African Exodus
Refugee Crisis, Human Rights and
the 1969 OAU Convention

July 1995

Lawyers Committee for Human Rights
The Physical Protection of Refugees

taken place.

In each of these areas, the record of many host governments has been one of dismal failure. But the record of international agencies has also been far from adequate. The OAU Bureau of Refugees, as chapter VII demonstrates, has virtually no presence on the ground and plays no effective protection role. UNHCR, through a combination of political pusillanimitiy and under-representation, often fails to act as an effective advocate for refugee interests. In Malawi and Zimbabwe, for example, UNHCR did not have sufficient permanent presence in the refugee settlements to play an effective watchdog role. Nor has it always been willing to mount its own pressure on behalf of refugees, for example by investigating the behavior of security forces or filing legal actions against security personnel. The constant fear of falling foul of the host government can lead UNHCR to acquiesce in abuses.

A. Kenya

In recent years Kenya has been host to several hundred thousand refugees fleeing conflicts in Somalia, Sudan and Ethiopia. It has also received significant numbers of Ugandans in the 1970s and 1980s and, more recently, of Rwandese. The Somali conflict caused a massive leap in the number of refugees from a total of only 14,000 in early 1991. The largest group by far have been Somalis who at their peak, in 1992, numbered more than 400,000. Almost a quarter of a million Somali refugees remained in Kenya in early 1995. It is the Somalis who have been most vulnerable to physical attack. The deployment of international forces in Somalia in Operation Restore Hope (subsequently UNOSOM) had the effect of driving armed Somali bandits into the border areas. Refugee settlements, Kenyan security personnel and relief workers and supplies have all been the victims of bandit attacks. A particular problem has been the high incidence of rape among refugee women, often coupled with extortion. The Kenyan police and military have been ineffective in stopping these assaults and have even been guilty of raping refugee women themselves in a number of cases (see footnote 1 below).
African Exodus

The background to this crisis is to be found in decades of institutional discrimination against Kenya's own sizeable ethnic Somali population. The northeastern area of the country, which is overwhelmingly populated by Kenyan Somalis, was ruled under a state of emergency from independence in 1963 until 1991 after an insurrection that demanded unification with Somalia. Great Britain, the colonial power, had reneged on a promise to allow the territory inhabited by Kenyan Somalis to become part of an independent Somalia. Under the state of emergency, the Kenyan authorities had powers of detention without trial, set up special courts and imposed the death penalty for illegal possession of firearms. These exceptional measures continued long after the threat of insurrection had faded, and was accompanied by gross abuses of human rights — most notably the Wajir massacre of 1984, in which at least 2,000 ethnic Somalis were killed by security forces.

When Somali refugees began to flow into Kenya in the late 1980s, the government introduced a nationwide screening of Somalis, ostensibly to identify illegal aliens. Anyone whose physical appearance suggested that they were Somali was at risk of arbitrary arrest. Kenyan Somalis were required to carry separate identity cards to prove their nationality, a measure that was discriminatory on grounds of race or ethnic origin.

The Kenyan government also had a long-standing interest in the conflict in Somalia, although this was probably a less important factor than its generally discriminatory attitude toward Somalis in Kenya. The Kenyan government had long supported the government of President Siad Barre in Somalia. Indeed in 1989 the chief of the Kenyan defense staff, himself an ethnic Somali, assured the Barre government that Ogadeni refugees would not be allowed to remain in Kenya. After Siad Barre's overthrow in 1991, Kenya allowed its territory to be used for supplying arms and other matériel to the ex-dictator's militias as they continued to fight in Somalia.

The government's seizure of Somali livestock in the aftermath of the 1960s insurrection exacerbated the problem of banditry, fuelling a long-term security crisis in the northeast. The refugee population, which received a measure of international food aid, was an obvious target for
The Physical Protection of Refugees

banditry; indeed some local nomads registered as refugees in order to receive relief. It was not easy to establish exactly who was responsible for particular attacks, a difficulty made worse by the tendency of the Kenyan authorities to lump all Somalis together as *shifta* (bandits). In fact, there appear to have been three separate groups preying on refugees: professional bandits, local nomads and militia bands carrying out incursions across the Somali-Kenyan border.

In April-May 1993 the Lawyers Committee interviewed refugees at Kakuma camp in northwestern Kenya and at three camps in the Dadaab area of north-eastern Kenya — Dagahaley, Hagadera and Ifo.* The most serious problems were in the Dadaab area camps, where the security situation was critical. Kenyan police and soldiers were reported to have participated in some attacks. Beatings of refugees, as well as sexual assault and rape, were daily and nightly occurrences. A rape counsellor reported that the 107 cases reported to her in the two months before the Lawyers Committee's visit were just the tip of the iceberg.

According to women interviewed by the Lawyers Committee, rapes were generally carried out by Somali-speakers, presumably either local nomads or militia fighters from across the border. The attackers were generally described as being masked, dressed in black and armed with guns and knives. Although women were targeted primarily for purely sexual reasons, the rapes also appeared in some cases to have had an ethnic dimension. Refugee women sometimes reported that their attackers had

---

*The Lawyers Committee's findings were conveyed at the time to the Kenyan authorities, UNHCR and the US Government. At around the same time researchers from Human Rights Watch and African Rights also visited the camps. Their reports, *Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya* (Human Rights Watch) and *The Nightmare Continues... Abuses Against Somali Refugees in Kenya* (African Rights), were published in late 1993. See also Richard Carver, "Kenya: Aftermath of the Elections," *Refugee Survey Quarterly*, Vol. 13, No. 1 (Spring 1994) especially at 51-54. This section draws upon the findings of Human Rights Watch and African Rights as well as on the Lawyers Committee's own research.
African Exodus

demanded to know to which clan they belonged. If the attackers belonged to the same clan, then the women might be spared.

In some cases refugee women were raped by Kenyan police or soldiers. Seven out of 192 cases reported to UNHCR between February and August 1993 involved police, although the true number was probably much higher.42 (UNHCR estimated the total number of rapes at ten times the reported figure.)

Refugees in all the camps reported looting and beatings by both bandits and the police. Many refugees said they did not report attacks to the Kenyan police, either because they were afraid of reprisals or because they considered such complaints futile.

In one of the worst incidents, in August 1992, 15 refugees were killed after four police had died in a bandit attack. The bodies of the dead were burned and witnesses specifically implicated police in some of the killings. On March 3, 1993, after four police had been killed by bandits the previous night, members of a detail of about 20 police fired into a crowd of some 1,000 refugees assembled for food distribution in Dagahaley. Three refugees were killed and six seriously wounded. The following day, police fired tear gas into another crowd gathered for food distribution, and this time 19 people required medical attention. On neither occasion was there any provocation from the crowd.

In another incident on March 3, 1993, four police officers at the Hagadera police post took a ride in a vehicle with staff members of the relief agency CARE. In their custody was a man whose hands were tied

42 Human Rights Watch and African Rights arrived at quite different estimates of the scale of the problem. The former reported: “While most refugee women have various complaints about the Kenyan police, they say that the police are generally not responsible for widespread sexual assault.” (Seeking Refuge, Finding Terror, at 15). African Rights says that “many” though not a majority of rapes are committed by police and soldiers. Of 10 cases which it recounted in detail, half involved police or soldiers (The Nightmare Continues, at 13-22).
The Physical Protection of Refugees

together and who had clearly been beaten. After driving for about 30 minutes, the police ordered the vehicle to stop between Dadaab and Hagadera. Three of the officers then untied the prisoner and took him into the bush. The CARE staff members heard shots and the officers returned to the vehicle alone and returned to the Hagadera post. The prisoner's body was found a few days later, along with another man's body, and identified by his aunt. Both men had been refugees. Although the crime was reported to the police for investigation, it appears that there was no follow-up and that no charges were filed in connection with the killing.

The reluctance of refugees to report abuses to the Kenyan authorities is scarcely surprising, given the casual and dismissive response to their complaints. After the question of rape had been raised in parliament, Julius Sunkuli, a minister in the President's Office, accused refugee women of fabricating their claims to "attract sympathy and give the government negative publicity." Sunkuli said that if the allegations were true, women should report them to the police. However, confusingly for the refugees, another official in Dadaab was later reported to have said that it was up to Somalis to sort out the problem for themselves and that it was not Kenya's responsibility to investigate.

In 1993, UNHCR asked governments involved in UNOSOM to consider speeding up the deployment of forces along the border to stop bandit raids. But even this would only have addressed the problem of attacks from across the Somali border, and not the many attacks launched from within Kenyan territory. In November 1994, the Kenyan government complained to the United Nations that UNOSOM troops had still not been deployed to prevent cross-border attacks. The British government mooted the possibility of deploying UN troops within Kenya to guard the refugee camps, but this did not materialize. In the final analysis, the physical protection of refugees remains in the hands of the same Kenyan security

---

43*Nation* (Nairobi), July 29, 1993; *Standard* (Nairobi), July 29, 1993.

African Exodus

forces who are themselves responsible for some of the abuses.

Some human rights groups strongly criticized UNHCR for what were described as failures to fulfil its protection mandate.\textsuperscript{45} It is true that UNHCR was initially slow to help refugees advance their complaints against the authorities in cases where the perpetrators of abuse were the security forces themselves. UNHCR was required to pass complaints against the police to the police themselves, who would then investigate. If there was evidence of a criminal offense, the case would be forwarded to the Attorney General, who is responsible for prosecutions. However, seldom, if ever, were prosecutions brought against the police. Refugees have been reluctant to make complaints against the police for fear of reprisals.\textsuperscript{46}

UNHCR was criticized for failing to follow one of two courses of action: either filing a civil suit for damages against the officers involved or initiating a private criminal prosecution. Subsequently, however, UNHCR has contracted a Kenyan women’s NGO, the International Federation of Women Lawyers (FIDA), to help victims of abuse to seek redress.

As far as the Lawyers Committee is aware, there have been no prosecutions of police or other security officials for violent offenses against refugees. However, two other avenues are open to UNHCR, neither of which has been taken. It could either file a civil suit for damages against the officers involved or, under Kenyan law, it could file a private criminal prosecution.

In one well-documented case, where 37 Somali refugees died in a 1991 drowning accident as they were being repatriated, refugees instructed a lawyer to file a civil suit for damages. The lawyer, Mohammed Ibrahim unsuccessfully sought UNHCR’s cooperation. In an affidavit, he stated:

\textsuperscript{45}Notably by African Rights, in \textit{The Nightmare Continues}.

\textsuperscript{46}Ibid.

---

68
The Physical Protection of Refugees

The UNHCR does not provide any legal representation for any refugee in Kenya. The UNHCR never attends any court and provides no legal supporter advocacy in any of the various proceedings to which refugees are subjected. There is no advocacy for bail. At the very best they may send a letter confirming that a particular person is registered with UNHCR as a refugee but this is by no means the usual practice.47

UNHCR's failure to offer any vigorous advocacy on behalf of refugees reinforces their sense of fatalism. African Rights quoted one refugee in Dadaab:

There is no office to report things to. If you report you might get yourself into trouble. Sometimes we went to the UNHCR field office; we repeated this several times. Last time, the field officer told us: "The government of Kenya is responsible and they know exactly what is happening, so don't come and talk to me about it every day." We were advised by the field officer not to sleep during the night, but to gather somewhere, and shout. We pray to God.48

However, this assessment is not altogether fair. UNHCR has in fact provided a rape counsellor to assist refugee women and has launched an appeal for funds to improve security in the camps and give further support to rape victims (which initially found singularly little response from the international community). By late 1994 the camps were fenced and the police presence greatly increased, including helicopter patrols. The result was that the average monthly number of rapes had fallen from more than 30 in 1993 to fewer than 10 in 1994.

47Cited in The Nightmare Continues, at 44.

48Ibid., at 45.