴ that women and children comprise the largest population in Kenya's refugee camps and are also notably susceptible to sexual violence and human trafficking, as well as maternal and reproductive health difficulties.

It is worth noting that the repeal of Section 385 vide the SOA Amendment Bill of 2011 has provided new opportunities for

¹ Opening Remarks during the Sexual Offences Act implementation Workshop made by Amos Wako, Attorney General of the Republic of Kenya (as he then was). 25th -27th May 2011.

² Forced Migration is 'a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.' <http://www.forcedmigration.org/about/whatisfm/what-is-forced-migration> as at 27th January 2012

³ Heshima Kenya 2013, pg. 4

⁴ Ibid

⁵ Which stated that; 'Any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that of the offence complained of'



victims of SGBV to report without the fear of persecution and prosecution by the same law upon unfavourable judgments being passed. However, the repealing of this section becomes obsolete if the persons it seeks to protect are unaware of the existence of the SOA and are unable to report their grievances.

In the asylum context, victims of SGBV are faced with the hurdle of a referral structure whose very conceptualization is meant to protect them. While the coordination of the sectors is supposed to improve the services for victims, refugees and asylum seekers are faced with a process that potentially exposes them to physical security risks owing to lack of knowledge among law enforcement and humanitarian actors on the Act and its provisions. The result is harassment and at times arrests of the persons seeking these services. One-stop centres, however, provide a source of relief for victims. Advocacy on refugee protection is much easier where most of these services are centralized.

Lack of documentation poses another challenge where refugee services are concerned. This can be traced to the Government of Kenya's directive that was issued on December 18th 2012 requiring that all urban refugees move to the respective camps and that all registration in urban areas be stopped. This directive was quashed by a High Court ruling given by Justice David Majanja, citing that the directive on strict encampment was *inter alia* unconstitutional and contrary to the principle of *non-refoulement*. Further orders were issued to resume registration. An appeal has since then been filed by the respondents, while registration in Nairobi has been carried out for very few extremely vulnerable cases. Most asylum seekers are opting to register at the camps.

Consequently, what this means is that it becomes difficult for undocumented refugees and asylum seekers, particularly survivors of SGBV, to access crucial services as envisioned by the SOA. This, coupled with the fear of police harassment,

limits movement by of refugee communities, especially for Somali⁶ nationals, who have been victims of xenophobic attitudes following the spate of grenade attacks across Kenya and the September 2013 Westgate Mall terror siege.

Stigma associated with sexual offences continues to be embedded in culture. In a report on the *Child Rights Situational Analysis for Refugee Children in Nairobi*⁷ the Somali community revealed that the practise of female genital mutilation (FGM) is performed on children from the ages of 3 to 15 years, with the purpose of reducing sexual libido. According to Somali culture, if a woman has not undergone FGM, there is a high probability of her becoming promiscuous and not fetching the highest dowry price. The cultural practice is so entrenched in the minds of girl children that they believe without undergoing FGM, they will not find a lifelong suitor. This strong belief reflects their need to ensure that singlehandedly the practice continues.

However, the biggest challenge for refugees, asylum seekers and other forced migrants continues to be their lack of awareness of the SOA and the institutions that can offer services to assist them. There is need therefore, for continued sensitization efforts and initiatives to raise awareness regarding the SOA, with reference to the forced migrants, particularly refugees and asylum seekers, in order to enhance their knowledge on prevention of GBV in their communities.

⁶ This is the largest refugee population living in Kenya.

⁷ This is a report of the finding of a survey that was carried out for 2013 by the Government of Kenya, UNHCR, RCK, HIAS, Kituo Cha Sheria, JRS and Heshima Kenya.

Sex and Gender-based Violence

Cultural and Religious Misconceptions that Negatively Affect Refugees

My husband has been locking me in the house every time he goes to work. I am not supposed to interact with other neighbours in our estate since my husband says they will influence me negatively. If he finds me talking to any man then I would be beaten as a way of disciplining me and keeping me focused only on him. I am used to it, though sometimes I get very stressed about my situation. But there is nothing I can do since I see other ladies go through the same and persevere. We have to be obedient to our husbands” - Asylum seeker, RCK legal Clinic in Eastleigh, January 2013

By Dennis Likule

Gender-based violence has been defined as “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially-ascribed gender differences between males and females”.¹ These differences favour the male point of view. Even though GBV can be perpetrated against either gender, it is widely accepted that regardless of the cultural context, women and girls are disproportionately vulnerable.

Kenya has ratified the key international legal instruments and has in recent years taken significant steps towards the legal protection of women’s rights. Several of the principles of the international frameworks are found in the 2010 Kenya Constitution and in national laws. Sexual violence - including rape, defilement, sexual harassment and indecent assault - has been criminalized under the Sexual Offences Act of 2006 and the Penal Code (Chapter 63 of the laws of Kenya). There is a Domestic Violence (Family Protection) Bill 2007 in draft pending parliamentary approval.² More recently in 2011, female genital mutilation was made illegal under the Prohibition of Female Genital Mutilation Act.

Despite national legislation to support equal rights, refugee

¹ Asylum under threat: assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor, RCK 2012.

² Ibid

women are continually exposed to multiple cases of subordination, marginalization and violence. Female-headed households, single women, older women, and adolescent girls are the most vulnerable. For instance, traditional Somali Islamic culture assigns women a secondary role. Women are often treated as secondary citizens which impedes their access to justice on matters of GBV.

In the camps *Shari’a* law and other traditional legal systems such as *Xeer* law and the *Maslaha* courts are often applied to determine cases involving family issues including GBV.³ High



levels of stigma are attached to the victims of GBV who are seen as sullied by and their community responsible for the violence enacted upon them. In other words, women are victimized twice in cases of GBV. It is thus important to link

³ Ibid

these legal definitions with the understanding construed in various cultures and the established perceptions about gender norms and acceptable behaviour.

Most SGBV survivors who have attended RCK legal clinics, both in the camps and Nairobi, do not seek medical treatment after being assaulted or do so late after developing complications.⁴ This situation is exacerbated by the fact that the majority of women refugees and asylum seekers do not speak English or the official local language, Kiswahili. Furthermore, social stigma leaves them wary of asking another member of the community conversant with the language to interpret for them when making reports.

Women repeatedly highlighted the negative social consequences of a woman who is known to have been raped. They are labelled as sex workers and are often presumed to be infected with HIV/AIDs, and thus considered unsuitable for marriage. Acknowledging an incidence of SGBV is considered shameful and several survivors said they wear the *niqab* (face-veil) so that they cannot be identified and ridiculed. The taboo on openly discussing anything related to sexual relations also inhibits some women from seeking help.⁵

The issue of translation of SGBV terminologies among the refugee communities is a matter of concern in ensuring their understanding of SGBV as construed in law. An attempt to make use of direct translation many a time distorts the meaning of English legal terms that may not have an equivalent in the refugees' vernacular language. As such, while making such translations and more so where an equivalent word does not exist, it is important to ensure that the translation conceptualizes the SGBV term to ensure that the community understands it to be a violation.

The issue of consent is one that is normally misconstrued among various refugee communities. In some communities such as the Oromo, women generally do not give consent in matters relating to sexual relations. Men say that their acquiescence makes the ladies appear modest and as such, knowing that they will never say yes, it calls for the men to use force.

In marriages the situation is made even worse. It is unimaginable (for a man) that a wife can even think of saying no in the event they do not want to be intimate with their

spouses and occasionally force is used to obtain conjugal rights. Owing to cultural rules, women may not see the violation as an offence and will not report it to the police as it is their wifely obligation to be obedient.

By gaining a sense of culturally normalized behaviour, service providers can better understand the low incidence reporting rates and care-seeking habits among refugee SGBV survivors.⁶ They can then in turn create more culturally sensitive interventions which stand a better chance of achieving improved primary prevention.

Police and health clinic staff should also be aware of the refugee women's fear of speaking out and ensure that those seeking care are asked direct questions and given time to disclose their experiences. RCK has made great steps in addressing the above matters, particularly in Dadaab refugee camp where it has stationed trusted and well-trained translators at both police stations and health clinics who handle the cases in strict confidence. This is a positive step that should be replicated within the refugee-hosting areas in urban centres. Health workers and police also need to be sensitized on the ways that refugees would communicate various violations. The legal clinics have shown in the past that refugees do not use explicit terms while referring to any form of violation they have gone through. As such, persons attending to the refugees should pay attention to the nuances of their narrative.

Finally, it is important for humanitarian actors conducting sensitization activities relating to the topic of SGBV to engage the communities (including religious leaders and other community opinion leaders) in the implementation of behavioural change campaigns. This engagement will ensure the production of well tailored information, educational and communication (IEC) materials and curricula that will be clearly understood by the various refugee communities within their cultural and religious aspirations.

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⁴ RCK 2013 legal clinic statistics.

⁵ FMR Issue no.43

⁶ Ibid

The Forgotten Faces of Sexual and Gender-based Violence in Kenya

By **Fatma Adam**

Fatma Adam is a volunteer in the Advocacy and Capacity Enhancement Programme. Her interests include gender relations and women's rights.



Refugees and other forced migrants mainly face challenges of insecurity and physical safety. Sexual and gender-based violence (SGBV) is a great source of this insecurity. It is the mandate of the Government to ensure that each person realizes the right to safety. This stipulation also holds for refugees and other forced migrants.

Among the refugee population, the refugee male victims of SGBV appear to have been neglected. Even though female victims constitute the highest rates of gender-based assault, men and boys also suffer and need assistance. Over the years the narrative has termed men as aggressors in SGBV discourse which leaves many male victims ignored.

In addition, there are cultural and religious issues involved. Male victims do not necessarily come forward owing the social construct of masculinity. This leads to fear and the feeling of shame related to stigmatization for those who experience the violence.

One of the ways men suffer from SGBV include rape in conflict situations. Many men have been helplessly forced to watch their wives and daughters being violated. It is used as an instrument to lower the social status of men an attempt to de-masculinise the male victim and show dominance and power over the victim.

Another way is through rape of young boys and men. In conflict situations, power is everything. Civilian populations are often reminded of the power of various militias through arson and rape. These two criminal acts are considered to be

more of an aggressive show of power than mere criminal acts.

In more ethnically charged conflicts, circumcision is used against men as a way of projecting power. For example, this was used in Kenya during the post-election violence that followed the disputed polls of 2007. A number of male victims were forcefully circumcised as a way of asserting tribal dominance over them since their culture did not circumcise as a rite of passage.

The effects of sexual and gender-based violence on male victims include depression and psycho-social issues. Victims often contract of HIV/AIDs and other sexually transmitted diseases, while some suffer permanent injuries that affect their health throughout their lives.

It is often difficult to measure the extent of gender-based violence against men in times of both peace and conflict. The reasons are due to the stigmatization of society most men fear if they were to report the sexual violence they have endured they could be mistaken for a homosexual. Doctors, humanitarian aid workers and counsellors are rarely trained to detect sexual assault against men, and therefore the signs present go undetected.

On many occasions, male victims of sexual assault remain silent or completely deny being sexually abused. If they are to mention sexual assault it is in the form of witnessing, not experiencing it themselves. There is a lack of proper information on gender-based violence against men; therefore affecting awareness on the subject and contributing to the continued silence on sexual and gender-based violence.

Crucial measures must be taken in order to recognize that the victim can be male and also to search for preventive measures in tackling the problem. These measures include training workers involved in humanitarian aid such as doctors, field workers, counsellors, among others, to look for signs of sexual and gender-based violence against men and boys during medical checkups and interviews, as to well as adopt legal and psychosocial avenues of interventions.



Eliminating Harmful Aspect of Social and Cultural Practices Affecting Children

By Irkan Abdi Hussein

Irkan Abdi Hussein is a standard eight pupil at Kayole Primary School whose essay won a competition run by RCK under the Swiss Development Cooperation (SDC) project. The competition was aimed at raising awareness among school children on harmful cultural practices and was part of an initiative to celebrate the Day of the African Child.

There are many harmful aspects of social and cultural practices that adversely affect children all over the world and that need to be eliminated. They include: female genital mutilation (FGM), early and forced child marriages, preference of sons over daughters and certain features of dowry systems. These harmful practices affect girls more than boys and have serious consequences for the girl child's physical, emotional and psychological development.

FGM involves surgical removal of parts or all of the most sensitive female genital organs. This activity is an important rite of passage in some traditions marking the coming of age of the female child. However, many girls in the developing world are unaware of the dangers this practice has on their health. They are also unaware of their basic right to refuse this harmful practice that affects their wellbeing.

Early and forced child marriages occur when at least one partner does not give consent and is thus coerced into marriage. This includes the mail order brides. Forced child marriages take place in many different cultural, practical and economic situations concerning both boys and girls.

However, girls are undoubtedly the most affected and suffer the most severe consequences. They are frequently intimidated, abducted, raped and sometimes murdered. Further, when a girl marries early it means the end of her education. This means that she gives up her right to make decisions about her future, her health and her well being. In addition, early marriages have been linked to high maternal mortality rates.

For these reasons, it is necessary to eliminate harmful aspects of practices. Children should be permitted to speak out against these practices and to access information on their rights. Young girls should be taught that it is their right to remain in school and choose a partner of their choice when they are of age. It is essential also to create awareness in society regarding the serious nature and the consequences of child marriage.

Religious and community leaders should be involved in awareness creation. They should act as watchdogs looking out for abduction and child marriage. They should also be actively involved in organizing and supporting awareness-raising campaigns on the negative effects of child marriage. Moreover, they should act together with children and their parents to promote equality and respect for girls' rights and autonomy, and adopt zero tolerance to violence against girls and women in general.

Finally, opportunities for community dialogue need to be set up. The dialogue should involve parents, teachers, community and political leaders and the media. It should focus on how the society can come together and take positive steps to ensure that these destructive aspects of such practices are abandoned.

Economic Empowerment as a Complementary Intervention to Legal Aid in SGBV Cases

...but if you can create an honorable livelihood, where you take your skills and use them and you earn a living from them, it gives you a sense of freedom and allows you to balance your life the way you want."

(Anita Roddick, Human Rights Activist)

By Diana Wambui

Diana Wambui is a psychosocial counsellor in the Legal and Social Justice Programme. Her interest includes counselling psychology and is currently pursuing a master's degree in that field.



Legal intervention has been the predominant response to clients facing sexual and gender-based violence (SGBV). However, as the story in the subsequent paragraphs will tell, it does not deal with the trauma caused by the abuse. Women are often left with deep emotional scars that legal niceties cannot heal; the law cannot restore dignity to women that survive SGBV.

In 2009, a woman walked into RCK and requested assistance in drafting an appeal. Her application for refugee status had been denied. She was very emotional and could not tell the facts of her story properly, choosing to dwell on how she felt receiving a rejection letter after the first application. Legal officers at RCK decided that she needed time to work through her feelings by talking to those close to her to comfort her. However, on her second appointment, her emotional condition had not improved. She was referred to a psychosocial counsellor in the Legal Aid and Social Justice Programme.

She was unable to come to RCK offices owing to lack of transport funds. This necessitated a psychosocial counsellor to visit her at home to offer the counselling services she needed. During these home visits, the counsellor would take her some basic home supplies to help her provide for her family.

In the first three sessions she was encouraged to tell her story without interruptions. She wept incessantly as she struggled to tell her story to the counsellor. At some point

the counsellor could not make out what the issues were as the client kept breaking down during these sessions.

On the fourth session, she pulled out very many tiny beads joined together on different strings. They were blue, red, yellow, green beads, among other colours, but the red stood out. The chains were varied as there were long and short ones. Each string represented a sleepless night spent threading the beads on the strings. She wanted the counsellor to quantify how many nights she had stayed awake. To the counsellor there really was no need for this evidence because she could see the pain; she believed and accepted her story unconditionally.

It was at this point that her abusive marriage was revealed. Her husband wantonly picked fights with her and would physically and emotionally assault her. She felt as though her dignity was irreparably damaged by the one person who should protect her, especially when she was most vulnerable. As a way of coping with the pain, she would sit alone in the darkness of the night and sew the little beads together.

After two subsequent sessions, the client produced a beautiful bead necklace. Her neighbour was her first customer and she used the money to pay for transport for her next session and the rest for food. She proudly informed the counsellor that



she would no longer need social assistance for subsequent visits. That morning she had gone to the market and found pride in the liberating feeling of being able to buy what she needed with her own money. Business was good for her of course, with its ups and downs, but RCK walked with her and encouraged her along the way.

This client's experience initiated a project to assist women like her. In 2012 RCK came up with a project where women were provided with micro grants to set up businesses of their own. It entailed inviting interested women to apply for the grants and the successful applicants were trained on various aspects of setting up and running a business. The project began with ten women survivors of SGBV and gave them a way to regain their confidence and dignity.

At the business training the women were encouraged to learn about the Kenyan tax system. It included finding out

how much a business licence costs, where and how to find it. The legal aid team was available to take them through legal issues such as contract law and business premise licences. The women were also trained in basic business skills such as finding a target market and marketing.

In conclusion, RCK has seen a positive impact on the lives of SGBV survivors through this project. Domestic violence against women in the home deprives them of their dignity. This is worse when the women have suffered through conflict in their country of origin and during the flight to the country of asylum. However, through this project, women living in abusive relationships are economically empowered to remove themselves from the source of threat and rent houses in safer areas. Thus those who have faced SGBV in their country of origin and in the country of asylum get the opportunity to regain their dignity.

Building a Balanced Financial Plan

By Patrick Njonjo

Patrick Njonjo is an Assistant Programme Officer in the Institutional Support and Development Programme.

He is an accountant and currently pursuing a bachelor's degree in Commerce.



Everybody has a different financial priority. No matter how much you earn or what stage you are in life you need to have a sound financial plan. It should have objectives and targets to achieve. A balanced plan is basically made of four strands: budgeting, saving, investing and planning for retirement.

A budget, simply put, is a tool to monitor one's spending. It increases one's consciousness on how and where one's money is spent. It guides one to spend money on products that are a priority.

Savings go hand in hand with a spending plan. The best policy is to avoid spending before you earn and save. Statistics show that if one loses one's job today, it would take up to 12 weeks to secure another one. Therefore to be safe it is a good idea to save up to nine months worth of one's monthly comfortable living expenses.

Money should work for you and not the other way round. Having a solid investment plan is key in a balanced financial

plan. Hard-earned money should be put where it can gain more for the earner. It has the effect of liberating one so as not to rely on a single source of income only. It also increases the savings reserve, giving one peace of mind.

Many people, especially young professionals, rarely think about retirement. From the time one lands a new job, the mind is on how to build a name for oneself and grow one's career. With time, retirement approaches and all the years of hard work do not count when, with advancing years one does not have the vigour to work.

Retirement should be a time for relaxation. A time spent on travelling, enjoying hobbies and interests and engaging in all the activities that one might have missed owing to tight job schedules. However, without proper planning for retirement, relaxation would be a mere pipe dream and one risks spending one's golden years working for a minimum wage. Dependence on social security is not enough.

A great financial plan starts with writing down and walking through your desired plan. This should be done as soon as one starts earning and before demands on one's income become prohibitive. In addition, it is important to think through the strategy one needs to adopt to reach one's financial goals and stick to it. Evaluating these strategies is also important in order to know whether they serve one's objectives well.

Have a healthy financial year!



Lucy Kiama (ED RCK) addressing a plenary session in Nairobi



*RCK S
mission*



Participants of the Isiolo Court Users Committee training



Staff and Partners at a monitoring visit to Isiolo



Stefania Tranfo (Associate - Advocacy) conducting a sensitization forum for primary school teachers in Nairobi



Participants listen attentively during a sensitization forum on gender-based violence in Kasarani in Nairobi



Participants of the Milimani Court Users Committee held in Nairobi

State Sanctioned Rape?

Implications of Marital Exemption Clause for Married Refugees and Asylum Seekers

By Andrew Maina

Rape is one of the offences considered to be egregious in Kenya's penal law. It is criminalized by the Sexual Offences Act of 2006 (hereinafter referred to as the Act). Section 3 of the Act defines the mental and physical aspects of the crime. It is the intentional and unlawful insertion of genital organs into those of another without consent or with consent that is not free and informed.

"Intentional and unlawful" is further defined by section 43 of the Act. This section deals with salient aspects of consent that is crucial for a conviction. These aspects are: coercive circumstances, false pretences, fraud and engaging with a person who cannot appreciate the nature of the act being committed. These represent the mental criminal liability aspects that need to be proved by a prosecutor to secure a conviction on the offence of rape.

However, what the section gives with one hand it takes away with another. Section 43(5) excludes the application of this section to "persons who are legally married to each other." This means that spouses cannot legally rape each other; that they cannot be charged in a court of law with the rape of their spouse. It does not mean that married women cannot be factually forced into having sex by their spouses.

Refugees and asylum seekers in Kenya are also protected by the Act. By dint of section 16 of the Refugees Act, 2006, they are subject to all laws currently in force in Kenya. Therefore the exclusion clause applies to refugees and asylum seekers who are legally married either in Kenya or the country of origin. They are exposed to the real danger of rape in the home that the law in advertently condones.

Many refugees and asylum seekers come to RCK legal aid clinics to seek legal support on a myriad of issues. Among the issues is domestic violence perpetrated by a spouse. This assault covers violence such as physical assault, psychological abuse, sexual violence and emotional abuse. Considering that a number of women are raped during conflict in their country of origin, this makes a case for their protection against the crime even in marriage.

Rape denigrates the victims. It is a serious affront to a woman's right to human dignity, personal security and liberty to her body as well as reproductive health. Survivors of rape in marriage are more affected by the crime owing to the confidence relationship they have with a spouse. This, coupled with the fact that they have to continue living with the perpetrators, is doubly traumatic and degrading.

Andrew Maina is an Assistant Programme Officer in the Information and Research Programme. His research interests include causes of ethnic war in Africa and legal interventions that aim to protect human rights in ethnic conflict.



Article 27 of the Constitution – the supreme law of the land¹ – provides that all people, including refugees and asylum seekers, are equal before the law. Further, it provides that all people have the right to equal protection of the law. The State is prohibited by the Constitution from discriminating against a person or a group of people on a number of grounds including *marital status*. Moreover, the same article provides for a redress mechanism by the state through enactment of laws and affirmative action policies.

Granted that rights have limitations, Article 24 of the Constitution provides the criteria for limiting any right provided for by the Constitution. The limitation has to be provided in law and it must be reasonable and justifiable in a democratic society. Whereas the Act limits the protection against rape to unmarried people, the justification is neither reasonable nor justifiable.

Marital rape exemption clause comes from the writings of a prominent English legal scholar, Sir Matthew Hale. He opined that a man cannot rape his wife as the latter had given perpetual consent at the time of marriage.² This comment was not cited and was not a conclusion from any empirically based analysis of the law at the time. Therefore there was no proper reasoning for having the rule in place. This rule became applicable to Kenya upon colonization and application of English laws in Kenya.

Hale's argument has the effect of creating perpetual consent. It means that once a woman is married she is deemed to have consented to sexual relations until the marriage is dissolved. No justification is made for this rule and it is unreasonable to think that consent is perpetual. This rule thus fails the constitutional test of limitation and needs to be amended.

In conclusion, the marital exemption clause in rape law is tantamount to state sanctioned rape. The Act was approved by the state and enforced by it. Every day that the law is not amended in line with constitutional provisions implies that the state condones rape in marriage. It also means that the rights of married Kenyans as well as vulnerable refugees and asylum seekers are being infringed. Concerted efforts to amend the law should be made to ensure section 43(5) is deleted and that the law is enforced to prevent the vice perpetrated in marriage.

¹ Article 2(4)

² Matthew Hale, History of the Pleas of the Crown, 1736



Giving A Helping Hand

Providing Mental Health Support to Humanitarian Workers

By Dinah Makambi

Dinah Makambi is the Programme Manager at RCK Kakuma Field Office. She has a keen interest in Children's Rights. She is an Advocate of the High Court of Kenya and is currently pursuing a Masters Degree in Diplomacy and International Relations.



Humanitarian work in refugee protection is generally challenging but rewarding. On the face of it, it may seem like dealing with one client after another, but that is not the case. Most of the time, humanitarian workers have to hear horrific stories of man's cruelty to fellow man, and the injustices that happen to people in broad daylight. The most difficult thing is to listen, but to remain strong, sober and objective as the person across the room tells you of the pain, torture and suffering they have had to endure then wait for you to provide a solution or if not, point them towards a solution. Due to constant interaction with traumatized clients, humanitarian workers risk suffering from secondary trauma.

I remember one day accompanying three of my clients to court. Two were sisters aged eight and 11 years and the other was eight years old. All three were GBV survivors and the hearing of their cases had been scheduled for that day. I had

taken time to prepare the children for court through pre-trial counselling, and I was confident that they had understood why they were in court that day. The cases were heard in the magistrate's office, as opposed to open courts, which the law provides in order to preserve the dignity of the children. The only people present in the office were the magistrate, the accused person, the court clerk, prosecutor, one police officer guarding the accused person, the complainants and an advocate. Nothing could have prepared me for what took place in court in the few minutes that followed, as the children went ahead to testify to the court the gory details of the injustice that was done to them.

As lawyers, we are always cautioned against being emotional with a client's case because it is imperative that a lawyer remains objective. But how do you avoid being emotional when you hear a blow by blow account of an abuse, from the mouth of an eight year old, and the same being repeated by her 11 year-old sister who is also living with disability? Then the same scenario is played again when the third child takes to the stand against yet another accused person. No amount of education or skills could have prepared me for the emotional turmoil I was going through. And yet there I was, as an officer of the court trying to remain objective with a duty to represent my clients with the utmost professionalism. But I was crushed, as I sat through the hearing, fighting back tears.

The human body has its own mechanisms of dealing with trauma, whether physical or psychological, primary or secondary. But sometimes the reaction that one may have to trauma may be destructive as opposed to being constructive. Most service providers in the humanitarian field suffer from secondary trauma. Psychologists have different terms for it, be it vicarious trauma or compassion fatigue. Vicarious trauma may be defined as the emotional residue of exposure that professionals have from working with people as they listen to their trauma stories and become witnesses to the pain, fear, and terror that trauma survivors have endured¹.

But how, if at all, do the various humanitarian organizations help staff through these traumatic experiences?

One model that RCK has adopted and has been instrumental in promoting the wellbeing of both staff and clients is the setting up of a psychosocial component. It is offered together with legal aid services. The psychosocial department not only deals with matters relating to clients but often assists staff to cope with difficult cases. The organization has embraced the fact that staff deal with difficult cases and they frequently need to exhale. For this reason, the organization has developed several strategies to help with the mental and emotional wellbeing of the staff.

One of the strategies employed by RCK is staff debriefing sessions. These are sessions where staff get together and engage in various activities that range from providing a safe space where staff can hold candid discussions of what they have faced through a particular period, to engaging in just plain fun and games. Sometimes the debriefing sessions serve as team-building sessions that enable staff to identify both individual and group strengths, weaknesses as well as to reflect on opportunities and threats. Staff are also able to access more professional help if need be. This arrangement is organized and supported by RCK and is available to all staff. The debriefing sessions are conducted on a regular basis, both at the field offices and in Nairobi.

There are other avenues for debriefing among RCK staff. RCK offices are designed in such a way that staff share meals together. It is during these meal sessions that staff members talk about their day and sometimes these occasions offer an opportunity for staff to debrief. These informal sessions not only build up individual resilience but organizational resilience as well.

For counsellors who give the much needed psychosocial support to clients and sometimes to staff, peer group supervision has come in handy as a support structure. Peer group supervision is an effective form of leaderless peer group counselling. Participants confer with one another by reciprocating key topics of their professional everyday lives, in order to provide solutions for difficult situations with colleagues or clients. The participants learn better ways to manage professional problems and reduce stress. This results in the group members' increased professionalism within their work environments². The Peer group supervision also offers counsellors an opportune moment for debriefing.

Another way of helping staff to cope with traumatic experiences is by calling in the help of a professional counsellor. RCK has brought on board an on-call professional counsellor who can be called to assist a member of staff who needs more specialized assistance as in the case of a traumatic situation. As is with any other professional counselling, the therapy sessions are confidential and this gives staff confidence as they are provided with a safe space to talk about their experiences.

Rest and recuperation for field staff has also been instrumental in ensuring staff wellbeing. Field staff often spend long hours in the field, and so are in direct contact with the clients. That coupled with the fact that they are away from their support structures, such as family and friends, makes them even more susceptible to vicarious trauma. Rest and recuperation gives staff time out not only to rest but to reconnect and not lose touch with his or her support structure. All these strategies provide staff a safer environment to work in. In the humanitarian field, it is the responsibility of an individual to protect their health and safety. However, this responsibility should not lie with the individual alone. The organization through which this individual provides service to humanity also has a role to play. More often than not, the organization strives to invest and further develop the professional aspects of an individual, and some go further by providing medical coverage for their staff. Be that as it may, the mental health of a staff is equally important and should be taken care of equally with his/her physical health. For if one staff member is not able to perform to the optimum, the organization and more so the beneficiaries lose out. At the end of the day, an organization is only as strong as its weakest link.

Being a humanitarian worker is challenging but with the right kind of support, it makes every minute of the work worthwhile!

¹ See <http://www.counseling.org/docs/trauma-disaster/fact-sheet-9---vicarious-trauma.pdf?sfvrsn=2> Last visited on 2/2/2014

² See < <http://www.peer-supervision.com/> > last visited 2/2/2014

Declaration of Prima Facie Status

A Case for the South Sudanese

By **Oscar Muriuki**

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Prima facie status, simply understood, means 'on the face of it'. In terms of asylum protection it implies that an asylum seeker will be recognized as a refugee and accorded the necessary protection without the need to undergo the detailed individual Refugee Status Determination (RSD).

Under the law, there are two possibilities available: that of an individual recognized as a *prima facie* refugee, given that he meets a certain threshold. This is not particularly difficult to envision since the consideration to be made is for one person.

It gets a little more complicated in the case of groups of persons. In such cases the decision rests solely upon the Cabinet Secretary. The ramifications of such a declaration are far reaching. It therefore explains the caution which the Government exercises in making this decision.

Under Kenyan law, the provision for the same is to be found in section 3(2) and 3(3) of the Refugee Act, 2006 that states:

A person shall be a prima facie refugee for purposes of this Act if such

person owing to external aggression, occupation, foreign domination or events

seriously disturbing public order in any part or whole of his country of origin or

nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

If the Minister considers that any class of persons are prima facie refugees

as defined in subsection (2), the Minister may declare such class of persons to be

prima facie refugees and may at any time amend or revoke such declaration.

Ideally, the determination that certain groups of persons are exempt from undergoing RSD is a discretionary function of the office of the Cabinet Secretary. However, there are pertinent concerns that should motivate the Government in making such declarations, these include mass influxes and humanitarian need.

The continued arrival at our borders of large numbers of asylum seekers in the past has influenced such decisions. The case, some years ago, of the Somali refugee influx following the strife caused by the Islamic Courts Union and further exacerbated by a drought led to their receiving *prima facie* status.

In instances of mass influxes, the human resource capability of the Government to handle RSD on a case by case basis comes into question. Taking into consideration that assistance to a refugee is intricately tied to their status, a hasty but thorough RSD process is imperative.

Nevertheless, it is not a strict science that numbers alone guide this decision. In the year 2000, Kenya granted *prima facie* status to 4,500 south Sudanese asylum seekers, while at the same time 9,000 of their fellow countrymen seeking asylum in Egypt were not granted such status. It therefore stands to reason that numbers alone will not suffice.



In cases of protracted conflicts with corresponding humanitarian concerns, the declaration dispenses with the long drawn out process of RSD which for all practical purposes can take months before a decision is made. Bearing in mind that a wider array of protection and assistance is accorded to recognized refugees as opposed to asylum seekers, the justification for *prima facie* decision in such instances is warranted.

For instance, the most recent influx, that of the South Sudanese, where majority of the arrivals were women, children (figures estimate 70%) and unaccompanied minors, fits the profile of persons in need of assistance. By dispensing with the RSD process the Government and aid agencies will be in a better position to offer assistance.

RSD processes, by their nature, interrogate the cause of flight and in many instances these are traumatic experiences that asylum seekers rarely wish to relive.

By operation of section 4 of the Refugee Act, certain persons are disqualified, including from a grant of refugee status by virtue of *inter alia* crimes against humanity, non-political crimes in Kenya during asylum or in another country prior to asylum, acts contrary to the UN or AU principles and purposes or dual citizenship and not availing himself/herself protection in his/her second nationality without good reason. The Government needs to assess the granting of *prima facie* status objectively if there is a serious concern that such disqualified persons may receive such recognition.

The duty of the Government is to Balance the need to protect the most vulnerable asylum seekers from their horrific memories through a long drawn out process that hinders their protection and the need to disqualify undesirable elements.

As per the Act, the declaration is discretionary and there is need for the law to provide criteria for consideration by the Cabinet Secretary, some of which have been highlighted in this article.

The need for a declaration in cases of refugee influxes contains both a legal and administrative dimension. Essentially by granting this status, the refugees will be in a far better position to receive much needed assistance. However, the process through which such declaration is made needs to be well founded in law and policy thereby mitigating the risk of arbitrary declarations.

By Rufus Karanja

Rufus Karanja is the Advocacy Programme Officer at the Refugee Consortium of Kenya. He works on advocacy issues relating to the protection and assistance of refugees, IDPs and other forced migrants.



On 10th November, 2013, the Governments of Kenya and the Federal Republic of Somalia in conjunction with UNHCR signed a tripartite agreement for the voluntary repatriation of Somali refugees. This agreement provides the legal framework and modality for the voluntary repatriation of Somali refugees back to their country of origin. The agreement will be in effect for an initial period of three years but with a possibility of renewal as agreed upon by the parties.

In this agreement, all the three parties have important responsibilities in ensuring that the process is voluntary and that it is conducted in safety and dignity. The responsibilities of the Government of Kenya are clearly stipulated in Article 24 of the Agreement. Among these responsibilities is the simplification of immigration formalities and procedures to facilitate easy exit of Somali refugees from Kenya into Somalia. This responsibility would necessitate the Government of Kenya to set up suitable immigration measures at the Kenya-Somalia border in order to fulfill its obligation under the Agreement.

As it stands, it is difficult to see how the Government of Kenya would carry out this administrative immigration function if the Kenya-Somalia border remains officially closed. In 2007 the Government officially closed the border for fear of a spill over of the resurgence of armed conflict in Somalia into Kenya.¹ Nonetheless, Somali nationals seeking asylum in Kenya over the years have continued to access the country owing to the porous border coupled with the lack of border control outposts. This closure has meant that essential immigration outposts which would host a reception centre, screening centre for both health and security as well as police instalments in Liboi have remained unmanned.

¹ <http://news.bbc.co.uk/2/hi/6227083.stm>



Appeal to Reopen Kenya- Somali border

Ease of Repatriation for Somali returnees

To facilitate eased movement of Somali refugees back to their country these installations ought to be manned by officially reopening of the border and establishing immigration border control stations. Under Article 24(vi) and (vii) of the Tripartite Agreement, the Government of Kenya is obligated to exempt all goods of the returnees from tax as well as simplify health formalities and requirements to the extent feasible by national law. These provisions envision that the Government will have its representatives at the border to ensure that these rules are applied and that the material safety as well as legal safety of the returnees is protected.

Moreover, it is in the interest of the Government of Kenya to ensure that our territorial integrity and security is not compromised but strengthened by the establishment of proper immigration and border control system during the voluntary repatriation process. This is especially so at a time when Kenya is facing increasing insecurity threats and infiltration by *al Shabaab* insurgents. In 2013, there were numerous unfortunate incidents when the insurgents crossed over into Kenya and carried out terrorist attacks which killed innocent civilians and police officers serving in Dadaab and the north eastern frontiers.

Enhanced border control stations will also offer a monitoring mechanism against smuggling of contraband across the border during the repatriation process. Thus the Government

of Kenya should also consider investing more for the use of enhanced technology to gather intelligence and improve on its mobile security patrols along the border with Somalia. This move would underscore the fact that establishment of the immigration outposts in Liboi and Mandera would not be sufficient to offer proper security monitoring of the long and porous border.

The installation of these border outposts at Liboi, Amuma and Mandera would enhance border control and ease the movement of the Somali returnees. At the moment UNHCR has earmarked Mandera and Liboi as two of the key transit points for the returnees in their pilot phase. Mandera was chosen owing to its close proximity to the three identified areas of return for the pilot phase: Luuq, Kismayo and Baidoa.

Finally, the discussions on the voluntary repatriation envisage 'go and see' visits that are encouraged and facilitated by the three parties. Hence the establishment of the immigration outposts would ensure that there is proper documentation of Somali refugees who wish to participate in the 'go and see', 'come and tell' visits. It would also enhance the documentation of the spontaneous returns that have been a challenge for both UNHCR and the Government of Kenya in terms of establishing the exact number of spontaneous returnees to Somalia.

Developing a Protection Agenda

Climate Change and Natural Disasters Displacement

By Rufus Karanja

Every year, millions of people are forcibly displaced by floods, windstorms, earthquakes, droughts and other natural hazards.¹ Such persons in most instances become internally displaced but in other instances are forced to cross national borders to seek refuge and assistance. A crucial aspect is that while such natural hazards contribute to displacements (both internally and across the borders of states), in certain situations such displacements occur within a complex environment impacted by armed conflict, generalized violence and political instability. A case in point is the 2011-2012 Horn of Africa drought crisis which affected an estimated 13 million people. According to the UNHCR 2011 Global Report, an estimated 290,000 Somalis fled across the border into Kenya and Ethiopia as a result of the prevailing severe drought, famine, ongoing conflict and insecurity arising from *al-Shabaab* attacks.²

Over the years, there has been a growing interest among states and humanitarian actors on the institutional and legal gaps that can address the specific protection needs of persons displaced across national borders in the context of natural disasters and climate change. This interest has been generated by the debate on whether the current international refugee law is comprehensive enough to protect persons displaced by natural disasters or what has been termed as “climate refugees”. An interesting debate has focused on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Preliminary scholarly arguments note that while the Convention introduces an expanded definition of a refugee, it does not specifically address or provide adequate protection to persons displaced across international borders in the context of natural disasters alone.³

This gap was most evident during the 2010/2011 Horn of Africa drought crisis. During the crisis, Somali nationals fleeing the drought situation were received in Kenya’s Dadaab refugee camp and registered by UNHCR and the Government of Kenya as refugees. Analysis conducted on the situation indicates that the Somalis fleeing the drought situation were registered and granted asylum under the pre-text of the 1969 OAU Convention, particularly under Article 1(2), which expands the definition of a refugee to include persons fleeing “situations seriously disturbing public order.” In this case, the protracted and severe drought and famine situation in Somalia was considered a “situation seriously disturbing public order.” Whereas it may be argued that this provision was and remains sufficient to cover persons displaced by natural hazards and those who do cross national borders, an analysis of most African state practice on refugee status determination reveal many inconsistencies in granting asylum to persons displaced by natural hazards. In most instances, African states have relied on the “conflict, disaster and displacement” nexus to grant asylum claims as opposed to relying upon the 1969 OAU Convention as the legal basis for granting refugee status to an asylum seeker in a context solely linked to a natural hazard.⁴

To address this legal gap, the Nansen Initiative was launched in October 2012 by the Governments of Norway and Switzerland to build consensus on the development of a protection agenda, addressing the needs of people displaced across borders in the context of disasters caused by natural hazards, including those linked to climate change. The Initiative was created following the 2011 Nansen Conference held in Norway, which concluded, among other outcomes, that, “a more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters.”⁵

The Initiative has been conceptualized as a state-led but bottom-up consultative process that will entail a series of five regional consultations targeted to be held in regions

¹ <http://www.nanseninitiative.org/>

² UNHCR Global Report 2011 <http://www.unhcr.org/4fc880a70.html>

³ Marina Sharpe, ‘The 1969 OAU Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination’ (2013). Legal and Protection Policy Research Series PPLA/2013/01; Alice Edwards, ‘Refugee Status Determination in Africa’ (2006) 14 African journal of international and comparative law 204.

⁴ Desktop Review on Cross Border Displacement in the Context of Disasters in the Horn of Africa (January 2014)

⁵ The Nansen Conference: Climate Change and Displacement in the 21st Century’ (Oslo, Norway, June 5-7, 2011 Conference Report, Norwegian Refugee Council 2011)

affected by actual or expected disaster-induced cross-border displacements, including the regions of South Pacific, Central America, Horn of Africa, South-East Asia and South Asia. The Initiative is led by a steering group composed of states with balanced geographical representation from the Global South and North⁶. It also has an Envoy of the Chairmanship (Professor Walter Kaelin), who represents the Initiative and provides strategic guidance and direction throughout the consultative process.

On 3rd – 4th March 2014, the Nansen Initiative Secretariat in partnership with RCK and the Norwegian Refugee Council (NRC) convened a Pre-Civil Society meeting in Nairobi which brought together 43 participants comprising of various practitioners drawn from civil society, academia and affected communities from the Horn of Africa region. The meeting provided the participants with a platform to share relevant experiences, challenges and also the opportunity to identify good practices related to cross-border displacement in the context of natural hazards and climate change. RCK made a presentation on the “Relevance of the 1969 OAU Convention on the Nansen Initiative.” The key recommendations and key messages arising out of the meeting will be used to inform the Horn of Africa states’ regional consultation being planned for May, 2014.

The outcome of the regional consultations will further be used to develop a protection agenda that will be the main document of discussion in a global consultative meeting planned for 2015. The protection agenda will include a common understanding of the issue, its dimensions and the challenges faced by relevant stakeholders. It will also contain good practices and tools for the protection of persons displaced across borders in the context of natural disasters.

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⁶ Members of the Steering Group include: Commonwealth of Australia, People's Republic of Bangladesh, Republic of Costa Rica, the Federal Republic of Germany, Republic of Kenya, The Kingdom of Norway, Federal Republic of Mexico, Republic of Philippines and the Swiss Confederation

Regional Highlights

*Compiled by Fatma Adam
and Edmund Lang'at*

Kenya



Encampment Order, 2014

The Government of Kenya has officially adopted a strict encampment policy. Since 17th of May, 2014 it designated Dadaab and Kakuma refugee camps as official designated areas for hosting refugees and asylum seekers. This means that refugees who reside outside these areas are liable to a six month jail term or a fine of Ksh.20,000 if found guilty.

This move was precipitated by a spate of attacks from the radical militant group *al-Shabaab*. A wave of bombings has rocked the Kenyan capital prompting the government to embark on *Operation Usalama Watch* (operation security watch) that was meant to weed out foreigners from Kenya. The directive was enforced with the view of better management of refugees in the country.

Thousands of people were rounded up and taken to Kasarani Sports Stadium for security screening. At the stadium, humanitarian organizations have no access and therefore could not assess the status and conditions of those held there. After going through the screening process, those found to not have proper documentation were summarily deported to their countries of origin.

Humanitarian organizations expressed their concern at the way the operation was implemented. Urban refugee families were separated with children being left in urban areas, business interrupted and livelihood disrupted. Cases of extortion and police harassment were recorded throughout the period that the operation was being implemented. Humanitarian organizations continue to engage with the government to get exemption for certain vulnerable groups and investigate cases of human rights abuses committed during the operation.

Somali Repatriation

On 10th November 2014, the Government of Kenya, Federal Government of Somalia and UNHCR signed a Tripartite Agreement, initiating the first steps in the voluntary repatriating of over 500,000 Somali refugees who have called Kenya their home for more than two decades. The agreement is meant to provide a legal framework for the safe and dignified voluntary repatriation of Somali refugees from the Republic of Kenya and their reintegration in the Federal Republic of Somalia.

International Organization for Migration (IOM) have initiated a survey in Dadaab to analyse the needs and concerns of Somali refugees and to prepare for any eventual voluntary repatriation interests. A limited number of refugees living in all five camps will be interviewed. A sample size of 7,526 will be used in all camps. The sampled refugees will be asked to give their free and honest opinions about their intentions to return to Somalia,

Finding Durable Solutions for Somali Refugees through the Global Initiative

By Lucy W. Kiama & Rufus Karanja

Lucy Kiama is the Executive Director of the Refugee Consortium of Kenya. She has a keen interest in matters relating to gender and human rights.



The Federal Republic of Somalia has suffered from over two decades of political instability, a volatile environment situation and a protracted displacement situation. Over one million Somalis are in asylum in neighbouring states within the Horn of Africa while a further one million are internally displaced within Somalia.

In a bid to catalyse efforts to find durable solutions for the Somali refugee situation, the United Nations High Commissioner for Refugees, (Antonio Guterres), launched in October 2011 a special initiative dubbed “the Global Initiative for Somali Refugees (GISR).”

The GISR initiative is intended as an over-arching process to rally the international community into addressing the most challenging questions, problems and imperatives of the Somali refugee caseload. The Initiative recognizes that the situation of Somali refugees as it is today stands unacceptable, with over one million Somalis living in a state of protracted displacement and dire humanitarian conditions both within Somalia and beyond. While recent developments in Somalia have raised hopes of finding durable solutions to the 23 year-old refugee situation, there still remain considerable challenges in governance, security, infrastructure, service provision and livelihood opportunities for Somalis refugees.

To commence the deliberations on the GISR, the UN High Commissioner convened a high level panel discussion in Geneva on 13-14 November, 2013. The objectives of the high level panel included: to identify key issues and challenges of the Somali refugee situation; opportunities to enhance livelihood and facilitate safe and dignified voluntary repatriation where feasible, while assuring continuing asylum and international protection, where necessary, and ways of galvanizing the

international community to drive forward these solutions. The Panel in Geneva brought together a group of 24 experts, including members of the Somali diaspora, civil society leaders from the region, academics, businessmen, former diplomats and senior UN officials. Lucy Kiama, RCK Executive Director, was the Government of Kenya’s nominee in the Panel.

Key messages coming out of the Panel discussions include: there is need for the international community to offer full and continuing support to Somali refugees; asylum space for Somali refugees must continue to be preserved in the current discussions on voluntary repatriation of Somali refugees in Kenya; asylum should evolve from a “care and maintenance” approach to one where human potential could be fully realized, while suffering and marginalization should be reversed. This will entail a significant re-conceptualization of the refugee experience with a view to making it a positive and transformative one by focusing on self reliance, skill building and access to livelihood opportunities.

As part of the next steps of the initiative, UNHCR will forward the recommendations arising out of the Panel discussions by developing of a global comprehensive plan of action (COMPACT). In addition, customized country-specific action plans will also be developed in the global conference that will be convened by the UN High Commissioner early in 2014.



RCK ED Lucy Kiama addressing the Nansen Initiative forum

their expectations on security, opportunities to earn a living and exposure to public service.

Marsabit Peace Initiative

The Marsabit Peace Initiative meeting took place in February 2014, in Nairobi. The gathering brought together community representatives and leaders from the communities that over the years have experienced conflict: Borana, Gabra, Burji, Sakura and Garre within Moyale county and its surrounding environs that have been hit by recurrent violence over the past year leading to loss of life, property and livelihoods. The most recent violence took place in January 2014 with at least nine people killed and hundreds fleeing their homes.

Kakuma Camp Situation

According to UNHCR, 20,156 South Sudanese have been received in Kakuma camp in 2014. Camp population stands at 149,365 which is 635 persons short of the 150,000 capacity threshold. This huge number has already strained the available resources in the camp.

Somalia



The planned voluntary repatriation of Somali refugees has raised concerns on the security of those who want to go back and those who would like to remain in Kenya. Of concern, however, is whether the current security environment in Somalia is amenable to voluntary repatriation, and if the Kenya Government will observe the human rights obligations relating to Somali refugees - in particular the principle of non-refoulement. These issues are seen against the backdrop of the continued in-fighting in Somalia, more so regarding the bombings and explosions that have been witnessed lately in the Somali capital of Mogadishu.

UNHCR together with the Federal Government of Somalia have identified Luuq, Eastern Kimayu and Baidoa as areas where Somali refugees residing in Kenya are free to voluntarily repatriate. These areas are considered to be relatively peaceful compared to other parts of the country, with the exception of Somaliland and Puntland which have always considered themselves independent from the larger Somalia and have enjoyed relative peace over the years.

Non-governmental organisations such as the International Rescue Committee (IRC), the Norwegian Refugee Council (NRC), INTERSOS, Action Contre la Faim (ACF) and Tearfund expressed their willingness to assist with the voluntary repatriation process, but urged for continued engagement in the 'processes and plans around solutions and the practical implications of the tripartite agreement'.

Meanwhile, in renewed efforts to boost the Somali National Army, members of the African Union Mission in Somalia (AMISOM) have completed a training programme for the first inter-clan light infantry company at its training facilities at

Jazeera Camp in the capital, Mogadishu. Soldiers drawn from different clans in Somalia underwent a six-month rigorous training course, ranging from basic rifle marksmanship to moving as a group formation during a planned attack. The programme started with about 700 recruits, but owing to the intensity of the training only 130 men and women made it to the final stage.

South Sudan



On December 15th 2013, South Sudan woke up to gunshots and screams from people who were running away from the shouting. President Salva Kiir was swift to blame troops loyal to his former deputy, Riek Machar, for instigating the attacks. Battles raged for a second day in the capital, Juba, amid fears that the fighting could spread elsewhere in the country. South Sudanese media reported that several former ministers had been arrested, but there was no news on the fate of Machar.

Peace talks were organized in the Ethiopian capital of Addis Ababa in which both factions of South Sudan were invited to take part. On 12th February 2014, led by the Inter-Governmental Authority on Development (IGAD), seven former political detainees from South Sudan were allowed to take part in the peace talks in Addis Ababa. Opposition negotiators had threatened to boycott the second round of talks unless several demands were met, including that the former detainees, who were released to the custody of the Kenyan president in late January, be allowed to travel to Ethiopia to take part in the negotiations.

Ugandan troops have been fighting alongside South Sudanese Government forces since December and in recent weeks have been helping government forces to drive rebels from numerous strongholds. The possible involvement of external forces in support of the rebels highlights the risk of a widening regional conflict. Ethiopia and Sudan have asked Uganda to withdraw troops from South Sudan to avoid drawing other countries into the conflict. Ugandan officials say Kampala will not withdraw from South Sudan until stability is restored, while indicating a possibility of withdrawing around mid April.

The second round of talks for South Sudan that was to begin on February 10th was expected to focus on reconciliation and building a political dialogue between the two sides. But the talks are taking place against the backdrop of ongoing fighting in parts of South Sudan, including in Machar's hometown of Leer and in oil-rich Upper Nile state. It is estimated that 10,000 people have been killed and 171,000 people forced to flee to neighbouring countries. UNHCR estimates that 710,600 people have been displaced within South Sudan.

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