

Refugee rights in Kenya between Theory and Practice

Eva Freudenthaler

While a large number of refugees are hosted in Kenya, there is a discrepancy between the rights they are entitled to theoretically and the ones they can practically enjoy. This incongruity between refugee and human rights in theory and practice is analyzed and established in this article, through the reference to some selected rights.

The main findings show that protection from expulsion, guaranteed in the principle of non-refoulement is not fully adhered to in Kenya, due to a border closure with Somalia, which denies asylum seekers entry into the country. Furthermore, refugees are obliged to stay in two major and remote refugee camps, Kakuma and Dadaab, and are only allowed to leave under certain circumstances, which is in breach of the right to free movement. Nevertheless, many choose to live outside these areas, mostly in towns. As for the right to work, refugees are hardly ever granted the work permission needed and hence resort to other forms of income, mainly in the informal economy.

The conducted research has shown that the main effects for this discrepancy between theory and practice are found in the passivity of the Kenyan state towards refugees and the resulting ambiguous role of UNHCR, which carries out many of the state's responsibilities.

Introduction

The recent images of people, mostly Somalis and Ethiopians, fleeing towards Kenya are still present in the media. One of the most pressing

issues publicized is the lack of space in the refugee camps and the general inability of both the government and humanitarian organizations to cope with the situation in an adequate manner. While the challenges that asylum seekers and refugees pose to the host countries are present in the public discourse, relatively little concern is given to the rights of refugees once they have entered the country. However, this is the case not only with respect to representations in the media, but also applies to policy making and legal responses on refugee influx.

Kenya plays an important role as a refugee receiving country, due to its relative political stability and geostrategic position, being surrounded by countries with instable and repressive regimes, which is why more than 400.000 asylum seekers and refugees reside in Kenya at the moment (UNHCR 2012).

Although there have been immense forced migrations out of Somalia and towards Kenya in the last year, the majority of refugees have lived in the country for several years, often decades (UNHCR 2005). Therefore, the aim of this article is not to analyze the period of flight or arrival, but to focus on the living conditions of refugees in Kenya.

This article is based upon, and uses excerpts from, a diploma thesis in African Studies at the University of Vienna.⁸⁸ The thesis is based on the assumption that refugees in Kenya do not enjoy all the rights they are legally entitled to through the international and national human rights and refugee law. This gap was analysed through some selected rights, using text interpretation of theoretical texts and research findings. Additionally, expert interviews and participant observation were carried out in Nairobi and Kakuma refugee camps between July and September 2010. The main findings of the research are presented in the article.

After providing an overview of the historical development of the situation of refugees in Kenya, the relevant rights will be discussed, focusing on the legality of the confinement to refugee camps compared to the right to free movement.

⁸⁸ Freudenthaler, Eva (2011): *Refugee Rights in Kenya. A comparative legal analysis of theory and practice.* Wien: Diplomarbeit.

Historical background of asylum in Kenya

Historically, Kenya has served as a one of the African model countries regarding the treatment of refugees. It is argued that there are two main periods for refugee policies in post-independence Africa (Rutinwa 2002: 12). During the first period there was an era of openness towards forced migrants, even described as a “golden age” of asylum in Africa (Rutinwa 2002: 16), while the second marked a shift in the nature of asylum with more restrictions imposed and a less generous attitude. After colonialism until the late 1980s, many African states were characterized by similar features regarding the situation of refugees. These include: a liberal definition of “a refugee”, a commitment to asylum and the principle of *non-refoulement*, the prohibition to send back asylum seekers, the effort to find durable solutions and a general respect for refugee rights (Rutinwa 2002: 16). As for refugee rights such as the freedom of movement, the rights to work, education and security rights, these were generally upheld and respected.

This openness of both, the receiving governments and the host communities towards refugees had several reasons. The explanation has to take into account the specific background of the refugees of the early postcolonial era: During this time, the majority of forced migrants came from countries still fighting against colonialism or racist regimes, like apartheid South Africa, and were seen as freedom fighters, which – together with the main principles of that time being anti-colonialism and pan-Africanism – provided the basis for an open approach towards asylum seekers (Crisp 2000: 5). Globally, refugee policies got more restrictive after the Cold War era, as refugees were no longer perceived as potential allies in the political power struggle (Whitaker 2002: 4).

A similar openness can be observed in Kenya, with the main inflow of asylum seekers starting after independence (Abuya 2007: 56). Until 1991, refugees were administered by the state through the *Ministry of Home Affairs*. Foreigners, who entered the country to seek asylum, were required to proceed to a Reception Centre in Thika, a town near Nairobi where their asylum interview was conducted. The Reception Centre also had the capacity to accommodate up to five hundred asylum seekers. The Refugee Status Determination (RSD) process took about three months and if the claim was considered substantial, the asylum seeker was declared a refugee by the Ministry (Skari/Girardet 1985: 15).

Additionally, UNHCR in Nairobi conducted interviews with persons unable to go to Thika. Moreover, it provided complementary protection to asylum seekers rejected by the Government.⁸⁹ The protection offered by the Kenyan government and the rights that refugees were able to enjoy were, to a certain extent, in accordance with international refugee and human rights law:⁹⁰ refugees were allowed to move freely within the country and to choose their place of residence, which also gave them the possibility to integrate themselves into the host community (Abuya 2007: 72). As for working conditions, refugees had the right to gain employment and were encouraged to be self-reliant, for example through assistance in job search or providing training. This encouragement, however, was not facilitated by the government but rather by other, non-state actors, mostly local and bilateral development agencies, churches and UNHCR. Nevertheless, the theoretical right to work did not mean that refugees found access to the labour market easily: on the contrary, the overwhelming majority of refugees were not working – at least not documented and thus not in the formal economy – but relied on social assistance by aid agencies (Abuya 2007: 72ff).

During the late 1980s, the security situation in several countries surrounding Kenya aggravated which led to the inflow of unprecedentedly high numbers of asylum seekers, foremost from Somalia. The country had never before experienced such an inflow of immigrants: “In summary, by 1991 Kenya, which had previously hosted some 15,000 refugees, was playing host to some 130,000 refugees – an increment of more than eight fold. Just over a year later this figure had shot to almost 400,000.” (Abuya 2007: 84).

The constantly rising numbers caused the total collapse of the Refugee Status Determination (RSD) and the protection system in 1992: while originally, each claim had been processed individually through one-to-one interviews, after 1992, this was made impossible. Instead of the costly

⁸⁹ UNHCR declared them “Mandate refugees”, which describes a person “who meets the criteria of the UNHCR Statute”, but had not been accepted by the host State as a refugee (UNHCR 1992: 4). The legal classification of these “Mandate refugees” was and is not clear and adds to the complex position that UNHCR holds.

⁹⁰ At the time, the *Immigration Act* (1967) and the *Aliens Restriction Act* (1973) were the main instruments concerning refugee rights. Relevant articles were section 15 of the *Immigration Act* for the refugee definition and section 5 for the procedure to obtain it. For all other rights, both acts are silent on specific regulations concerning refugees, thus allowing the general rules for non-citizens to apply.

solution of hiring more personnel in Thika and modifying the now inadequate registration and determination process, the government stopped exercising its responsibility towards asylum seekers and asked the UNHCR for assistance. Therefore, it was UNHCR who took over the responsibility for conducting the RSD (Verdirame 1999: 56f).

Another measure of the Kenyan government to deal with the situation, apart from suspending the individual status determination, was the creation of refugee camps (Verdirame 1999: 57). This decision was built on the belief that camps were necessary for refugees in order to administer them properly by having all services on site, and further, to raise the now needed additional funds, as the international community is often seen by governments to prefer camps over “unregulated” settlements (Black 1998a: 5). Therefore, the government provided land for the creation of four camp complexes, which were subsequently transformed into two main camps – Dadaab near the Somali border and Kakuma, in the north of Kenya next to South Sudan.

Although the Government of Kenya provided the land for establishing the camps, it did not take any additional responsibility in resolving the situation; it was left to UNHCR to administer the camps. In addition to the creation of camps, a new policy requiring refugees to stay in the “designated areas” was introduced: “In the bureaucratic jargon of the post-1991 refugee regime in Kenya, refugees *have* to reside in camps ‘until a durable solution is found’.” (Verdirame 1999: 57)

Therefore, the 1990s meant a major shift in Kenya’s refugee policy, foremost concerning UNHCR’s role. It put the UNHCR in a position beyond its mandate, taking over elements that are legally the state’s responsibility. To summarize, the main reasons for the responsibility shift from the Kenyan government towards the UNHCR are first, as outlined above, the fast increase in the numbers of displaced persons and the surge in asylum claims. Second, Kenya’s declining economy and the diminishing funds for asylum procedures which were exacerbated by the Structural Adjustment Programs imposed by the *World Bank* and the *International Monetary Fund* also exacerbated the situation (Abuya 2007: 85f.). This can be observed together with geopolitical dynamics at the time, as refugees were no
Third, the 1990s also saw a rise in xenophobic attitudes and anti-refugee discourse by the highest political leaders (Rutinwa 2002: 13).

To put it positively, these measures were aimed at upholding the principles of asylum and *non-refoulement*, but they therefore sacrificed other, previously guaranteed liberties and rights of refugees (Crisp 1999: 18).

Refugees and their rights in Kenya today

After having outlined the historical development and the contradictions of the Kenyan refugee policy, the following section is more closely related to the perspectives of the refugees interviewed for this research. For them, the rights they considered most important in their situation are the right to free movement and the right to work, which are, at the same time, the rights that have come severely under threat in Kenya. Before elaborating on them at a later point, a quick look will be taken into the principle of *non-refoulement*, as it provides the basis for the stay in the host country without being expelled, and the RSD process, because the refugee status is required in order to be able to exercise other rights.

All of the rights relevant for refugees are anchored in international refugee and human rights law, specifically in the *Convention relating to the Status of Refugees* (Refugee Convention, 1951) and *Protocol*, the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (OAU Convention, 1969), the *International Covenant on Civil and Political Right* (ICCPR, 1966) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966), which Kenya has all signed and ratified. On the domestic level, the *Refugee Act*, a long-awaited step to integrate the international framework and apply these rights fully to refugees in Kenya, was introduced in 2006.

The Principle of Non-Refoulement

In order to seek protection, it is fundamental that asylum seekers are not returned or expelled to any country where they might be persecuted, particularly not to the country that they have fled from. This right is called the principle of *non-refoulement*, laid down in the *UN Refugee Convention*.⁹¹

⁹¹ Convention relating to the Status of Refugees: Art. 33 (1)

Kenya has only recently, in 2006, integrated the principle of *non-refoulement* into its domestic framework with the *Refugee Act*. However, there is a strong consensus that this principle had already been established as part of international customary law – i.e. law that was generated by consistent and widely accepted state practice and the belief that this practice is legally required (Goodwin-Gill 2007: 208ff).

Refoulement of refugees?

Incidents of *refoulement* in Kenya have been reported for many years, mostly by humanitarian agencies, international NGOs and national newspapers (Abuya 2007: 80f.). Although the principle of *non-refoulement* was generally upheld during the 1970s and 1980s, some incidents were reported also at that time (Juma 2000: 81). In recent years, one measure heavily criticized by the international community was Kenya's closure of the border with Somalia in January 2007. The background for this decision was the invasion of Ethiopian troops into Somalia in support of the *Transitional Federal Government* of Somalia. A spread of the Somali conflict by fighters entering Kenya was feared, possibly endangering Kenya's national security. Kenya's then Foreign Minister Raphael Tuju claimed that the country was "not able to ascertain whether these people [Somali immigrants] are genuine refugees or fighters and therefore it's best that they remain in Somalia." (Human Rights Watch 2009: 12) Since then, hundreds of Somali asylum seekers have been either hindered from entering or, more frequently, sent back to Somalia.

To close a border in order to prevent the arrival of refugees violates the principle of *non-refoulement*: The majority of countries worldwide follow the concept that *non-refoulement* starts from the moment the asylum seeker demands entry, but border closures automatically reject all possible asylum seekers at the frontier and place them at risk of further persecution (Amnesty International 2007: 7ff). Especially at the beginning of the closure, many Somalis were hindered from entering Kenya. But the 680 km border is hard to control and today, this measure does not effectively prevent the entrance of Somali asylum seekers anymore, as in 2008 alone around 60.000 new arrivals crossed the border (Human Rights Watch 2009: 1).

The reason for the closure given by the government was its concern with national security (Human Rights Watch 2009: 12). Under the Geneva

convention, it is indeed legitimate to expel a refugee in the case he or she poses a possible threat to the security of the country of asylum. But this is a measure only applicable for individual refugees after a fair process in which the individual is examined, thus it is not acceptable to make use of it before an asylum procedure has taken place (Amnesty International 2007: 8). As neither a RSD process took place nor did the closure regard specific individuals, from a legal perspective, concerns for national security were not a valid reason for border closure.

The main effect of the closing was a decline in the upholding of human rights, arbitrary police arrest and numerous incidents of *refoulement* (Human Rights Watch 2009: 14ff). At the time this article is written, Somali citizens continue to cross the border – not at established border points but rather at alternative entry points in order to avoid security personnel, often paying smugglers to help cross the border, which again increases their vulnerability. A side-effect of this procedure is that the refugees are not instantly documented and thus fall into the category of “illegal immigration”, which the Kenyan government tries to prevent.

In a nutshell, there have been positive developments in Kenya to prevent the *refoulement* of refugees, namely the implementation of the principle in the *Refugee Act* of 2006 and a strengthened application of this rule. At the same time, numerous cases of *refoulement* were reported (Amnesty International 2007: 3f), especially of Somali refugees in connection with the border closure in 2007. This measure was neither in line with international and national refugee law nor effective with regards to national security, as Kenya’s Minister of Immigration, Otieno Kachwang, stated: “The border closure has not achieved what it was intended for” (Human Rights Watch 2009: 13).

Refugee Status Determination Process

To receive protection, it is necessary to be declared a “refugee”. A person seeking refuge has to undergo a procedure – the Refugee Status Determination (RSD) process – in order to determine whether this person falls under the legal definition of “refugee” and is eligible to protection. In many European countries, the steps of getting the status often take several

years and are full of legal hurdles – this development is also seen in Kenya (Abuya 2004: 194f).

International refugee and human rights law does not regulate the principles of the RSD or the duration of the process. Therefore, it is upon every state to determine its own procedure. Theoretically, the Government of Kenya is responsible for the RSD by means of the newly established *Department of Refugee Affairs*, but the governmental RSD programme broke down in 1991 and UNHCR began to process asylum claims. Until today, this task has not been resumed by the Government.

Currently, the RSD is processed both in Nairobi and the two camp complexes by UNHCR on the basis of the UN *Refugee Convention* (1951) and the OAU *Convention* (1969). After entering the country, the asylum seekers have to present themselves at UNHCR and ask for an interview - the majority apply for the status determination in one of the camps. UNHCR Nairobi operates in the neighbourhood of Westlands, where large numbers of people arrive every day early in the morning. They are registered and questioned by a UN officer and then receive a document that indicates the date of the interview. At the time of research, in August 2010, the earliest date available was March 2012 (i.e. one and a half years later).

Justice delayed is justice denied

“The process for RSD can take quite a long time, unfortunately, because of the limited resources that we have and the huge number of new arrivals that we’re getting, who require full RSD.”

It usually takes several years of waiting until a decision on the refugee status is reached. The procedure might take even longer if the decision is negative and an appeal is made. The main reason for the backlog is the financial situation of UNHCR, which has been experiencing shortfalls of budget for years. The cutting back of staff, one of the austerity measures taken, has had a profound impact on its ability to deal with the large numbers of refugees (Jamal 2000: 4). However, it should be remembered that it is not UNHCR that is officially responsible for the RSD and that the Government of Kenya has not yet met its legal obligations. Several steps towards a greater responsibility of the *Department of Refugee Affairs* (DRA)

have been taken – but it has been assured that the process will be shifted to the DRA within the next years.

Thus, asylum seekers have to wait very long periods of time before they get granted the right of refuge and the protection they need. Not having a right accorded in a timely fashion has similar effects to the denial of the right itself. Hence, the vulnerability during the years of waiting gives the old legal maxim “justice delayed is justice denied” its true core.

The option of appeal

If the decision from the Status Determination is negative, the asylum seeker is not considered a genuine refugee. He or she will receive a written letter of rejection stating the causes in ambiguous terms; the reasons for the negative decision are highly cursory and general, among them “lack of credibility”, “inconsistency” and “lack of well-founded fear” – this makes it difficult to appeal (Refugee Consortium of Kenya 2005: 2).

The effects of the usage of such generalized terms cannot be underestimated: in order to file an appeal, the applicant has to state the reasons as to why his or her case does indeed fit the refugee definition. How can he or she challenge the decision if it is not clear why the claim was found incredible in the first place? Furthermore, legal assistance is normally expensive and scarce in the camps – now, Kenyan non-governmental organizations *Refugee Consortium of Kenya* and *Kituo cha Sheria* have begun to step into this protection gap. Furthermore, generalized statements like the ones mentioned above and, more profoundly, the lack of consideration for their situation can contribute to the re-traumatization of refugees.

Camps and the freedom of movement

The importance of the exercise of the freedom of movement and choice of residence cannot be overestimated, as the liberty to move within states is a prerequisite for the enjoyment of any other human right.⁹²

The right to free movement is laid down in international human rights law such as the *Universal Declaration of Human Rights* (UDHR) and the

⁹² Prominently laid down in the US Supreme Court decision *Aptheker vs. Secretary of State* (1964) 378 US 992.

International Covenant on Civil and Political Rights (ICCPR), and refugee law, foremost the *Refugee Convention*.⁹³ Although there are certain possible limitations, these do not apply broadly to refugees: therefore, refugees in Kenya have the same freedom to move and choose their place of residence as other non-nationals and can, theoretically, move freely around the country (Human Rights Watch 2002: 151).

A look at the new Kenyan Constitution, promulgated in August 2010, further enlightens the debate on the applicability of this right on refugees. The new Constitution changed the provision from applying “all citizens” to a new article, stating: “Every person has the right to freedom of movement.”⁹⁴ Therefore, refugees are included in the wording of “every person”, which guarantees them free movement within Kenya.

After having presented the legal framework, it will now be examined whether it is compatible with the situation in the refugee camps. As explained, a new governmental policy required refugees to stay in camps from the early 1990s onwards. Although this encampment policy was heavily criticized by human rights organizations, the government decided to further endorse and secure it on the national level through the *Refugee Act*.⁹⁵ The question here is whether the creation of camps and the obligation of refugees to stay in them is a contradictory to or consistent with the right to free movement. Although there is no authoritative answer to this question yet, there is a strong voice from international refugee law experts (e.g. Goodwin-Gill 2007: 465) who argue that the temporary restriction to designated areas does not violate the *Refugee Convention* in the case of a mass inflow or a similar situation of emergency. In the case of Kenya, it is questionable whether today’s refugee situation is an emergency situation (Human Rights Watch 2002: 152f). While the mass inflow of refugees in the 1990s may have constituted such a situation and indeed allowed for the set up of camps and the restriction of movement, the limitation on free movement is required to be only temporary and conditional upon the special situation. As for today, there is a generally high number of refugees in Kenya and a steady arrival of new asylum seekers, but a large number of the camp populations are made up of people who have been living in Kenya

⁹³ UDHR: Art. 13(1), ICCPR: Art 12 (1) and Refugee Convention: Art 26.

⁹⁴ Constitution of Kenya: Art. 39.

⁹⁵ The Refugee Act: Art. 16 (2) lit b. and Art 25 lit f.

for several years. Hence, an emergency situation is not given, as it has been unchanging for years.

In order to answer this question, it is firstly important to take a closer look at the situation of refugee camps in Kenya as the term “refugee camp” itself includes rather different conceptions of human settlements that often vary significantly in size, structure, political character and the possibility of free movement (Crisp/Jacobsen 1998: 27). Today, there are two camp complexes in Kenya that can be characterised as artificial and overcrowded environments in remote areas of the country. The Dadaab camp complex near the Somali border in Northeast Kenya, the world’s largest refugee camp, comprises three separate camps – Dagahaley, Ifo and Hagadera – and is home mostly to Somali refugees. It is highly overcrowded, which results in the sporadic relocation of refugees to the Kakuma camp (Barasa 2009), situated in the Turkana region next to Kakuma town in the north of the country and hosting mainly Sudanese and Ethiopian refugees. Both areas can be described as part of the geographical and socio-political “periphery” of Kenya (Pérouse de Montclos/Kagwanja 2002: 207) and have long been neglected by the Kenyan government, which results in a poor quality of available public services. The areas are semi-arid, making farming or agricultural activities difficult, if not impossible, and keeping cattle, as the majority of the local population does, is not an option in the camps (Verdirame 1999: 61f). Therefore, the dependency on humanitarian organizations for food, daily necessities, but also medical care, education, or employment opportunities is very high (Refugee Consortium of Kenya 2005: 1). Although both camp complexes are located in rural areas, they are characterized by certain urban features in regard to the population density, the economic dynamic including international trade networks, and its cosmopolitan character. Thus, “il évoque plutôt une sorte de ghetto urbain en milieu rural”⁹⁶ (Pérouse de Montclos 2008: 195).

As for the freedom of movement, the official policy of the government announces that the refugee camps are ‘closed’. Refugees are not allowed to settle elsewhere or even travel in and out of the camps without permission. This does not include the immediate surroundings of the camp, meaning that refugees can move freely both between the three camp complexes and

⁹⁶ “it calls to mind a sort of urban ghetto in a rural setting.” (E.F.)

Dadaab town and between Kakuma camp and Kakuma town (UNHCR 2005: 31).

If a refugee wants to travel further, he or she needs permission and has to obtain the so-called *Movement Pass*, a time-limited document including the bio data and a digital picture of the refugee. In theory, it should be the government that allows refugees to move, but for now, the pass is a document co-signed by the governmental DRA and UNHCR. In Dadaab and Kakuma, there are different procedures for a refugee to gain access to this document.

In Kakuma, the refugee has to give a reason for his or her wish to travel, then UNHCR prepares the document and co-signs it with the DRA. The reasons for moving outside the camp areas are mostly medical, educational or family visits (Human Rights Watch 2009: 45). The duration of the travel is usually between 15 days and three months for medical and personal reasons, and one year for education. Contrary to Kakuma, it is much more difficult to obtain the *Movement Pass* in Dadaab. The overwhelming majority of refugees in Dadaab are from Somalia, a fact which made the Kenyan government introduce a more stringent and complicated procedure for reasons of national security and fear of terrorism (Human Rights Watch 2010: 71ff). A refugee who wants to travel has to apply personally for the *Movement Pass* with the "Security Committee". The acceptance rates are lower than in Kakuma.⁹⁷

Although the international legal framework is vague, many governments and even international agencies seem to prefer encampment to open settlement (Black 1998a: 5). The reasons for the construction of camps are multifold. Some arguments are along the lines of what may be best for refugees, in that there are "practical advantages from the standpoints of service delivery, accountability, identification of individuals, physical access, cost effectiveness of the relief operations and monitoring of both the refugees' status and received assistance" (Van Damme 1995: 360f). It is suggested that refugees would, if able to choose where to settle, often prefer to live in camp-like structures and around points of aid delivery anyway. Furthermore, camps would permit refugees to continue living in their own communities and provide them with better economic conditions than

⁹⁷ The UNHCR still disapproves this procedure, as one Protection Officer put it: "We thought it was a bad idea to make refugees stand in front of a room full of police and say why they wanted to go visit their relatives."

having to settle on their own, which in turn could lower the crime rate among asylum seekers and refugees. These arguments are allegedly based on the best interest of refugees, but if so, then why not let refugees decide where to live?

The argument related to the effectiveness of assistance and status determination is surely a valid concern. It would, however, only be applicable in the first months of a situation of a high refugee inflow, as it is more effective for long-term refugees to be self-sufficient instead of being continuously dependent on aid. Another, maybe even more important reason for encampment policies is the influence of international donors (Harrell-Bond 1998: 22). The benefit of refugee camps for host governments and humanitarian organizations is not only their proclaimed better assistance for refugees but also an increase in donor funding, as camps are clearly visible to the international community. Also, presenting refugees as helpless and dependent on aid may attract more funds than presenting the far more complex reality of diverse types of settlement and refugees (ibid.). In theory, most humanitarian organizations, foremost UNHCR, discourage encampment policies and do not cease to express their concern regarding the human rights situation in the camps. Nevertheless, it is not their responsibility or mandate to decide where refugees should settle (Black 1998a: 5). Still, as many host governments do prefer encampment because of a perceived threat to national security by self-settled refugees, the humanitarian community often considers camps to be inevitable and does not present alternatives but rather works along these policies and supports the implementation and organization of camps (Black 1998b: 31).

The imposed dependency is aggravated by the quasi-impossibility to work. To work and earn your own livelihood was mentioned as one of the major concerns by all refugees and asylum seekers interviewed. This leads to the question: Are refugees entitled to a right to work in Kenya?

The *Refugee Convention*, the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) unambiguously accord refugees the right to work.⁹⁸ The *Refugee Convention* regulates the right to work for refugees, and accords the same treatment for refugees as for other non-nationals.⁹⁹ This means that they are not granted access to the labour market on the same terms as nationals, but

⁹⁸ UDHR: Art. 23 (1) and ICESCR: Art. 6.

⁹⁹ Refugee Convention: Art. 17 (1).

the *Convention* rather refers to national law in regard to employment for other non-nationals. It declares further that any restrictive measures on employment for refugees shall not be imposed after three years of residence in the country – in Kenya four years of residence (US Committee on Refugees and Immigrants 2009: 4). The Kenyan national law requests work permits for all non-nationals, thus also refugees in order to be able to work. Hence, refugees are entitled to the right to work.

Employment in the camps: Equal pay for equal work?

Employment in the camps is often hindered by several factors, the sheer lack of formal employment opportunities being one of them. Other than that, refugees are discouraged from leaving the camps as substantial parts in the camps are covered by UNHCR and both camps are situated in the geographical periphery of Kenya, at a long distance from any major towns. Although refugees are restrained from becoming economically self-sufficient, most of them manage to find ways around the restrictive employment policies. Many aid agencies in the camps employ refugees, especially high qualified ones, for example as teachers, interpreters, supervisors, or drivers (Kanere 2009: 2). However, the ones who are employed are not considered actually “employed”, but rather perceived as “incentive workers” (Kanere 2009: 2). Incentive here essentially stands for “work for food”; it is not a legal category but was coined by aid agencies. Most refugees do not have regular work contracts and even if they do, these are renewed on a monthly basis, even though according to Kenyan labour laws, a regular employment contract has to be established within six months in order to prevent the exploitation of workers. While Kenyan citizens, coming from the host community living around the camp, and other foreigners, who all do basically the same work, are paid regular salaries - for example around 15.000-20.000 KSh for teachers - camp residents, irrespective of their qualification or individual experience, receive only a fifth of the sum. This amount is not sufficient to cater for daily needs, and although the commodity prices at the markets in the camps have increased, the payments have not been adjusted for years. It has also been voiced by incentive workers that their payment is often delayed, sometimes for months, while contracted labourers are almost always paid on time

(Kanere 2009: 2). This inequality in payment and labour rights is often a source for frustration, but as other work opportunities are scarce, refugees compete for the available incentive jobs – being employed unfairly and insecurely is in general preferred to being dependent on handouts.

When asked for the reasons for the inequality in payment, the answers given by the camp organizations vary. One line of argument is that refugees and asylum seekers are entitled to ration cards and thus have free access to basic services and do not need a salary to pay for them. This explanation is misleading, as Kenyans living around the camp can and do access similar services, for example medical treatment and education, in order to minimize tension between the host community and the refugee population. UNHCR has referred to budget constraints when asked for a justification in the differences in salaries, but the constraints do not prevent them from paying regular salaries to Kenyan workers and other foreign staff.

As the scope of incentive work is limited and agriculture is not an option due to natural limitations, the informal economy plays a vital role. Some refugees can not use all of the food given to them, not due to a lack of need, but the differences in diet (Jamal 2000: 19). Food is a cultural issue, and if the traditional staples are not provided by humanitarian assistance, people find measures to access them. Thus, the food and other items refugees are given are sold, not only to fellow camp residents, but also to the surrounding areas, sometimes even abroad to the countries of origin. The items purchased vary, including daily items such as vegetables, *injera*,¹⁰⁰ clothes, shoes, meat, milk, kerosene, matches, etc. (Pérouse de Montclos/Kagwanja 2002: 212).

To summarize, refugees in Kenya are required to live in camps although the legal basis for this type of settlement remains vague and is contradicting the right to free movement. Encampment is favoured not only by the Kenyan state, but by the majority of African countries (Kuhlman 1994: 124). The development towards narrowing down refugees' and asylum seekers' right to free movement can also be observed in many European countries or Australia (Goodwin-Gill 2001: 23ff).

During the research process, every conducted interview concluded with the question what the interviewee would change with regards to refugee rights if he or she had the chance to. The overwhelming majority demanded the

¹⁰⁰ Injera is a flatbread used as staple food for mostly Ethiopians and Somalis.

freedom of movement, together with a better implementation of the right to work.

“If I could change anything, it would be: let these people just live among the community. Get rid of the refugee camps.”

Urban refugees: a neglected reality

Despite the aim of the Kenyan government to restrict refugees to camps, a vast number of registered and unregistered refugees live among the urban populations of Kenya's major towns. The main point of attraction is Nairobi, where the refugee population is estimated at between 50.000 and 100.000 refugees. They live throughout the city, with a high concentration of Somali and Ethiopian immigrants in the neighbourhood of Eastleigh (Pavanello/Elhawary/Pantuliano 2010: 7).

The legal status of these urban refugees regarding their stay in town differs according to their economic self-sufficiency or the obtaining of a *Movement Pass*. Before elaborating this aspect in more detail, it has to be stated that the legal situation of urban refugees is not clarified. Even in the expert interviews carried out, contradicting explanations were given when asked about the legality of the stay of refugees. Those arriving in Nairobi can either proceed to a camp or state that they prefer to stay in town. The latter is possible under one condition: they have to sign that they can and will provide for themselves in Nairobi and are “economically self-sufficient”. This means that while in the refugee camps numerous humanitarian organizations assist camp residents, urban refugees are not entitled to any assistance from UNHCR. This is in fact contravening the UNHCR mandate, as its main goal is to support refugees, and not to assist only those refugees who conform to restrictive national policies (Harrel-Bond/Verdirame 2005: 290f). The vast majority of refugees in town live there undocumented without falling into one of the categories of exceptions to encampment. Most of them are aware of their precarious status and the risk and vulnerability that it entails.

This vulnerability caused by the lack of clear governmental refugee policy is manifested in numerous aspects of daily life such as employment, education, health care or encounters with the police. Furthermore,

assistance to urban refugees is provided only by churches or humanitarian programs, while the bulk of foreign aid is used for refugees in the camps. Nevertheless, many refugees choose to live in the city rather than in a camp. The various reasons motivating people worldwide to move to urban centres are similar to those of the refugees interviewed in Kenya. Further, there are some specific factors encouraging refugees to live in town instead of camps: “security threats, lack of adequate education and medical services, limited livelihood opportunities and harsh climatic conditions. In terms of security, refugees in Nairobi, particularly women, were concerned about the level of gender-based violence and killings in the camps, particularly in Dadaab.” (Pavanello/Elhawary/Pantuliano 2010: 14). Security was often mentioned as one of the reasons for the change of location by Ethiopian and Congolese refugees, of whom some said that the very people that they fled from originally are now in the camps trying to find them.

As mentioned above, in order to work in the formal economy, all non-citizens, including asylum seekers and refugees, need a work permit. Work permits for refugees are valid for two years, and cost 50.000 KSh,¹⁰¹ which is an unaffordable sum for many. Furthermore, the Ministry of Immigration announced in 2000 to stop issuing the documents due to an increase in forged permits (Pavanello/Elhawary/Pantuliano 2010: 20f).

Therefore, the great majority of urban refugees and asylum seekers engage in the informal economy. Also for Kenyans, to work in the informal economy, or *jua kali*, as it is known in Kenya, is not unusual. On the contrary, informal work is constantly growing and in 2008, around 80% of the total employment in Kenya was in the informal sector (Institute of Economic Affairs Kenya 2010: 19f).

The work of urban refugees includes work on construction sites, mechanics, shoe shiners, shop attendants, car washers, etc. Those who have lived in Nairobi for a longer period of time are often self-employed through petty trade, which can be observed in Eastleigh, where many Somali migrants and refugees have small roadside stands with fruits and vegetables, or their own stalls, selling clothes, fabrics, shoes, or electronics. Still other immigrants run their small businesses such as kiosks, telephone and

¹⁰¹ About 500 Euro

internet cafés, selling the stimulant *mira'a*¹⁰², or running beauty salons or *matatus*.¹⁰³

Some of the refugee entrepreneurs have become economically quite successful, as observed in Eastleigh, where supermarkets and shopping malls like the Garissa Lodge, established by Somali refugees, are today the hub for trading and shopping in Nairobi (Campbell 2006: 403). Another example for successful refugees outside the formal economy is the *matatu* industry: These minibuses began as an illegal form of transportation in Nairobi after independence but quickly became the most common mode of travelling, transporting people through Nairobi and all around Kenya and the neighbouring countries. Although the majority of *matatus* are owned by Kenyans, Somalis also own a large number of *matatus* and established their position especially on the routes from Nairobi to the camps in Kakuma and Dadaab, which are used predominantly by refugees (Campbell 2006: 404).

Women and men have equally opened their own businesses or do casual labour – female entrepreneurs are often selling tea and coffee or vegetables on the roadside, and many are in the tailoring business or do laundry in mostly Kenyan households (Jaji 2009: 145).

In conclusion, it should be stressed once more that refugees and asylum seekers, even with the more restrictive regulations of the *Refugee Convention*, do have the right to work after having spent a maximum period of four years in the country. However, even though the majority of refugees in Kenya have been in the country for years if not decades, they still lack the possibility to engage in the formal labour market. But as shown in the paper, the frustration over obstacles to engage in employment does not render refugees and asylum seekers helpless: many individual livelihood concepts, mostly rooted in the informal economy, have been established to provide economic independence, both in the camps and towns. The refugees thus work around the restrictions placed by the Government and towards their right to employment. The remaining question to answer is why those restrictions are in place at all, as they have negative consequences for the refugee population, the financial situation of organizations and the economic development of the host country.

¹⁰² Mira'a, also known as khat, is a plant used as a stimulant by chewing it.

¹⁰³ Matatus are share taxis and one of the main means of transport, both in urban centres and between towns in Kenya.

Apart from economic survival, urban refugees are coping with other challenges due to their intransparent legal status. Government officials do not welcome refugees to urban centres, on the contrary. Kenya's Vice President and Minister of Home Affairs, Moody Awori, threatened urban refugees in 2004: "I am asking all refugees to report to the camps and those that will be found to be in the city and other urban places without authorization will be treated like any other illegal aliens. . . The government will soon mount a crackdown on these illegal aliens with a view to flushing them out." (Campbell 2006: 401). This was not an empty threat as police swoops and harassment of refugees are a common problem, regardless of the legal status of their stay or available documentation (Pavanello/Elhawary/Pantuliano 2010: 17). Police officers are often unaware of refugee documentation, and the belief that all refugees in town are residing illegally is widespread (ibid). They routinely stop refugees or other immigrants and do not agree to release them unless a bribe is paid (Human Rights Watch 2002: 42ff). Bribery is often a major revenue for police officers and refugees are prone to harassment, mostly as a result of their vulnerable legal status.

During the period of research in Nairobi, larger crackdowns were organized, aiming primarily at Somali refugees and justified by national security concerns after the Kampala bombings in July 2010.¹⁰⁴ Some refugees were detained, taken to court or simply sent back to the camps.

Effects of the disparities

The previous section of the paper offered examples of the existing gaps between the rights refugees are theoretically entitled to enjoy and the liberties they can indeed exercise. The answers explaining why the application of certain refugee rights in Kenya is not guaranteed are multifold, ranging from political, sociological,¹⁰⁵ and economic reasons up to the individual level, which cannot be left out of scope. Especially the economic context, including the high unemployment rate in Kenya, limited

¹⁰⁴ In July 2010 suicide bombers attacked two restaurants in Kampala. The attack was claimed to be orchestrated by the Somali-based group Al-Shabaab.

¹⁰⁵ The sociological dimension includes the construction of refugees as "the other", and, as a consequence, denying them certain rights.

resources of the government, and the endemic corruption experienced by the majority of refugees is crucial in the understanding of the given situation. Further, the global development towards more restrictive refugee policies, which, together with a reluctance of most Western states to “share the burden” of refugees, amounts to the situation at hand (Whitaker 2002: 3f). While all these reasons have undoubtedly been important factors, in the following I will concentrate on the changing role of the state and the main actors involved in refugee protection, foremost UNHCR in Kenya.

The demise of the state: “No law is self-applying.”

This old legal saying gets to the heart of the dilemma of refugee rights in Kenya. The possibility for refugees to exercise their rights lies within the responsibility of the host state. But as the government did not perform this duty the way it is legally obliged to, UNHCR stepped in and took over some of the pivotal roles for refugee protection. This development can be observed not only in Kenya, but should be identified as part of a general transformation of the role of UNHCR, without yet having adapted its mandate (Hyndman 2001: 46).

In Kenya, the UN agency has been responsible for Status Determination and the administration of the camps, together with the co-decisions about who may or may not leave the camp compounds. Kenya, which declared itself a “transit country”, thus enhancing the idea that refugees were temporary and the government did not have to deal with them, even pronounced refugees as “the responsibility of UNHCR” (Harrell-Bond/Verdirame 2005: 272).

UNHCR’s original mandate was to promote asylum and to guarantee the treatment of asylum seekers and refugees in regard to the UN *Refugee Convention*. Since its establishment, the Office has experienced many changes: globally, the origins of conflict changed, shifting from international clashes caused by state tensions along the Cold War lines towards internal conflicts and civil war (Hyndman 2001: 50). Consequently, refugee flows changed, and new and differing tasks were required from UNHCR that could not be found within its Statute – together with a dramatic expansion of its activities worldwide, in terms of personnel, missions and budget (Barutciski 1999: 3f). The protection gap mentioned was beyond the limits of UNHCR’s mandate, including problems such as

the plight of Internally Displaced Persons, humanitarian assistance, Status Determination, and the administration of refugee camps. As the governments of the host countries were regularly neither willing nor able to accomplish these tasks, UNHCR took over pivotal elements of the host state's responsibility. This model was often not reversed, so that in turn the role of the state was weakened and UNHCR's position strengthened (Slaughter/Crisp 2009: 2ff).

Probably the most important and at the same time heavily criticized task for UNHCR in Kenya is the administration of the two camp complexes. While UNHCR and its personnel speak vehemently against the encampment of long-term refugees, the problem is again that they maintain this situation of human rights violations by administering them and comply with the idea that camps are inevitable. The position of UNHCR on encampment is also reflected in their urban refugee policies, which until recently called refugees outside camps "irregular movers" who belonged into camps, enhancing the insecure situation of many urban refugees (Harrell-Bond/Verdirame 2005: 100ff).

A further point of critique of UNHCR's role in Kenya is the insistence it puts on repatriation to the country of origin as the preferred option for refugees. This is in compliance with the government's position, which considers refugees as being in the country only temporarily. It has been shown that this policy is far from reality. Nevertheless, in consequence of it, integration into the local communities, including enhanced rights such as employment and free choice of residence, was sidelined (Harrell-Bond/Verdirame 2005: 287ff).

In an article about this shift in UNHCR's role, Amy Slaughter and Jeff Crisp calls the Office a "surrogate State", accurately describing its difficult and ambiguous role. UNHCR is often exercising sovereignty, for example in the refugee camps or through RSD, but is merely a guest in the country of asylum (Wilde 1998: 113ff). Further, UNHCR uses its funds, influence and personnel working for the new duties, while compromising its role as an advocate of refugees and their rights. Initially, UNHCR was considered a moral authority for refugee protection, criticizing the misbehaviour of governments and demanding them to respect their international obligations. But this role cannot be upheld if it takes part in decisions and situations that some perceive as a violation of refugee rights (Barutciski 1999: 2).

Thus, while it seemed as the most logical step for UNHCR to fill the gaps the state left, this has proven to be counter-productive. By supporting the encampment policy and even deciding who is allowed to leave the compounds, i.e. following an approach that renders refugees dependent in a protracted situation like the one in Kenya, UNHCR is turning away from its original activities to promote asylum and pursue a rights-based approach.

Conclusion

The main findings of the conducted research show that there is indeed a discrepancy between the rights of refugees guaranteed by international and national instruments and their implementation in practice in Kenya. Concerning the principle of *non-refoulement* it can be stated that there have been incidents violating this principle, foremost in the past due to the closure of the border with Somalia. In addition, the Kenyan state does not perform its duty to determine the refugee status of asylum seekers, but rather leaves this responsibility to UNHCR. The RSD process thus contains several problems, including long waiting periods and impenetrable procedures to appeal.

Many of these afore discussed legal issues can be directly linked to the poor implementation of the freedom to move, obliging the refugees to stay in camps for an undetermined period of time. Although the majority of refugees indeed live in the two large camp complexes in the periphery of Kenya, many choose to stay outside these areas and therefore face various other obstacles.

One of them is the insufficient implementation of the right to employment, which is neither met in the camps nor in the urban areas. A legally not regulated system of “incentives” instead of payment was developed in the camps. This created further problems regarding equal pay, and forced refugees to gain their major revenue from informal work. Last but not least, insecurity and violence is a daily concern for many refugees, often linked to police harassment and them lacking identity documents. This article has demonstrated that one of the effects for this gap between refugee rights in theory and praxis can be found in the ambivalent role of UNHCR, as its role as a protector and agent for refugee rights has been weakened by the taking over of state responsibilities.

References

- Abuya, Edwin. 2004. United Nations High Commissioner for Refugees and Status Determination Imtaxaan in Kenya: An Empirical Survey. In: *Journal of African Law*, Vol. 48, No. 2, 187-206.
- Abuya, Edwin. 2007. Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective. In: *International Journal of Refugee Law*, Vol. 19, No. 1, 51-95.
- Amnesty International. 2007. Kenya. Denied refuge. The Effect of the Closure of the Kenya/Somali Border on Thousands of Somali Asylum Seekers and Refugees. London: Amnesty International.
- Barasa, Lucas. 2009. 12.000 Refugees to be Moved. In: *Daily Nation*, 6. August 2009. <http://www.nation.co.ke/News/-/1056/635754/-/ull9j4/-/index.html> [09.03. 2011]
- Barutciski, Michael. 1999. Introduction. Confusion about UNHCR's Role. In: Dennis McNamara/Guy Goodwin-Gill (eds.): *UNHCR and International Refugee Protection*. RSP Working Paper No. 2. Oxford: Refugee Studies Programme, 2-4.
- Black, Richard. 1998a. Putting Refugees in Camps. In: *Forced Migration Review*, Vol. 2, 4-7.
- Black, Richard. 1998b. Refugee Camps not Really Reconsidered: a Reply to Crisp and Jacobsen. In: *Forced Migration Review*, Vol. 3, 31.
- Campbell, Elizabeth. 2006. Urban refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration. In: *Journal of Refugee Studies*, Vol. 19, No. 3, 396-413.
- Crisp, Jeff/Jacobsen, Karen. 1998. Refugee Camps Reconsidered. In: *Forced Migration Review*, Vol. 3, 27-30.
- Crisp, Jeff. 1999. A State of Insecurity: the Political Economy of Violence in Refugee-Populated Areas of Kenya. *New Issues in Refugee Research*. Working Paper No. 16. Geneva: UNHCR.
- Crisp, Jeff. 2000. Africa's Refugees: Patterns, Problems and Policy Challenges. *New Issues in Refugee Research*. Working Paper No. 28. Geneva: UNHCR.
- Freudenthaler, Eva. 2011. *Refugee Rights in Kenya. A comparative legal analysis of theory and practice*. Wien: Diplomarbeit.
- Goodwin-Gill, Guy. 2001. Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention and Protection.
- Goodwin-Gill, Guy. 2007. *The Refugee in International Law*. Oxford: Oxford University Press.
- Harrell-Bond, Barbara. 1998. Camps: Literature review. In: *Forced Migration Review*, Vol. 2, 22-23.
- Harrell-Bond, Barbara/Verdirame, Guglielmo. 2005. *Rights in Exile: Janus-Faced Humanitarianism*. New York: Berghahn Books.
- Human Rights Watch. 2002. *Hidden in plain view. Refugees living without protection in Nairobi and Kampala*. New York: Human Rights Watch.

- Human Rights Watch. 2009. *From Horror to Hopelessness. Kenya's Forgotten Somali Refugee Crisis*. New York: Human Rights Watch.
- Human Rights Watch. 2010. "Welcome to Kenya." Police abuse of Somali refugees. New York: Human Rights Watch.
- Hyndman, Jennifer. 2001. Change and Challenge at UNHCR: A Retrospective of the Past Fifty Years. In: *Refuge*, Vol. 19, 45-53.
- Institute of Economic Affairs – Kenya. 2010. *The Dynamics and Trends of Employment in Kenya*. IEA Research Paper. Nairobi: IEA.
- Jaji, Rosemary. 2009. *Refugee Women and the Experiences of Local Integration in Nairobi, Kenya*. Bayreuth University: Dissertation.
- Jamal, Arafat. 2000. *Minimum Standards and Essential Needs in a Protracted Refugee Situation: A Review of the UNHCR Programme in Kakuma, Kenya*. Geneva: UNHCR.
- Juma, Monica. 2000. *The Politics of Humanitarian Assistance: State, Non-State Actors and Displacement in Kenya and Uganda (1989-1998)*. Oxford: Unpublished Doctoral Thesis.
- Kanere. 2009. Are Refugees Entitled to Equal Pay for Equal Work? In: *Kakuma News Reflector- A Refugee Free Press, Volumes 1/2*. <http://kakuma.wordpress.com/2009/01/31/are-refugees-entitled-to-equal-pay-for-equal-work/> [17. 08. 2011]
- Kuhlman, Tom. 1994. Organized Versus Spontaneous Settlement of Refugees in Africa. In: Howard Adelman/John Sorenson (eds.): *African Refugees. Development Aid and Repatriation*. Boulder: Westview Press, 117-142.
- Milner, James. 2004. *Golden Age? What Golden Age? A Critical History of African Asylum Policy*. Paper Presented to the Centre for Refugee Studies. Toronto: York University.
- Pavanello, Sara/Elhawary, Samir/Pantuliano, Sara. 2010. *Hidden and Exposed: Urban Refugees in Nairobi, Kenya*. HPG Working Paper. London: Overseas Development Institute.
- Pérouse de Montclos, Marc-Antoine. 2008. Marges Urbaines et Migrations Forcées: Les Réfugiés à l'Épreuve des Camps en Afrique de l'Est. In: *Autrepart*, Vol. 45, 191-205.
- Pérouse de Montclos, Marc-Antoine/Kagwanja, Peter Mwangi. 2002. Refugee Camps or Cities? The Socio-Economics of the Dadaab and Kakuma Camps in Northern Kenya. In: *Journal of Refugee Studies*, Vol. 13, No.2, 205-222.
- Refugee Consortium of Kenya. 2005. *Forum: UNHCR Refugee Status Determination: The Kenyan Experience*. Report Presented at the UNHCR Executive Committee Meetings in Geneva, October 2005. <http://rsdwatch.wordpress.com/2005/11/13/forum-unhcr-refugee-status-determination-the-kenyan-experience/> [12.02.2012]
- Rutinwa, Bonaventure. 2002. The End of Asylum? The Changing Nature of Refugee Policies in Africa. In: *Refugee Survey Quarterly*, Vol. 21, No. 1&2, 12-41.
- Skari, Tala/Girardet, Edward. 1985. Urban Refugees: Out of the Public Eye. In: *Refugees*, Vol. 23, 14-25.

- Slaughter, Amy/Crisp, Jeff. 2009. A Surrogate State? The Role of UNHCR in Protracted Refugee Situations. *New Issues in Refugee Research*. Working Paper No. 168. Geneva: UNHCR.
- UNHCR. 1992. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. Geneva: UNHCR.
- UNHCR. 2005. *Analysis of Refugee Protection Capacity*. Kenya. April 2005. <http://www.unhcr.org/refworld/docid/472896f70.html> [11.09.2011]
- UNHCR. 2012. 2012 UNHCR Country Operations Profile – Kenya. <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483a16> [30.03.2012]
- US Committee on Refugees and Immigrants. 2009. *World Refugee Survey 2009*. Kenya. www.unhcr.org/refworld/country,,,,ERI,,4a40d2aa76,0.html [20.07.2011]
- Van Damme, Wim. 1995. Do Refugees Belong in Camps? Experiences from Goma and Guinea. In: *The Lancet*, Vol. 346, No. 8979, 360-362.
- Verdirame, Guglielmo. 1999. Human Rights and Refugees: The Case of Kenya. In: *Journal of Refugee Studies*, Vol. 12, No. 1, 54-77.
- Whitaker, Beth Elise. 2002. Changing priorities in Refugee Protection: The Rwandan Repatriation from Tanzania. *New Issues in Refugee Research*. Working Paper No. 53. Geneva: UNHCR.
- Wilde, Ralph. 1998. Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law. In: *Yale Human Rights & Development*, Vol. 1, No. 5, 107-128.

Primary sources:

- Aptheker vs. Secretary of State. 1964. 378 US 992.
- Universal Declaration of Human Rights. UN, 1948.
- Convention relating to the Status of Refugees. UN, 1951.
- International Covenant on Civil and Political Rights. UN, 1966.
- International Covenant on Economic, Social and Cultural Rights. UN, 1966.
- The Immigration Act. Republic of Kenya, 1967.
- Convention Governing the Specific Aspects of Refugee Problems in Africa. OAU, 1969.
- The Aliens Restriction Act. Republic of Kenya, 1973.
- The Refugee Act 2006. Republic of Kenya, 2006.
- The Constitution of Kenya. Republic of Kenya, 2010.

Interviews and participant observation

The main findings of this paper are based on nine semi-structured interviews, which each took around one hour and were held in summer 2010 in Kenya. The interview partners in Nairobi consisted of a lawyer working with a Kenyan organization for refugee rights – Kituo cha Sheria, a lawyer from UNHCR Nairobi, a university professor of law at Moi University, the head of the Nairobi Archdiocese Refugee Assistance Programme (NARAP), an organization offering self-help education to urban refugees since the 1980s and the District Officer of Eastleigh, a district in Nairobi, populated mainly by Somali immigrants and refugees. In Kakuma camp, the interviews were conducted with the Protection Officer of UNHCR, with a lawyer from a Kenyan NGO working on refugee rights, the Refugee Consortium of Kenya (RCK), a public officer from the Department of Refugee Affairs (DRA) responsible for the first registration of asylum seekers and a journalist from the refugee community, the editor of the Kakuma News Reflector (KANERE). Additionally, participant observations, informal conversations and interviews with refugees from Somalia, Sudan, DR Congo and Uganda were held in both Nairobi and Kakuma. All of the unlabeled quotations are taken from this research.

