

Bold advocacy finally strengthens refugee protection in Kenya

by Eva Ayiera

In November 2006, after 15 years of consideration, the Kenyan Parliament enacted the Refugee Act, believed by many to be potentially the most important milestone in the management of refugee affairs in Kenya.

The law would not have been passed without intense advocacy, lobbying, negotiating and balancing of the political, economic, human rights issues and security considerations. The Refugee Consortium of Kenya (RCK), established in 1998 as a legal aid and advocacy organisation for refugees, took a

about 14,400 to nearly 300,000 as refugees fled en masse from Somalia, Sudan and Ethiopia at a time of chronic economic crisis and hyperinflation. Faced with a seemingly endless stream of refugees, Kenya drafted a refugee bill but the government watched the situation, unwilling to shoulder the growing

periphery of Kenya's growing refugee crisis. However, the scope of rights available to refugees shrank. They were exposed to constant unlawful arrests, incarceration and the risk of *refoulement*. Their rights were uncertain and undefined. Refugee protection standards were in a state of steady decline.

As years went by, the government became increasingly reluctant to enact the refugee law. Kenya continued to face sporadic influxes of refugees, the long porous border

with Somalia became a cause for concern and the increase in gun crime stirred up public outrage against refugees and immigrants. Concerns arose about environmental degradation in the refugee camps, where large numbers of refugees were living on a small area of land. Conflicts between refugees and host communities grew and many Kenyans noted the disparities between their own living standards and those of refugees. The draft legislation was judged to be a burden that a beleaguered Kenya could not afford to shoulder. As the refugee situation



UNHCR/A Webster

Sudanese refugee women in Kakuma camp.

central role in advocating for this law, working with its partners in a concerted effort to realise lasting change in refugee management.

Kenya's resistance to a refugee law dates back to 1990-91 when the refugee population shot up from

burden indefinitely. The government established two refugee camps – Dadaab and Kakuma – in remote and inhospitable corners of Kenya and delegated authority for management and protection to UNHCR in a bid to ensure the international community did not remain at the

became protracted, resistance to enactment intensified, although the need for protection, accountability and predictable administration became ever more apparent as the needs of refugees intensified.

A new political climate was ushered in by the 2002 general elections. The democratic transformation opened space for a new form of engagement between the government and civil society and a softening of the antagonism towards NGOs that had been acute under the previous government.

In 2006, the Refugee Bill was gazetted and returned to Parliament. Recognising a new, vibrant opportunity, RCK engaged a broad cross-section of stakeholders in a spirited campaign for enactment of the law. RCK promoted the legislation, engaged at the highest level with the parliamentary committee responsible for the bill, monitored parliamentary debates, liaised with the Refugee Affairs Department and UN agencies and worked with other civil society actors to push for enactment.

Advocacy strategies

RCK's approach to advocacy recognises the need for NGOs to define themselves as non-partisan and non-political. However, given the history of the bill and the sentiments of Kenyans towards it, the process was steeped in political considerations that needed to be addressed if the legislation was to be enacted. We recognised the need for a long-term engagement, focused on demystifying refugees and the asylum process and changing attitudes towards them. We recognised the need for a broadly inclusive negotiation. Politicians, government departments and the public had differing interests and legitimate concerns about the refugee situation that merited frank discussion and consideration. The refugee debate in Kenya had become a charged issue, fuelled by negative media stereotypes, upsurge of armed crime, apparent linkages between refugee influxes and rare epidemics and resentment against the way refugees have driven up the cost of renting accommodation.

We did not lose sight of the importance of distinguishing refugees from illegal migrants. RCK and its partners focused on promoting the bill as a law aimed at addressing these issues by putting in place predictable systems of management,

distinguishing refugees from other categories of migrants and highlighting the need for the Kenya government to resume full authority for the overall management of refugee affairs. While arguments for ensuring that international human rights standards are reflected in national legislation are important, it is equally important to address the practical issues arising within a country. It was critical to demonstrate how new legislation would benefit Kenya.

Being a national NGO gave RCK the platform to present arguments and address issues that may have been perceived in a different light coming from an international actor. Working with the legislators, we reviewed each clause of the bill in order to ensure refugee rights were protected in line with international standards; to address security concerns raised by some government partners; to protect the environment in areas hosting refugees; and to ensure the legislation would help both refugee and host communities. Our recommendations were incorporated into the formal text of the bill as it was re-drafted into a formal law. The bill was signed into law by the Kenyan President and became law on 30 December 2006. At the end of a lengthy negotiation process, RCK, partner NGOs, international and intergovernmental organisations, the Refugee Affairs Department and refugees collectively breathed a sigh of relief, recognising the achievement that bold advocacy had achieved and our hopes that it would usher in a new era in management of refugee affairs.

Events in Somalia challenge new law

It is now important to ensure that legal standards are upheld and that the government is held to account for the provisions of the legislation. RCK is concerned to see the new law applied in the situation of Somali refugees in the present round of conflicts. The border has remained closed since January 2007 and some asylum seekers have been *refouled*. Few refugees have managed to trickle into the country to seek asylum and many displaced Somalis are camping on the other side of the Kenya/Somalia border.

While we support the government in its efforts to enhance security and protect Kenyans, we do not believe that the solution lies in denying entry or forcing back vulnerable refugee women, men and children to a situation of grievous harm and threat of death. At the same time, we acknowledge that the government has now allowed humanitarian aid to pass through Kenya into Somalia and we urge the international community to increase efforts both to provide security and humanitarian assistance to the displaced persons sheltering on the Somali side of the border. We call on the government to open the border and to let in those in need. UNHCR can mobilise resources from the international community to assist in vetting asylum seekers at the border before they enter the country in order to retain the civilian nature of asylum.

Kenya has been host to over 150,000 Somali refugees over the last fifteen years of Somalia's unrest – a laudable humanitarian gesture recognised all over the world. It shares a border of well over 600 km with Somalia. Refusing to allow asylum seekers entry through the known border points will force people to find alternative and unofficial routes into the country, and the government will miss opportunities to vet entrants. Closing the border and refusing access to asylum seekers are also likely to escalate the humanitarian situation in Somalia which will spill over into Kenya.

We call on the government to re-evaluate its position and to allow refugees from Somalia to enter and seek asylum in Kenya in keeping with the national law and policies found in the Refugee Act and in line with international human rights and humanitarian law. In the same spirit, the international community should demonstrate greater commitment to shoulder the humanitarian and security responsibilities arising from the Somalia situation.

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