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**Rights Displaced: The Effects of Long-term
Encampment on the Human Rights of Refugees**

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Abstract

This paper investigates the use of long-term encampment policies in protracted refugee situations. Unlike most contemporary scholarship on the subject, this work focuses on the human rights of encamped refugees rather than on their rights under international refugee law. The author uses Kakuma refugee camp in Kenya as a microcosm by which to explore long-term encampment and to assess the ability of encamped refugees to claim their human rights in practice. This research also questions the role played by host states, international organisations and by refugee discourse in normalising and promoting such policies. Given the lack of durable solutions available to the majority of the world's refugees, this paper puts forth recommendations for how to better align the realities of protracted refugee situations with the promotion and protection of human rights.

Keywords: *Long-term encampment, protracted refugee situations, international human rights law, Kakuma refugee camp*

Acronyms

ACHPR	African Charter on Human and People's Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social Cultural Rights
IHRL	International Human Rights Law
IRL	International Refugee Law
LTE	Long-term encampment
OAU	Charter of the Organisation of African Unity
NGO	Non-governmental organisation(s)
PRS	Protracted Refugee Situation(s)
SRS	Self-Reliance Strategy Programmes
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees

Introduction

Since the inception of an international regime for the protection of refugees in the aftermath of the First World War, the refugee problem has been constructed as a temporary phenomenon. This discourse has been enshrined by the Office of the United Nations High Commissioner for Refugees (UNHCR), which offers three durable, or permanent, solutions for refugees: voluntary repatriation, permanent local integration, or permanent resettlement to a third country. In the last six decades, the regime has evolved into a sophisticated system comprised of international institutions and bodies of international law, meanwhile refugee crises continue to persist with unprecedented ferocity. It is safe to say that refugees have long been an endemic issue; yet the temporary notion of the refugee endures. With the proliferation of protracted refugee situations and the emergence of increasingly restrictionist host-country policies, a fourth durable solution has evolved, that of long-term encampment. The reality is that the majority of the world's refugees continue to languish in refugee camps for periods of time that extend far beyond the initial emergency phase of a refugee crisis. While these individuals might be given the right to life through the principle of non-refoulement, the cornerstone of international refugee law, this right has come at the expense of other fundamental human rights that are directly jeopardised by policies of long-term encampment.

This paper will investigate the conditions faced by encamped refugees in protracted refugee situations in order to assess the effects that long-term encampment has on one's status as a human rights holder. After all, refugee status does not strip a person of their human rights. International refugee law is premised on the international community stepping in to provide surrogate state protection, which includes the promotion and protection of an individual's human rights. This paper poses the question of which human rights, if any, do refugees in situations of long-term encampment have. It will explore the discrepancy between protocol and practice while investigating what an enduring existence within the refugee camp entails. This work sets itself apart from other scholarly pursuits on the subject by focusing on the human rights of encamped refugees rather than on their rights under international refugee law. Moreover, while most scholarship in this field focuses on documenting human rights violations and abuses in camps, few scholars pose the larger, more abstract questions of how refugee discourse normalises the long-term encampment of refugees and legitimizes a life devoid of fundamental human rights and freedoms.

While protracted refugee situations involving policies of long-term encampment exist in various parts of the world, this paper will focus on the problems associated with long-term encampment

in Africa on the grounds that the continent has more protracted refugee situations and contains more refugee camps than any other region (Schmidt 2003, 2). As such, the long-term encampment of refugees in Africa presents a critical situation in need of investigation and analysis. This paper will focus specifically on the human rights of refugees in Kakuma refugee camp in Kenya, which serves as a microcosm for exploring policies of long-term encampment and their effect on human rights. Similarly, this paper concentrates on the realities of long-term encampment, rather than on the refugee camp itself, so as to question the temporary nature of the refugee and to highlight the concerns raised by prolonged restrictions on human rights.

Unlike more radical scholarship that advocates for the removal of refugee camps, this paper attempts to deal with the challenges posed by protracted refugee situations in a more realistic fashion. In 2010, the 49 least-developed countries provided asylum to over two million refugees (UNHCR Global Trends 2010, 2). At present, doing away with refugee camps altogether, which offer much needed humanitarian assistance, or integrating thousands of refugees into developing countries which struggle to provide for their own nationals, is not an option. Rather, we should focus on how to align conditions of long-term exile with human rights norms and standards that allow for a life of dignity, regardless of whether a durable solution can be found.

Methodology

Generally speaking, compliance with human rights norms is assessed by examining past case law or judicial decisions. In the case of encamped refugees, however, a typical legal analysis is made impossible as these individuals seldom have recourse to justice. Instead, a document analysis and case study method will be applied to assess the restrictions imposed on the human rights of refugees through policies of long-term encampment. This investigation consists of library based research utilising primary and secondary sources including UN and NGO documents, research and field reports, scholarly articles, and the application of national and international legal instruments.

Outline of paper

Prior to assessing the conditions of long-term encampment and their effect on the human rights of refugees, some background on the field will be provided. First, this paper will establish the relationship between international refugee law and international human rights law. Second, this paper will provide a brief history of refugee protection and shifts in refugee policy. Third, an

investigation into protracted refugee situations and policies of long-term encampment will be provided. Fourth, the refugee camp will be examined as both a concept and as a physical structure; an overview of the negative consequences of long-term encampment will be given. Fifth, using Kakuma refugee camp in Kenya as a case study, this paper will assess the extent to which encamped refugees can avail themselves to their human rights. Lastly, recommendations will be put forth for how better align the realities of long-term encampment with considerations for human rights.

Background

To begin with, it is useful to explore the relationship between international refugee law (IRL) and international human rights law (IHRL) – a relationship upon which this work is premised. This paper investigates long-term encampment from a human rights perspective because focusing on the denial of fundamental human rights highlights the critical nature of this largely overlooked phenomenon. Such an analysis is made possible because the two branches of law are intertwined. Many of the rights found within the various international human rights instruments are replicated in the 1951 Convention Relating to the Status of Refugees, henceforth referred to as the 1951 Convention. For example, the right to freedom of movement is enshrined in Article 26 of the 1951 Convention and in Article 12 of the ICCPR. Freedom of movement is necessary for the realisation of numerous other human rights. The inclusion of the right to seek and to enjoy asylum from persecution in Article 14 of the UDHR is another case in point (Edwards 2005, 297). Moreover, international human rights law tends to reinforce the principles found within the 1951 Convention. Generally speaking, the Convention ensures that refugees are able to enjoy a range of rights and freedoms found within international human rights instruments (Jamal 2003, 5).

Durable solutions: a critical history

In his work, B.S. Chimni chronicles the ways in which the shifting nature of the refugee problem has been dealt with through time. He notes that from 1945 to 1985 the preferred solution was permanent resettlement in a host country. From 1985 to the present, however, the preferred solution became repatriation, ranging from voluntary repatriation to increasingly imposed return (Chimi 2004, 56). Several factors account for this change. Throughout the Cold War era, refugees were accepted by Western host countries as “agents of democracy”, thereby acting as the physical manifestations of the fight against communism (Smith 2004, 44). With the Cold War drawing to a close, refugees no longer served their formally political purpose and so host

countries lost some of their incentive for accepting asylum seekers. Meanwhile, in Africa, the decolonisation process and subsequent transition to state-sovereignty contributed to mass displacement throughout the region. In typical fashion, the refugee problem was treated as temporary; meanwhile, the number of refugees doubled from less than two million in 1970 to over 4 million by 1980 (Smith 2004, 44). Thus, while refugee crises became more pronounced, potential host countries became less willing to accept refugees. A new international consensus emerged in the 1980s and 1990s to account for this shift: rather than accepting refugees for resettlement, voluntary repatriation came to represent the most cost-effective and thus, appropriate solution (UNHCR/DPS 2008, 17).

Problems began to emerge as refugees increasingly found themselves without the ability to return. Currently, two-thirds of the global refugee population, or 10.3 million people, are considered to be in protracted refugee situations (Humanitarian Information Unit 2011). The majority of host countries dealing with PRS have chosen policies of long-term encampment, thereby forcing refugees to spend years, and sometimes decades confined to camps without the ability to integrate into the host country. Critics of long-term encampment have dubbed the long-term encampment of refugees “warehousing”, a term that speaks to its dehumanising nature (USCRI 2009).

Protracted refugee situations

Protracted refugee situations (PRS) stretch the original assumptions that underpinned the international regime for refugee protection: the temporary character of the refugee problem. In 2004, an UNHCR Standing Committee paper defined PRS as a situation of 25,000 or more refugees that had been in existence for five or more years with no immediate prospect of a durable solution (UNHCR ExCom 2004, 2). In 2009, UNHCR Executive Committee Conclusion No. 109 eliminated the quantitative limit of 25,000 people as the definition previously prevented a number of critical situations from being addressed by the international community; this includes the 15,000 Rwandans in Uganda and the 17,000 Burundians in the Democratic Republic of Congo (Milner and Loescher 2011, 15). There are now over thirty protracted refugee situations in the world and their average duration has nearly doubled in the last decade (Loescher et al 2008, 1). Refugees in PRS are unable to return to their country of origin because of ongoing conflict or because they fear persecution. At the same time, they are restricted from permanently settling within the host state, and as such, are left with few options (Crisp 2003, 1).

Causes and consequences of PRS

Protracted refugee situations usually occur near border areas of host countries. These locations are insecure and form a low priority for host governments and international actors alike (Crisp 2003, 5). More importantly for this analysis, PRS are often characterised by the inability of refugees to claim basic human rights, a point that will be explored in detail in subsequent sections. It is also crucial to point out that PRS are not natural consequences of involuntary displacement. Rather, they are the result of political actions taken by both the country of origin and by the country of asylum (Jamal 2003, 4). In Africa, this phenomenon has been caused by continued conflict and by policies of non-intervention. Moreover, as Mary Kaldor points out, in Africa and elsewhere, the “new wars” of the last several decades are fought for control over resources and power and are characterised by the targeting of civilians (Kaldor 2007, 82). Indeed, in modern wars, being a combatant is relatively safe; in the beginning of the 20th century, ninety percent of all casualties were combatants, while in contemporary conflicts, ninety percent of reported casualties are of a civilian nature (UNDP 1994, 47).

Second, the international community’s response to the devastation caused by such conflicts has been inadequate, especially in comparison to the response in places like Bosnia, East Timor and Northern Iraq, which allowed for large-scale repatriation movements (Crisp 2003, 2). Such an opportunity never presented itself within the African context. In Africa, the impossibility of return was combined with host country and UNHCR policies that paid little attention to the possibility of permanent, local integration. From the 1980s onward, the international community has continued to prefer repatriation over resettlement despite the realities on the ground. These factors have led to the problem of protracted refugee situations today.

PRS and the link to long-term encampment

This paper has explored the causes of PRS in order to show that continued conflict in the country of origin is only a part of the problem. Protracted refugee situations are exacerbated, perhaps more directly, by host country policies of non-integration, and more generally, by the misconceived notion that refugees warrant a temporary solution, i.e. settlement into a camp. Jamal continues, “If refugee situations endure because of ongoing problems in countries of origin, they stagnate and become protracted as a result of responses to refugee inflows, typically involving restrictions on refugee movement and employment possibilities and confinement to camps (Jamal 2003, 4). In this way, rather than forming a solution, the refugee camp becomes part of the problem.

Justifications for long-term encampment

Prior to analysing human rights within the context of long-term encampment, it will be useful to first explain how long-term encampment became the ideal policy for dealing with PRS in host countries. The idea of encampment as a means by which to handle refugee populations is a curious one. In fact, no mention of camps is made in the 1951 Convention (Smith 2004, 39). Justifications for policies of encampment are rarely made in general terms. Instead, host governments formulate specific reasons to explain their use (Black 1998, 5). For one, host countries often claim that allowing refugees to settle freely would threaten national security (Smith 2004, 45). However, numerous case studies show that refugee camps can become security problems through the process of militarisation. As Barbara Harrell-Bond acknowledges, the nature of encampment also promotes violence as it is “very nearly impossible to maintain the civilian character of a camp” (Harrell-Bond 2002, 19). Thus, while it is entirely legitimate for governments to exercise control over refugee populations, there is also ample evidence to suggest that encampment is not an ideal solution for concerns over national security.

Another often cited rationale for policies of encampment is that refugees would become an economic burden outside of the camp (Smith 2004, 46). Writing in the late 1980s, Gaim Kibreab advocated for spatially segregated sites for refugees citing “the large numbers of those who need to be integrated, the very low or negative economic growth rates...the drastically declining commodity prices and agricultural output and the debt crisis” as reasons (Gaim 1989, 468). This argument has remained largely unchanged for over thirty years. In 2003, Arafat Jamal wrote that “to insist that poor African nations not only accept thousands of refugees but also let them spread throughout the country is unreasonable (Jamal 2003, 4). This paper, however, argues that to confine refugees to long-term encampment that denies a life of dignity is also unreasonable. In other words, a compromise must be found.

Apart from security concerns and undue economic hardship, vested interests and ulterior motives of the host state and of the international community also play a significant role. Both Barbara Harrell-Bond and Richard Black place the blame for the establishment of camps on the UNHCR and other international aid agencies; according to Black, “these agencies are seen as favouring a policy that either helps them to carry out their mandate to assist refugees or, alternatively, strengthens their control of camp populations and accountability to donors” (Black 1998, 5). In simpler terms, refugee policy in Africa is largely driven by convenience for humanitarian organisations and donor demands. Host countries also have an interest in keeping refugees

encamped; they fear that providing refugees with a larger degree of rights and freedoms would promote permanent settlement. However, as Merrill Smith correctly points out, this fear “stems from an unnecessary confusion between integration as an interim measure for enjoying Convention rights, on the one hand, and integration as a permanent durable solution, on the other (Smith 2004, 53). After all, in accepting refugees, host states have certain duties to uphold, including the promotion and protection of fundamental human rights.

The refugee camp: characteristics

Now that the link between protracted refugee situations and long-term encampment has been established, we can move on to discussing the refugee camp. Officially designated camps are reported to contain over 87% of the refugees assisted by the UNHCR, the main body responsible for providing assistance and protection to refugees and other persons of concern (Agier 2002, 319). The most important characteristics of the refugee camp, which sets this structure apart from other spaces, are “segregation from the host population, the need to share facilities, a lack of privacy, overcrowding and a limited, restricted area within which the whole compass of daily life is to be conducted” (Schmidt 2003, 5). Moreover, camp life consists of living on small amounts of humanitarian support with little to no economic independence; these factors isolate the refugee from the economic system and society at large (Diken and Laustsen 2005, 88).

Limited or restricted mobility is perhaps the most prominent feature of the refugee camp. Refugees are confined to camps in several ways. The most visible barrier to mobility is the physical enclosure of the camp, but less visible barriers are also commonplace. For example, sanctions are often imposed on refugees who leave the camp without official permission. Some host states, like Kenya, rely on more elaborate measures, such as denying humanitarian assistance to self-settled refugees (Verdirame 1999, 4). Planned refugee settlements and camps are similar in that they are placed in isolated and underdeveloped areas (Schmidt 2003, 21). In contrast to camps, however, settlements are intended to provide refugees with some degree of self-reliance – a subject that will be discussed more thoroughly in subsequent sections.

The isolation of the refugee camp from public life and dependence on aid is perhaps most striking within the African context. As Gaim noted in the 1980s, refugees are placed in “spatially segregated sites where their material needs are met by the international refugee support system. The goals of local settlement are often incompatible” (1989, 470). Writing a decade later,

Richard Black referred to refugee camps in Africa as “tented cities supplied wholly from the outside” (Black 1998, 4). This raises questions regarding the confinement of individuals to such environments for extended periods of time. While a more detailed analysis of long-term encampment will be provided later on, for now it will suffice to say that these individuals take part in an unfortunate exchange involving the provision of aid and assistance in lieu of their human rights (Hyndman 2000, 87). This exchange may be reasonable in the short-term, but problems emerge when livelihood is reduced to biological survival for extended periods of time.

Questioning the temporary nature of the camp

Refugee camps are constructed as temporary spaces to meet the immediate needs of the forcibly displaced. When refugees first arrive to a refugee camp, their immediate needs include safety, food and shelter. Over time, livelihood goals evolve to include economic independence or integration into society. One of the problems that arise from long-term encampment is that the camp structure does not accommodate for an extended stay. As such, more advanced objectives remain out of reach for the majority of encamped refugees (Jacobsen 2002, 5). As illustrated by the popularity of long-term encampment policies, most refugees become a permanent fixture within the host state. The reality on the ground is that refugee camps accrue thousands of inhabitants for periods that generally last far beyond the initial phase of displacement (Agier 2002, 319). In fact, more than half of all refugees globally are effectively confined to camps, or “warehoused”, in situations lasting ten years or more (USCRI 2006, 1). Yet, despite decades of evidence showing that refugees are an enduring phenomenon that cannot be dealt with through temporary mechanisms, international organisations and host states continue to deal with refugees through inappropriate emergency phase policies (Nyers 2006, 9). The reasons for this anomaly have already been established.

State of emergency: no end in sight

The management of refugee camps fails to evolve beyond emergency provisions partially because there are no international guidelines for judging when the crisis ends. According to the Third Edition of the UNHCR Handbook for Emergencies, an emergency is defined as “any situation in which the life or well-being of refugees will be threatened unless immediate and appropriate action is taken” (UNHCR 2007, 4). One could say that after years of exile, the life of the refugee is no longer in immediate danger or peril. The Handbook, however, provides no information on when an emergency ends and how to accommodate the shift from humanitarianism to provisions for human rights (Deardoff 2009, 20). This fact makes the

transition from crisis management more difficult in practice, particularly because states receive little guidance on when restrictions on human rights are no longer acceptable (Goodwin-Gill and MacAdam 2007, 470). For the purpose of this paper, the main problem this crisis approach to camp management raises is its effect on human rights. It is, of course, normal for certain rights to be derogated from in times of emergency. This point is made clear by the categorization of rights in international human rights instruments as absolute, derogable or qualified. It is however, unreasonable to expect refugees to live in camps without fundamental human rights for prolonged periods of time.

There are many negative consequences stemming from encampment policies. This includes the breakdown of community, the radicalisation of ethnic identity and increased susceptibility to disease (Verdirame and Harrell-Bond 2005, 271). Confinement to camps also increases dependency on aid and ignores the resources and capacities that refugees possess (Schmidt 2003, 7). The UNHCR's Standing Committee has also noted that "the high incidence of violence, exploitation and other criminal activities are disturbing manifestations of refugees remaining passive recipients of humanitarian assistance and continuing to live in idleness and despair" (Standing Committee Framework 2003, 10). Most importantly for the purposes of this paper, long-term encampment violates fundamental rights and freedoms guaranteed to all human beings. In later sections, this paper will explore which rights are violated by policies of long-term encampment and how.

Case study: Kakuma refugee camp, Kenya

This paper focuses on Kenya because unlike Tanzania and Liberia, which have recently shifted their refugee policies in dealing with protracted refugee situations to include refugee settlements and local integration, Kenya has not budged from its policy of long-term encampment (Milner and Loescher 2011, 9). According to the UNHCR, Kenya is host to 403,000 refugees, making it the sixth largest refugee hosting country in the world (UNHCR Global Trends 2010, 12). Given the sheer magnitude of the protracted refugee crisis in Kenya, as well as the fact that the majority of these refugees remained encamped for years on end, an analysis of Kenya's refugee policy and its impact on human rights makes for an ideal case study.

Kakuma camp in the Turkana District of North-Western Kenya was chosen for several reasons. The camp was established in 1992, making it one of the oldest refugee camps in Africa (Jansen 2008, 569). In 2010, the camp hosted over 96,000 refugees from nine different countries, several

of which continue to face protracted, violent conflicts – most notably Somalia and Sudan (Horn 2010, 358). As Jeff Crisp asserted in an UNHCR report, “the refugees have no prospect of being allowed to remain and settle in Kenya and yet the prospects for a lasting peace in Somalia and Sudan are so poor that voluntary repatriation seems to be ruled out for the foreseeable future” (Crisp, 2000, 60). Even with the recent independence of South Sudan, many refugees are unable to repatriate simply because after years of exile, they have nothing to go back to. Furthermore, given the extreme overcrowding in the Daadab camp compound, refugees from this area are being moved to Kakuma on a regular basis (IRIN 2009). While the Daadab Camp compound in the North-Eastern province was also considered as a case study for this paper, the current conditions in the camp make it less suitable for an investigation into human rights concerns. The fact that the camp now hosts over 255,000 refugees and asylum seekers, when it was designed for a maximum population of 90,000, speaks for itself (HRW 2009, 3). Since conditions within Daadab are well below minimum humanitarian standards, an investigation into human rights concerns seems less appropriate.

Kenya's refugee policy

In 1991, a significant change occurred to Kenya's policy towards refugees that encouraged long-term encampment. Prior to 1991, the Kenyan government was in charge of refugee status determination procedures as well as of refugee policy (Verdirame 1999, 57). The Kenyan government also supported policies of local integration and self-sufficiency for incoming refugees. During this time, the UNHCR played a subsidiary role. In Kenya and elsewhere, individual status determination procedures are conducted under the 1951 Convention, which require the individual to have a well-founded fear of persecution under one of the five Convention grounds. This system came under increasing pressure as protracted conflicts in Uganda, Ethiopia and Somalia raged on (Verdirame 2000, 6). Due to declining resources and increasing refugee numbers, the Kenyan government could no longer accommodate asylum seekers on an individual basis. Instead, refugees became accepted under the 1969 OAU Convention on Refugee Problems in Africa, which allowed for the admittance of refugees on a prima facie basis. According to Article 1(2), refugee status is based solely on the objective criteria of persons leaving their country because of war, or other violent disturbances (OAU Convention 1969). Despite this change, the UNHCR asserts that prima facie refugees remain fully protected by the principle of non-refoulement, as well as by other rights enshrined in the 1951 Convention (Smith 2004, 53).

As the Kenyan government continued to be overwhelmed by protracted refugee situations it turned to the international community for assistance. International assistance and external

resources came in the form of the UNHCR's all too familiar policy of placing refugees in camps (Verdirame 2000, 7). Essentially, in asking for international assistance, Kenya lost control of its refugee policy. From 1991 onwards, responsibility for refugees was handed over to the UNHCR and other humanitarian organisations, whose mandate does not accommodate for the provision of human rights. This new approach also neglected the reality of the protracted and permanent plight of the majority of the country's refugees. Many scholars were critical of this shift noting that it failed to preserve the positive aspects of Kenya's pre-1991 refugee regime, including local integration and the promotion of basic human rights (Verdirame 1999, 57). In 2006, the Kenyan government appeared to take back control through the Kenyan Refugee Act. The Act constitutes one of the few instances of international refugee law being adopted by national legislation. The Act, and its implications on the ground, will be discussed in detail below.

Theory vs. practice: a legal analysis of Kenya's refugee policy

Kenya is signatory to a number of international legal instruments covering both international refugee law and international human rights law. This includes the 1951 Convention and the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Human and Peoples' Rights. Thus, under international law, Kenya is obligated to ensure that the basic human rights of every person in its territory are met, including the rights of refugees.

As noted earlier, the Kenyan government also enshrined these international principles in national legislature by ratifying a domestic Refugee Act in 2006. Article 16.1 of the Act provides that "every recognised refugee and every member of his family in Kenya shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is a party" (Refugee Act 2006, 9). As such, the fundamental human rights of refugees should be protected. Moreover, the Refugee Act defines a refugee under both OAU Convention and 1951 Convention grounds. Thus, *prima facie* refugees and refugees that have gone through individual status determination procedures are guaranteed the same rights through the 2006 Refugee Act. While the Act provides much needed clarification on refugee policy and gives responsibility for registering refugees back to the Kenyan government, the provisions stress the continued use of encampment policies. As we shall see, this does little to promote the rights of refugees. Lastly, as a domestic legal document, the Refugee Act should also shift responsibility for refugees back to the Kenyan state.

Freedom of movement: law vs. practice

International refugee law and international human rights law require the host state to guarantee freedom of movement throughout the country, a right clearly violated by long-term encampment. Even though Kenya has not adopted an official policy that requires refugees to remain in camps, a number of incentives are used to achieve this goal. Perhaps the biggest deterrent to self-settlement is that only encamped refugees can receive humanitarian assistance (HRW 2009, 3). In addition, the Kenyan government developed policies that limit the movement of refugees outside of camps. For example, encamped refugees must obtain a permit, known as a “movement pass”, to leave the camp’s enclosure, even if for short periods. Passes are difficult to obtain and only twenty percent of refugees in Kenya have documents of any kind (Turton 2005, 5). Another important deterrent is the time that is required to lodge an application for asylum outside of a refugee camp. In 2009, refugees had to wait an average of nine months until their asylum application was reviewed in Nairobi, compared to a significantly quicker procedure administered by the UNHCR within Kakuma camp (HRW March 2009, 3).

As subsequent sections will demonstrate, the human rights of encamped refugees in Kenya are restricted for a number of reasons. First, refugee camps in Kenya operate outside of the state legal system. Second, the administration of camps is generally ignored by the Kenyan government and left to humanitarian organisations. The promotion of human rights stretches beyond the mandate of a humanitarian organisation like the UNHCR. Third, subpar treatment is justified on the basis that refugees will only remain in camps for a short while. At this point it is useful to move on to an investigation into Kakuma camp. Firstly, a description of the camp structure and camp conditions will be provided. Secondly, the effect of these conditions on human rights will be addressed. Lastly, a conclusion on the human rights of refugees in situations of long-term encampment will be given.

Kakuma refugee camp: characteristics and conditions

Kakuma camp is located in a remote and semi-arid area populated by poor nomadic pastoralists (Adelekan 2006, 10). The terrain is flat, barren and dry (Pittway and Barolomei 2002, 4). Given this harsh environment, the ability of refugees to use the land to their advantage and to develop self-sustainability initiatives, such as agriculture or farming, is made impossible. Moreover, in order to decrease the likelihood of conflict between refugees and the local population, refugees are prohibited from keeping farm animals (Horn 2010, 359). The camp is located 125 kilometres

from the Sudanese border and travel to Nairobi, some 840 kilometres away, is not only dangerous but largely prohibited (Mareng 2010, 293). As noted earlier, Kenyan refugee policy makes it difficult for refugees to leave the camp and prohibits refugees from taking up formal employment (Horn 2010, 359). These factors leave encamped refugees largely dependent on humanitarian aid.

Within Kakuma camp, the UNHCR is in charge of coordinating services for refugees, with other humanitarian agencies assisting with their delivery (Verdirame 2000, 41). One of the problems associated with protracted refugee situations is that donors often divert their funds to new, high-profile emergencies, which results in funding cuts for services in camps housing refugees for extended periods of time. Kakuma camp is no exception. Here, services that go beyond the basic guarantees for survival have been jeopardized, including provisions for education and cultural activities (Jamal 2000, 19). Even though Kakuma refugee camp was established more than twenty years ago, the UNHCR continues to administer the camp as if it were a temporary construct. This is clear from the type of shelter provided to refugees within the camp. When refugees first arrive, they are given strips of plastic sheeting used for the construction of a temporary shelter. In Kakuma camp, refugees are not provided with materials more adept for a long-term stay; rather, they are given replacement sheeting year after year (Jamal 2000, 20). Regarding education, UNHCR guidelines suggest that education levels should be roughly equivalent to the national level (Jamal 2000, 22). In 1999, per capita expenditure on education in Kenya's refugee camps was 25 USD, while the national figure was 200 USD. Moreover, secondary schooling facilities in Kakuma camp are sparse, fail to cover all years, and reach a mere 1,800 out of 36,500 students (Jamal 2000, 22).

Another issue of concern is that of employment. There is no official employment market in the camp and any employment refugees partake in outside of formal refugee camps is restricted. That being said, NGOs operating in both Daadab and Kakuma camps employ some 1,500 refugees, thereby allowing these individuals to earn enough money to supplement their food rations (Agier 2000, 331). Nonetheless, these activities benefit a minute portion of the population with entrepreneurial skills. In 2003, it was estimated that less than 6% of refugees in Kenya had an income (Refugees International 2003, 1). These dismal conditions are exacerbated by the camp's large population. Kakuma refugee camp houses close to 100,000 refugees, which is five times greater than the amount recommended by the UNHCR Handbook for Emergencies (Jamal 2000, 21).

Security in and around Kakuma camp is also worthy of examination. Two main actors are responsible for maintaining security: the host government of Kenya and the UNHCR. According to an array of international legal instruments, including the OAU Refugee Convention and the UN Charter, physical protection and security within refugee camps is primarily the responsibility of the Kenyan state, which works with the UNHCR to ensure the safety and security of refugees (Jacobsen 1999, 4). Nonetheless, the camp has been designated as a danger area by the UNHCR due to its proximity to the Sudanese border.

A field report from 2002 cites that security in and around Kakuma camp is so dismal that humanitarian staff are prohibited from taking their families near the camp (Bartolomei et al 2002, 2). Moreover, violent incidents involving serious injury or death take place on a daily basis (Crisp 2003, 14). The treatment of vulnerable groups within the camp is another testament to the lack of security. Individuals who face particular danger because of their minority status, gender, or other immutable characteristic are kept safe by confining them to a “protection area”. While inside, refugees lack access to educational facilities and to other basic amenities. On average, individuals stay confined to this space for four to five years at a time (Barlomei et al 2002, 7). Moreover, armed robbery and other forms of violence between refugees and the local population are common (Napier-Moore 2005, 8).

Generally speaking, refugees in Kakuma camp are at least provided with services necessary for survival. However, this is inadequate when dealing with situations of long-term encampment. As one aid worker observed in 2000, “the most apparent and prevalent mood in Kakuma camp today is a sense of despair and low self-worth” (Jamal 2000, 17). The above section has provided the reader with a general understanding of the conditions within Kakuma refugee camp. The next section will illustrate how these conditions affect the human rights of encamped refugees.

The human rights of refugees in LTE – Kakuma refugee camp and elsewhere

As previously mentioned, this paper uses Kakuma refugee camp as a microcosm for assessing the human rights of encamped refugees more generally. Although the field of refugee studies is context-specific, with conditions varying from country to country, long-term encampment tends to produce similar violations of human rights. As previously discussed, the refugee camp structure and refugee camp management are partially to blame. Categorically listing how rights enshrined in the numerous human rights instruments to which Kenya is party are either promoted

or violated in practice goes beyond capacity of this paper. Instead, it will suffice to investigate how encampment effects the realisation of rights that are most fundamental for a life of dignity. The following human rights were also chosen because they appear in a range of human rights instruments, thus giving credit to their importance and universality. This analysis will include the following human rights: “the right to work” (UDHR, ICESCR, ACHPR), “the right to education” (UDHR, ICESCR, ACHPR), recourse to justice and “the right to a fair and public hearing” (UDHR, ACHPR, ICCPR), the right not to be “subjected to torture or to cruel, inhuman or degrading treatment or punishment” (UDHR, ICCPR, ACHPR), and “the right to freedom of movement” (UDHR, ICCPR, ACHPR).

The right to work

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” (UDHR 1948)

The right to work, including wage earning employment, is a fundamental human right enshrined in Article 23 of the UDHR, Article 6 of the ICCPR and Article 15 of the ACHPR. It is also a recognised right in the 1951 Convention. As such, refugees in Kenya should not be inhibited in their ability to work. Long-term confinement in Kakuma camp, however, leaves the vast majority of refugees without this ability. Not only are employment opportunities within the camp severely limited, but the ability to obtain employment is hindered by the remote location of the camp, as well as by the numerous incentives used by the Kenyan government to keep refugees confined to camps. Restrictions on employment deprive refugees of the ability to rebuild their lives and become constructive members of society (UNHCR 2006, 114). As the case study of Kakuma camp makes clear, the right to work is violated by long-term encampment.

The right to education

“The State Parties to the present Covenant recognise the right of everyone to education” (UDHR)

The human right to education can be found in Article 26 of the UDHR, Article 13 of the ICESCR and in Article 17 of the ACHPR. Moreover, UNHCR policy guidelines recognise that “access to education is a fundamental human right of all refugee children” (UNHCR Standing Committee 2000, 5). Compared to other refugee camps, the enrolment figures in Kakuma camp are above average (UNHCR Global Report, 2002). Nonetheless, access and quality of education

is limited and significantly below the national average (Jamal 2000, 22). Generally, refugee children are provided with elementary education, but very few have access to the camp's secondary school facilities (Crisp 2000, 69). Likewise, the harsh conditions in Kakuma camp affect the ability of refugees to go to school and to study (Verdirame and Harrell-Bond 2005, 255). Moreover, restrictions on their right to work limit the benefits that refugees are able to derive from their education.

Recourse to justice and the right to a fair and public hearing

“Everyone shall have the right to recognition everywhere as a person before the law” (ICCPR 1966)

The right to a fair trial and access to courts is enshrined in several international human rights instruments. Article 10 of the UDHR provides for a fair and public hearing. Article 14 of the ICESCR provides individuals with the right to a fair trial. Article 3 of the ACHPR guarantees equality before the law. In Kakuma camp, however, crime and violence flourish not only because of desperate conditions, but because transgressions go unpunished. Essentially, there is no force to back up any rule of law within the camp (Jacobsen 1999, 3). Instead, the lives of refugees are administered by humanitarian organisations operating within the camp or by refugees that act as leaders within their community. On a visit to the camp in 2002, Barbara Harrell-Bond observed, “Kakuma camp is administered by the UNHCR and its implementing partners independently of the government, outside of the judicial system, with no checks on power, and, in effect, without legal remedies against abuses” (2002, 59). Refugees in Kakuma camp are also restricted in their ability to access a court because of the location of the camp and the difficulties inherent in travel. The nearest courts are in Garissa, 50 kilometres away (Verdirame and Harrell-Bond 2005, 182). There is also the added complication of obtaining a permit to travel to a court.

In Kakuma camp, community leaders are often given the responsibility to settle disputes and impose sentencing. Often, the convictions obtained in this manner do not constitute a crime under Kenyan law and justice is sometimes handed out in the form of physical punishment (Verdirame and Harrell-Bond 2005, 141). Recently, a mobile court system was introduced to Kenya's refugee camps in order to improve access to justice and to compensate for the communal dispute resolution mechanisms mentioned above. Access to these courts is available to refugees and Kenyan nationals alike (Napier-Moore 2005, 8). The ability of mobile courts to effectively deal with the human rights violations experienced by refugees has been severely

limited. Not only are visits to Kakuma camp infrequent, but they sometimes fail to meet the needs of refugees altogether. In March of 2009, for example, the court failed to hear any cases involving refugees (KANERE 2009).

The right to freedom from torture or from cruel, inhuman or degrading treatment or punishment

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (UDHR 1948)

The right to “freedom from torture, cruel inhuman or degrading treatment or punishment” is a fundamental and non-derogable human right enshrined in Article 3 of the UDHR, Article 7 of the ICCPR, and is referred to within the ACHPR. The extent to which encamped refugees in Kakuma camp are protected against violations of this right is debatable at best. Generally speaking, the assistance and protection provided in refugee camps guards against violations of this human right. After all, refugees flee to escape such treatment in the first place. Nonetheless, in Kakuma camp, acts tantamount to “torture, inhuman or degrading treatment or punishment” occur on a daily basis. This is partly caused by the lack of security within the camp as well as by the conditions inherent to long-term encampment that tend to foster violent or criminal behaviour. For example, In Kakuma camp, sexual violence against women – an act considered by many legal scholars to be a violation of the above right – occurs on a daily basis. Women live in constant fear of being raped and even resort to trading sex for food rations to survive (Bartolomei et al 2003). Moreover, the use of physical punishment as a form of justice could be deemed as cruel, inhuman or degrading punishment.

The right to freedom of movement

“Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law” (ACHPR 1981)

Freedom of movement is enshrined in Article 13 of the UDHR, Article 12 of the ICCPR and in Article 12 of the ACHPR. As this paper makes clear, the very act of encampment denies this fundamental human right. In Kakuma camp, refugees are confined to the camp unless they are able to retrieve a temporary permit to leave. As detailed above, the Kenyan government has put

numerous incentives and policies in place to keep refugees encamped. According to various international human rights law instruments and the Kenyan constitution, the interference with a refugee's freedom of movement is prohibited unless the government is able to show that free movement would threaten "defence, public safety or public order" (HRW 2009, 46). The Kenyan government has not issued such a declaration, and as such, confinement to camps violates this right. Freedom of movement is perhaps the most instrumental right to the enjoyment of any other rights, including the right to employment or to a secure livelihood (Verdirame and Harrell-Bond 2005, 179). Without the ability to move freely within a country, the ability to lead a life of dignity is lost.

LTE and the loss of human rights: an analysis

Based on the above investigation we can see that refugees confined by policies of long-term encampment, such as the refugees within Kakuma camp, experience a number of human rights violations. Because refugees are confined to camps, and lack the ability to move freely within Kenya, they also lack the ability to lead independent lives. Essentially, by seeking refuge in host countries that promote long-term encampment, refugees are granted the right to life, but at the expense of other fundamental human rights to which they are entitled. In Kenya as well as in other countries that endorse long-term encampment, refugees benefit from the principle of non-refoulement. They are allowed to remain on Kenyan soil without the threat of being returned to a place where they will face persecution. Beyond this point, however, refugees are unable to enjoy even the most basic rights available to nationals (Jamal 2000, 7). An investigation into Kakuma camp demonstrates that long-term encampment in segregated refugee camps fosters conditions that impede the realisation of human rights. However, the neglect of host governments is only partially to blame. The very nature of the refugee camp model is incompatible with the realisation of human rights.

Factors resulting in the loss of human rights

The above analysis provides the reader with an understanding of the human rights violations that occur because of long-term encampment. However, it is also important to explore the ways in which the nature of encampment facilitates the denial of human rights, in Kakuma camp and elsewhere. Although this question has been explored in various parts of this paper, a more abstract account of these factors will be provided here. A number of observations can be made

based on an analysis of refugee policies in Kenya, the structure and management of refugee camps more generally and the conception of the refugee as a temporary humanitarian problem.

Writing in the 1990s, Agamben noted that “whoever entered the camp moved in a zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense” (1998, 170). While his work is in reference to the Nazi concentration camps of the Second World War, the same principle applies to contemporary refugees confined to camps for extended periods of time. As Kakuma camp demonstrates, refugee camps have become anomalies in which societal and legal standards cease to apply. Part of the reason that legal norms are lost is due to the socio-political space that refugee camps occupy within the host state.

Refugees confined by policies of long-term encampment are isolated from society at large. They are prohibited from integrating with the host state on any level, and in many ways become invisible. The fact that Kakuma camp, or its larger counterpart the Daadab compound, do not appear on current maps of Kenya is a case in point (Agier 2002, 323). Generally speaking, host states prefer camps over other methods of dealing with refugees because this seemingly alleviates them of their legal duty to provide protection. Instead, protection is delegated to humanitarian agencies operating within the camp. This lack of adequate state protection not only results in grave violations of fundamental rights and freedoms, but facilitates their abuse. We should be critical of host states that accept refugees only to ignore their responsibilities to these populations by confining them to camps for extended periods of time.

A second issue is the placement of refugees within the humanitarian paradigm. Refugees are viewed as passive victims, and as such, are reduced to recipients of aid within the camp. While possessing this label is acceptable for a short time, being associated with such passive victimization in the long-term presents a more critical problem. Unfortunately, words like “hungry”, “hopeless” and “homeless” form the fundamental aspects of the refugee narrative (Napier-Moore 2005, 13). Being stripped down to a biological minimum for prolonged periods, as Nyers notes, “subsumes the refugee within a discourse of animality” (Nyers 2006, 88). In other words, long-term encampment leads to the dehumanisation of refugees. Verdirame also writes to this effect, noting that refugee policy is trapped in a 1950s format, in which the main focus was on allowing people to claim asylum and providing for mere survival (Verdirame and Harrell-Bond 2005, 1). Drafters of the 1951 Convention, however, never envisioned refugee status as an enduring phenomenon. Thus, while refugee camps provide much needed emergency relief and assistance, they are not suitable for the long-term needs of refugees.

Recommendations

While asylum guarantees the right to life, in countries such as Kenya, refugee policy does not allow for a dignified life worth living. This paper has demonstrated that policies of long-term encampment are irreconcilable with human rights. By being restricted in their freedom of movement, refugees confined by closed camp policies are denied fundamental human rights and are left completely reliant on humanitarian aid and assistance – a process that reduces human life to mere survival.

Difficulties with durable solutions

Several countries, such as Liberia, Sierra Leone and Tanzania, have recently turned to naturalisation and integration in lieu of enclosed camp policies (Milner and Loescher 2011, 10). The results of integration have yet to be seen, and it is perhaps too optimistic to think that refugees will receive the type of assistance outside of the camp that will enable them to live stable and sustainable lives. After all, Tanzania, Sierra Leone and Liberia are ranked on the lowest bracket for human development (HDI Index 2010, 146). The reality is that in 2010, developing countries hosted four-fifths of the world's refugees (UNHCR Global Trends 2010, 2). These countries lack the capacity and resources to implement some of the proposed solutions, such as calls for integration. Crisp argues that even if the UNHCR were to lobby for self-settlement or integration, these policies are politically and economically unfeasible in developing countries and could risk involuntary return or early refoulement (Crisp 2003, 20). Other solutions include calls for host country development, compensation for host governments, or efforts to end conflicts in countries of origin (Napier-Moore 2005, 14). While these suggestions are notable, we are still faced with the fact that many conflicts will remain protracted and the majority of host countries simply lack the resources to move refugees out of camps. Instead, international and host country efforts should focus on improving camp conditions in order to improve the lives of refugees.

Improving the conditions of long-term encampment

As previously mentioned, the administration of refugee camps does not reflect the present realities of long-term encampment. The majority of refugees who arrive in camps will not have

quick access to durable solutions, a statement confirmed by the fact that refugees spend an average of seventeen years in exile (Napier-Moore 2005, 8). While confined to the camp, refugees remain isolated, ignored, and devoid of the basic opportunities to improve their lives. Being exposed to such conditions leads to the long-term denial of fundamental human rights – a situation that is both lamentable and in violation of international human rights law.

One way to improve conditions within camps is to create a limit on the management of refugee camps as temporary sites equipped to provide only the most basic of humanitarian services. After a certain period of time, camp maintenance should evolve beyond minimum standards to include measures that promote self-reliance and ensure the protection of fundamental human rights. A number of scholars note that Article 17(2a) of the 1951 Convention provides a good starting point (Deardoff 2009, 22). Article 17(2a) asserts that “restrictive measures imposed on aliens...shall not be applied to a refugee who...has completed three years’ residency in the country” (United Nations 1951, 22). In accordance with Article 17, necessary transitions that enable refugees to live in less restrictive conditions, or that guarantee basic human rights, should be made. One proposal is to adopt mechanisms that promote self-reliance.

The UNHCR has observed that self-reliance can act as a precursor to the three durable solutions (UNHCR/DPC 2008, 13). As we have seen, current restrictions imposed by long-term encampment make self-reliance impossible. In the last decade, the UNHCR has established Self-Reliance Strategy (SRS) programmes in several countries. Such an approach recognises the long-term nature of asylum and links development with aid and refugee policy (Meyer 2006, 2). In Uganda, for example, under the guise of the UNHCR, the government allocated land to refugees for farming purposes (McKinsey and Adjumani 2003). By 2003, the UNHCR reported that more than 50,000 refugees in 35 settlements were no longer receiving food rations (McKinsey and Adjumani 2003). While Uganda has allotted spaces to refugees that are more akin to settlements, the differences between refugee camps and refugee settlements lay on a broad spectrum, thus making it possible to alter the more restrictive conditions found in refugee camps closer to acceptable human rights standards. This includes implementing measures that improve the self-reliance of encamped refugees.

Changes to enclosed refugee camps are of course constrained by financial resources and political realities. However, providing for a more dignified life through small changes in refugee camp maintenance and administration is a relatively modest proposal, especially considering the more radical calls for abolishing refugee camps and providing for full and immediate local integration. In order to implement these changes, host governments must work in conjunction with the

UNHCR to develop refugee settlement policies that go beyond essential needs and that allow refugees to begin rebuilding their lives. This of course requires host states to reclaim their legal duty to protect the human rights of refugees and to meet their obligations under international law. Perhaps Kenya's Refugee Act is a step in the right direction.

Conclusion

This paper has investigated the effects of long-term encampment through a human rights lens. In questioning whether or not refugees confined to long-term encampment can lay claim to their rights in practice, the above analysis has shown that enclosed refugee camps are incompatible with the realisation of fundamental human rights. One might go so far as to argue that the only human right that refugees in long-term encampment are left with is their right to life. As this paper demonstrates, encamped refugees are unable to claim their human rights for a number of reasons. First, the socio-spatial isolation of the camp leaves refugees outside of the legal system; as such, recourse to justice is severely limited. Second, refugee camps are primarily administered by humanitarian organisations that are unable to guard against human rights violations or act as duty bearers in this regard. Third, the conception of the refugee as temporary, and thus warranting a temporary, humanitarian response justifies subpar treatment devoid of human rights considerations. Thus, this paper has shown that refugee camps form ill-suited solutions for protracted refugee situations.

Refugee camps similar to Kakuma refugee camp in Kenya can be found in numerous parts of the world. Such spaces inhibit the human right to freedom of movement, thereby restricting a range of other fundamental human rights to which all individuals, regardless of their legal status, are entitled. Essentially while the long-term encampment of refugees provides for the right to life by guaranteeing asylum and the minimum of biological survival, refugees in such situations are denied their very humanity. By highlighting the problems associated with long-term encampment, this paper has also provided a platform for improvement, namely by demonstrating the importance of mechanisms that promote self-reliance for refugees. Perhaps the time has come to critically examine host-country policies that fail to go beyond the first line of protection provided in the principle of non-refoulement. As this paper makes clear, we can no longer afford to treat the refugee problem as a temporary phenomenon merely worthy of a short-term solution.

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