



# Asylum space in Kenya: evolution of refugee protection over 20 years

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**Kenya's traditionally accommodating asylum regime has been rocked by changes in the main causes and contexts of displacement, both internally and externally. Those working to protect refugees in Kenya have had to adapt to new threats and adopt new practices.**

For over 20 years, Kenya has been hosting refugees of different nationalities from across the region and is home to one of the biggest refugee camps in the world. Very few African countries can claim to have an asylum regime that has been as flexible and accommodating as that of Kenya, yet in recent years Kenya's asylum regime has undergone substantial changes in both its policy framework and management practice due to changing security dynamics and the changing push factors that cause displacement within the region. To this end, both the government and humanitarian actors have been forced to find new approaches and practices.

In the formative years of the 1990s, prior to the setting up of the refugee camps, the small numbers of asylum seekers and refugees that Kenya received were scattered throughout the country, including in transit towns such as Mombasa and Thika. The number of registered refugees was very small compared to today's figure of over 474,000. Currently, Dadaab hosts 388,627 refugees, Kakuma hosts 53,518 and Nairobi hosts 32,679.<sup>1</sup> The Dadaab refugee camp was established to host and provide protection to Somali refugees who had fled persecution after the fall of President Siad Barre triggered a civil war and displaced thousands of Somalis. Kakuma refugee camp, on the other hand, was established in the early 1990s mainly to host and assist refugees fleeing civil war in Sudan.

The changing asylum space in Kenya has been characterised by a key debate on the balance between protection of refugees and asylum seekers vis-à-vis security management in the context of changing security dynamics both within Kenya and in the region.

## The prevalence of security threats

Of the refugee caseloads that have been heavily affected by this debate, one has been that of Somali refugees. Kenya's continued hosting of Somali refugees and granting them *prima facie* status has been a thorny issue among the Kenyan public due to increased incidences of insecurity in the form of terrorist attacks that have taken place in various Kenyan towns.

It is no secret that Kenya's borders are porous and are prone to infiltration by external forces and undocumented persons. According to the Kenyan government, their decision in January 2007 to close the Kenyan-Somali border at Liboi was as a security measure against external forces. However, it did not prevent many asylum seekers from seeking refuge in Kenya; on the contrary, they continued arriving in large numbers. Yet the closure of the border meant that screening of asylum seekers for diseases and illegal items such

as weapons was suspended, leaving locals and host communities worried about security threats from Al-Shabaab insurgents as well as disease (with cholera, diarrhoea and measles outbreaks having been reported in Somalia's capital). In 2012, there were several incidents when Al-Shabaab militants crossed over to Kenya and kidnapped humanitarian workers or carried out attacks on members of the Kenyan security forces.

The year 2011 witnessed the highest influx of Somali refugees Kenya has ever seen. According to UNHCR, 113,500<sup>2</sup> new arrivals in Dadaab were recorded within a



Children play in Ifo camp as the sun goes down.

period of eight months, a result of the famine, drought and insecurity that were being experienced in Somalia. This high influx of refugees put a lot of strain on essential resources such as food and shelter and on other things such as social amenities. It also created hostility between the host community and the refugee community due to competition for scarce resources within the North Eastern Province where the camps are located. Rises in cases of insecurity and gender-based violence were also reported due to congestion within the camps.<sup>3</sup> In response, the government and UNHCR established new camps Ifo 2 and Kambioos, despite there having been a stalemate over the establishment of any new camps as the government had previously maintained categorically that they would not establish any new camps within the Dadaab complex due to security reasons. The opening of these additional camps in 2011 helped ease congestion in the camps but insecurity was still prevalent.



Cases of insecurity were experienced not only in Dadaab camps but also in urban areas such as Nairobi and Mombasa where grenade attacks took place; Al-Shabaab took credit for most of these – in retaliation for Kenya's military incursion into Somalia. Service providers were under pressure as more refugees were in need of assistance ranging from legal counselling to medical attention. The 2011 influx also brought to light the debate about climate refugees and the need for the international community to have a formal discussion around this recent phenomenon and whether there is need for a revision of the conventional definition of refugee.

### Repatriation v protection?

The growing resentment within Kenya to 'imported' insecurity has led to the current debate about repatriating Somali refugees following the government's claim that south and central Somalia are now safe and 'liberated'. The Government of Kenya, UNHCR and the Somali government are currently in the early stages of making preparations for the repatriation of Somali refugees. However, there is deep concern among agencies working on refugee protection that these preparations are being done hastily without due regard for the changing security dynamics within Somalia; from the preliminary surveys done, it appears that most Somali refugees do not want to go back to Somalia for fear of persecution and insecurity.

Somali refugees are not the only caseload of refugees thinking about repatriation. Rwandans who fled their country prior to 1998 are being asked to return to their

country of origin following the invocation on 30 June 2013 of the cessation clause whereby the conditions in Rwanda are now deemed conducive for safe return. The Rwandese government recently announced that they were ready to start receiving all refugees and that measures have been put in place to ensure that the returnees are well reintegrated into the communities.<sup>4</sup> This announcement has caused a lot of anxiety among Rwandese refugees, and the Kenyan government's delayed indication of their position on the cessation is not helping the situation. Refugees have asked whether they can benefit from any other alternative legal status such as becoming citizens of Kenya or regularising their stay in Kenya instead of going back to Rwanda. Agencies working with refugees have started lobbying the Kenyan government to allow an alternative legal status for such refugees as provided for under the Citizenship and Immigration legislation in Kenya.

In late December 2012, however, agencies working with refugees received an unprecedented directive from the government requiring all refugees living within urban areas to relocate to the respective refugee camps (those of Somali origin to relocate to Dadaab refugee camp and those of other nationalities to relocate to Kakuma refugee camp). This directive essentially sought to introduce a *de facto* policy of encampment in Kenya given that the government has never previously officially registered the refugee camps through the *Kenya Gazette*<sup>5</sup> nor officially given notice that Kenya would adopt an encampment policy as part of its asylum regime. This directive also



Makeshift shelters and new tents in a section for new arrivals at Ifo, one of the three refugee camps at Dadaab in north-east Kenya. 2009.



was and continues to be a significant threat to UNHCR's urban refugee policy which seeks to expand protection for the increasing numbers of refugees living in urban areas.<sup>6</sup>

### Changing approaches and lessons learned

One of the lessons that agencies working on protection of refugees have learned is to combine both advocacy and legal interventions in the context of a changing asylum regime. To this end, the agencies working together under the Nairobi

Urban Refugee Protection Network (URPN<sup>7</sup>) went to court to challenge the December 2012 directive; as a result, the High Court issued orders stopping the government from implementing the directive until a full hearing of the matter. This legal intervention by refugee agencies has been heralded as a bold move given that over the years refugee agencies have always endeavoured to take collaborative advocacy initiatives – rather than initiate legal confrontation – with the government when it comes to refugee protection and management.

Although the issuance of the orders by the High Court provided a reprieve for urban refugees, to date the Department of Refugee Affairs (DRA) has yet to comply with the court order and resume full operations (including refugee registration). Further, the government through the State Law Office has issued a Notice of Appeal indicating their intention to appeal the High Court decision. However, of particular concern is that the DRA's lack of registration of new arrivals puts them at risk of arbitrary arrest by law enforcement officers for lack of documentation; such persons also cannot access health services, education and other essential services. The issuance of this directive was a clear testament that the asylum space in Kenya is shrinking and demonstrated the government's determination to adopt a strict encampment policy as well as a strongly securitised asylum regime in Kenya, something that is unprecedented in the country.

Another area of advocacy that agencies working on refugees have been involved in has been on the lobbying for the Refugees Act, 2006. The Act is currently being reviewed following the promulgation of a new Constitution but agencies fear that the current discussions around rising insecurity in the country may prejudice the review process of the Act such that gains made while

lobbying for the 2006 Refugees Act may be lost. An advocacy strategy adopted by the refugee agencies has been to not push for the review process of the Act at this moment since discussions within government circles are prejudiced towards securitising the asylum space.

Over the past 20 years, refugee management and protection in Kenya have come a long way but there is still much to be done in the future to ensure the protection



of refugees and asylum seekers. Humanitarian agencies must continue to be vigilant to ensure that asylum space in Kenya is protected, especially at this time when it appears that the government is keen on shrinking this space by securitising refugee management and operationalising a national RSD process through the taking up of RSD functions by Kenya's Department

of Refugees Affairs from UNHCR. It is envisaged that the process of RSD which has mostly been conducted by UNHCR through a non-adversarial process will now shift to an adversarial process where asylum claims will be adjudicated as provided for in the Refugee Regulations of Kenya, 2009. Of particular importance will be to ensure that the review process of the current Refugees Act, 2006 upholds the provisions and standards of protection for refugees and asylum seekers provided for within the 1951 Refugee Convention and the 1969 OAU Convention.

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1. [www.data.unhcr.org](http://www.data.unhcr.org) as at 7th October, 2013
2. [www.unhcr.org/pages/49e483a16.html](http://www.unhcr.org/pages/49e483a16.html)
3. RCK Asylum Under Threat: Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor, 2012. <http://tinyurl.com/RCK-AsylumUnderThreat-2012>
4. <http://tinyurl.com/Rwanda-gov-2July2013>
5. Official government publication
6. [www.refworld.org/docid/4ab8e7f2.html](http://www.refworld.org/docid/4ab8e7f2.html)
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