

Refugee management in Kenya

by the Refugee Consortium of Kenya

Kenya hosts approximately 250,000 refugees from over 11 war-torn countries.

The majority are from Somalia, Sudan, Ethiopia and the Great Lakes region. There are two official refugee camps in Kenya: Dadaab, close to the Somali border, hosts about 150,000 refugees; Kakuma, located in northern Kenya near the Sudanese border, hosts about 83,000 refugees.

The government implements a refugee encampment policy: once refugees have gone through the status determination procedures, they are obliged to reside in a camp while awaiting a durable solution. However, for a myriad of reasons (including insecurity in the camps, health problems and maladjustment to camp life), many refugees defy this requirement and make their way to urban areas. It is estimated that 30-50,000 refugees/asylum seekers live illegally in urban areas.

Asylum seekers are required to undergo status determination in Nairobi and during this time they are not under UNHCR protection. They suffer from lack of social assistance, harassment and extortion by law enforcement agents in addition to hostility from members of the public.

Responsibilities

Kenya has acceded to the 1951 Convention and ratified the 1969 OAU Convention and the Universal Declaration of Human Rights as well as other international human rights treaties. The National Refugee Secretariat (NRS) in the Ministry of Home Affairs is charged with the responsibility of managing the refugee situation. Although there is a bill pending in parliament, Kenya still lacks refugee-specific legislation. Without it, the protection inherent within these Conventions remains fundamentally elusive to refugees.

In a recent incident of influx of Somali refugees into Mandera in Kenya, the government refused to relocate the refugees to a safer site even though the temporary site where

the refugees were sheltering was only 500 metres from the border where fighting was raging. In addition, the local administration visited the site on several occasions, threatening the refugees with dire consequences should they refuse to return to Somalia. Most of the refugees were women and children. This obvious contravention of the principle of *non-refoulement* went unchallenged.

Legislation would certainly go a long way towards providing a clear framework for the protection of refugees. Under Kenya's new draft constitution, refugees are guaranteed the right of *non-refoulement* and parliament is charged with responsibility to enact refugee legislation within a year of the new constitution coming into force. In effect, the new constitution recognises the right to seek asylum as a constitutional right.

The government has to date abdicated its responsibilities

The government has to date abdicated its responsibilities and instead delegated responsibility to UNHCR. In addition to its own mandate of protection and provision of humanitarian assistance, UNHCR has accepted responsibility for receiving refugees, registration and scheduling appointments for status determination, conducting eligibility interviews, making decisions on eligibility, hearing appeals, making decisions on appeal and making camp referrals. UNHCR has, in effect, assumed the role of a government ministry and in so doing has seriously compromised its autonomy and its effectiveness in providing refugee protection.

Police harassment

One of the main problems faced by refugees is police harassment. The police carry out regular raids in refugee-dominated areas during which they have been known to search refugee homes, abuse, assault, intimidate and wrongfully arrest refugees. Many refugees are detained in police

cells for many days without being charged while others are forced to pay bribes to police officers to secure their release. Police blatantly disregard UNHCR documents indicating that the refugee/asylum seeker is known to the agency. Although UNHCR and the government have agreed to provide joint documents to refugees and asylum seekers, this initiative has been stalled for well over a year. Harassment, extortion and intimidation of refugees by police officers continue unabated.

The plight of asylum seekers in Kenya is particularly dire. While awaiting status determination, asylum seekers are de facto not persons of concern to UNHCR and thus have no access to social assistance or protection. They are open to police harassment, extortion, sexual assault, abuse and discrimination of every sort. The UNHCR branch office maintains that its mandate extends assistance to recognised refugees only. Realising their plight, there is need for the

agency to review its mandate and to provide the requisite protection and assistance to asylum seekers.

Attitudes towards refugees

Civil society in Kenya remains ignorant of the plight of refugees and this ignorance together with the currently depressed economy often results in xenophobia and hostility toward refugees. Although African cultures are renowned for their hospitality, this virtue has worn thin.

Experience has shown that in the run-up to elections many politicians will not hesitate to manipulate the refugee situation as an electioneering gimmick. Members of Parliament have been known to distort facts and stereotype and vilify refugees as the sole source of increased crime and insecurity, proliferation of illegal arms and scarcity of resources. They have even been known to point to humanitarian assistance to refugees in the camps as evidence that refugees allegedly enjoy a better lifestyle than the locals. Blaming refugees detracts

attention from their own responsibilities towards their constituents.

UNHCR and refugee protection

As the agency responsible for refugee status determination and resettlement processing, UNHCR has been overwhelmed in executing its mandate and its dual role has compromised its effectiveness. Asylum seekers must undergo individual status determination procedures in order to be eligible for UNHCR assistance. Unfortunately, this process can take six to eight months, during which time the asylum seeker has no access to social assistance, medical services, education or other basic amenities.

Resettlement came to a halt over a year ago in Kenya as a result of exposure of a long-running corruption scam involving payments for UNHCR resettlement assistance.¹ To date the process has not resumed and this has meant that many deserving cases are unattended, further compounding their already desperate situation. In the interest of refugee welfare, receiving countries need to press for the active re-commencement of the resettlement programme.

The corruption and sex scandals that have dogged UNHCR branch offices

continue to be a cause for concern.² No clear disciplinary action has been taken to address these abuses. The recently launched UNHCR Code of Conduct has been presented as a 'morally persuasive' document rather than a binding document for staff.

UNHCR in Kenya has been unreachable and inaccessible to refugees. Eligibility decisions are given in writing as is rescheduling of appointments. Interaction with refugees is kept at a minimum so that refugees neither have a forum where their questions may be addressed nor a means to question the process. On several occasions, NGOs have had to intervene on behalf of refugees and set up a meeting with refugee community representatives and UNHCR in order to address issues of concern. UNHCR remains ill informed on the refugee situation on the ground as a direct result of its distance from refugees, the very people it serves.

Having been given state support to take the lead in refugee protection, UNHCR must use its position to comprehend the dynamics of refugee protection and mobilise support for resources to effectively address the challenges of refugee protection in Africa. UNHCR must not resign itself to the status quo and remain inactive

in the face of state violation of refugee rights. It must take the lead in calling for respect for refugees and in exerting pressure for positive change.

Other actors

NGOs have made significant efforts to call attention to the refugee situation and to advocate for a positive response to refugee rights. One such example is the first ever joint workshop for Kenyan and Ugandan members of parliament organised in April 2002 by the Refugee Consortium of Kenya in collaboration with the Lawyers Committee for Human Rights (New York) and the Refugee Law Project in Uganda. The aim of the workshop was to educate, inform and raise awareness on pertinent refugee issues and the pivotal role that parliamentarians play in refugee protection. It was a successful initiative and demonstrated the clear need for such fora in promoting an environment conducive to effective refugee welfare and protection. This initiative is now being extended to other sectors such as the judiciary and law enforcement agents.

Recommendations

African governments' hospitality to refugees is waning. This is evidenced by stricter encampment policies,

Somali Bantu refugees line up for confirmation of transfer to Kakuma, for resettlement to USA.





Nuer women from southern Sudan, in Walda refugee camp, Kenya.

partiality in the protection of refugees and outright expulsion justified by exaggeration of the pressures exerted by refugees on struggling economies.

One of the major devices for improving the refugee situation is sensitisation. The key players in refugee protection – the police, the government and the judiciary – must be informed of and encouraged to accept their responsibility vis-à-vis refugee protection. Advocacy must be undertaken to get the judiciary to be more active in refugee protection. Civil society must also be sensitised through the media and civil education to eliminate xenophobia and promote adherence to human rights principles.

UNHCR must divorce itself from the dual role it has assumed in order to execute its mandate effectively. It must retain its autonomy if it is to speak out against government practices that harm refugee welfare and to be more proactive rather than reactive. UNHCR must remain relevant to the context. It must be flexible enough to respond to refugee protection needs, as the specific context requires. In particular, UNHCR's policies on protection must be tailored to address the peculiarities of the African refugee situation.

There is a need to actively pursue durable solutions for refugees. This includes promoting peace in the conflict-ridden regions from which the refugees flee. The Machakos initiative to bring peace to Sudan, coordinated by the Intergovernmental Authority on Development (IGAD)³, has given reason for optimism. Nonetheless, their weakness stemmed from the lack of involvement of refugees, educators, lawyers and business people in the

process. It is imperative that representatives of society at large – people who will actually build peace on the ground – be present at these talks.

Durable solutions in the form of local integration must also be explored, particularly for refugees with professional skills that can contribute significantly to the local society and economy.

In order for successful resettlement to occur, the relevant parties must function efficiently and with a well-informed perspective. We are currently witnessing the preparation for resettlement of 10,000 Somali Bantus to the US. There is a need to ensure that these refugees are prepared for the drastic change in their lifestyle and equipped with coping mechanisms for the migration.

The principle of burden sharing must not be neglected; host countries cannot be left to shoulder alone the impact of refugees. It is unrealistic for UNHCR and the international community to put pressure on African states to continue accepting refugees without addressing the daunting economic, social and security challenges that such a responsibility poses. UNHCR must use its unique position in refugee protection to translate verbal commitments to burden sharing into reality.

For further information about the Refugee Consortium of Kenya (RCK) email: refcon@icconnect.co.ke.

1. For details, see www.irinnews.org/report.asp?ReportID=20160.
2. See FMR15 pp16-19: www.fmreview.org/FMRpdfs/FMR15/fmr15.7.pdf.
3. See FMR15 p48: www.fmreview.org/FMRpdfs/FMR15/fmr15.19.pdf.

Human Rights Watch report on the plight of refugees in Nairobi and Kampala

Tens of thousands of refugees are living in terrible conditions and danger in the capital cities of Kenya and Uganda whose governments have failed to take minimal steps to protect and care for them, according to a report by Human Rights Watch (HRW)¹.

Refugees are forced to sleep in the streets or in squalid and overcrowded apartments in the poorest neighbourhoods of Nairobi and Kampala. They are subject to beatings, sexual violence, harassment, extortion, arbitrary arrest and detention by local criminals, persecutors who follow them from their native countries (especially state security agents from Rwanda, Ethiopia and DRC) and even the Kenyan police and Ugandan soldiers.

HRW takes to task not only the governments of Uganda and Kenya but also charges UNHCR with being "unresponsive" to the concerns of urban refugees. This is the consequence of a 1997 policy which gives preference to refugees living in designated camps and UNHCR fears that they may offend the two host governments which require refugees to live in camps.

The assistance provided to urban refugees by such organisations as the Refugee Law Project in Kampala or the Refugee Consortium of Kenya in Nairobi is, says HRW, "just a drop in the ocean ... these agencies can do little to protect refugees from violent attacks".

HRW calls on UNHCR and both governments to provide legal status to urban refugees and improve the status determination systems in both countries. Donor governments are urged to provide more resources for protecting and aiding refugees in urban areas and speeding up their resettlement in third countries.

1. The full 208 page report 'Hidden in Plain View' is online at: www.hrw.org/reports/2002/kenyuan/

On 6 December, HRW published a further warning that Kenyan police appeared to be using the 28 November attacks on Israeli tourists in Mombasa to justify a crackdown on refugees in Nairobi. Between 29 November and 5 December, police conducted three large raids and dozens of arbitrary arrests against refugees from Ethiopia, Somalia, Sudan and the Democratic Republic of Congo in several neighbourhoods of Nairobi.