



# **DEVOLUTION IN KENYA:** OPPORTUNITY FOR TRANSITIONAL SOLUTIONS FOR REFUGEES?



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IN KENYA:  
OPPORTUNITY FOR  
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SOLUTIONS FOR  
REFUGEES?**



This publication was commissioned by the Regional Durable Solutions Secretariat (ReDSS) and was prepared and conducted solely by Samuel Hall.

This report should be cited using the following referencing style:  
Regional Durable Solutions Secretariat (ReDSS) / Samuel Hall (2015) "Devolution in Kenya: Opportunity for Transitional Solutions for Refugees? Analysing the impact of devolution on refugee affairs in refugee hosting counties".

22 July 2015

Photo: Axel Fassio/DRC

# CONTENTS

ACRONYMS .....	6
FOREWORD .....	8
<b>PART A</b>	
INTRODUCTION .....	9
ANALYSIS OF THE POTENTIAL OF DEVOLUTION FOR REFUGEE AFFAIRS .....	15
DEVOLUTION AND DURABLE SOLUTIONS IN DADAAB? A CASE STUDY .....	24
DEVOLUTION AND DURABLE SOLUTIONS IN KAKUMA? A CASE STUDY .....	36
<b>PART B</b>	
REFUGEE MANAGEMENT IN KENYA .....	49
<i>CONTEXT ANALYSIS OF REFUGEE AFFAIRS IN KENYA</i> .....	49
<i>LEGAL ANALYSIS OF RELEVANT FRAMEWORKS AND LAWS</i> .....	55
<i>WHO GOVERNS WHOM RIGHT NOW?</i> .....	58
DEVOLUTION AND IMPLICATIONS FOR REFUGEE MANAGEMENT .....	62
<i>DEVOLUTION ARCHITECTURE</i> .....	62
<i>THE UPS AND DOWNS OF DEVOLUTION IN KENYA: ACHIEVEMENTS AND CHALLENGES</i> .....	62
<i>THE PROMISE OF EQUALITY? THE EQUITABLE SHARE AND EQUALISATION FUND – A LONG TERM PERSPECTIVE</i> .....	68
ROLES AND RESPONSIBILITIES UNDER DEVOLUTION .....	71
CONCLUSION .....	76
RECOMMENDATIONS .....	80
REFERENCES .....	87

# ACRONYMS

<b>CIDP</b>	County Integrated Development Plans
<b>CGA</b>	County Government Act
<b>CDC</b>	Community Development Committees
<b>CoK</b>	Constitution of Kenya
<b>CRA</b>	Commission for Revenue Allocation
<b>DRA</b>	Department of Refugee Affairs
<b>DRC</b>	Danish Refugee Council
<b>FDG</b>	Focus Group Discussions
<b>GBV</b>	Gender Based Violence
<b>GoK</b>	Government of Kenya
<b>HDI</b>	Human Development Index
<b>HPI</b>	Human Poverty Index
<b>IED</b>	Improvised Explosive Device
<b>INGO</b>	International Non Governmental Organization
<b>IOM</b>	International Organization for Migration
<b>IRC</b>	International Rescue Committee
<b>KII</b>	Key Informant Interview
<b>LATF</b>	Local Authorities Transfer Funds
<b>LWF</b>	Lutheran World Federation
<b>MCA</b>	Members of the County Assembly
<b>MDA</b>	Ministries, Departments and Agencies
<b>MSF</b>	Médecins Sans Frontières
<b>NRC</b>	Norwegian Refugee Council
<b>NGO</b>	Non-Governmental Organizations
<b>PIN</b>	Personal Identification Number
<b>RCK</b>	Refugee Consortium of Kenya
<b>ReDSS</b>	Regional Durable Solutions Secretariat
<b>RSD</b>	Refugee Status Determination
<b>SS</b>	South Sudan
<b>TA</b>	Transition Authority
<b>TDGA</b>	Transition to Devolved Government Act
<b>UACA</b>	Urban Areas and Cities Act
<b>UNHABITAT</b>	United Nations Human Settlement Programme
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WASH</b>	Water, Sanitation and Hygiene
<b>WFP</b>	United Nations World Food Programme

# **PART A**

ANALYSING THE IMPACT OF  
DEVOLUTION ON REFUGEE AFFAIRS  
IN REFUGEE HOSTING COUNTIES  
(TURKANA AND GARISSA)

# FOREWORD

The objective of this research is to assess the opportunities posed by the political process for potential solutions in Kenya's key refugee-hosting counties of Turkana and Garissa. It firstly analyses opportunities presented by devolution which can contribute to the increased self-reliance of refugees. Secondly it focuses on the architecture of devolution in relation to refugee affairs, through the provision of a manual which analyses the legal framework, institutional structures, actors and processes of devolution.

Protracted displacement is on the rise in the East and Horn of Africa, reflective of a global trend. Subsequently the search for solutions to protracted displacement is increasingly high on the agenda of states, donors and key stakeholders working on forced migration, displacement and solutions in the region.

This report is part of a cycle of studies commissioned by the Regional Durable Solutions Secretariat (ReDSS)<sup>1</sup> to build an evidence base, enabling humanitarian and development actors to develop informed strategies on displacement and solutions. In the heated political and security environment regarding refugees in the region, this research is timely and relevant.

Kenya's devolution is among the most rapid and ambitious processes taking place globally, providing governance challenges and opportunities as new county governments are built. Devolution is likely to significantly change the management of humanitarian and development issues in the country. In turn it could lead to both challenges and opportunities in the management of refugee affairs, and in self-reliance prospects for refugees, prior to the realisation of permanent and sustainable solutions. This research identifies potential entry points in programming, advocacy and knowledge building which can mutually benefit county governments, refugees and host communities alike.



**Gemma Davies**  
ReDSS Coordinator

<sup>1</sup> The Regional Durable Solutions Secretariat is an information and coordination hub that acts as a catalyst and agent provocateur to stimulate forward thinking and policy development on durable solutions for displacement affected communities. ReDSS is managed through an advisory group comprising of DRC, IRC, NRC, World Vision, ACTED, INTERSOS, Mercy Corp, RCK, CARE International and OXFAM. IRC and DRC form the steering committee. ReDSS is a member of the Solutions Alliance. The Secretariat is hosted by the Danish Refugee Council (DRC) Regional Office for the Horn of Africa and Yemen, in Nairobi. It officially commenced its work in March 2014.

# INTRODUCTION

## BACKGROUND OF THE STUDY

The search for durable solutions for refugees and displaced persons in the Horn of Africa is high on the agenda. It is a regional and cross-border issue, with a strong political dimension that goes beyond the existing humanitarian agenda. The current security climate in Kenya and Somalia require interim, transitional solutions that can pave the way for durable solutions to be reached. How do we treat this transitional environment such that it best benefits refugee and host communities?

The political climate is fast evolving in Kenya, and may constitute a resource for transitional solutions. The 2010 Constitution of Kenya enacted a process of devolution with wide ranging consequences on the nature of local governance and service delivery. For donors, stakeholders, and organisations working in Kenya on refugee affairs, devolution is a force to be reconciled with. It is a ‘work in progress’ and in its infancy stage with mandates and by-laws being written in 2015. This study assesses whether county governments can provide an opportunity to reach transitional solutions for refugees, recognising that any solution to displacement will require a community-based approach. Host communities and local populations require attention in planning for transitional and durable solutions, and hence county governments may also have a role to

play in refugee affairs. This is the focus of the present study.

This report is part of a cycle of studies commissioned by the Danish Refugee Council (DRC), in partnership with the Regional Durable Solutions Secretariat (ReDSS), gathering the main actors working on migration and displacement in the region to find durable solutions to displacement. In a heated political and security context framing refugee affairs in East Africa, there is an acute need for evidence-based strategies to find durable solutions. This is especially true in light of the “protracted situations of displacement”, by which refugees get “trapped in limbo (...) having been in exile for more than five years with no immediate prospect of finding a durable solution for themselves.”<sup>2</sup>

The key component under study is the devolution process that began in Kenya with the promulgation of a new constitution in 2010. Devolution is the transfer or delegation of power from the central to the sub-national level: from Nairobi to county administrations. Kenya’s devolved system involves the creation of two or more levels of government that are to coordinate activities, but that are not subordinate to each other. Each is created and protected by the Constitution. The system combines self-governance and shared governance at the local

<sup>2</sup> Crisp, J (2002), ‘No solution in sight: the problem of protracted refugee situations in Africa’ in CCIS Working Paper n°68.

and national levels<sup>3</sup>. The 2010 Constitution of Kenya brought major evolutions in the governance of the country, with an inscription of the separation of powers and of the principle of devolution in the Constitution. The devolution of power to county authorities, rapidly implemented since 2010, will impact the way development and humanitarian issues are handled in the country. The impact of devolution on refugee management is yet to be analysed. Moreover the consequences of the devolved system in Kenya are difficult to grasp for humanitarian and development actors. Will devolution open or reduce the space for refugees to access durable solutions? What role is there for county authorities to play when it comes to refugee management?

In this context, DRC commissioned Samuel Hall to analyse **the potential opportunities and risks opened by the devolution process in Kenya for longer-term solutions for refugees that can contribute to building their self-reliance and their local economic integration**. Previous studies have argued that refugees in Dadaab and Kakuma camps contribute substantially to the economy of the northern region, laying the ground for positive synergies and, potentially, forms of de facto local integration<sup>4</sup>. In the context of devolution, it is necessary to assess the perceptions and attitudes of county authorities towards refugee populations present on their soil. Their potential to contribute to refugee management is the highlight of this report.

This report is part of a two-part deliverable:

- A. Devolution in Kenya: Opportunity or Risk to Durable Solutions for Refugees?
- B. Devolution Manual: Devolution Architecture and Refugee Affairs Management in Kenya

### **PART A. ANALYSING THE IMPACT OF DEVOLUTION ON REFUGEE AFFAIRS**

This first section analyses the potential opportunities opened by the devolution process in Kenya for longer-term solutions for refugees that can contribute to building their self-reliance and their local economic integration.

### **PART B. A MANUAL ON DEVOLUTION ARCHITECTURE AND IMPLICATIONS**

The key aspects to follow – and contours to be written – are on the legal framework, institutional structures, intergovernmental relations and public financial management of the devolved process.

## **RESEARCH OBJECTIVES**

This report asks one central question: Can county governments be counted on as players in refugee affairs to support an improved quality of asylum and transitional solutions for refugees?

This research has 3 objectives:

<sup>3</sup> A Report on the Implementation of Devolved Government in Kenya Volume 1 (2011) Republic of Kenya

<sup>4</sup> Kamau, C and Fox, J (2013), The Dadaab Dilemma. A Study on Livelihoods Activities and Opportunities for Dadaab Refugees in Intermediaries in Development ; Durable Solutions (2013), Perspectives of Somali refugees living in kenyan and Ethiopian camps and selected communities of return.

1. **From a knowledge-building perspective**, it explores the status of devolution, its implementation and impact on refugee affairs
2. **From an advocacy standpoint**, the research provides an evidence-based strategy to engage with both national and county authorities on refugee affairs
3. **From a programmatic perspective**, the research identifies 'entry points' for actors to integrate the devolution process within their programme framework in northern counties.

## KEY CONCEPTS & DEFINITIONS

**REFUGEES:** The 1951 Refugee Convention defines a refugee as someone who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.” The 1967 Protocol removed geographical and temporal restrictions from the Convention.

**DURABLE SOLUTIONS:** The means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to lead normal lives. While traditionally of three types – voluntary repatriation, resettlement and local integration – an integrated approach includes post-conflict reconstruction for a conducive socio-economic environment<sup>5</sup>.

**TRANSITIONAL SOLUTIONS:** a framework for transitioning displacement situations into durable solutions, requiring a partnership between humanitarian and development actors, refugees and host communities, and the participation of local actors through area-based interventions. Transitional solutions seek to enhance the self-reliance of protracted refugees and host communities alike.

**LOCAL INTEGRATION:** The process whereby refugees settle permanently in the country of asylum. Local integration combines three elements - legal, economic and socio-cultural. 'Firstly, it is a legal process, whereby refugees attain a wider range of rights in the host state. Secondly, it is an economic process of establishing sustainable livelihoods and a standard of living comparable to the host community. Thirdly, it is a social and cultural process of adaptation and acceptance that enables refugees to contribute to the social life of the host country and live without fear of discrimination.'<sup>6</sup> A narrow conception of local integration entails that refugees are only integrated when they become naturalised citizens of their asylum country. However, a broader definition suggests that local integration may happen without naturalisation: through socio-economic or de-facto local integration.

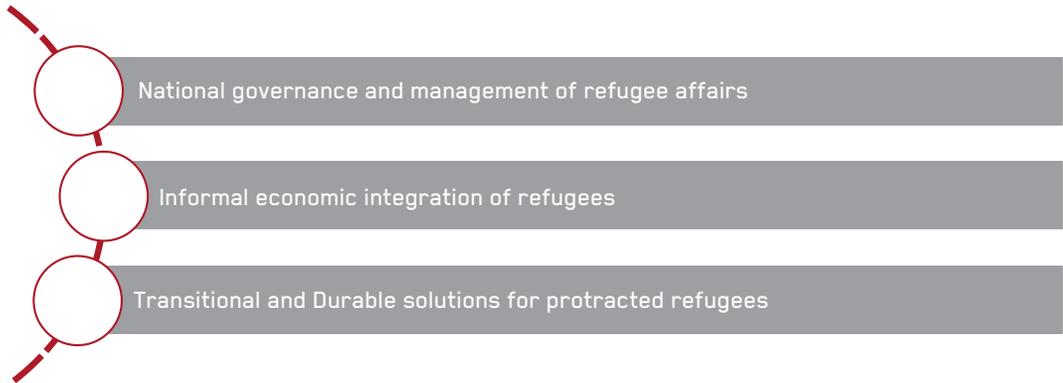
**DEVOLUTION:** The transfer or delegation of power especially by central government to local or regional administration. Kenya's devolved system involves the creation of two or more levels of government that are co-ordinated, but not subordinate to each other. Each is protected by the Constitution, with the functions and resources set out and defined by the Constitution. The system combines self-governance and shared governance at the local and national levels, respectively<sup>7</sup>.

5 UNHCR Framework for Durable Solution for refugees and persons of concern (2003), p.11.

6 UNHCR, Local Integration: an under-reported solution to protracted refugee situations (2008), p.1.

7 A Report on the Implementation of Devolved Government in Kenya Volume 1 (2011) Republic of Kenya

The present research is at the crossroad of major themes related to refugee issues in Kenya:

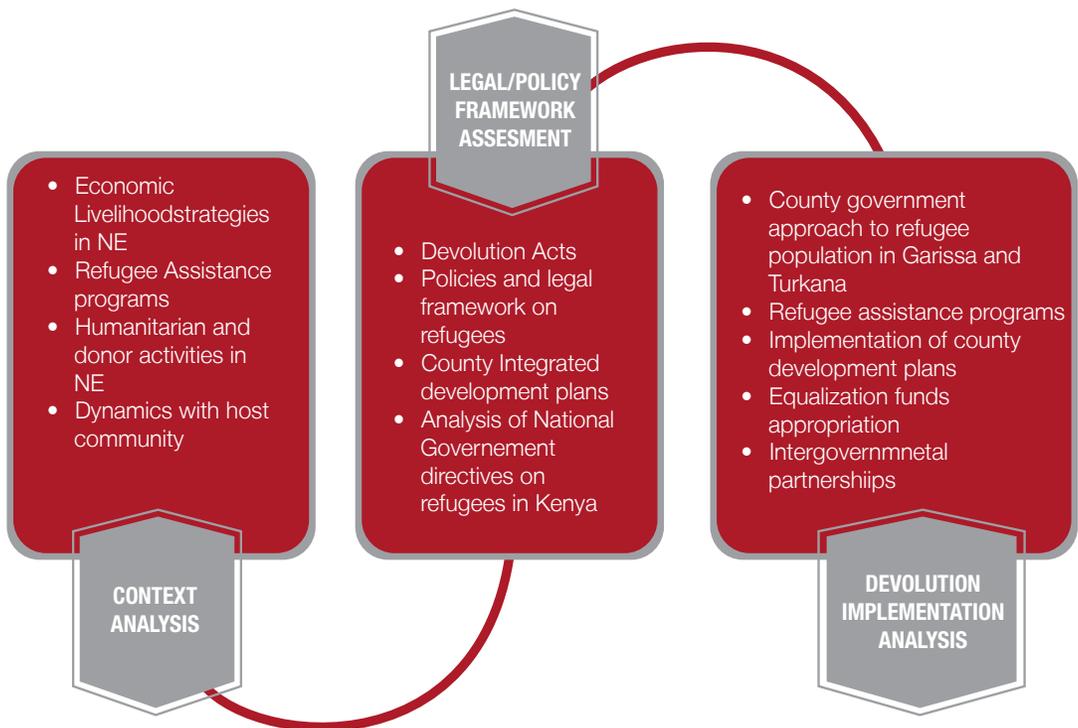


**METHODOLOGY**

**Overall Approach**

The research was designed as an exploratory research using qualitative methods. The primary research consisted of in-depth interviews with key informants based in Nairobi, Garissa and Turkana counties, and, to a lesser extent, in Wajir County. The in-depth interviews were supplemented by other methods including context analysis and focus group discussions.

*Figure 1. Methodology Outline*



**Context Analysis** - A thorough context analysis was conducted to grasp the dynamics of both host community and refugee populations, including a review of the existing economic dynamics of Wajir and Garissa and socio-economic interactions between host and refugee communities. An assessment of existing interventions was also conducted, keeping in mind the question of linkages between humanitarian and development actors on the ground.

**Legal/Policy Framework** - An analysis of legal frameworks and policy pertaining to refugee management and to durable solutions in northern Kenya's refugee hosting counties was conducted to assess whether county governments can play a key role in refugee management as a way of promoting longer-term solutions for refugees.

**Devolution Implementation Analysis** - A broad assessment of county governments' response to the presence of refugees was conducted in the field. An understanding of how fiscal funds, particularly the equalisation fund for marginalised counties is appropriated and whether the refugee population is taken into account was included in the analysis.

### **Geographic Scope**

The research was conducted at two levels:

- **National Level:** Interviews were conducted in Nairobi to target national and international stakeholders involved in refugee affairs;
- **Field Level:** Garissa, Wajir and Turkana counties were chosen for a comprehensive assessment of the situation and key stakeholders surrounding Dadaab and Kakuma camps. The fieldwork focused on the various camps composing Dadaab and Kakuma, as well as government officials in Lodwar and county authorities in Wajir County.

### **Research Tools**

The qualitative tools in this study consisted of:

#### **Literature /Desk Review**

The research team conducted a comprehensive desk and literature review based on:

1. Desk review of DRC reports and publications
2. Review of other relevant reports on refugee population in northeastern / northwestern
3. Literature review of articles and journals on decentralization in refugee management
4. Literature review of devolution in Kenya
5. Literature review on refugees livelihoods strategies and self-reliance mechanisms
6. Legal and policy documents

A review of documents such as the county integrated development plans, the devolution acts, policy documents and other relevant documents, was undertaken to analyse the stance on refugee populations, durable solutions and the integration of refugees.

#### **In-depth Interviews with Key Stakeholders**

A series of in-depth interviews with key stakeholders involved in governance and refugee management issues fed into the analysis presented in this report:

- National Government actors (Ministry of Devolution, Transition Authority, Department for Refugee Affairs)
- County authorities (Governors and deputy governors, technical departments)
- Non-governmental actors including local NGOs and international actors in the field (IOM, UNHCR, Care, UN Habitat, DRC, LWF, etc.)

In-depth interviews were conducted in Nairobi and at the local level. When stakeholders were not available, interviews were conducted over

the phone. The interviews were semi-structured and based on open-ended questions. The research team interviewed over 50 key stakeholders.

### **Focus group discussions**

The research team conducted two Focus Group Discussions (FGDs) in the camps of Ifo 1 and Dagahaley with a group of young men (26 to 34 years old). On the other hand, no FGDs were conducted in Kakuma given time and logistical constraints. FGDs in Dadaab proved to be challenging; while our researchers went to the camps in Dadaab and their surroundings to conduct additional focus group discussions that had been scheduled, the research team was left waiting for respondents. Focus Groups with women had therefore to be cancelled. The focus groups were instrumental to get in-depth information on the livelihood strategies of refugees, on the factors that affect or contribute to their local integration and on their plans for the future. FGDs were conducted with 8-9 respondents in each location based on semi-structured discussion guidelines.

# ANALYSIS OF THE POTENTIAL OF DEVOLUTION FOR REFUGEE AFFAIRS

With refugees exceeding the host population in Dadaab, and representing the main market and demand for animal and agricultural products in Garissa County, refugees showcase a key economic potential. Dadaab is known as a booming business hub in Kenya located close to the Somali-Kenya border where cross-border trade is important for food security on both sides. Although economic activity in Kakuma is not comparable to Dadaab given the smaller-scale trade activities with South Sudan, refugees in Turkana still provide major market opportunities for host community businesses especially by providing a ready made market for milk and other livestock products as well as livelihood opportunities resulting from the camp set up. As such, the presence of refugees in both counties is creating a high demand

for resources and services. With the devolved government, and in the specific context of marginalised, semi-arid and climate change-prone environments, strengthening service delivery and improving wellbeing standards is a priority in northern Kenya's counties.

## POSITION OF NATIONAL AUTHORITIES

The IOM Migration profile for Kenya, launched in March 2015, calls for mainstreaming of migration through devolution for effective local interventions. This is a timely and relevant discussion in Kenya – operationally, what will it entail?

When discussing strengthening ties between refugee communities and county governments,

	TOTAL	GARISSA			TURKANA
		ALINJUGUR	DADAAAB	KAKUMA	NAIROBI
Refugees/Asylum Seekers	585,363	128,772	227,242	178,079	51,2870
Registration	61,864	5,213	6,722	45,556	4,373
<b>RSD</b>					
Applied	65,955	467	1,881	57,587	6,020
Recognized	5,531	80	174	2,718	2,559
Rejected	1,187	15	102	98	972
Pending	34,011	769	2,696	24,120	6,426
Resettlement Submissions	6,805				
Resettlement Departures	2,098				

Source: UNHCR, December 2014 Statistical Package

national stakeholders do not express a common voice, which highlights an open possibility to influence mindsets on refugee issues in Kenya. Three actors are key in these discussions at a national level – the Ministry of Devolution and Planning, the Ministry of Interior’s Department of Refugee Affairs (DRA), and the United Nations Refugee Agency (UNHCR).

- *The Ministry of Devolution and Planning* encourages county involvement in refugee affairs: « We advocate for county to have a stronger role – county should be involved as partners with the United Nations in refugee management. First because of its geography, second because of the question of land, third as counties must manage resentment and tensions locally, and fourth, as security issues have negative impacts on the ability of the county to deliver services »<sup>8</sup>.
- *The Department of Refugee Affairs* in Nairobi, on the other hand, expressed concerns, seeking to avoid competition over who should act on refugee management: « there is some push by county governments to get more involved in refugee management – in terms of social provision and social benefits. (...) But the county may not have the capacity in terms of protection, livelihoods and security, or education, health and hygiene programs. (...) We cannot have refugee management be devolved in Kenya. Host community issues are related to essential services and environment. These are areas that the county can be involved in, but not in other areas. If there are security matters, it is good to involve counties, but not to devolve refugee matters.»<sup>9</sup>
- *UNHCR Kenya’s* management expressed a middle ground: «It is early to talk about devolution in refugee management – it has been two years only. The first signs are positive: we have locally elected interlocutors who see pros and cons of refugees. With devolution, we have local partners at the

local level to provide better integration, better equip refugees to go back to their country and build their skills.»<sup>10</sup>

These statements translate key issues for consideration for this study:

**First, discussions over the link between devolution and refugee management are happening: it is a timely and relevant discussion**

even if it is still carried out with a degree of restraint: local counties are delivering services at a local level – with limitations. Security remains the key concern of national stakeholders. In this regard, Dadaab and Kakuma present two different case studies – security is a decisive factor in the former, but not in the latter. This opens up an opportunity for greater county involvement in Kakuma’s refugee affairs.

**Second, the question of local county capacity is debated:**

interlocutors interviewed for this study agreed on the need for enhancing local governance and capacity building efforts to provide counties with the right tools and resources to tackle refugee management, as they are seen as lacking both.

**Third, sectoral entry points are discussed**

whether on health, education, livelihood, or the environment as potential areas for county actions. Although such interventions are restricted, in the discourse, to host communities, in reality, grey areas exist for county governments to effectively cover both refugee and host communities.

These are the three key areas on which discussions should be framed to advance the opportunities, and minimise the risks, presented by devolution for refugee management.

8 Interview, Ministry of Devolution and Planning, 24 March 2015.

9 Interview, Department of Refugee Affairs, Nairobi, 24 March 2015.

10 Interview, UNHCR Nairobi, 20 March 2015.

## Refugees as Assets

Whether as teachers, or nurses, in Kakuma, or as entrepreneurs in urban areas such as Eastleigh, refugees are recognised as playing an economic and social role by members of both the central and devolved government. Most stakeholders are open to the idea of capitalizing on refugees as a resource to improve local economies.

- A DRA representative interviewed for this study, in Nairobi, explained: « This is where we are loosing out. The US is a country built by immigrants. We have great minds and great entrepreneurs and schools. Eastleigh's economy is larger than 10 counties combined in terms of license collections and taxation<sup>11</sup>».
- The Ministry of Devolution and Planning's representative focused, at the time of the interview, on Dadaab's unrecognised potential: « We need to assimilate them. If we allow for this to happen, Dadaab will be the biggest town in Kenya! We think that it is temporary but these people are staying. Make Dadaab a normal town and you will have a big vibrant town. (...) Get refugees to help in infrastructure and in developing towns.<sup>12</sup>»
- Members of the Ministry of Interior and co-ordination of National Development expressed a level of resistance at the potential for social or economic integration advocating for the closure of the camps, seen as major security threat for Kenya.<sup>13</sup>

For most actors interviewed at the county level, the presence of refugees was viewed as an opportunity, bringing development to a marginalised region. This remains at odds with central government voices. At the March 2015 launch of the IOM Migration Profile for Kenya, Major General Kihalangwa, Director

of Immigration Services, expressed that “the presence of refugees has had both positive and negative impacts – yet mostly negative, on security and environmental degradation”<sup>14</sup>. Such views, predominantly at the national level, mainly focus on security and environmental issues. On the economic front, refugees are increasingly seen as an asset to be tapped into by stakeholders in local and the national governments.

## POSITION OF COUNTY AUTHORITIES ON REFUGEE AFFAIRS

From an economic perspective, refugees are seen by most stakeholders interviewed for this study, which include representatives at the county level and members from the Transition Authority and Ministry of Devolution and Planning, as:

- Opening the counties to other markets<sup>15</sup>
- Diversifying the economy
- Transitioning host communities from pastoralism to alternative livelihoods
- Transferring skills to the host economy (specifically in Kakuma, Turkana)

County authorities are opening up to discussions on the development potential of refugees' presence on their territory. In this regard, Dadaab and Kakuma – Kenya's refugee camps – provide two case studies for the potential of devolution for refugee affairs. As stated by a DRA official, “Turkana is learning to tap into the importance of the refugee camp”<sup>16</sup>, specifying its clear economic contribution to the County, while highlighting as well negative impacts on the environment: a balancing act.

The presence of United Nations agencies and Non-Governmental Organizations (NGOs) has benefited not only refugees but also the

11 Interview, DRA Nairobi, 24 March 2015

12 Interview, Ministry of Devolution and Planning, 24 March 2015

13 Interview, County commissioner, Ministry of Interior and co-ordination of national development, 12 March 2015

14 Opening remarks by Maj. Gen. Dr. Kihalangwa, Launch of the Migration Profile for Kenya, 31 March 2015, Nairobi

15 Interview, Refugee Consortium of Kenya (RCK), 19 March 2015

16 DRA official commenting at the Government Validation Workshop, 21 May 2015

host community through an increase in community-based programs. Counties recognise this and make sure that host communities also benefit. However, county representatives underlined that the presence of refugees poses environmental consequences to the host community. Additionally, one common statement and question is “are refugees preferred? Why are they assisted in so many ways?”<sup>17</sup>. The fact that refugees are employed by NGOs or benefit from aid has notably created tensions. More needs to be done to inform their vision and discourse, and to adopt community-based programming rather than ‘statutory’ programming on behalf of refugees.

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## **CASE STUDY:** GARISSA COUNTY AND REFUGEE MANAGEMENT LEVERAGING THE UNOFFICIAL INTEGRATION

The Garissa County Government perceives the following as challenges posed by hosting a refugee population. These challenges all highlight the perceived negative impact of refugee presence.

- Security
- Access to and quality of education
- Environmental Degradation
- Dilapidated road infrastructure
- Access to Socio-Economic opportunities

Despite these challenges and the novelty of county government structures, efforts have been made to leverage the informal integration between refugees and host community. One way the county has engaged with refugee matters is by holding regular stakeholder fora to generate ideas with organisations working with refugees for the betterment of the Garissa people.

A stakeholder forum was conducted by the County Government of Garissa in conjunction with the Office of the County Executive Secretary for Education and Public Service, Information Management and Intergovernmental and Institutional Reform, highlighting the challenges of hosting refugees, to which they provided achievements and potential for a way forward. The county has established peace committees with the aim of ensuring security for both host population and refugees. The peace committees are organized per camp and are serving the community. Another way that the county has been engaging is by working directly with organizations that are based in Dadaab. Some county officials have pro-actively introduced themselves to organizations working in refugee camps.

On the other hand, respondents report inconsistent information on the engagement of county governments in refugee matters. Field data reveals that county engagement is piecemeal and only occurs when the county can benefit. For example, county council authorities collect taxes albeit in an ad hoc manner from business in and around Dadaab and the camps. Refugees report having more interactions with national government officials from the DRA than county officials.

An analysis of Garissa county’s integrated development plan shows that the refugee population is not taken into consideration. The county has an elaborate 11-step development plan that prioritizes

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17 Government Validation Workshop, 21 May 2015

agricultural development, tourism and employment creation for its people. County authorities state that their mandate is to serve the people of Garissa and not refugees. However, the stakeholder fora suggest that it is impossible to ignore the presence of the refugee population and that county engagement is vital. The research team thus strongly advocates for the inclusion of refugees in the county's integrated development plan and for the county to have a more active role on issues pertaining to refugee management."

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## CASE STUDY: TURKANA COUNTY AND REFUGEE MANAGEMENT VOICES FOR INTEGRATION AND TRANSFER OF SKILLS

Turkana's economy is not comparable to that of Dadaab, but it is quickly expanding with positive contributions by refugees that are recognised by authorities. The governor and member of parliament are from opposing parties but both look forward to developments on refugees' economic integration. Sources interviewed for this study report that they understand that refugees have skills that can benefit them – including diaspora capital, access to networks, skills and know-how that the host community does not have.<sup>18</sup>

In Turkana, refugees are seen as being more skilled than the host community, and more advantaged from an assistance perspective: they have a role to play in helping the host community to diversify its local economy and means of livelihood. The pastoralist lifestyle of the host community is conceived as a challenge for county authorities. Refugees and pastoralists are often compared to in the discourse of county authorities, with refugees being considered as endowed with greater skills and in a position to teach pastoralists these skills. The end goal for county authorities interviewed is to get the host community to improve and change lifestyles that would be better adapted to fulfilling the county's development potential. A recent validation workshop with government officials (May 2015) highlighted that some refugees have more livestock than the local population, which in turn may lead to tensions and local conflicts.

How to transform pastoralism in Turkana?

Refugees are seen as a key to improving the lifestyle of pastoralists – and to help the Turkana County transition in its stalled development process. *"Pastoralist lifestyle is a challenge: trying to improve the lifestyle of pastoralists is very difficult as they keep migrating. Trying to improve services for them is difficult. Aligned to that lifestyle is a tradition of cattle rustling – this tribe steals from that tribe. In the past, they used to steal cattle only – now they use more violent arms. This insecurity hampers economic development."<sup>19</sup>*

"Refugees are contributing to the economy in Kakuma. There is a big impact on the economy. Kakuma town is increasing – it is expanding – there are job opportunities. There is also the expansion of schools and hospitals as a result of NGOS. They also cater for the host community sometimes. Our people are now talking English! Many even know Arabic! There is so much exposure. Previously we had serious drought affecting host community. Now host communities can do other jobs working with refugee."

**- University of Notre Dame**

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<sup>18</sup> Interview, University of Notre Dame, 27 March 2015

<sup>19</sup> Interview, Ministry of Devolution and Planning, 24 March 2015

At the same time, resentment towards refugees persists. There is a strong feeling that refugees are benefiting more than the host community – while contributing to environmental degradation: a paradigm shift is needed, as suggested by all government officials interviewed. They suggest that aid agencies should put equal resources in the host community to create a good environment for refugee-host community relations, and to optimise the economic integration of refugees.

Identified areas that need long-term interventions – in camps and for host communities all include an important role for the county government. These include:<sup>20</sup>

- Education – construction of schools and staffing
- Peace building and conflict resolution
- GBV prevention and response
- Capacity building for duty bearers
- Water trucking

### **ENGAGING WITH COUNTIES IN REFUGEE AFFAIRS: ENTRY POINTS**

Counties can engage on refugee affairs through resource allocation and funding mechanisms. With counties having control over resources, there are ways that they can impact refugee affairs positively. A number of suggestions by NGOs call for counties to use a fraction of their budget for programmatic interventions targeting refugees. This is already happening – albeit indirectly – in Turkana county, where shares of the county budget and interventions benefit both host and refugee communities: the so-called “grey areas” of county interventions discussed in the Turkana case study. Other suggestions include developing infrastructure that can be utilised on a sharing basis between host community and refugees. Through the county executive, counties have been able to engage in programs that have a positive impact on refugees. Education and health

are notably the main entry points that the Garissa county government engage in service provision for refugees and host community. The same pillars of intervention are highlighted in Turkana – yet Turkana presents additional opportunities for local governance, capacity building and development efforts: to enhance the development benefit of refugee presence for a longer-term impact that would benefit the host population.

### **1. Community Based Development**

The Constituency Development Committees (CDCs) were an entry point for dialogue with the community, until the creation of the Sub-County Administrator’s Office launched in October 2014. At the time of the field visit to Dadaab, the CDCs had just been disbanded. Their role was to act as a liaison between the host community and the humanitarian organizations. This function has now been taken up by the Sub-County Administrator’s Office. The establishment of this office is an opportunity to engage with community needs. Interviews with organisations based in the field find that in order to engage the county on refugee matters, the host community must be a beneficiary. Yet, in the absence of CDCs and in a context where the terms of references of the Sub-County Administrator’s Office are not clear, engagement with host communities – and hence the community-based approach – is in a state of limbo. For organisations like IRC that have worked through the community – directly with health management committees – this is not a concern. “It allows room for negotiation with the county government” (IRC).

“Entry point should not be the County government but through the community. For example IRC works directly with communities and health management committees that gives the organization legitimacy. This allows room for negotiation with the county government”

**- IRC**

<sup>20</sup> DRC (2014), Rapid assessment of child protection concerns in Kakuma refugee camp, February 2014

In a context of changing roles, responsibilities and legitimacy 'void' in voicing host communities' needs, a more nuanced understanding of community-level politics is required. It is necessary to map power holders within the county government. Organisations such as IRC and LWF have found that developing programs that have community input and approval are much easier to implement. Community driven programs and interventions can include refugees as beneficiaries in the longer term. DRC has adopted a community-based development approach in working with refugee and refugee hosting communities. The methodology, which borrows from the participatory rural appraisal (PRA), involves the community governance structures and refugee grants management committees. DRC builds their capacity to manage projects, prioritize activities and allocate resources. The approach shifts the decision making power to the community. Through this initiative, livelihood activities such as flour mills, retail stores, market stall and community ambulance services have been initiated in the camps to increase self-reliance. In hosting communities, health facilities have been constructed at Fafi health centre and classrooms at Morothile School in Dadaab. The approach, if adopted on a wider scale, could be an effective entry point for refugee integration in the county.

## **2. Devolution for Conflict Resolution: A means to ease resentment and tensions locally**

The nature of refugee-host community relations is complex. In Turkana, some describe it as overall peaceful but characterised by mistrust and resentment towards refugees who are seen to benefit from a greater level of assistance than the host community. Ill feelings persist in both Kakuma and Dadaab on the negative impact of refugees on the environment. Lastly, others point to security and physical fears, referring to an increase in terror attacks and use of guns in

Kakuma and Dadaab. In this context, conflict resolution is a priority to set up a strong basis for any economic integration.

“The national government will not manage to solve the resentment between elders, nor among youth. To stop eruptions, the county must be active in convincing the locals that it is good to have refugees. It is good to manage this resentment.”

**- Ministry of Devolution**

Devolution presents a means for conflict resolution: giving counties a stronger role in managing expectations. An effective entry point is the negotiation on land. The debate over land issues in Kakuma provides a useful lens to understand refugee-host community relations. In Turkana, land is held in trust for the community by the County Council of Turkana. UNHCR, DRA and county officials have engaged in discussions with the host community over 2.5 years to expand land for refugees. The host community saw it as an opportunity to ask for more resources, similar to those of refugees: they would concede to giving more land to the refugees, if they get something adequate in return. The mere fact that the community has conceded in 2015 to make land available to refugees shows that they recognise a potential gain for them.

Devolution provides an opportunity to resolve tensions between host communities and refugees locally: *'Locals and refugee relations are not characterised by a natural equilibrium: we need to create a situation whereby locals appreciate refugees' presence. The government must make it easier for people to accept refugees through sensitisation programs. Devolution is an opportunity because it is coming from the right people at the county level'*<sup>21</sup>.

<sup>21</sup> Interview, Ministry of Devolution and Planning, 24 March 2015

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# SECTORAL APPROACH TO REFUGEE MANAGEMENT: HEALTH AND EDUCATION AS ENTRY POINTS

Direct engagement by county governments with the refugee population is limited due to the presence of DRA, UNHCR and other non-governmental actors. Other impeding factors are the lack of capacity to deal with a function that has been exclusively assigned to the national government, lack of requisite skills in County offices, amongst others. Yet, the study finds that refugee-hosting counties of Garissa and Turkana already engage in service provision to refugees and host community, mainly in education and health.

“One of the biggest challenges of encampment is disease outbreak. This increases the vulnerability of refugees and poses problems for host community as well”

- *Transition Authority*

**A. Health, Water and Sanitation:** For the fiscal year 2013/2014 the Garissa County Government allocated KSH 422,260,000 to this sector for the host community, making it the county’s top most priority. Health is a common concern for refugee camps and in the county as whole.

Reports from the field find that counties are willing to work with organisations whose programing are aligned with their development needs and priorities,- in particular with NGOs that work in their areas of priority. These NGOs present an opportunity for community-based interventions benefiting the host community, as well as the refugee population.

In Turkana county, NGOs have engaged with the county health department to provide health services directly with health committees at the community level. This has been a way to provide critical services for both refugees and hosts. The Turkana county cooperates with IRC to

provide health services to refugees in camps through joint campaigns<sup>22</sup>.

“We work on WASH, Education and GBV issues and we also do food distribution; the county government approached us to start interacting with them, sharing reports and planning jointly. We can see it has worked very well especially with the ministry of water and education at county level”

- *CARE*

**B. Education:** Education is a critical concern for both refugees and host community who can access the Kenyan curriculum inside the camps. The county cabinet secretary for education in Garissa has been involved in making sure that educational services in the camps are up to standard. It has been argued that services within the camps are of higher standard than those outside the camp, hence the attraction for host community families to send their children. The county’s budget for the fiscal year 2013/2014 allocates KSH 50,000,000 to education, youth, polytechnic and sports. The allocation does not reflect the needs on the ground. The assumption being that organizations working in the camps provide this service, precluding the need for further funds.

Another interesting development is the growth of tertiary education in Dadaab where Kenyatta university is serving both the locals and the refugees. This is an opportunity brought purely by the existence of the camp with important effect to the host community.

In Turkana, as in the rest of the country, early childhood education is devolved and the country

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22 Interview, Ministry of Health Services and Sanitation. 12 March 2015

is involved in providing material for refugee schools. At the same time, refugee teachers are seen as good teachers who can be tapped into for the rest of the county. Shared social services – health, education, WASH – are potential entry points.

“I know DRC supports their education but the problem remains that funding comes in 1 year blocks. So it can be quite unstable when they cannot get their school fees paid for more than 1 year. (...) The space for schools there is very small so there are few schools plus also you have to consider that we have few teachers available.”

***– CARE Dadaab staff***

# DEVOLUTION AND DURABLE SOLUTIONS IN DADAAB? A CASE STUDY

Dadaab presents lessons learned for the self-reliance of protracted refugees. The existing refugee economy in Dadaab is strong, the economic integration of refugees remains informal, and more can be done to ensure that the host community benefits from Dadaab as a contributor to economic development. At the same time, the county has had to grapple with the heightened insecurity in the region. This section reviews pathways to integrate refugees in county plans.

Dadaab hosts approximately 334,565 Somali refugees as of February 2015. It is one of the most protracted, oldest refugee camp situations in the world, having come into existence in 1991. It is, its own city with its own micro-economy; considered the third-largest city in Kenya, after Mombasa. It is referred to as « the hidden city » as the economic contribution of Dadaab is not formally recognised and hence not formally incorporated into the economy of the country – or of the counties.

Looking at Dadaab presents a great opportunity for host counties to unlock the potential for devolution and the devolved governments to integrate refugees both socially and economically. It presents an opportunity to see the refugee population as a resource – exploring possibilities for a two-way interaction.

## EXISTING REFUGEE ECONOMY IN DADAAB

Despite the difficult economic conditions in the region, both host community and refugee populations have managed to develop livelihood strategies. An example of refugees' resilience is found in Dadaab town, where businesses are running and are owned by refugees within the camps<sup>23</sup>. Most refugees are only engaged in casual labour as a source of employment. A study conducted by the IDC found that out of a sample of twenty-five businesses in Dadaab town, only two employed refugees<sup>24</sup>. The study also found that, there was resentment

<sup>23</sup> Kamau, C and Fox, J (2013) The Dadaab Dilemma. A Study on Livelihoods Activities and Opportunities for Dadaab Refugees in Intermediaries in Development

<sup>24</sup> Ibid

TABLE 2. CAMPS IN DADAAB AND THEIR POPULATION	
CAMP	POPULATION
Hagadera	103,858
Dagahaley	83,853
Ifo 1	76,438
Ifo 2	50,802
Kambios	20,614

Source: UNHCR, February 2015

towards refugees taking up jobs that could be filled up by the host community. On the other hand, trade seems to be a lucrative business for refugees within camps. Cross-border trade, enables goods such as milk, pasta and khat to be brought in tax-free from Somalia, then sold within the camps and around Dadaab town. An interesting economic strategy for refugees in camps in Kenya is the money transfer system called dahabshil, which is based on an informal information based system. Relatives and friends abroad use this facility to support those that are left behind in camps. Recently, the Kenya government has frozen the accounts of Somali remittance firms over suspicion of financing or supporting terror activities<sup>25</sup>. Dahabshil is one of the largest African Money Transfer Operator in Africa. There is fear that the halt of remittances will threaten the livelihoods of refugees who rely on them for their survival. Estimates suggest that between \$70 million to \$100 million a month is transferred between Somalis (from the USA and Europe to Kenya and Somalia)<sup>26</sup>.

The effect of Kenya's decision to tighten its regulation on financial flow will likely to have repercussions on the remittance landscape. However, is it also likely that people will find alternatives – using other companies in the market or mobile money system.<sup>27</sup> As such, the full impact Kenya's recent policies will have on Somali refugees in camps is yet to be seen.

**Some refugees work as incentive workers within the camps**, for UNHCR and partner organizations. By Kenyan law, as they cannot be employed formally, they are provided a small incentive for their tasks, instead of a salary. Kenyan nationals with the same qualifications as the refugees are paid a competitive market-

rate salary that at most times matches their qualifications while the refugees, are paid a maximum of 10,000 Kenya Shillings as stated by Kenyan laws. Interviewed refugees argued that this pay was insufficient to sustain their families, a sentiment shared by Kakuma's refugees camp and widely written about in their independent news magazine, KANERE<sup>28</sup>.

The incentive payments are not a salary but an incentive alongside shelter, food, water, education and health assistance. Livelihoods for refugees do not qualify as employment but as an income generating activity (IGA). Other IGAs within the camps include hand looming, tailoring, confectionary production, hair dressing, poultry rearing, hand craft, small businesses, green house farming and multi-story gardening. Over 2,000 women organized into self-help groups conduct economic activities that include vending vegetable and cereal crops, and animal trading. Combined with trade, refugees inside the Dadaab camps also get income through incentive pay they receive from working with UNHCR or its partner organizations working within the camp. All 16 respondents within focus group discussions held in the Ifo 1 and Dagahaley camps in Dadaab were educated up to tertiary level and had also participated in skills training. The various professions represented were teaching, mechanical engineering, social workers, community mobilization and community development.

**The potential of Dadaab's refugee youth:** an entry point for county-level integration. From FGDs, illustrated on the next page, youth showcase qualifications unmatched by their elders. Refugee youth interviewed were the ones who held incentive worker positions with UNHCR and partners agencies and who had gone past high school in their education.

25 <http://m.news24.com/kenya/National/News/Somalis-hit-by-Kenyas-move-to-freeze-money-remittance-20150411>

26 <http://qz.com/379060/kenya-is-stopping-remittances-of-70-million-a-month-reaching-its-somali-community/>

27 This article highlights alternatives available to Somalis in Somalia following the closure of UK Bank accounts belonging to cash-transfer firms. <http://www.theguardian.com/global-development/2013/aug/09/somalia-remittances-options-barclays>

28 The Kakuma News Reflector, or KANERE, is an independent news magazine produced by Ethiopian, Congolese, Ugandan, Rwandan, Somali, Sudanese and Kenyan journalists operating in Kakuma Refugee Camp, Kenya

From the limited information collected in the focus group discussions, respondents pointed out that there were few income generating opportunities for youth, seen as a threat to the security of the region as these idle youth were a target for extremist groups. There are many organisations working in youth empowerment within the camps but without the hope for earning money and changing their situation, many are stuck in a state of Buufis,<sup>29</sup> constantly waiting to be resettled and therefore not fully establishing livelihoods in the camps.

### **‘Refugee economy’ in Dadaab**

A recent report by the Oxford Refugee Studies Centre finds that refugee communities are usually integrated into economic systems of the host community<sup>30</sup>. The concept of “refugee economies” is broadly defined as ‘the resource allocation systems relating to a displaced population’. The concept is intended to be holistic in attempting to look at ways in which refugees’ economic activities are not simply reducible to livelihoods but are part of a wider system involving consumption, production, exchange, and finance. It also reflects an attempt to provide a ‘bottom-up’ perspective by exploring refugees’ economic lives from the perspective of the people themselves rather than from the ‘top down’ perspective. A study undertaken by the Human Innovation project at Oxford University finds that in the case of Uganda, where, despite the remoteness of rural refugee camps, refugees are nested in the local Ugandan economy, attracting goods, capital and people from other places to their internal markets.

“The integration of biometrics for food collection has also really affected business. Anyone who is not present in the camp does not get food; meaning there is no excess food as some

refugees live with their relatives outside the camp. This has created a decline in many businesses“

### **– Respondent IFO 1 Camp**

In the case of refugees in Dadaab, business within the refugee camps is conducted through these transnational networks. Refugees identify the market gaps in the camp and the goods they require, then they ask relatives and friends in Nairobi to buy these goods and send out money via MPESA. The goods then loaded on the bus that goes from Nairobi through Garissa to Dadaab. For those with businesses, money for trade mainly comes from remittances sent by their relatives resettled in the developed world. The MPESA transfer of money contributes to the economy of Kenya as a country, while the need to transport goods between Nairobi and Dadaab also means that the buses, all owned by members of the host community, are in constant business.

Cross-border trade is rife on the Somali-Kenya border given Dadaab’s strategic location situated within easy proximity of the Kismayo port. Commodities such as sugar, powdered milk, pasta and electrical items make their way to Dadaab through informal border trade. According to a study conducted by the Study Advisory Group on livelihoods in Dadaab, the volume of economic activity in Dadaab matches that of major cities; at the time of the study in 2010, the camps had a total of around 5000 shops, a figure according to the study that can only be matched by major cities<sup>31</sup>.

Research findings debunk the myth that refugees are exclusively dependent on humanitarian and donor actors. There are a variety of creative and enterprising ways that refugees use as survival and livelihood strategies with research conducted in Dadaab showing

29 Buufis is a term commonly used in the Kenyan Refugee camp of Dadaab referring to a person’s dream of resettlement. Horst, C. (2006) Buufis amongst Somalis in Dadaab: The transnational and historical logics behind resettlement dreams. *Journal of Refugee Studies*, 19(2), 143-157

30 Refugee Economies: Rethinking Popular Assumptions. University of Oxford

31 Study Advisory group (2010) In search of protection and livelihoods, socio-economic and environmental impacts of Dadaab refugee camps on host communities, p.42

that the refugees are involved in trading in the food rations they receive from the World Food Programme (WFP) as a means of economic survival. Economic benefits from this trade have however recently declined since the inception of the biometric food collection system introduced by WFP<sup>32</sup>.

### **Illegal trade within the camps**

Much of the business and trade within the camp are considered illegal. Food rations are sold and goods smuggled from Somalia and as such, not taxed. It can be argued that this loophole has been created because of the lack of legal avenues to conduct business. Business permits, as reported by refugees who own businesses within the camp, are only obtained ad-hoc, after one has started operating a business. There is no structured way to obtain one before operating a business. Tax collection is reportedly done by unidentified individuals who claim to be the county government.

This lack of legal pathway for conducting business creates a system where businesses and their contribution cannot be accounted for. County governments should take this as an opportunity to create structured systems that will mutually benefit refugee businesses and the county government.

«When starting a business you do not ask for authorization from anywhere. You just need capital and a business idea. When the

government comes to you they tell you what tax to pay...there is nowhere where you go to get the process or to get a permit. There is no authorization or anything. »

**- Dagahaley Camp**

Despite the innovation in entrepreneurship shown by refugees, legal restrictions to work as well as to move freely are obstacles. Refugees can trade within the camps but, by law, are restricted from doing business outside the camps. This policy has proven to be a limiting factor in business expansion and innovation for the refugees, and limit benefits the government can reap from the refugees' presence.

Host community members can however run businesses both inside and outside the camps: they own many of the businesses within the camps thus giving them an economic advantage over refugees.

### **POTENTIAL FOR A TWO-WAY ECONOMIC INTEGRATION**

The presence of refugee camps in Dadaab has brought an area that is one of the most underdeveloped regions in Kenya to the international limelight. In doing so, it has improved the resources of the marginalised region and its surrounding communities. Dadaab is located in the arid and semi-arid land (ASAL), suffering from high levels of poverty and low human development levels. The picture below is of Sabrelo town, a few kilometres from Dadaab town. The informal structures and aridity of land captured is evidence of the low levels of

<sup>32</sup> Until 2013, food within refugee camps in Kakuma and Dadaab was distributed by the line method, where the refugees would line up and receive their food rations. As from 2013, all refugees living in camps have their fingerprints registered in the system and checked before they can collect their food rations. A significant number of cards have stopped being used and WFP has distributed 58,000 fewer rations since the introduction of this system.

development in the region. Similar to it are the towns Hagarbul and Lago all between Dadaab and Garissa. With the presence of UNHCR and its partners, host residents are now able to access services from the infrastructural projects implemented; such as health services, water and sanitation services and education. The large and equipped Ifo 2 hospital was officially opened in February 2014. It is a level 5 hospital with a capacity of 120 patients that caters to both refugees and the host community. Within the camps, solid stone-structure schools have been constructed and are better equipped and furnished (with teachers and learning material) than the schools in the villages around the camps.

The presence of the refugees has exposed the host community to business and trade. As an example of a two-way economic integration, in Dadaab town, a recent pop-up of warehouses and hardware shops owned by local residents and supplying building material to agencies both for their own construction and for the construction of refugee shelters within the camps.

The presence of the refugee camps, of UNHCR and its partners has created job opportunities for many residents of Garissa County. Many national employees working in the region come from the host community. Other than formal employment within the organizations, Garissa residents also benefit from work as casual labourers in construction sites for projects run by organizations, and those in business have a ready market in both the refugees and in UNHCR and its partners.

A major development in 2012 was the opening up of Equity, one of Kenya's largest banks in Dadaab town. Dadaab is fast becoming an

economic hub for Garissa due to the economic opportunities available for many people. Furthermore a study conducted by DANIDA in 2010 on the socio-economic and environmental impacts of Dadaab refugee camps found that the positive economic impacts outweigh the negative ones for the host community<sup>33</sup>.

**Presence of refugees: An economic opportunity for Garissa's growth.** As

evidenced by interviews conducted with key informants and stakeholders in Dadaab, the presence of refugees in Dadaab presents an opportunity for the economic growth of Garissa as a region, as captured in quotes below:

"They have positively helped as they are trading with the county and with other Kenyans in every aspect and in all lines. Dagahaley camp has been established mainly because of refugees and they have added value to us as a nation and as a county."

**- Deputy Governor Garissa County**

"...these refugees are helping the community. So many people from the host community are working with and for refugees. They are inside the camps doing business with them and working for them; running their shops and doing all manner of businesses. The livelihoods of the host population have benefited from the presence of the refugees."

**- DRA Officer in Dadaab**

"They have influenced the host community very positively by bringing in some aspect of competition. Economically this has been very beneficial to the hosts. Dadaab has really grown and developed thanks to the refugees and their influence. The refugees have

<sup>33</sup> Martin Enghoff Bente Hansen Abdi Umar Bjørn Gildestad Matthew Owen Alex Obara, (September 2010). Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities

positively challenged the host community. Somali refugees are very business minded and very entrepreneurial.”

**- Lutheran World Foundation (LWF) Dadaab staff**

“Refugees in this area have really improved the economy of this area and the look of this area, it never used to be like this; having refugees here, development has increased and there are work opportunities from all these organizations for the host community.”

**- CARE Dadaab staff**

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## **INFORMAL TAXATION BY THE GOVERNMENT IN THE CAMPS? INFORMALITY IN THE CAMPS**

Refugees report that taxes are collected from those operating businesses within the camps. On the other hand, county representatives interviewed reported that they did not collect any tax from refugees and argued that this was a hindrance to them in budgeting for the county with the presence of refugees. The contradiction in reports of tax collection speaks to a system that is not streamlined and a crack in county operations. For the county government to evaluate the benefits of economic integration, they will have to streamline their operations. Further research is required on the benefits of a formalised and transparent tax system in developing the economic potential of the regions hosting refugees.

### ***Respondents reporting that refugee businesses are taxed:***

“...the local government comes at the beginning of every year and they tax everyone with a business.”

**- Respondent Ifo 1 Camp**

“The funny thing I have seen is that you see different people coming to collect tax; on one day one person comes and then on the other day another come and each requires a different amount for you to pay so you do not know who the contact person is and they can just steal from us this way.

**- Respondent Dagahaley Camp**

### ***Respondents reporting that refugees are not taxed:***

“...the government does not tax refugees. They pay no taxes to the county either.”

**- DRA Officer Dadaab**

« Their business would be of a great importance to the Kenyan government and they could be contributing to the national kitty but now they are not! When they do business as they are doing now, it is more profitable for them as they do not have to pay taxes.»

**- County Commissioner Dadaab**

Economic integration for refugees is only limited within the confines of the camps but hosts are free to trade both within the camps and outside the camps. Furthermore, the sense of economic integration can only be felt and observed in Dadaab and not beyond.

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## SECURITY CONCERNS IMPEDE ECONOMIC INTEGRATION IN DADAAB

On the way to Garissa town, three police checks held up the research team's field interviewer and the DRC staff who were required to present their national ID cards. Refugees interviewed reported that even when issued a movement permit by DRA, they still faced harassment along these stops.

In light of recent security concerns and terrorist attacks in Kenya, the State's response to not only refugees, but also towards those of Somali ethnic origin has been extremely hostile. The Refugee Act of 2006<sup>34</sup> Section 14 (3) states that: *'No refugee shall reside outside the designated area indicated in his refugee certificate or other registration document without the authority of the Commissioner'*.

The security situation in Dadaab has deteriorated, with recurring incidents in 2014 in the camps (Hagadera) and on the road towards Alinjugur. This is the case more broadly in northeastern Kenya: in December 2014, 36 people were killed in a terror attack, another instance of insecurity in the region. Common criminality and banditry have also increased. The first kidnapping of Dadaab humanitarian staff occurred in Hagadera in September 2011<sup>35</sup>. In April 2015, attacks by Al-Shabaab on a university in Garissa claimed the lives of at least 147 individuals. Following these attacks, the government of Kenya announced the need to close Dadaab within three months, calling for the forceful return of refugees to their country of origin. Whether Dadaab will be closed or not is still unclear to this date. Insecurity incidents are hampering prospects for local or economic integration. The full repercussions of the Garissa attacks on the residents of Dadaab are yet to be seen.

A legal NGO and advocacy platform for refugees, Kituo Cha Sheria are calling for the need to de-link refugees from insecurity incidents in the media and the political discourse especially as there are no known refugees who have been convicted of a terror-related crime. Media bias has at times exacerbated this perception. For example, in November 2013, 21 young refugees were arrested having left the camp. It was alleged by the Kenyan media that they had been on their way to join Al-Shabaab. They however were on their way to look for a fellow refugee who was mentally handicapped and had wandered away from the camp and they had informed the police about their mission<sup>36</sup>. The media presentation of the situation negatively impacts on the security and wellbeing of refugees. Furthermore, the official political discourse scapegoating refugees for deteriorating insecurity in the country is not only heightening the anti-refugee climate but is also feeding the negative perceptions of Somali refugees.

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34 The Refugee Act 2006 Gok. <http://www.rckkenya.org/rokdownloads/Resources/Conventions,%20policies%20and%20legislation/The%20Refugee%20Act%202006.pdf>

35 [http://crs.yorku.ca/sites/default/files/Hagadera\\_Camp\\_Profile\\_August\\_2012.pdf](http://crs.yorku.ca/sites/default/files/Hagadera_Camp_Profile_August_2012.pdf)

36 <file:///C:/Users/test/Downloads/15November2013Sitrep1.pdf>

The refugee population still experiences challenges such as inadequate shelter, exposure of girls and women to sexual and gender based violence, inadequate sanitation facilities exposing them to health risks<sup>37</sup>. Refugees further experience harassment from national authorities and host community, thereby affecting their ability to fully integrate into the community.

## **POLITICAL WILLINGNESS FOR ECONOMIC INTEGRATION**

The presence of refugees in Garissa County is often viewed by politicians as a burden to the county, sentiments shared by both the governor and deputy governor of the county. The county development plan does not include the management of refugees and in its budget has no allocation for refugee affairs.

The view of refugees as a social and economic burden is not only in Dadaab but across the country. As voiced by development actors, migration is not a focus of national development plans nor county development plans. The top-down understanding of migration as an economic opportunity is lacking.

The situation of refugees in Kenya, and in particular in Dadaab, points to a government push towards voluntary repatriation as the preferred durable solution for refugees. The situation on the ground however points to an ongoing, and informal, local integration that has been gradually taking place over the last two decades of protracted exile for many refugees. The presence of refugees in Dadaab has a positive impact on the host community. Refugees in Dadaab not only represent the main market and demand for animal and agricultural products in the county of Garissa, but also play key economic roles through cross-border

trade as well by operating with large diaspora networks of Somali traders across the globe.

“Garissa is county that is really suffering with refugee burden and as a county we are managing to find sustainable solutions that will ensure the Garissa people do not suffer from this burden.”

**– Governor Garissa County**

“My government is not looking to work with refugees. I have 5 billion shillings allocated to my county: how will that be enough for the people of Garissa and for the refugees too? Moreover, our constitution does not allow for us to have a budget for refugees! (...) If they want development, then they can go back to their countries and bring development there. Not in my county!”

**– Dep. Governor Garissa**

## **TAKING STOCK OF DURABLE SOLUTIONS FOR REFUGEES IN NORTH EASTERN KENYA**

### **I) Voluntary Repatriation and Resettlement**

Interviews with government respondents (both on the national and county level) show that voluntary repatriation is the preferred durable solution. This is the government’s preferred position but not the overall preferred durable solution as voiced by refugees. In the words of the county deputy governor, it is the only solution. Interviews with the DRA Commissioner and the deputy county commissioner also reveal return as the perceived best solution. Statistics from UNHCR show that as of September 30, 2014<sup>38</sup>, 3,084 out of the 358,101 refugees in Dadaab were willing to voluntarily return to Somalia (approximately 8% of the population). A recent Returns Intentions Survey reduces this number to 2.9% of refugees being willing to return<sup>39</sup>.

37 Asylum under threat : Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor, Refugee Consortium of Kenya (RCK), June 2012

38 UNHCR Statistical Package, September 30, 2014

39 IOM/UNHCR (2014) Joint Return Intention Survey Report

FGDs with refugees living in the Ifo 1 and Dagahaley camps revealed that some refugees are willing to opt for voluntary repatriation. The conditions for return were however pegged on them being assured of security and economic sustainability upon their return. Refugees are hopeful that on going back to Somalia, they would be marketable for jobs with international organizations or NGOs. Those prepared to return argue that going back to Somalia would be better than staying in Kenya as they feel alienated in Kenya and feel that while in Kenya, the confines of the camps define and limit their socio-economic growth. They voiced a fear that returning to Somalia would mean being treated like refugees in their own country as some have been away for over 20 years and no longer have access to land or any property to go back to.

Resettlement in a third country, though favoured by most refugee respondents, is an unlikely alternative. A UNHCR resettlement officer stated that receiving countries were only willing to take high-risk protection and medical cases. For example, the USA had reduced the number from 8,000 refugees per year to 400 per year. The reality of it is that not as many refugees are currently being resettled as in previous years.

As of 2011, a UNHCR report shows that resettlement as a durable solution is only available to a small number of refugees. Priority in 2011 was given to refugees in protracted situations (meaning Somalis who arrived between 1991 and 1992), non-Somalis facing persecution and discrimination, and refugees with acute protection or medical issues. For 3 years consecutively, the overall submission per year stood at 8,000 refugees. After the 2011

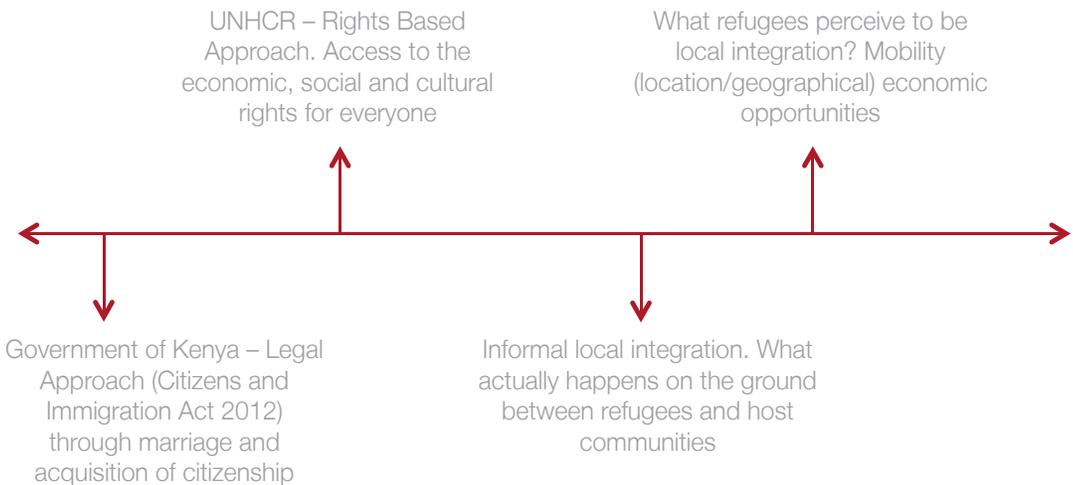
emergency and influx of refugees in the camp, priority is now given to acute protection cases and refugees with medical issues. The number has dropped from 8,000 to 400 refugees per year.

## **II) (Informal) Local integration as a durable solution?**

Refugee presence has led to a de facto informal integration of refugees in Kenya. There have been reports that because of corruption, refugees are able to escape from the camps and travel to Nairobi by paying law enforcement officers hefty bribes. Another concern with refugee management is the homogeneity of the host community and the refugee population. County authorities note that refugees have been able to mix and blend in with the host community, with some of them even living in surrounding villages away from the camp. This, they argue, makes it difficult to tell who is a refugee.

Local integration is a term that needs to be unlocked for concrete understanding by all stakeholders. As it is understood by the respondents, it involves both the host and refugee communities living together and working together. Though already 'informally' in practice, it is not an avenue the government is willing to explore. Respondents from the county government acknowledge that it is already happening but view this as a threat to the county.

Results find that different actors understand and interpret local integration in different ways on a spectrum between lesser and more integration:



On the other hand, the willingness of counties to embrace local integration is two-sided. The presence of refugees can be viewed either as an advantage or disadvantage. The refugee presence in North Eastern has brought some level of development to an already marginalised region that has been ignored by the national Kenyan Government. The presence of UN agencies and NGOs has benefited not only the refugees but also the host community. Counties recognize this and make sure that host communities also benefit. However, the Garissa County notes that the presence of refugees poses social, economic and environmental consequences to the host community.

Local integration of refugees affords refugees an opportunity to claim their rights, to participate in the economic, social and cultural life of their host community. Access to durable solutions and in particular local integration is largely dependent of the responses and perceptions of host communities towards refugees as well the position of the local and national government on the issues.<sup>40</sup> Scholars have argued that local integration of refugees has been impeded by the difficult economic context of North Eastern Kenya where refugees are hosted. North Eastern Kenya has been a historically politically and

economically marginalised region, thereby affecting positive economic growth both for the host community and the refugee populations. Resistance to local integration is therefore likely to be strong. In this context, humanitarian and development actors should try to identify mid-way solutions, based on the existing economic dynamics on the ground, in order go beyond humanitarian interventions and build the resilience of refugees and improve the quality of asylum. County authorities represent a privileged interlocutor in this quest for durable solutions, as illustrated by the Stakeholder Forum organized by the Garissa county authorities on the question of refugees in November 2014.

**Despite this, studies have found that refugees in North Eastern Kenya have managed to integrate informally to the economy and operate outside the legal system.** One of the ways this is happening is through marriage between host community and refugees. The Kenya Citizenship and Immigration Act 2011<sup>41</sup> makes provision for acquiring citizenship through marriage. Refugees live with them but do not have official government issued documents. Interviews in Dadaab revealed that this type of integration has been taking place for some time. Most households in Dadaab (within

40 Local Integration: A Right (2006) in Local Integration- More Than A Durable Solution, Jesuit Refugee Service Issue No.39

41 Kenya Citizenship and Immigration Act (2011) Section 11

and outside the camps) are mixed with refugees living in the host community village and host community members living within the camps.

Beyond marriage, a UNHCR report in 2011<sup>42</sup> shows that new arriving refugees were living outside the camps with relatives or within the host community, in the outskirts of the camps:

*“In August 2008, UNHCR’s camp management partner in Dadaab, the Lutheran World Federation (LWF), halted the allocation of residential plots to new arrivals due to lack of available space in all the three camps. Since then, some of the new arrivals have chosen to stay with their relatives, but the majority have been living outside of the designated camp areas (outskirts), on land which belongs to the host community. The outskirts of Ifo Camp, as of August 2011, hosted around 25,000 refugees. Around 30,000 persons lived in the outskirts of Dagahaley Camp, and some 20,000 people in the outskirts of Hagadera Camp. There is currently a concerted effort underway to relocate people settling on the outskirts to Ifo 2 Camp and the Kambioos site.”*

The Ifo 2 and Kambioos camps were officially opened on 14 July 2011, and by September 2011; about 60,232 refugees had been relocated to these camps.<sup>43</sup> Although many of the refugees were relocated, most chose to remain within the host community.

## THE IMPACT OF DEVOLUTION ON ON-GOING PROGRAMS

With the devolved government being only a year old, its operations and its impact have yet to reach the refugees in Dadaab and to affect the programmes implemented by various organizations. The biggest capacity

gap within county governments is that they have never managed refugees. The county government says it wants to give a directive that organizations must first seek its approval in implementing any refugee projects. The deputy governor was however not clear on how this should be implemented or how to go about it, with emphasis only placed on the need for compensation by UNHCR for environmental degradation caused by refugees.

In terms of imbedding refugee affairs to the county government agenda, he was insistent that it should remain at the hands of the national government<sup>44</sup>.

«I have said we shall 1st get compensation for their presence before we can even think of them... They are using our facilities and UNHCR should compensate for using our land so we do not have anything for them!»

**- Dep. Governor Garissa**

«The government should cater for the refugees. Moreover, our constitution does not allow for us to have a budget for refugees»

**- Dep. Governor Garissa**

Some of UNHCR’s implementing partners are however working with the devolved government. The Lutheran World Foundation (LWF), in its school and education programs, is working in close collaboration with the county’s cabinet secretary for education. He has been involved in evaluating the school curriculum within the camps and in evaluating the qualifications of schoolteachers.

On a national level, DRA officials expressed that the involvement of the county government in refugee issues would only delay activities. Previously, land allocation for refugees was DRA’s prerogative. With the devolved

42 [https://www.unhcr.org/hk/files/Emergency/emergency%20report/2011%20somali/Oct%2011/Dadaab%20Refugee%20Operation%20Brief%20\\_v.%202011.09.24\\_.pdf](https://www.unhcr.org/hk/files/Emergency/emergency%20report/2011%20somali/Oct%2011/Dadaab%20Refugee%20Operation%20Brief%20_v.%202011.09.24_.pdf)

43 file:///C:/Users/test/Documents/Devolution%20Programme/Dadaab%20Refugee%20Operation%20Brief%20\_v.%202011.09.24\_.pdf

44 Constitution of Kenya (2010), schedule 4 highlights distribution of functions between the national government and the county government.

government though, and with land being such a contentious issue, the DRA has to go through the county's land commissioner to be allocated land for refugees. With unpredictability in the arrival of refugees, it becomes almost impossible to plan for refugee housing. Without consolidated efforts between the national and county governments on refugee management, the power battle only affects refugees.

There seems to be a lack of capacity within the county government to fully devolve its operations. The education secretary is the only one in the county government who is reported to be actively working with the humanitarian organizations. Other functions are still on the national level. Overall, respondents all seemed to know about the devolved government but all said that they were yet to see what that really meant. The impact of consolidated

efforts between the county government and the humanitarian agencies cannot therefore be assessed at this time.

If well managed, devolution can be an opportunity for everyone. As a hosting county, Garissa cannot ignore the continued presence of refugees as part of their community. By streamlining county functions, they can be in a position to tap into the local economy of refugees. By focusing on regional development versus politics, their manpower and skills should also be viewed as an opportunity and not a threat. There is a need for a clear structure on how to involve them. Dadaab and the refugee population is a micro-economy that is not being tapped into. The presence of UNHCR and its partners can attract more funding for other development opportunities for the host community.

# DEVOLUTION AND DURABLE SOLUTIONS IN KAKUMA? A CASE STUDY

Through its county integrated plan, Turkana prioritises economic development programmes. The Human Development Index (HDI) for Turkana is lower than the rest of the country: Turkana scores at 0.3331 compared to a national average of 0.561<sup>45</sup>. Similarly, the Human Poverty Index (HPI) is at 0.613: much higher than the national HPI at 0.291<sup>46</sup>. As a result, the County Integrated Plan spells out Turkana's priorities for the next 5 years. These include:

- Water, Irrigation and Agriculture – to ensure food security, adequate water and income generation for poverty reduction, promoting agribusiness, food diversification and nutrition<sup>47</sup>
- Health – to be aligned with Kenya Vision 2030, the Health Sector strategic plan, and the Millennium Development Goals through the elimination of communicable diseases, provision of essential health services and tangible investments in health organisations<sup>48</sup>
- Energy, environment and natural resources through integrated resource management.

These priorities highlight a key link with the refugee economy and aid delivery for potential integration between refugee and host communities through sectoral priorities.

In a context of:

- Increasing migration trends to Kakuma, and
- Increasing financial resources for Turkana,

The international community is shifting its policy to turn Kakuma into a sustainable and economically viable unity: a development-oriented vision for the future of the refugee operations in Kenya. The implementation of this vision is expected to start with the establishment of a new camp to respond to the ongoing influx of South Sudanese refugees<sup>49</sup>.

45 Turkana County Integrated Development Plan, 2013- 2017, p.15

46 Ibid, p.15; Kenyan National Human Development Report, 2009

47 Turkana County Integrated Development Plan, 2013- 2017, p.97

48 Ibid, p.113

49 Kenya Comprehensive Refugee Program 2014, p.10

## MIGRATION TRENDS TO KAKUMA

TABLE 3. POPULATION OF KAKUMA REFUGEE CAMP, TURKANA (BY COUNTRY OF ORIGIN)	
CAMP	POPULATION
Somalia	56,260
South Sudan	90,302
Sudan	9,844
DR Congo	9,062
Rwanda	611
Eritrea	127
Burundi	6,021
Ethiopia	7,819
Uganda	1,065
<b>TOTAL</b>	<b>181,119</b>

Source: UNHCR 2015

There are 181,119 registered refugees in Kakuma<sup>50</sup>. The camp population expanded since 2013 as a result of the influx of South Sudanese during which refugees arrived at a weekly rate of 900. However, the trend of new arrivals has slowed down significantly with no more than 100 refugees received per week on average according to UNHCR.<sup>51</sup> Given the refugee influx over the past 2 years, the camp has become severely congested thus compromising the delivery of services; by the end of 2013, a decline in water, sanitation and health standards was noted alongside the decrease in the number of refugees with adequate shelter.<sup>52</sup>

In comparison to its neighbours, Kenya has witnessed a smaller number of new arrivals; yet, Kenya continues to receive the largest number of unaccompanied minors (80 % of recent arrivals)<sup>53</sup> amongst those seeking asylum in the region. According to UNHCR, this trend is likely to continue given the attraction to the education system in Kenya.<sup>54</sup> UNHCR calls for resources to provide for education and protective safe learning environments for the high number of children among the new arrivals. It is estimated that 120 classrooms will be needed to be equipped with school furniture<sup>55</sup>.

50 UNHCR, Kakuma Camp Population statistics, March 2015

51 UNHCR, Kakuma Operational Update, March 2015

52 Kenya Comprehensive Refugee Programme 2014, p. 8

53 UNHCR Inter-Agency Appeal for the South Sudanese refugee emergency (Jan-December 2014), March 2014

54 Ibid

55 UNHCR Inter-Agency Appeal for the South Sudanese refugee emergency (Jan-December 2014), March 2014

# FINANCIAL TRENDS: A WELL ENDOWED MARGINALISED COUNTY

Turkana will receive 10.2 billion from July 2015 compared to 9.1 billion that the county received in the current fiscal year.<sup>56</sup> Nairobi and Turkana will receive the largest share of the KSH 253 billion to be given to counties in the next fiscal year starting on July 1, 2015.

Turkana receives a high amount of the equitable share due to its landmass, which according to the Commission of Revenue Allocation in Kenya is 68,680.3 Km<sup>2</sup><sup>57</sup> with a population of 855,399 (compared to Garissa's 44,175 Km<sup>2</sup> and population of 623,060)<sup>58</sup>. In addition the HDI is higher in Garissa than Turkana<sup>59</sup>, hence justifying the greater ongoing and upcoming investments in Turkana County. As a result, the County budget of Turkana is double that of Garissa.

The focus of the Turkana budget is on structuring finance and planning (with KES 1.3 billion in 2013/2014), followed by public works, transports and roads (KSH 820 million), water services, irrigation and agriculture (KSH 615 million) health and sanitation (KSH 610 million), water and education, HRD, cultural and social services (KSH 420 million)<sup>60</sup>.

## EXISTING REFUGEE ECONOMY IN KAKUMA

With the discovery of oil reserves in Turkana, the Government of Kenya received SH. 4.4 billion from the World Bank to strengthen its capacity to manage the oil and gas sector. The World Bank says that the Kenya Petroleum Technical Assistance project will focus on development

measures to generate more private investment in the country's oil and gas industry<sup>61</sup>. As a result, the economy of Turkana is opening up to rest of the world – the recent discovery of oil, underground water and minerals has attracted a lot of attention to Turkana,<sup>62</sup> various international trade fairs and investment conferences are in the pipeline to encourage investors.<sup>63</sup>

UNESCO and the Government of Kenya announced, in 2013, the discovery of massive ground water reserves in Turkana<sup>64</sup>. This water may be used for new land irrigation. Numerous irrigation schemes in Kenya have not brought the benefits expected and had adversely affected local communities by blocking migration routes or reducing communal grazing.<sup>65</sup> The hope in Turkana is that the clean water sources can meet the demands of the Turkanans as well as those of development prospects focusing on agriculture.

Market chains in Kakuma follow transport corridors – Kakuma camp is fed through the Northwestern corridor, which links Nairobi with Lockichoggio and South-Sudan. According to a market assessment by WFP, most markets in the arid lands are weakly integrated both amongst themselves and with the main supply market in Kenya<sup>66</sup>. While cross-border trade with South Sudan takes place, it has been on the decline since 2013. Furthermore, trade from South Sudan is not of large-scale nature and is predominantly one sided with processed food commodities crossing from Kenya to South Sudan.<sup>67</sup>

56 <http://www.nation.co.ke/news/politics/How-47-counties-will-share-Budget-billions/-/1064/2620014/-/k9uuq5/-/index.html>

57 This is a contested figure. According to the Turkana County Government and other sources, the landmass of Turkana County is 77,000 km<sup>2</sup>, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/PUBLIC%20CONSULTATION%20AND%20SOCIO%20ECONOMIC%20ANALYSIS%20OF%20LAKE%20TURKANA%20COMMUNITIES%20UPDATED%20VERSION.PDF>

58 <http://www.crakenya.org/information/revenue-allocation-formula/>

59 UNDP, Republic of Kenya (June 2014), Kenya National Human Development report 2009

60 Country Budgets 2013-2014 (2013) Commission on Revenue Allocation

61 <http://todayfinancialnews.com/trade-and-investment/2741-kenya-gets-sh8-billion-from-world-bank-to-develop-oil-and-gas-sector>

62 Turkana Roundtable meeting, November 2014, p.2

63 Interview, Ministry of Tourism, Trade and Industry, 13 March 2015

64 <http://www.theguardian.com/environment/africa-wild/2013/sep/11/1>

65 <http://policy-practice.oxfam.org.uk/blog/2014/01/harnessing-turkanas-water-discovery>

66 WFP (June 2014), Dadaab and Kakuma refugee Camps, Market Assessment, p.4

67 KII, Kakuma; KII; WFP (June 2014), Dadaab and Kakuma refugee Camps, Market Assessment, p.24

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## KAKUMA: A HIDDEN CITY, TOO?

As a result of the low market connections, the camp economy has gained prominence: Kakuma camp is the major urban centre for refugees and host community alike.<sup>68</sup> The camp boasts a vibrant market of food and non-food items, including a variety of shops, social amenities and services such as restaurants, coffee shops, tailoring services, mechanics, carpentry and beauty and telephone services.<sup>69</sup>

The University of Notre Dame divides the various types of economic activities within Kakuma Refugee Camp and Kakuma town into 8 categories comprising (adapted from Oka, R. 2011):

- 1) Formal relief distribution
- 2) Formal commerce: wholesale and retails traders supplying goods and services
- 3) Formal-Informal Commerce: traders supply refugee wholesalers/retailers
- 4) Formal-Informal banking and remittance: four band and mobile money systems enable cash and credit to be transferred from relatives to Kakuma refugees
- 5) Formal-informal Employment: Kakuma refugees work with relief agencies or traders
- 6) Informal Overt Commerce: Refugee wholesalers and retailers supply goods and services to refugee consumers within Kakuma camp
- 7) Informal relief Commerce: refugees sell portions of relief food package to black market traders
- 8) Informal covert commerce: various actors involved in the flow of drugs, weapons, and other extra-legal and illicit activities within Kakuma town and camp.<sup>70</sup>

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## REFUGEE CONTRIBUTION TO THE KAKUMA ECONOMY

Kakuma's economy shows strong refugee agency and contribution to local development through:

- **Well-established economic networks** – strong business networks exist in the camp predominantly run by Somalis and to a lesser extent Ethiopians traders who recruit employees from within the camp or from their extended kin networks. Research shows how the well established trading community, especially those run by Somalis, have ‘the enhanced ability to handle good and services, manage the flow of capital and credit within and between camps from offering small-scale retail credit to banking and remittances services.’<sup>71</sup>
- **Remittance economy / Bringing cash to the local economy:** Four banks are identified within the Somali trader networks through which remittance transfers are conducted: these include Dahabshil, Amel, Dalson, and Iftin.<sup>72</sup> Refugees receive money from abroad (US, Canada, Europe and M.E) as well as Kenya and other east African relatives (from relatives who work as

68 Oka, R. (2011), *Unlikely cities in the Desert: the Informal Economy as casual agent for Permanent 'urban' sustainability in Kakuma refugee camp, Kenya*, Urban Anthropology

69 Kils; WFP (June 2014), *Dadaab and Kakuma refugee Camps. Market Assessment*, p.15

70 Oka, R. (2011), *Unlikely cities in the Desert: the Informal Economy as casual agent for Permanent 'urban' sustainability in Kakuma refugee camp, Kenya*, Urban Anthropology, p. 228

71 Oka, R. (2011), *Unlikely cities in the Desert*, p. 238

72 *Ibid*, p. 245

'clandestine migrants').<sup>73</sup> M-PESA agents at Kakuma estimated that refugees receive 100,000-150,000 USD per month.<sup>74</sup> Bankers and traders confirmed that at least 20% of the refugees did not receive any remittances from abroad, based on Oka's study in 2011.<sup>75</sup>

- **Black Market and relief traders:** the black market in Kakuma provides a mean for refugees to gain cash by selling their own goods and buying other goods and services. Particular shops are specialized in relief trade; the black market 'involves purchasing relief goods from refugees, repacking the goods [...] and then selling them to retailers within the camp or wholesalers who come from Kakuma town, Lodwar, Kitale and Eldoret.'<sup>76</sup> The popularity of relief trade in the camp can especially be seen amongst refugees who depend entirely on WFP food and do not receive cash through remittances or employment.<sup>77</sup>
- **Taxation and licensing issues:** The deputy at the Department of Trade and Tourism confirmed that refugees are given licenses each year. Department officers provide this service in the camp as refugees cannot leave Kakuma. It is estimated that refugees in Kakuma contribute around 1.1 million KSH each year in taxation.<sup>78</sup> Market assessment by WFP points out that food traders need to obtain a license from the county council and are subject to annual fees. 83% of traders in Kakuma stated that they pay annual fees.<sup>79</sup>
- **A market for host community businesses:** According to market assessments conducted by the World Food Program (WFP), refugees spend on the average 60-70 % of their disposable incomes on food and non-food items provided by refugee and host community businesses. Small traders and wholesale outlets run by both refugee and host communities are engaged in selling food and non-food items, reflecting a fair level of integration between the economies of the two communities.<sup>80</sup> Kakuma camp is reportedly the largest market for livestock producers of the host community – hence generating the most demand for animal meat and produce in Turkana county.
- **Major source of employment for the local community:** the presence of the refugee camp is also a major source of employment for the local community – from menial jobs provided by cleaners and housekeepers to local contractors who undertake construction of refugee facilities in the camps.
- **Purchase of livestock:** prices of livestock are higher in Kakuma than other parts of Turkana because of the demand in Kakuma. Refugees reportedly pay the CESS, a tax on the movement of agricultural produce raised by local authorities in Kenya. This taxation is applied to each animal slaughtered at the refugee camp to the county. For a goat 20 shillings, for a camel 100 shillings. With the influx of refugees – more taxation is being paid to the county.<sup>81</sup>

'The majority sale of livestock in Kakuma region is for refugees. Buyers are mainly Somalis. The biggest market in Turkana is Lodwar – the Lodwar market is bought by Somali traders and sold into Eldoret/Kitaleh.

*– Rahul Oka, Professor, University of Notre Dame*

73 Ibid, p.245

74 Ibid, p.245

75 Ibid, p.245

76 Ibid, p. 246

77 Ibid, p. 246

78 Confirmed by the Department of Revenues

79 WFP (June 2014), Dadaab and Kakuma refugee Camps, Market Assessment, p.16

80 Turkana Roundtable meeting, November 2014, p.2

81 Interview, Ministry of Tourism, Trade and Industry, 13 March 2015

## POTENTIAL FOR A TWO-WAY ECONOMIC INTEGRATION

The move away from assistance to development is beginning in Turkana: a key element of a two-way economic integration between refugees and host communities. Kakuma is presented as an integrated economy between refugees and local populations: the presence of refugees creates a much larger market as well as lower level jobs for Turkans. As a result, the host community benefits from service provision provided by refugees: the camp set-up is crucial for host community, paving the way for a two-way economic integration.

- **Refugees provide a source of employment for the host community.** The host community being poorer than the refugee community – a Kakuma specificity – local Turkans work for refugees: a very unique dynamic indeed as host community members are often pastoralists with fewer resources – they work as loaders or domestic servants, washing clothes, for refugees. There is also job creation as result of NGOs in the area and many construction plans. Children can access schools in refugee camps. Host community sells charcoal to refugees as the market in Kakuma is cheaper than markets outside of the camp. Finally, many local contractors undertake constructions of refugee facilities.
- **Building a sustainable economy that benefits both refugee and host community:** The creation of a fake economy resulted from the distribution of free food and non-food items negatively impacted the county's economy.<sup>82</sup> UNHCR is seeking to move away from this model and build more sustainable economy that benefits both refugee and host community.<sup>83</sup>
- **Agricultural programing:** an initiative by Action Africa Health International is leading to the creation of model farms in camps in

order to empower refugees to do higher level agricultural productions. They will only be selling in the Kakuma market to respond to a large demand for vegetables.

- **Holistic and multi-sectoral approach to education and livelihoods:** the Qatar Foundation is launching a program that is education-based as well as targeted at developing vocational skills, linked to employment opportunities through market assessments, alongside training on entrepreneurship to increase the employability of graduates of the program.<sup>84</sup> UNHCR is to build on the Qatar Foundation-funded integrated education project and to explore opportunities to integrate social services delivered to the refugees and the host community.<sup>85</sup> The US\$18.4 million multi-year integrated education project funded by the Qatar Foundation has been praised by Governor Nanok as a model program to be emulated for the integration of services provided to the refugee and host communities.<sup>86</sup>
- **A clear system of succession should be in place** – if refugees suddenly have to leave to be resettled – they should figure out how businesses can be shifted (manufacturing/ how to explore to Lodwar). One of the reasons why refugees do not invest in the local economy is because they realise that their stay in the camp is transient.<sup>87</sup>

To build a more sustainable economic model, UNHCR launched an initiative aiming at integrating the refugee and host community economies, in partnership with the County Government and development partners. “The overall objective of this initiative is to re-orient the refugee assistance program to contribute to: (i) improving the socio-economic conditions of the refugee and the host communities; (ii) better prepare the host community to take advantage of emerging economic opportunities

82 Turkana Roundtable meeting, November 2014, p.1

83 Interview, UNHCR Nairobi, 20 March 2015

84 Interview, UNHCR Kakuma, 11 March 2015

85 Turkana Roundtable meeting, November 2014, p.2

86 Ibid, p.6

87 Interview, University of Notre Dame, 27 March 2015

in upcoming extraction and potential irrigation fed agriculture; and (iii) reduce over-dependence on humanitarian aid and prepare the refugees for durable solutions”.<sup>88</sup> Through a joint World Bank and UNHCR study, further information will be provided to showcase how the refugee economy and host economy can be integrated.

Another initiative, the UN joint Turkana initiative, started in early March involving all UN agencies in Turkana (UNDP, UNICEF, IOM, UNHCR and WFP) calling them to align their priorities with the county's integrated plan. The initiative aims for improved coordination, increased accountability of resources and alignment of objectives with the county integrated plan. It is an important opportunity to mainstream refugee issues at the county level.

### **POLITICAL WILLINGNESS FOR ECONOMIC INTEGRATION**

Authorities' interest lies in taking a more active role in refugee management: the Governor's office is interested in engaging more on the management of refugee affairs and to lobby for a portion for the host community to benefit from the resources invested by the host community. Government authorities are interested in taking a more active role – they see the benefits of being able to work more closely with refugees on the ground.

This trend is best described as an interest that resulted with the creation of devolution – and the realisation from the county's perspective that their interests lies in taking a more active role in the management of refugees – using refugees to benefit a development agenda.

The political willingness is there, but Turkana County is limited by key constraints:

- **A lack of capacity and resources to deal with refugee management:** Turkana County is reportedly under-sourced, under-staffed and unable to manage the funds under its portfolio.
- **Difficulty in managing the county's own resources and responsibilities – let alone refugee affairs.** There is currently a lack of absorption of county resources.
- **There might be willingness from the county authorities to engage more with refugee management – however the problem is at the operational level** – the county lacks resources leading to contradictory statements from the county as to what kind of engagement they want to have versus the resources and capacity they have.

This highlights the need to invest in the capacity building of the Turkana county government in service delivery in key sectors – health, education, and water – in the short run, while protection issues will need to remain with the international community given that country structures are not presently sufficiently stable.

<sup>88</sup> Turkana Roundtable meeting, November 2014, p.2

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# CAPACITY BUILDING OF LOCAL AUTHORITIES IN TURKANA: THE LOCAL AUTHORITIES TRANSFER FUNDS (LATF)

Capacity building of local authorities are nascent – notably through an initiative by Oxfam to build the capacity and knowledge of local authorities on the Local Authorities Transfer Funds (LATF). This fund is provided to local authorities to improve service delivery to the public, improve financial management and accountability and to reduce outstanding debts. Overall, 5 per cent of the national income tax receipts are allocated to the LATF. Local authorities are required to combine LATF with their own local revenues to implement services and investments at the local level. Another fund, the Constituencies Development Fund (CDF) aims to ensure that 2.5 per cent of government revenue is devolved to the constituency level for the purposes of development and poverty reduction, particularly by means of grassroots wealth creation.<sup>89</sup> In effect, money is being given to the county but the Turkana county has no capacity to use it. Oxfam's study found that the county has no capacity to formulate strategies and funds disbursement. Budgets were not adhered to. Against this background, OXFAM implemented the Community Engagement in Good Governance Project in Turkana to ensure that the rights of marginalised populations are assured through an integration of political, social and economic systems at the local level.<sup>90</sup>

## TAKING STOCK OF DURABLE SOLUTIONS FOR REFUGEES IN NORTH WEST KENYA

### I) Local Integration

Kenya's 2007 refugee acts prohibit refugees from engaging in gainful employment outside the camps as work permits are not issued to refugees. The new refugee bill (2014) may offer some opportunities for refugees to integrate

locally. The Kenyan Citizenship Act limits refugees' integration prospects. Application procedures require a passport number, a personal identification number (PIN) certificate (personal identification number – need work permit).

Initiatives for local integration face obstacles from the national level – with a focus on security and policies – and at the local level: with resistance from host communities who feel unequally treated. Unless the host community is provided with similar resources, local integration will be blocked. Such attitude may also be showcased among government officials: some departments may resist efforts for local integration. These include the Ministry of Land, Physical Planning and Urban areas, the security department as well as the ministry of energy, environment and natural resources.

Although fully-fledged integration will not be possible, economic integration of refugees remains desirable on a county level and can contribute towards achieving durable solutions for refugees, while benefiting equally the host community. There is an ethnic divide between host and refugee communities (unlike Dadaab) leading to limited avenues for interactions outside the economic sphere (notably with fewer intermarriages). Refugees in Kakuma are not a homogeneous population: Kakuma has more than 16 different nationalities. Some tensions erupt between various nationalities especially South-Sudanese but in general the host community stays out of these fights. As such, Kakuma is seen as a quiet camp. Moreover, despite the disparity of wealth between refugees and host community, violence in the camp is limited.

<sup>89</sup> Oxfam, where does the money go? Citizen Participation in Turkana county, p.3

<sup>90</sup> Ibid, p.4

Hence, if complete local integration is impossible given Kenya's citizenship laws and restrictions imposed on refugees, county officials are receptive to finding long-term solutions for refugees. Refugees are seen as resource and important contributors to the economic development of the county if they are able to contribute more to the local economy.

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## **KAKUMA: "THE QUIET CAMP"**

Kakuma is often referred to as 'a quiet camp'. The lack of a terrorist threat can potentially result in more opportunities for the integration for refugees in Kakuma compared to Dadaab; refugees and NGOs operate in a peaceful and quiet environment that can be conducive to local integration. Moreover, there is a major difference in perceptions of Somali refugees versus South Sudanese. The government has adopted a softer stance and softer treatment of South Sudanese refugees given their lack of association with any terrorist threat. Having said this, 'terrorism' has impacted Kakuma on a small scale especially after the Westgate attacks, which were thought on a national and regional level to have been planned in part in Kakuma and hence negatively impacted the perception of refugees.

The opportunities present in Kakuma for local integration have to be de-linked from the ones in Dadaab. Linking the two processes may hamper efforts for local integration in Kakuma.

### **II) Resettlement from Kakuma**

Although numbers have gone down because of refugee crises in other parts of the world (notably in Syria), resettlement continues in Kakuma. Refugees are moved from Dadaab to Kakuma through the help of UNHCR. The process for resettlement for those coming from Dadaab used to take 1 -3 years. However, the process has recently changed: refugees will be coming in, processed after 1 or 2 months and returned back to Dadaab.

### **III) Repatriation**

Resentment exists between refugees and host community due to a strong disparity of wealth and resources: refugees are at an advantage both economically and in their access to resources. Land negotiations highlight the underlying disparity between the two communities and the concern of the host community who is prepared to give land but not without equal returns. Refugees in Kakuma, have more access to resources, networks and aid than the host community, which calls for a paradigm shift in how the two communities are assisted. Refugee resources and networks can play a role in potential repatriation and return. As such the economic wellbeing of refugees can be seen as contributing to a future return, empowering refugees to make their own choices for durable solutions.

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## REFUGEE NETWORKS IN KAKUMA

Among these, refugee networks in Kakuma are strong and may play a key role in any future repatriation trend. Refugees are part of a 'diaspora capital': Kakuma refugees belong to bigger diaspora networks that stretches from Somalia to Dadaab, to Kakuma, Nairobi, China, Dubai etc.<sup>91</sup> Somali merchants are tied with their country politics and are part of a large network that effectively stretches from East Africa, to Europe and the Middle East.

*'The very presence and ties to global remittance network – refugees feel entitled to get money and also consume global information. You either chose as normal a life as you can or you live the life of refugee. They chose to consume and the consumption is the road to normal – it goes along way – creates a demand that you would not otherwise see in this area.'*<sup>92</sup>

Somalia has one of Africa's largest per capita and most widespread diasporas. As part of large regional and global diaspora networks with ties to global remittance networks, Somalis are at an advantage given their 'enhanced abilities to handle goods and services at multiple scales within these camps from wholesale to retail.'<sup>93</sup> This enables them to trade and manage financial flows within and between camps, and across borders. However, mobility can also act as an economic impediment created by constant movement, thus precluding refugees to invest in their area of displacement.

### THE IMPACT OF DEVOLUTION ON ON-GOING PROGRAMS

Devolution presents opportunities for the residents of Turkana who equate devolution with their independence. Turkana, after Nairobi, gets the second highest share of allocation from the government for 2015 and most funds are spent on development projects.

Although refugees are not currently part of the county's agenda or integrated plan, significant opportunities exist for the management of refugees as county authorities recognize these opportunities and see refugees as an asset. County officials have expressed an interest in having a more active role in the management of refugee affairs; for the most part, they see refugees as having talents, resources and connections that the county can tap into for its economic development.

As far as refugee management is concerned, not much has changed at the time of this report, on an operational level, except for land issues. The county integrated development plan does not take into account refugees, but refugees are being considered over land issues. In Kakuma, land is community-owned, and through the devolved structure, the host community is now empowered while prior to devolution, the Commissioner would allocate land with little consultation with the host community. As a result, the impact of devolution is significant both on refugee and host populations, and relations between the two, contributing to effective conflict resolution.

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91 Interview, University of Notre Dame, 27 March 2015

92 Ibid

93 Oka, R. (2011), *Unlikely cities in the Desert*, p. 238

# TURKANA FOCUSES ON DEVELOPMENT PROJECTS, OUTSPENDING NAIROBI

## **Turkana County is focusing on development**

**projects:** the World Bank reports that Nairobi is one of the lowest spenders on development compared to Turkana which spent the largest share of its allocation on development projects.<sup>94</sup> However, the challenge facing Turkana is its low absorption capacity. While the County intends to spend large sums on development – the county has shown a low absorption of development funds and challenges in planning and procurement processes.

*“Turkana has now more money that it can spend. The major challenges facing Turkana is its capacity to absorb and capacity to optimise the funds given to them. Money is being returned to the fund as a result of the county’s inability to consume it and absorb it into improved services.”<sup>95</sup>*

- County budget estimates for the FY 2014/2015 amounted to Kshs. 13.99 billion comprising of Kshs 4.05 billion (31.1%) for recurrent expenditure and Kshs 8.95 billion (68.9%) for development expenditure.<sup>96</sup>
- Turkana development expenditure 552,102,771 is comparatively very high; Garissa County’s expenditure is also considered high 778, 086,310 and ranks amongst the highest.<sup>97</sup> Mandera County recorded the highest expenditure on development activities during the period under review at Kshs 1.27 billion followed by Garissa and Wajir counties at Kshs 778.09 million and 577.62 million respectively.<sup>98</sup>

- Turkana Development expenditure of Kshs. 552.1 million for FY 2014/2015: review shows that the county spent Kshs. 125.7 million on construction of ECD classrooms, Kshs. 79.7 million on Turkana education and Skills development fund, Kshs 124.5 million on construction of water projects, Kshs 37.2 million on provision of relief food, Kshs 78.8 million on revival of Lomidat Abattoir, Veterinary and development services, and revival of the Turkana Fishermen Corporative Society, and Kshs 78.8 million on Turkana Greening among other projects.
- According to the controller of budget report, although Turkana county saw huge improvement from the previous financial year concerning the absorption of development funds, ‘the uptake of development funds was still low and not as per the approved cash plan. The county did not spend the requisitioned development funds as anticipated in the work plans for the period under review’<sup>99</sup> thus highlighting low absorption capacity faced by the county.

**Agriculture and Food Security:** A major entry point in Turkana as one of the priorities in the integrated development plan is achieving food security. Involving refugees in agriculture activities as took place in Uganda to help improve food security will create a win-win situation - refugees can be a resource in this respect as many come from an agricultural background and can teach those skills to the host community. The Ministry of agriculture can be involved in the training of personnel. However, the potential for economic integration through agriculture is dependent on a number of factors: it is highly costly, requires Turkanans to give up land, and is dependent on the development of water irrigation mechanisms.

94 <http://www.nation.co.ke/news/politics/How-47-counties-will-share-Budget-billions/-/1064/2620014/-/k9uuq5/-/index.html>

95 KII, Ministry of Devolution and Planning.

96 County Budget Implementation Review Report, FY 2014/105, November 2014, p.162. Note that the budget is financed by 70.4 % from equitable share, 3.8% from local revenue sources, and 27.5% as projected cash balance from FY 2013/14

97 County Budget Implementation Review Report, FY 2014/105, November 2014, p.12

98 County Budget Implementation Review Report, FY 2014/105, November 2014, section 2.5

99 Ibid, p.165

**Natural resources and Livestock:** significant discoveries of oil and gas as well as the newly discovered underground water could be used to develop the agriculture sector. The size and quality of livestock in Turkana have been identified as entry points to better integrate the two economies and to bring about socio-economic transformation in the County.<sup>100</sup>

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## IMPLEMENTATION OF DEVOLUTION IN TURKANA AND ENTRY POINTS FOR DURABLE SOLUTIONS

In Turkana, devolution structures are in place – a Sub-County Administrator’s Office that deals with refugee issues on a county level, the nomination of wards and Members of the County Assembly (MCAs) that act as representatives at the county, while village level representatives are in the process of being secured. Significant resources have improved infrastructure, notably on health and education, two sectors identified as entry points for refugee integration. As an example, the level of equipment and facilities at Lodwar district hospital has improved: it is now an adequate emergency hospital open to Kakuma’s refugees. Turkana has seen an improvement of health indicators since devolution, alongside better equipment and functioning hospitals: while there were only 47 percent of immunisations before devolution, now 72 percent of Turkanans are immunised.<sup>101</sup>

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100 Turkana Roundtable meeting, November 2014, p.4

101 Interview, Ministry of Health Services and Sanitation. 12 March 2015

# PART B

## A MANUAL ON DEVOLUTION ARCHITECTURE AND IMPLICATIONS FOR REFUGEE AFFAIRS

This part of the two part series on Devolution and Durable Solutions in northern Kenya provides an overview of Refugee Affairs Management in Kenya in the context of the presently on-going process of devolution. Highlighting the architecture and funding channels within the new structure, the report identifies opportunities of engagement with the new structure on refugee and solutions related issues

# REFUGEE MANAGEMENT IN KENYA

## CONTEXT ANALYSIS OF REFUGEE AFFAIRS IN KENYA

Refugee management in Kenya is ever evolving: the Government of Kenya is in the process of formalising a policy framework to manage migration. At the national level, the years 2006-2014 have been rife with major policy and legal developments impacting migration – from the National Migration Policy, to the National Labour Migration Policy, and lastly the National Diaspora Policy.

Most of these policies remain in draft form, and remain focused on migration – rather than forced migration and refugee management issues. Key gaps remain in safeguarding the rights of non-citizens in Kenya (refugees). In this context, will devolution allow for a better safeguard of rights, asylum space and opportunities for self-reliance for refugees in Kenya?

### **Centralization (not devolution) of refugee affairs**

This section will review the overall context of refugee affairs in Kenya, starting with the Refugee Act of 2006 and the 2009 Refugee Regulations, the legislative proposals in the Refugee Bill of 2014 and the more recent initiatives to relocate urban refugees to camps in the North of Kenya.

### **The Refugee Act 2006, the Refugee Bill 2014 and National Asylum Policy 2014<sup>102</sup>: Government ownership of refugee affairs**

The Refugee Act 2006 came into operation in 2007 with Regulations enforced in 2009 as the main legal instrument governing the management of Refugees in Kenya. In 2014, a Refugee Bill was introduced in the Senate Assembly but has not been passed to date. The Refugee Act 2006 established the Office of the Commissioner of Refugees Affairs whose functions include developing policies, promoting durable solutions, coordinating international assistance, receiving and processing applications for refugee status, registration, issuing identity cards and travel documents and managing refugee camps in the country. A Refugee Affairs Committee (RAC), also established under the Act, is responsible for advising the Commissioner for Refugee Affairs. The Act also states that it should include representation from the host community and civil society.<sup>103</sup> The step forward with the Refugee Bill is the government's ownership over the system of refugee protection – taking over responsibilities from UNHCR gradually, including the responsibility for refugee status determination, registration of refugees and asylum seekers and their reception. At the time of writing, the Refugee Bill 2014 is awaiting debate in the Senate. The Refugee

<sup>102</sup> Draft Kenya National Policy on Refugees and Asylum Seekers 2014.

<sup>103</sup> Mwalimu, C. (2013) Refugees and State Security: Kenya's Obligation under International Humanitarian Law and the Impact of the Law on State Security

Bill 2014 proposes major changes to the current Refugee Law in Kenya, repealing the Refugee Act of 2006 and with it dismantling the Department of Refugee Affairs (DRA) and the Office of the Commissioner of Refugee Affairs.<sup>104</sup> The Bill proposes the removal of refugee management from the DRA to the Kenyan Citizens and Foreign Nationals Management Service.

The 2014 Bill was widely contested particularly for its call on dismantling the Department of Refugee Affairs in favour of the Kenya Citizens and Foreign Nationals Management Service which has not functioned since 2011 and lacks the institutional background of refugee management.

In reaction to the proposed Refugee Bill of 2014, a new Refugees Amendment Bill 2014 to the 2006 Refugee Act was drafted by the Refugee Bill Task Force on review of the Refugee Bill, creating two parallel processes – the Bill with the Senate on the one hand and a different version of the Bill as drafted by the Task Force on the other. The Task force is chaired by DRA and is composed of the following 9 agencies: Department of Refugee Affairs (DRA), Danish Refugee Council (DRC), Refugee Consortium of Kenya (RCK), HIAS Refugee Trust of Kenya, Kitua Cha Sheria, International Rescue Committee (IRC) and Heshima Kenya. The aim of the Task Force proposed bill is not to repeal the 2006 Refugee Act but rather to address gaps within the 2006 Refugee Act and bring it into conformity with the Constitution of Kenya 2010. The bill includes some effective provisions and empowers counties hosting refugees to have a legal leg to demand more from the national government on the basis that they host refugees. The Task Force Bill seeks to increase both county engagement and host community engagement on refugee management. An entire section deals with relations with host community

as the Task force recognizes the central role both the county and host community play in order to establish more harmonious relations between refugees and host communities. Finally, instead of dismantling DRA, the Task force is lobbying to strengthen DRA by increasing its staff and capacity.

The main weakness of the Refugee Bill 2014 is that it is operationally not sound. It is not sound to give away DRA. Refugee matters are unique because of the international component which have to conform to international best practices<sup>105</sup>

According to the DRA:

*'Our bill is creating an institutionally sound and legal mandate unlike the current 2006 Act which has many limitations. For instance no department handles returnees. There is the issue of double registration (Kenyans registering as refugees and refugees registering as Kenyans). The senate bill did not address these issues. Our bill has now provisions for durable solutions. It is going to reflect the current realities that we have. If this bill has an impact on county governments – whatever is done is done at local level must be reflected nationally.'*<sup>105</sup>

While ongoing discussions were taking place between the Senate and Parliament in order to harmonise the two pieces of Refugee bill, stakeholders on both sides have advocated for a halt of discussions given the anti-refugee climate following the April 2015 Garissa attacks. As refugees are being linked to insecurity, and with pressure from some government quarters calling for a closure of Dadaab refugee camps, discussions pertaining to refugees are currently viewed from a security lens. Such a heightened atmosphere is neither favourable nor conducive to constructive discussions on refugee rights and legal frameworks.<sup>106</sup>

<sup>105</sup> Interview, DRA Nairobi, 24 March 2015.

<sup>106</sup> Kitua Chuo Charia: 'Closing Dadaab' Conference, Rift Valley Institute, 29th April 2015.

<sup>104</sup> UNHCR Kenya Fact Sheet, December 2014, p.4.

At the same time as the revisions of the Refugee Bill 2014, the Task Force is drafting the first Kenya National Policy on Refugees and Asylum Seekers 2014 meant to compliment the proposed Refugee Bill. In it, the task force advances progressive measures meant to advance the opportunity created by devolved governance structures. The National Asylum Policy also provides for the three traditional durable solutions, giving responsibility for their achievement to the national government through the Department of Refugee Affairs.

### **A top-down national policy process impacting county governments**

The Government of Kenya's preference for refugees to reside in camps is not new – it dates back to the early 1990s with the expansion of the Dadaab refugee camps to a complex of five camps located in North Eastern Kenya's Garissa and Wajir counties, and the creation of Kakuma refugee camp, the second designated refugee area in North Western Kenya. In December 2012, the Government of Kenya announced a Directive for urban refugees to relocate in camps, requiring all refugees living in cities to relocate to designated refugee camps. Registration of urban refugees stopped with this directive. Both trends – encampment and end of the urban refugee registration process – have been considered as major setbacks in securing the rights of refugees in Kenya.

In July 2013, the high court ruled unconstitutional a government directive ordering all refugees in Nairobi and other cities to move into Dadaab and Kakuma camps. However, with deteriorating insecurity incidents, a little over a year later, the Kenyan government re-issued and began implementation of a similar directive to relocate urban refugees to camps. This was justified on the basis of the so-called emerging

security challenge in urban centres.

The recent attacks in the country, namely the Westgate incident, attacks on the coast and sporadic explosions across Nairobi has contributed to the stringent measures taken by the government on refugees. The March 26th Directive on encampment further affirmed the government's securitization of refugees. Interview reports with NGOs that sit on the Legal and Policy Taskforce on the Finalization of the Refugee Bill 2014 spearheading the review of the Refugee Bill suggest that one of the main reasons why refugee management will remain a national function is because refugees are now considered solely through the prism of national security, a function that cannot be devolved and that justifies centralized management of refugees.

“Refugee management remains with the national government and is viewed through the prism of national security. The refugee issue is a national security issue”

#### **– International Rescue Committee**

Interviews with national government actors further argue that apart from national security being a national function, counties do not have the capacity to manage the security challenges posed by refugees. Kenya now counts 47 counties, with international matters dealt with at the national level, including on issues of refugees and aliens. The counties hosting refugees are not independent of the state but can provide support in local service delivery, notably. The Government emphasises that Kenya is a unitary state with a devolved system of governance to bring government closer to the people.

### **The relocation and reinforcement of the DRA: A sign of a nationally owned agenda**

The Department of Refugee Affairs (DRA) is

the government organ mandated with the management, coordination and protection of refugees and asylum seekers in Kenya. Before the enactment of the Devolution process, the DRA was under the Ministry of Immigration and Registration of Persons. When the Kenyatta administration came into power in 2013, a restructuring of the Ministries in April of the same year saw a move of the DRA to the Ministry of Interior and Coordination of National Government under the Office of the President. In addition to relocating DRA, additional functions were allocated to this department in order to centralize the management of refugee affairs and reinforce national ownership. It is planned, over the next two years, that the DRA will gradually take over Refugee Status Determination (RSD) and other functions thus far handled by UNHCR. Interviews with the DRA confirm that refugee matters are national but at the same time take note of the fact that counties must be engaged.

“Refugee management is a responsibility of the national government and not the county government. DRA have offices in counties where refugees are hosted. The DRA have found that with devolution, counties are more sensitive to issues of land and therefore DRA has to engage more critically with them”

**– Commissioner for Refugees, Department of Refugee Affairs**

### **Efforts to strengthen Kenya's borders – away from counties, to a sovereign priority**

The restructuring of cabinet offices took place against a backdrop of increasing fighting between Kenya Defence Forces and Somali insurgents along Kenya's border with Somalia. The move to house the DRA within the Ministry of Interior and Coordination of National Government may be perceived to be a securitization of the asylum regime in Kenya.

Another example of Government stringency is the re-centralization of passport services, as a way to control and monitor who acquires citizenship. Security and border control concerns in Kenya are linked to the presence of refugees and of informal cross border movements, according to the official views of the Deputy Governor of Garissa.

As I mentioned, the issue and presence of refugees affects us as a county very much. Beyond the land issue, there is also an issue of security. These refugees are bringing in illegal firearms from Somalia and other counties. Within the camps, we are told that there is illegal trade of firearms and this is a security risk to the rest of the county. More than ever, we are now having many deaths caused by shootings on the streets and the explosion of these improvised explosive devices (IEDs). All these security problems are as a result of the presence of refugees”.

**– Deputy Governor, Garissa**

There appear to be two contradictory and parallel trends taking place with regards to refugee management in Kenya. With increasing securitization of refugee affairs by the national government, refugee affairs are being re-centralized despite the devolution of powers to the county governments.

The above efforts highlight a process of national ownership of refugee affairs. In this context, how can sub-national actors contribute to refugee management?

Discourses are evolving towards a positive engagement with county governments on refugee affairs – however there is no clear understanding of what county governments' roles and responsibilities should consist of. Although there are numerous ways that counties can and have engaged on in matters of refugee

management as will be detailed in this report.

## **Discourse On Refugee Management Under Devolution**

Can counties still play a proactive role in decision-making processes on refugee management?

Counties experience both the challenges and opportunities of hosting a refugee population. In Garissa, for example, environmental degradation, resource depletion, proliferation of illegal arms, disease outbreaks are a few continuing concerns. Opportunities are economic, with increasing trade opportunities as well as a greater presence of aid organisations and socio-economic through exchanges between nationalities, groups and clans – and between host and refugee communities as seen in Turkana. Interviews reflect conflicting opinions on whether counties should be involved in refugee affairs and if so what would be the roles and responsibilities. However, one point that remains clear is that counties must be consulted and engaged regarding decisions that affect the economy and politics of their jurisdiction.

Counties: an opportunity to be tested on refugee affairs? With devolution in Kenya, power is being decentralized. Decisions that once used to be made unilaterally by the government – like the expansion of camps – will soon no longer be made without the county's involvement. One reason relates to land ownership: refugee management is first and foremost a question of land management. What is done with the land, how the land is allocated, how it is used for infrastructure becomes a question for the counties. It is in this burgeoning debate that the voice of counties can be heard on refugee management. First, identifying where county powers lie (notably on land issues and land management), then linking it to refugee affairs. County governments are tasked by the law to

manage community land by consulting with the community. The Sub-County Administrator's office, which took over from the Constituency Development Committee (CDC), plays a key role in the decision making process. It is through this avenue that counties can play a role in refugee affairs and in particular allocation of land for camp expansion.

“What the national government needs to know is that the county needs to be consulted as a host, even before the national government has been contacted as to where the refugees should be located”

**- Deputy County Governor of Garissa**

“Refugees are mainly the responsibility of the national government.”

**- Deputy District Commissioner, Dadaab, Garissa County**

“If national governments monopolize decision-making counties will never support refugees but will only tolerate. County governments are crucial - Without the support of the county the national government will have problems as counties may bring obstacles that affect national government activities with regard to refugees”

**- Ministry of Devolution and Planning**

« The biggest impact of devolution can be seen on marginalised counties. Turkana has now more money than it can spend. The major challenges facing Turkana is its capacity to absorb and optimise the funds. Money is being returned to the fund as a result. »

**- Ministry of Devolution and Planning**

Counties have now become an interlocutor – yet the key role remains within the national government: National government involvement in refugee affairs remains central, without ignoring the fact that counties now need to be engaged. There are pending capacity issues,

fiscal management as well as issues related to setting up proper systems and new structures. County governors and officials have been in office for only over a year – not enough time to yet position them as a clear voice. There is a need, a willingness to get involved – unmatched by the capacity or procedures for a proper involvement on refugee affairs, as voiced by the deputy county governor as well as the national government, through the ministry of devolution and planning.

Within the same county – Garissa County – different voices can be heard. On the less optimistic end, statements suggest that there is a level of complacency amongst county authorities, and a lack of recognition of their role in refugee affairs. The further they stand, the better they consider themselves. In their view, counties should not engage in refugee affairs. The District Commissioner’s office in Dadaab stated his position on the issue when interviewed: according to him, the DRA is responsible for camp management on the district level, for what goes on in the camps and with refugees.

The view from NGOs working in the field with

county governments echo this distance and lack of engagement. They voice difficulties in obtaining any type of support from counties in day-to-day to more strategic refugee management issues. The county government is at best not supporting, and at worse not visible for practitioners on the ground, thus questioning the level of interaction between actors. To assess the impact of the relation between devolution and refugee management, this report will now assess the level of interaction between actors involved on both ends.

### **An opportunity for county governments to participate in refugee affairs? A dual discourse**

Devolution in Kenya is still at its infancy – newly designed, it is yet to be fully implemented. Assessing its impact on refugee management is difficult at this early stage of the implementation process. The debate is polarised and in need of a more positive outlook on the contribution of county governance to refugees, and of refugees’ contribution to marginalised counties like Garissa.

The discourse on refugee management under

devolution takes on two clear and opposite strands.

**The first strand:** Refugee matters are a national function and should remain so: first, a national government responsibility for matters relating to national security, international law and international relations involving cross-border relations with neighbouring governments; second, a national responsibility in responding first to the rights and needs of Kenyan citizens, especially the needs of vulnerable communities and citizens living in the marginalised regions of the country – like Garissa county.

*“When I talk about the people of Garissa County I am talking about the constituents of Garissa county. Anyone who holds a voters card in this county (...) we are not working with refugees. The purpose of the county governor’s office is to work for the county constituents and residents» Deputy Governor, Garissa County*

**The second strand:** Counties should play a role in refugee management and protection: Interview reports, with both national and county authorities and non-governmental organisations (NGOs) based in Dadaab, argue that the devolution of powers and resources gives room for counties to play a significant role in refugee management. Where is the middle ground between these extremes and the missing link between devolution and refugee management? A review of the legal frameworks and laws will shape the answer.

“County governments are crucial – without their support, the national government will face obstacles in refugee affairs”

**– Ministry of Devolution and Planning**

“I really think refugee issues should be handled on a county level: we are the ones who know what is happening on the ground.”

**– Deputy District Commissioner, Dadaab**

“Protection of human rights is the responsibility of all governments and therefore county governments that host refugees can play a role in refugee management.”

**– Refugee Consortium of Kenya**

## **LEGAL ANALYSIS OF RELEVANT FRAMEWORKS AND LAWS**

In 2014, a Refugee Bill has been proposed to Senate: an opportunity to clarify relations between DRA and county governments on

refugee affairs – yet to date, such efforts have remained controversial. The process will depend on other members of the taskforce – represented by UNHCR, DRC, NRC and IRC among others – to push for mainstreaming of migration and refugee affairs in devolution. Currently, five legal instruments speak to different aspects of refugee management in Kenya. Without operationalization of the acts and lack of guiding policies, Kenyan law on refugees may continue to be misinterpreted thereby affecting how refugees are managed and protected.

## **The disconnect between two policy processes**

A number of key international and national actors have argued that the Refugee Act of 2006 treats refugees as a transient problem. Interview reports find that the review of the bill has not taken into account the on-going devolution process, thereby showing signs that

refugee management is still envisaged mostly from a national perspective and disconnected from sub-national authorities.

The current review does not envisage county management of refugees, despite the fact that in reality refugee-hosting counties could have a role to play in refugee affairs on matters such as service provision for example.

The lack of a policy on refugees has handicapped the implementation of the current bill. Having a policy could lay out the place of counties that host refugees in refugee management and more importantly could inform interaction between national and county actors on refugee matters.

“The current refugee act does not properly align with the Constitution of Kenya – hence the need for the review. Furthermore, the Act treats refugees as a transient problem and in terms of entrenching their rights, it remains very weak.”

– IRC

### **Identifying opportunities for linking up policy processes through a consultative approach**

Like any legal instrument that has to go through a parliamentary vetting process, the proposed Refugees Bill (2014) will be securitized<sup>107</sup>.

The Refugee Bill is, at the time of this report, before the Senate. This was done without the knowledge of the Task Force that was reviewing the Bill. Hence, the Bill remains controversial. The lack of a consultative process with regards to policies and law goes against the principles of public participation laid out in the CoK 2010. Interviews find that few are aware of the review of the Bill. This leads to question whether local integration can be a potential durable solution.

“Potential supporters of the bill – people who come from where refugees are present have not been engaged thereby short-changing the argument for local integration”

– IRC

“The issue of local integration is very controversial both locally and at the government level due to historical and political issues. It is about resource sharing. For example the integration of refugees becomes political because once they are part of Kenyan society they can vote and they have decision making power”

– **Commissioner for Refugees, DRA**

A content analysis of legal frameworks pertaining to refugee matters finds that there is a lack of coherent provisions for refugee management and protection. The existence of numerous acts has led to misinterpretation of the law. Currently there are five legal instruments in place that inform different aspects of refugee management. The overarching legal framework for the acts below is the CoK 2010. The acts include:

- a) Refugee Act 2006
- b) Refugee Bill 2014
- c) Kenya Citizenship and Immigration Act 2011
- d) Kenya Citizens and Foreign Nationals Management Service Act 2012
- e) Constitution of Kenya 2010

Misinterpretation and confusion of the law is seen in a recent court case in which UNHCR acting on behalf of the defendant, put into question the Section 39 (1)<sup>108</sup> after the March 26th Directive for encampment of all urban refugees. The Refugee Act governs movement of refugees, however the Constitution, under the bill of rights in Section 20 (2)<sup>109</sup> states that

107 Securitization of the act alludes to the process by which, refugee affairs will be viewed through the lens of security concerns and not through the human rights lens

108 Section 39 (1) 'Every person has the right to freedom of movement'. CoK 2010

109 Section 20 (2) 'Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom' CoK 2010

all persons have rights. In resting the case, the court identified refugees as being part of a minority and marginalised group. This conclusion still remains questionable as refugees are a special identity and are not Kenyan citizens. On the other hand the Citizenship and Immigration Act 2011 speaks to some extent on local integration through the acquisition of citizenship through marriage.

The review of the Refugee Bill has undergone the following changes awaiting decision in Senate:

**TABLE 4. MAJOR CHANGES / REVIEW PROCESS OF THE 2014 REFUGEE BILL**

**MAJOR CHANGES**

1. Re-arrangement of Sections- the bill has six sections- each dealing with a specific aspect of refugee management
2. The Act has been aligned to the Kenya Citizens and Foreign Nationals Service Management Act 2012
3. The revised bill has a stronger element on security through screening and stringent check to monitor movement of refugees and asylum seekers
4. The bill lays out a place and clarifies roles and responsibilities for structures such as an appeals board, refugee affairs committee and tribunal implying a protectionist tone
5. With regards to the rights and duties of refugees, a new section on women, children and vulnerable groups has been included.
6. Terrorism has been added to the conditions that lead to the exclusion of refugees and stricter measures have been put in place for refugees and asylum seekers who commit crimes (serious and non serious)

*Source: UNHCR (Unpublished Notes on the Review of the Refugee Bill 2012)*

To date, changes have not included mainstreaming of devolution in refugee affairs. Further advocacy and agenda setting should be planned in order to ensure that revisions to the 2012 Refugee Bill take into account the devolved governments and applications of the 2010 Constitution of Kenya. The risk being that the revised bill will not in any way integrate county governments in refugee related decisions. This could pose a major risk to any attempts to address refugee needs at the subnational level.

## THE REFUGEE BILL 2014 – STATUS UPDATE

Prior to and independent of discussions on the Security Laws (amendment) bill, the Senate is discussing a proposed Refugee Bill with major changes to the current refugee law in Kenya. The main issues proposed are the repeal of the current Refugees Act (2006) and the dismantling of the Department of Refugee Affairs, effectively seeking to remove management of refugee affairs from the DRA to Kenyan Citizen and Foreign Management Service.

The proposed Refugee Bill 2014 does not take into account county governments and gives no power to county authorities through devolution. However, it should be noted that a memorandum to the bill gives justification that county governments should be more involved.

At the same time, a parallel process is on-going: a National Assembly amendment of the Refugee Bill is proposed with the aim not to repeal the 2006 Act but to draft an amendment to address gaps within the Act.

The Senate was on recess until February 2015, and the Bill is still in abeyance.

## WHO GOVERNS WHOM RIGHT NOW?

### LEVEL OF INTERACTION BETWEEN NATIONAL AND COUNTY ACTORS

#### **There is currently minimal interaction between national and county actors on refugee affairs.**

The Ministry of Devolution and Planning recognizes that the county government must adhere to any national policy on refugees in order to avoid contradictions. In the same breadth, the protection of human rights is a responsibility of all levels of governments, and the ministry recognizes and argues that counties have the responsibility to make refugees' stay humane and comfortable.

As refugee management remains an exclusive national function, there are currently limited legal avenues for the two levels of government to interact. **Establishing a working framework between the national and county governments that host refugees would be a starting point to effectively engage counties on refugee management.**

The DRA has set up offices in counties where there is a refugee population namely in Nairobi, Turkana, Garissa, and Mombasa. The DRA is responsible for camp management and counties may hence feel like they have no role to play. The DRA headquarters undertakes camp management from Nairobi whereby decisions and orders are cascaded down to DRA field officers at the camps in the county.

The process remains highly centralized as a means of tightening checks and monitoring of refugees. One way that refugee-hosting counties engage more closely with the DRA is land allocation for refugee camps that are on community land<sup>110</sup> and to a lesser extent refugee protection. However, county governments do not have a legal mandate to deal with refugee matters, as this is a national function. Counties have a legal avenue to handle aspects of refugee management by virtue of the fact they are trustees of community land. Article 63 (4)<sup>111</sup> makes provisions for community consultation regarding the use of community land. Therefore national and county governments must consult communities before allocating land for refugees or expansion of camps.

#### **The Missing link between National and County actors**

In the case of a protracted situation such as Dadaab, the question of where humanitarian assistance stops and development begins becomes difficult. The demands for development are ever more present, in protracted cases. Reports from the field find that the line between humanitarian work and development is blurry. Humanitarian agencies on the ground find themselves engaging in long-term development activities that ideally should be done by the county government and/or development agencies.

County governments are in charge of development in their jurisdictions. County integrated development plans lay out a five-year development road map for counties. Garissa County has developed an 11-point development plan that aims to boost the county's economy. On the other hand, the long-term presence of humanitarian agencies such as UNHCR

<sup>110</sup> Community land is held in trust for the community by the County government

<sup>111</sup> Section 63 (4) 'Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively' CoK 2010

and WFP has contributed to the infrastructural development of the county. Examples include the reconstruction of the Garissa – Dadaab road by WFP, hospitals, school, etc. Other agencies have engaged in livelihood programs that benefit both refugee and host community populations to improve their economic and social conditions. With the county government's negative perception on refugee presence, the field study reveals that it is difficult to have development initiatives where the refugees are the main beneficiaries. Therefore development programs must target both host and refugee communities.

More so, the government suggests that they should be compensated for hosting refugees who they argue have affected socio-economic development of the county. Other players such as the private sector have begun filling in developmental gaps. Equity Bank one of Kenya's leading banks has set up shop in Dadaab to capture the booming economic activity of the Dadaab economy.

With the increasing securitization of the refugee discourse, political and administrative powers largely remain at the national level. However, the devolution of power and some legal provisions notably the clause on community land under Article 63 (4) of CoK 2010 and the provision for a sub-county administrator under Section 50 (3) of the County Government Act provides windows for engagement of county governments on refugee affairs. The county executive through its ministries/ departments can be a way to engage with refugee management through the angle of service provision. With regards to financial power, interview reports find that a reduction of donor funds have impacted the conditions within the camps suggesting that financial aspect of refugee management is largely dependant on donor funds.

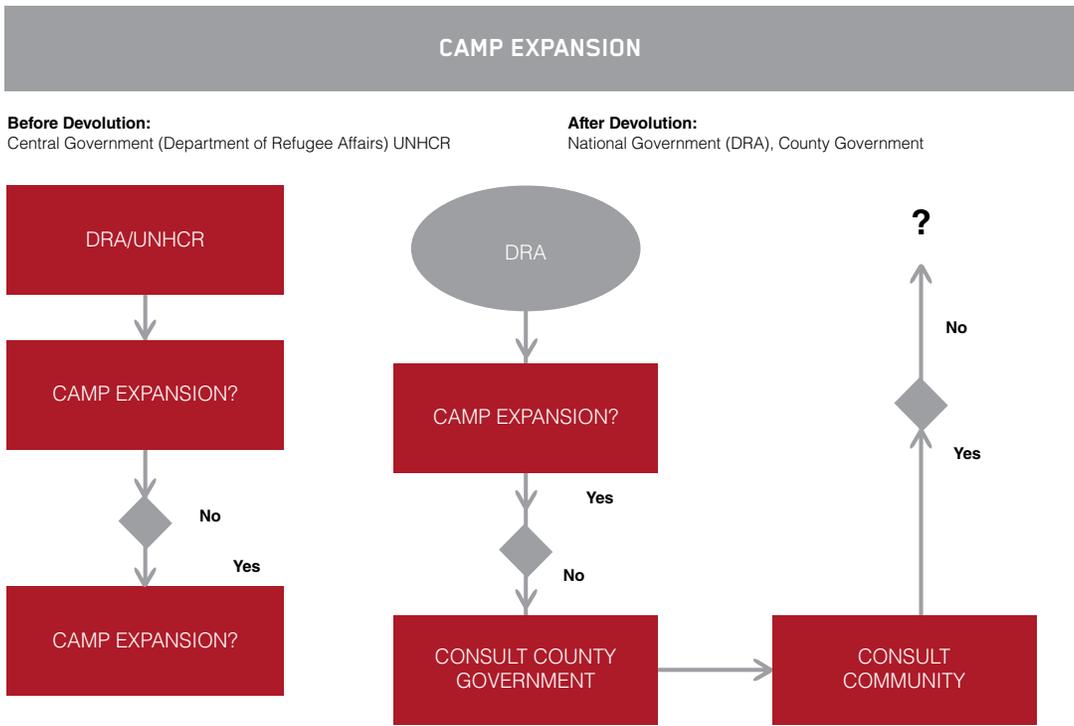
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## MAPPING THE PROCESS: AN EXAMPLE OF CAMP EXPANSION

Counties can play a role in some aspects of refugee management. The process is very unclear and informal especially at the county level. Using the example of camp expansion the process map below shows how the on-going process of devolution has impacted on decision making regarding refugee matters.

With the central government, rapid decisions such as camp expansion could be made without consultations. It has been reported that county government have been difficult to work with, and as a result, some organisations have had to make decisions from Nairobi. On the other hand, the process of decision-making is also unclear with regards to engaging relevant county authorities and offices. Interviews found that this is because county legal systems are not fully in place making it difficult for counties to make decisions backed by the law.

Figure 2: Process map for camp expansion



### The hopes and challenges of devolution

Turkana, Mandera and Garissa counties received the highest development funds in 2014<sup>112</sup> with respectively KSH 2 billion, 1.35 billion and 1.28 billion.

- Turkana’s 2013/2014 total revenue reached KSH 8,547 billion
  - Equitable share of KSH 7,664 billion
  - Equalization fund of KSH 302 million
  - Revenue from Local sources / subcounties of KSH 351,839,000
  - Donor funds of KSH 229,995,000
- Garissa’s budget was close to half, with KSH, 4,848 billion
  - Equitable share KSH 5,221,533,000
  - Level-Five hospitals of KSH 184,228,000
  - Revenue from local sources / subcounties of KSH 150,533,000
  - Donor funds of KSH 290,805,000

Turkana received more than it could absorb – confirmed by the controller of budget report which states that the least absorption of the annual budget was found in Kisumu, Mombasa and Turkana at respectively 4.33 per cent, 7.7 per cent and 7.4 per cent for Turkana. This calls for the need to enhance human capacity in Turkana County specifically to avoid funds being returned to the national government due to a lack of personnel or capacity. The needs are there as the host population is considered to be even poorer than the camp population – and hence high hopes rest in the county budgets’ capacity to be implemented for results.

Perspectives on devolution in Turkana are ripe with hope: *“Devolution for Turkana is the best thing that happened since independence!”*<sup>113</sup>; *“devolution has brought us independence – Lodwar is becoming a construction town”*<sup>114</sup>. The discourse on devolution is often linked

<sup>112</sup> Country budget implementation review report, first quarter (2014), Office of the Controller of budget, Government of Kenya.

<sup>113</sup> Interview, Ministry of Pastoral Economy and Fisheries, March 2015.

<sup>114</sup> Interview, Ministry of Trade and Tourism, March 2015

to the one on independence as stakeholders see the fruit of devolution in the capacity to bring Turkana, a marginalised county, to the development agenda in Kenya.

Yet, devolution comes with a set of challenges that are recognised as follows:

- Devolution is new: structures are being set-up, policy and legislation are being developed
- Devolution is a time and resource consuming process that requires a stronger infrastructure and set of human resources: the lack of local capacity and poor governance have been highlighted. Stakeholders have voiced their concern that counties cannot properly manage their own resources and responsibilities, let alone those that fall on refugee affairs. A recent example is the strike of doctors who contested the transfer of payments through county governments, as they consider that the county government cannot manage hospitals and health care in a timely manner. Media reports (May 2015) of funds mismanagement raises questions as to whether the county governments can effectively manage the allocated funds.
- Insecurity in northern Kenya hampers development prospects under devolution – especially so in Dadaab, but also recognised as a challenge in Turkana.

# DEVOLUTION AND IMPLICATIONS FOR REFUGEE MANAGEMENT

## DEVOLUTION ARCHITECTURE

The devolution process has brought forth opportunities and challenges for refugee management in northern Kenya. Joint efforts between the Transition Authority and Ministries, Departments and Agencies (MDAs) have operationalised Devolution Acts to ensure that counties are able to carry out their functions. The setting up of key bodies, institutions and systems is still an on-going process. So far, counties have established a number of structures that enable them to effect functions assigned to them by the constitution. This process brings forth both challenges and opportunities for refugee management and migration sector actors, highlighted below.

## THE UPS AND DOWNS OF DEVOLUTION IN KENYA: ACHIEVEMENTS AND CHALLENGES

In 2010, the new Constitution of Kenya set out a decentralized framework of governance: a system of devolved government with 47 sub-national, or lower level, county governments. The March 2013 elections included the election of county governors, deputy governors and representatives, paving the way for implementation. These 47 counties are now officially in charge of previous national responsibilities now turned local: provision of health care, primary education, and infrastructure, to name a few. In order to do so, the additional power allotted to the local county governments is accompanied by additional funds.

### Division of responsibilities - Key Facts

- Refugee affairs are a matter of national security and fall under the central government's mandate in Kenya.
- Counties are host to refugees, managed by the Department of Refugee Affairs (DRA) of the Central Government.
- County governments have no earmarked funds for refugee management. Their funds are dedicated to development projects in the county – that are calculated on the basis of the population of national citizens and residents.
- This section highlights the tensions between national management of refugees and county hosting refugee.

County governments are pledged a share of national revenues – but they are not solely receiving funds from the national government, **they are expected to mobilize their own revenues through a management of finances and taxation at the local level.** As such, local counties – through the devolution process – become their own government, as they possess the mandate to administer public policy, exercise executive and political power through customs and institutions. Yet, they fall short of setting a political agenda or setting the laws: a clear gap preventing regions with particular challenges – like North Eastern Kenya – to set the pace for solving its own bottlenecks. Refugee management remains a matter of national security in Kenya – and hence highlights one of the key limitations of the devolution process at the time this report is being written. In a May 2015 validation forum, UNHCR argued for the need to address budget allocations and expenditures, by including civil society in the process for transparency. Participants also raised the concern that refugee hosting counties could run the risk of becoming ‘ghost towns’ if operations are not effectively integrated in county operations, and if the county’s ability to run services is limited after external funding come to term.

**Achievements: A new architecture and division of labour from the national to the local**

The eleventh chapter of the CoK 2010 spells out the provisions for how the new devolved government structure will work. The most transformative aspects of the new Constitution are devolution of political power, responsibilities and resources. The devolution envisaged by the CoK 2010 is based on the principle of inter-dependence and cooperation.

The national government comprises of the Parliament, the National Executive and the Judiciary.

- Of the three arms of government – the Parliament, the National Executive and the Judiciary – only Parliament and the Judiciary will have some oversight and/or arbitration responsibility over the county governments. Parliament shall exercise control over the county governments directly or through independent constitutional offices such as the Controller of Budget and Auditor-General.
- Another major departure from the past is the establishment of a bicameral Parliament, comprising of the National Assembly and the Senate. The National Assembly will represent the interests of the constituencies, while the Senate will represent the interests of the counties. Whereas the Constitution empowers the National Assembly to enact legislation and exercise oversight over national revenue and expenditure, approval of Bills relating to the counties and oversight of county budgets has to be done jointly with the senate.
- The functions of the national and county government are laid out in the Fourth Schedule of the Constitution. There are three types of function i) exclusive ii) shared iii) residual.

**Achievements: Passing of Key Legislation**

The Task Force on Devolved Government (2010) concluded a comprehensive report that gave way to the creation of the Transition Authority (TA) - a statutory body, which has constitutional authority to midwife the transition process towards devolution in Kenya. The TA is established under Section 4 of the Transition to Devolved Government Act (TDGA) 2011, with the mandate to, facilitate and co-ordinate the transition to the devolved system of Government

as provided for under Section 15 of the Sixth Schedule to the Constitution of Kenya 2010. The Transition Authority is a critical institution charged with the responsibility of overseeing the implementation of devolution under the Constitution through policy and legal advice, resource mobilization, oversight, capacity building and coordination. The following acts were passed by parliament to spearhead the implementation of devolution throughout the transition phase.

**Challenges of devolution in a unitary state: From Policy formulation to Implementation**

**Lack of capacity**

**The lack of capacity of some county governments to set up proper administrative structures is putting devolution at risk** – a key point highlighted by all stakeholders in Turkana notably. Recent calls for a referendum by the opposition leader, has put a strain to the implementation process. The Transition Authority, in conjunction with line ministries, is working to ensure a phased implementation of devolved processes to those counties that have administrative and governance capacities. The offices meant to

execute governance capacities are set out in Part VI ‘Decentralised Units’ of County Government Act 2012. These offices include office of the ward administrator, office of the village administrator, village council, municipal boards and town boards.

The following milestones have been achieved under the phased implementation process:

- The Council of Governors has been established
- Counties have appointed executive committee members
- The Sub-County Administrator’s Office is operational
- County assembly members (MCAs) have been elected
- County public service boards are being set up
- Budgetary allocations have been made to all counties
- County Integrated Development Plans (CIDPS) have been submitted to the Ministry of Devolution and Planning (some CIDPs are not complete and are still undergoing review)

**A Unitary state umbrella**

Kenya is a unitary state – whereby the state governs as a single power, in which the central government is ultimately sovereign and chooses which powers to delegate to the sub-national,

115 Transition Finance Acts are those acts that are to guide public finance during the financial year 2012/2013

TABLE 5: DEVOLUTION ACTS	
DEVOLUTION ACTS – ENABLING LEGISLATION	
Name of the Act	Year
Constitution of Kenya (CoK)	2010
Transition to Devolved Government Act	2011
County Government Act	2011
Urban Areas and Cities Act	2011
Public Finance Management Act	2011
Intergovernmental Relations Act	2011
Transition Acts and Guidelines <sup>114</sup>	
Transition Public Finance Management Act	2013
Transfer County Revenue Allocation Act	2013

or county level, authorities. The government can delegate power to subnational units through devolution – but it may also abrogate acts and curtail devolved governments’ powers. Hence, devolution in theory and in practice can be at odds.

In terms of policy processes, devolution has happened and been heralded a success in a country where policy development is common, but rarely in such drastic forms. Under the pressure of counties and local political actors, the devolution of power has taken place more rapidly than originally planned, leading to challenges in the implementation process, in particular in terms of bridging the gap in capacities between national and local authorities. Despite the establishment of county governance structures and institutions, there is still a lack of clarity as to how the devolution process works and is implemented in practice. It is critical to note that despite the devolution of political autonomy and fiscal powers, Kenya is still a unitary state and therefore counties can have autonomy to a certain extent as long as it does not affect the unity of the Kenyan state. This is a central issue when discussing devolution in the context of refugee affairs – as it touches on one of the most sensitive nodes of the central government’s prerogatives: the management of refugee affairs, national security, and the provision of basic services to its citizens.

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## CHALLENGES IN THE IMPLEMENTATION PROCESS

The Institute of Economic Affairs (Kenya) cautions against treating devolution as a utopian model that would automatically secure equitable development, or remedy corruption and bureaucratic inefficiencies.<sup>116</sup> The big-bang approach<sup>117</sup> to the implementation of devolution has brought forth various challenges.

### **Fiscal Decentralization**

- According to the revenue sharing formula set by Commission for Revenue Allocation, counties are to receive 15% of the total national revenue. Counties have raised concerns that they have not been allocated adequate resources in comparison to the functions that have been devolved. A response to this is the ‘pesa mashinani’ referendum that aims to push for more funds to counties.
- The equalisation fund allocated to marginalised counties has been contested in parliament and it still remains unclear as to how the funds should be allocated. Interviews with the Ministry of Devolution and Planning reveal that the equalisation funds have not been useful to the development of marginalised areas as their absorption capacity is low.

### **Legal Framework for Devolution**

- Changes to the law have raised concerns at the county level. A major example is the recent amendment to the County Government Act 2011 that makes provisions for a County Development Fund to be chaired by the Senator which the Council of Governors argue goes against the tenets of devolution, as this move shifts a significant amount of power to senators

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<sup>116</sup> Institute of Economic Affairs, Devolution in Kenya- Prospects, Challenges and Future.

<sup>117</sup> “The big bang approach refers to the fact that Kenya is creating a new level of government and giving it political, financial and administrative autonomy all at once”. <http://www.theeastafrican.co.ke/OpEd/comment/The-challenge-of-devolution/-/434750/1722282/-/guciwiz/-/index.html>

and challenges the notion of separation of powers.

- County administrative structures are not fully in place. Some key county institutions such as the municipal boards and towns boards have not yet been established. These institutions play a key role in linking lower level administration levels to county activities. The reason behind this is the on-going debate around the amendment of the Urban Areas and Cities Act 2011. The institutional structures laid out in the act are crucial for enhancing relations between the county executive and lower level administrative units.

### **Power Struggles within the Devolved System**

- Members of the County Assembly hold a significant amount of power as part of the county legislature. Interview reports indicate that MCA's abuse this power, which has led to frequent impeachments of governors.
- Despite provisions made in the law concerning the roles and responsibilities of various offices both at the national and county level, there have division of labour issues notably between County executives and Member of the County Assembly and Governors and Senators. This has brought to question the notion of separation of powers and also challenges the legitimacy of the Intergovernmental Relations Act 2010.

### **Specific Devolution Implementation Challenges in North Eastern Kenya**

- Due to prolonged marginalisation of this region, skilled workers have migrated and left behind a deficit of skilled professionals. This has led to a lack of skilled and qualified officers at the county level.<sup>118</sup> Respondents reported that some county authorities lack requisite skills for the positions they hold thereby affecting day-to-day county operations.

- County level politics informed by ethnic tensions between different clan members have led to clan rivalries and exclusionary politics further challenging implementation of devolution. The struggle for power amongst different clan members namely the Degodia and Garre in Mandera County has led to competitive politics, which puts in question the capacity of county governments in the region to address conflict dynamics.

### **Devolution: A work in progress**

The key aspects to follow – and contours to be written – are on the legal framework, institutional structures, intergovernmental relations and public financial management of the devolved process.

**On the legal framework:** There are six main acts that inform the legal framework for devolution (Section 2.1). Members of the Taskforce on Devolved Government write that the devolution acts are vague making it difficult to operationalise.<sup>119</sup> The ongoing implementation process has seen numerous amendments to the act to fill in some gaps. The changes in legislation have been labelled as a plot by the national government to interrupt the process of devolution by maintaining power at the centre. Some examples include the County Government Act (2011) which states an « *amendment to the County Government Act that makes provisions for a County Development Fund, chaired by the Senator (National Government) and the Governor as the Secretary to the Board* ».

**On the institutional front:** The County Government Act 2011 and the Urban Areas and Cities Act 2011 (UACA) lay out most of the institutional organs. Yet, in most counties, municipal and town boards have not yet been set up as Section 5 of the UACA, which sets out the criteria for population thresholds for urban areas, is being contested. Furthermore,

118 <http://www.standardmedia.co.ke/article/2000090682/leadership-shortcomings-stifling-socio-economic-growth-in-counties>

119 Final Report of the Taskforce on Devolved Government- Volume 1 A Report on the Implementation of Devolved Government in Kenya

Constituency Development Committees (CDCs) have become obsolete. Replacing this office is the Sub-County Administrator's Office. The roles and responsibilities are laid out in the County Government Act and are now operational.

**On intergovernmental relations, fiscal planning and service delivery:** the division of labour between national and county government is not clear. County governments are slow in delineating integrated service sectors. This lack of clarity is at the centre of conflict between the county and national government over the equitable share of national revenue.<sup>120</sup>

**On public financial management:** The Intergovernmental Relations Act 2012 makes provisions for an Intergovernmental Fiscal Relations Department that needs to be operationalized. Pending implementation of the Treasury Single Account, the adoption of the Public Financial Management Act regulations and a formal agreement between the central government and counties on outstanding liabilities, as well as stronger oversight on the use of public resources.<sup>121</sup>

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## CASE STUDY: COUNTY INTEGRATED DEVELOPMENT PLAN (CIDP) – GARISSA COUNTY

The Public Finance Management Act (2011) provides that every county shall prepare a development plan in accordance with Article 220(2) of the Constitution of Kenya for approval by the county assembly. The county executive committee member responsible for planning shall submit the development plan before the county assembly dates set by Treasury. The development plan will inform the budget priorities for the coming year.

The County Governments Act, 2012 (CGA), 104 obligates a county to develop an integrated plan, designate planning units' at all county administrative levels and promote public participation and engagement by non state actors in the planning process. The County Integrated Development Plan (CIDP) is a 5 year plan that shall inform the:

- County's annual budget
- County Sectoral Plan - 10 year plan
- County Spatial Plan - 10 year plan using the Geographic Information System (GIS)
- City and municipal plans

Garissa County also has an 11-Point Development Plan that prioritizes key development areas:

1. Agricultural Development to achieve food security
2. Education
3. Technical training for youth
4. Infrastructure development
5. Livestock development and marketing
6. Water, Sanitation and Waste Management

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120 TISA

121 <http://www.standardmedia.co.ke/business/article/2000127726/imf-praises-progress-made-by-kenya-s-fledgling-devolved-system>

7. Healthcare Services
8. Provision of County emergency services
9. Provision of appropriate County Services
10. Tourism
11. Security

## THE PROMISE OF EQUALITY - THE EQUITABLE SHARE AND EQUALISATION FUND: A LONG TERM PERSPECTIVE

### Current legal limitations

The hopes for devolution are centred around the promise that services will be brought closer to the people, leading to improved planning and management, and, in the end, better service delivery. For marginalised regions such as northeastern and northwestern Kenya, the opportunities that devolution can avail are positive as counties are entitled to an equitable share as well as equalisation fund that is based on a formula developed by the Commission of Revenue Allocation (CRA)<sup>122</sup>.

However,

1. None of the devolution acts mention refugees. Considered to be mainly a question of national security, refugee management has not been devolved.
2. The equitable share (35% of national revenue) goes to county governments based on the CRA formula with specific criteria including population size and land mass. Yet, population size does not include the refugee populations, and land mass refers to the size – and not the density – of land. Hence counties like Dadaab will benefit from about half of the share of Turkana county due to its smaller population and its smaller geographic land mass.
3. The size of the equalisation fund is limited to 0.5% of national revenue: a small amount of money given the fund's purpose to address marginalisation and unequal development in Kenya, yet sizeable enough at the local level to make a difference given the historically unprecedented efforts to “filling funding gaps” for marginalised counties. According to a 2013 study on this fund, “based on current national revenue projections, this amounts to between five and seven billion Kenyan shillings, or in the range of USD 60 million”<sup>123</sup>. The total equalisation fund for the year 2013 was totalled at Ksh 3 billion. Projected allocations for the county of Wajir and Garissa were.

TABLE 6: EQUALISATION FUND ALLOCATION (2013)	
EQUALISATION FUND ALLOCATIONS (2013) <sup>24</sup>	
Wajir	Ksh 240 million
Garissa	Ksh 202 million

<sup>122</sup> Commission for Revenue Allocation <http://www.crakenya.org/information/revenue-allocation-formula/>

<sup>123</sup> Maximizing Kenya's Equalisation Fund – Pro Rights – 2013 p 2

<sup>124</sup> <http://www.businessdailyafrica.com/14-counties-to-benefit-from-Sh3bn-equalisation-fund/-/539546/1706002/-/13trap/-/index.html>

4. The equalisation fund is currently being discussed in Parliament and its status remains to date unknown. This is an opportunity for advocacy for these funds to be set aside for counties that are bearing the brunt of the refugee populations' needs.

### **Room for interpretation: the Equalisation Fund and “marginalised communities”**

The Commission on Revenue Allocation's report on Criteria for Identifying Marginalised Areas for the Purpose of the Equalisation Fund identifies 14 marginalised counties of which three are heavy refugee-hosting counties, namely Garissa, Wajir and Mandera. The 14 marginalised counties represent two-thirds of Kenya's landmass. The World Bank has since warned the Government not to use the geographic definition put forth by CRA to determine the Fund's allocations, as it would result in spreading critical resources too thin.

If the Arid Land requirement is set aside, as recommended by the World Bank, this leaves room for interpretation to set the presence of refugees as a criteria for assistance of those counties under additional pressures by identifying refugees as a marginalised community *stricto sensu*. Article 204(3)(b) stipulates that the Fund shall disburse grants to counties in “which marginalised communities exist”. It offers the opportunity – or room for interpretation – for the inclusion of refugees as marginalised communities within marginalised counties. The definition of “marginalised communities” is clearly defined in the CoK under Article 260 that defines marginalised communities as

*“a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole”*

*“a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation has remained outside the integrated social and economic life of Kenya as a whole”*

Article 260 continues by including indigenous communities, pastoral persons and communities – whether nomadic or settled – as part of this definition.

Article 204 also provides legal requirements and explanations for the purpose and use of the Equalisation fund:

*“The National government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible”.*

These are the highest ranking needs of marginalised counties and communities in need of critical basic services. Yet, Article 204 does not specify whether refugee communities would be entitled to benefiting from such funds or whether the fund is prioritised for local communities only. However, as key documents have since highlighted, the need for a participatory approach is crucial to ensure that the limited Fund can reach the greatest impact. Two dangers have to be avoided: neglecting certain communities altogether, and carrying out plans without consulting the local stakeholders. To what extent would local governors be prepared to consult with refugee community representatives in their counties? This barrier – and lack of acceptance by governors of refugee issues as a central issue under their mandate in North Eastern Kenya – remains a key hurdle for DRC to address. Once local mentalities have been sensitized to the plight of refugees, then by law, a case can be made for inclusion of refugee

communities as part of the constitutional definition of “marginalised communities”. This would ensure, in turn, that the Fund can be used as a pilot to assess the engagement of the devolved structure with the needs of refugees and host communities, in a participatory manner. The limited funds available would be more easily managed, controlled and evaluated, using this effort as a pilot to learn lessons and take a step-by-step approach to raising the profile of refugees within the devolved structure.

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## NOTE ON MARGINALISED COUNTIES OF NORTHERN KENYA

Historically, the northern region has been a marginalised region politically and socio-economically. One of the biggest capacity gaps in the so-called marginalised counties is lack of requisite skills. The skills set of those holding key positions do not match the offices. This has adverse effects on county management and administration and especially with regard to refugee management.

Prolonged marginalisation coupled with harsh climatic conditions has compounded the socio-economic status of the county hence a struggling local economy, which is a major cause of tension between host community and refugee population. Competition for scarce resources such as water, firewood, has compounded the environmental degradation in the county and in particular in areas where the camps are situated.

Interview reports with non-governmental organizations that work with refugees find that county governments are interventionists and they can sometimes be destructive to processes and programs. It has also been noted that working with county governments is difficult, because there are no proper avenues for engagement.

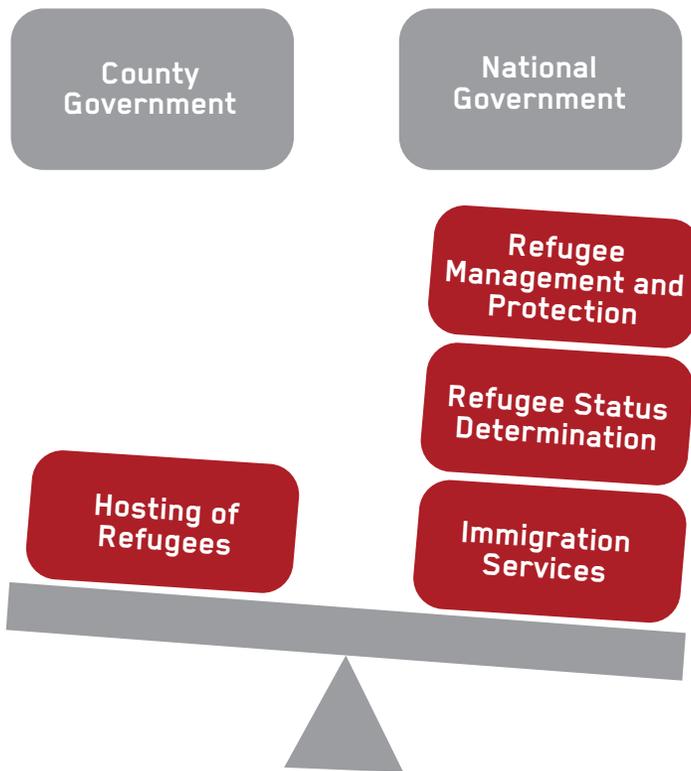
To counter the marginalisation factor the National Government through the Commission for Revenue Allocation, counties such as Garissa County are meant to receive an equalisation fund.

Working with counties that are in marginalised areas is difficult. Before devolution, these counties had no say as central government had full control. Political and fiscal autonomy has given these counties power and a voice.

## ROLES AND RESPONSIBILITIES UNDER DEVOLUTION

Refugee management is handled by the National Government represented by the Department of Refugee Affairs. County governments are not directly engaged with refugee management. The main actors mapped in this section are the DRA, County Government, UNHCR and NGOs operating on the fine line between national government, county government, and the humanitarian imperative. The mapping highlights the missing link with the development agenda.

Figure 3: Government role in Refugee Affairs



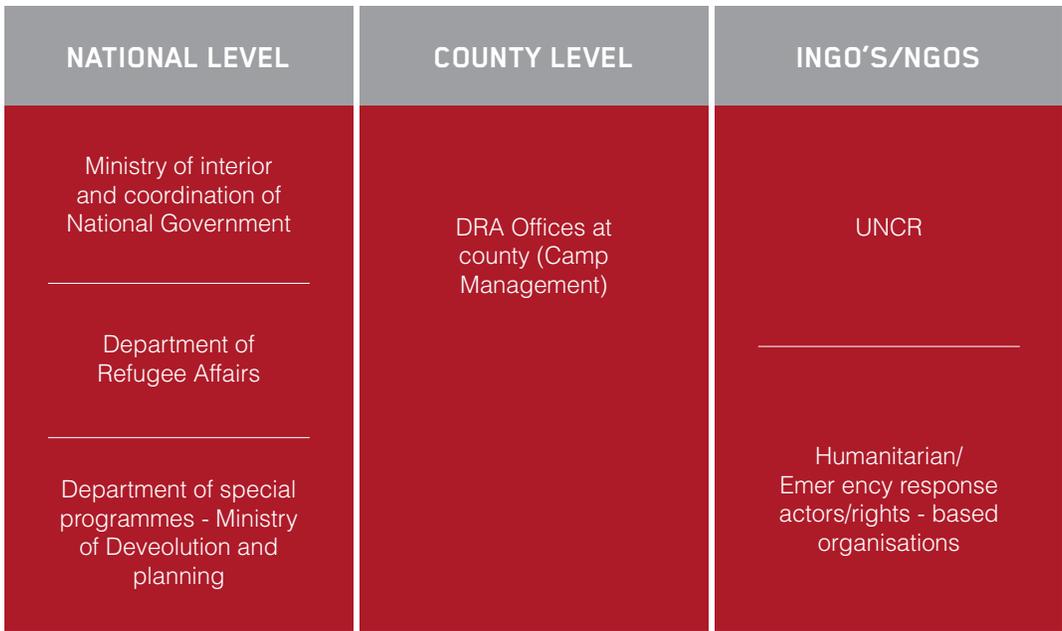
"Refugee management is a responsibility of the national government and not the county government"

**– Commissioner for Refugee, Department of Refugee Affairs**

"Counties are very young, and we must be given time to grow and learn in order to start effectively dealing with complex issues such as refugee management. But for the moment we are doing our best to make sure that we handle refugees carefully together with UNHCR and DRA."

**– Governor, Garissa County**

Figure 5: Institutional Landscape in Refugee Management



**Department of Refugee Affairs (DRA), Ministry of Interior and Coordination, National Government**

The Department of Refugee Affairs began its full operation in 2011 and is a fairly young unit. The role of the DRA is to receive, register, manage, and issue identification documents and protection of refugees and asylum seekers. In addition to this, the DRA has a mandate to ensure provision of shelter for refugees, setting up of camps and the coordination of service provision to refugees. The DRA has set up offices in counties where there is a refugee population namely, Nairobi, Turkana, Garissa, Mombasa and Nakuru.

**County Government**

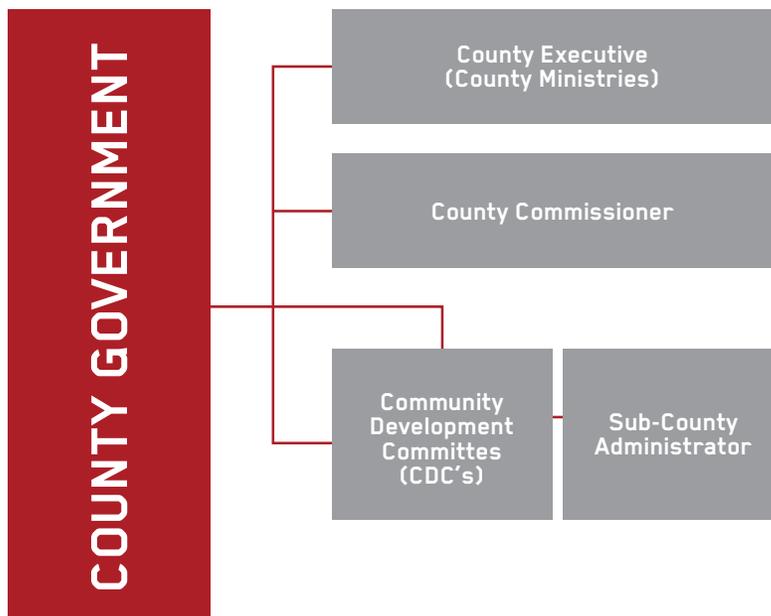
County engagement had thus far been implemented through CDCs that are crucial in managing host community and refugee relations. CDCs have particularly played a key role in conflict mitigation when tensions arise over environmental degradation, a rise in insecurity amongst others. As uncovered during the fieldwork led in Dadaab in October 2014, CDCs have become null and void as sub-county administrator is meant to take over the roles and responsibilities of the CDC'. Section 50 (3) of the County Government Act states that the holder of this position 'will be responsible for the coordination, management and supervision of the general administration functions in the sub-county including:

- (a) The development of policies and plans
- (b) Service delivery
- (c) Developmental activities to empower the community

(d) The provision and maintenance of infrastructure and facilities of public service’.

The establishment of this office may bring some challenges, as it appears to be taking a top-down approach to community development unlike the CDC’s that comprised of members from the community that had an acute understanding of people’s needs. Furthermore, the CDCs have been a main entry point for organizations working on programs. Their disappearance leaves a void hoped to be filled by the activities under the Sub-County Administrator’s Office, but it leaves the possibility of cooperation on refugee affairs in a state of limbo.

**Figure 6: County Actors in Refugee Management**



**County budgets and Programming with Refugees**

Counties have access to 43% of the national revenue for the year 2013/2014. In 2015/16 they will be sharing additional funds with an increase of KSH 52 billion in the county budgets for the next year, as disclosed by the Commission on Revenue Allocation (CRA) in November 2014. The additional amount is based on taxes collected in 2013/14 and the fact that devolved governments are entitled to a minimum of 15 % of the last audited accounts.

Devolved governments will be receiving additional funds after the parliamentary teams clear audited accounts – along with a new formula for calculation of county allocations. The new formula includes additional consideration for salaries for public servants working in the devolved governments while keeping with the other parameters that include: population figures, the basic equal share, poverty levels, land area and fiscal responsibilities. The proposed formula for 2015/16 includes two additional parameters: personal emolument and development. The top ten allocations by counties are provided below with the proposed figures for 2015/16:

TABLE 7: TOP 10 COUNTY BUDGETS (2014/15 AND 2015/16)		
COUNTY	CURRENT (2014/15)	PROPOSED (2015/16)
Nairobi	11.3	15.09
Turkana	9.14	8.75
Mandera	7.8	8.97
Kakamega	7.8	9.47
Nakuru	7.1	8.74
Bungoma	6.7	8.09
Kiambu	6.51	8.78
Kilifi	6.49	9.31
Kitui	6.34	7.72
Wajir	6.31	7.34

In the top 10 county budgets, three are major refugee hosting counties: these are namely Turkana (home to Kakuma camp), Mandera and Wajir (in North Eastern, covering Dadaab camps). Kakamega Council will receive the second largest as Kakamega is reported to contribute 4.9% to the national poverty rate, making it a priority in poverty reduction strategies.<sup>125</sup>

Garissa County does not figure in the top ten – as it ranks number 20 with KSH 6.1 billion proposed for 2015/16. The concern raised – and the increase – is based on the large sums spent on paying salaries for county personnel – highlighted by analysts as a concern as a large section of budgets was not being allocated to operational activities.

Marginalised counties in particular receive a larger chunk of the national revenue based on the formula provided by the Commission for Revenue Allocation<sup>126</sup>. The Socio-Economic Atlas for Kenya, released in November 2014, highlights specifically as one of its key findings that “counties with the poorest access to modern services and conveniences are in the North Eastern region”. The report states that 82% of the population in Turkana does not have access to toilets and have reverted to open defecation instead.

The issue of county budgets is a sensitive and contentious issue, as county governments budgets do not take into account the refugee population. Interview reports find that counties will only allocate funds to benefit the local population. There is currently no political will to engage with refugees and this is both reflected in their budget and development plans. On the other hand, reports from the field, find that the counties generate internally generated revenue through the collection of taxes from refugee owned business. The report further highlights that the tax collection process is ad-hoc and informal. Interviews suggest that refugees must be taxed in order to compensate for some of the consequences of hosting them such as environmental degradation.

<sup>125</sup> Government of Kenya / KNBS, Socio-Economic Atlas for Kenya 2014, released in November 2014.

<sup>126</sup> <http://www.crakenya.org/information/revenue-allocation-formula/>

“What seems to be happening is the county government seeing a way of making money through fining/ charging a fee on agencies for environmental degradation. That is the only way I can say we are now working together for the betterment of both the refugees and the country. They are finally contributing to the national kitty”

*– Deputy District Commissioner, Garissa County*

County budgets are generally of the same scale, where the difference lies with regards to priority areas. In the fiscal year for 2013/2014 Garissa received a total of KSH 4,847,000<sup>127</sup>. Garissa county’s top three priority areas were i) health, water and sanitation (KSH422, 260), ii) infrastructure and public works (KSH 400,000) and iii) finance and economic planning (KSH 174,000). These could be entry points for potential engagements with counties. Interview reports suggests that Counties can develop small-scale projects and strategies that target both refugees and host community on a sharing basis. An example of this is to leverage on the presence of refugees (seen as readily available labour), by engaging them in projects that benefit the county.

Another example is through agricultural programs – where refugees can engage in farming activities to produce food for the county. Several research studies report that agriculture is not feasible in the arid areas around Dadaab and Kakuma, but pastoralism is. On the other hand counties are in charge of business operations at the county level- therefore they can spearhead infrastructure and development at the county to spur local economic development so as to enhance economic integration of refugees and host community. Despite the on-going tussle over the equalisation fund, this could be an entry point for programming that specifically targets the refugee population – with the understanding that this type of approach is long term: at the moment the refugee issues are not included in the equalisation fund agenda but can be included in advocacy efforts for community-based programs in areas of high refugee presence.

**UNHCR** - The United Nations High Commission for Refugees (UNHCR) has been a long-term partner of the Kenyan Government with a focus on strengthening response capacity of local and national institutions and jointly pursuing Durable Solutions for refugees. The agency is responsible for refugee status determination and resettlement processing. The Refugee Bill 2014 however shifts most of these responsibilities to the Government of Kenya. For example the Department of Refugee Affairs took over the process of Refugee Status Determination, in July 2014. Together with the Government of Kenya and other aid agencies, UNHCR has and continues to provide protection, shelter, humanitarian assistance against chronic overcrowding, and risk of disease, floods, and famine amongst other challenges.

“UNHCR has a liaison officer created last year to liaise with the county government in Garissa. The officer is in charge of managing the relationship with the county”

*– UNHCR*

**Other Humanitarian Agencies** – International and Non-Governmental actor play a key role in offering basic service to refugees in the camps. Services range from the provision of health facilities, education services, food, relief items, legal services etc. Some of the organisations on the ground include, Danish Refugee Council, CARE Kenya, International Rescue Committee, Norwegian Refugee Council, Lutheran World Federation, World Food Programme, Médecins Sans Frontières, Save the Children UK, Refugee Consortium of Kenya, FilmAid International, Centre for Victims and Torture, National Council for Churches in Kenya.

<sup>127</sup> Commission of Revenue Allocation, County Budgets 2013-2014.

# CONCLUSION

The case for devolution as a potential avenue for durable solutions for refugees in Northeastern Kenya is fragile, albeit stronger in Northwestern Kenya. In both cases, it can be strengthened pending close monitoring of legal and institutional developments, and close management of relations with new counterparts in counties, specifically in Garissa.

Yet, it is important to de-link the two camp settings of northwestern and northeastern Kenya in any programming initiative. Kakuma and Dadaab represent drastically different camp populations, demographics, security and economic landscapes – as well as different budgets and financial means. Interviews emphasised the uniqueness of Kakuma as a

“quiet camp” and a model camp, part of a well-endowed marginalised county, where economic integration and development are a step ahead from other similar counties or camp settings; while Dadaab represents a more sensitive, political dimension whereby security, more than economics, is often discussed and perceived as acting as a key obstacle to durable solutions for refugees.

*Will devolution yield a basis for another type of economic interaction with refugees living in the camps in northern Kenya? Can county governments be counted on as players in refugee affairs to support an improved quality of asylum and transitional solutions for refugees?*

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## KEY TAKE-AWAYS ON DEVOLUTION AND REFUGEE MANAGEMENT IN KAKUMA, TURKANA

The potential for devolution to support refugee management in Kakuma is reinforced by:

- The increasing migration and financial trends of Kakuma presents the need, and adequate resources, to address the requirements of service delivery for both host and refugee populations: Kakuma is well-endowed with financial resources under the devolved government and the equitable share, it now requires the human resources and capabilities to act on it
- The UN Joint Initiative for the Integration of Refugees and Host communities is effectively coordinating interventions with the county, aligning efforts with the county integrated plan, to ensure that refugees are mainstreamed
- The existing ‘grey areas’ of county interventions show that in key sectors – health, childhood education and water – county interventions are being implemented that benefit both refugee and host populations
- The impact of devolution on structures and infrastructure has been noted, including on the devolved government’s set up at the county level as well as improvements in hospitals that refugees can now access.

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## KEY TAKE-AWAYS ON DEVOLUTION AND REFUGEE MANAGEMENT IN DADAAB, GARISSA

The potential for devolution to support refugee management in Dadaab is reinforced by:

- The homogeneity of the refugees and host community in northeastern Kenya – a fact that even county government officials are ready to recognize, being faced with a fait accompli of an informal integration
- The impossibility of discussing local integration at the national level paired with the possibility of providing incentives for county governments (fiscal, resource and programmatic incentives) to engage in local integration. Host communities know the economic value of Dadaab as they see its immediate impact. Dadaab is a city, a group of markets, a source of trade and livelihoods for host communities. County government representatives can be sensitized to adopt this view if it is made clear to them – hence the importance of knowledge building, advocacy and programming.

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## OPPORTUNITIES FOR DEVOLUTION AND DURABLE SOLUTIONS

Outside of the political realm, the reality of interactions builds a promise for economic integration:

- At the community level, economic interaction remains rife. Informal economic integration has taken over any formal attempts for refugees to gain economic stability. Transitional longer-term solutions supporting self-reliance and empowerment are lacking due to missing programmes and missing actors in the field. The reality reflects what can be perceived as unofficial or informal social and economic integration. Despite the fact that entrepreneurial activities of the refugees takes place outside a formal and legal system, the report finds that the host community and the Dadaab region have benefited.
  - The refugee economy of Dadaab camp consists of a variety of income generating and trade activities coupled with a transnational and international network of money transfers that serves as a crucial source of income for investment and survival. The large number of refugees provides a market for the host community's animal products, and a major reason for the growth of Dadaab town.
  - The refugee economy of Kakuma camp highlights a high demand for livestock and animal products produced by the host population, as well as the refugee community being an employer of the host community: this has created a two-way economic exchange that benefits the local economy. In addition, the importance of remittances, diaspora presence and cross-border linkages open up Kakuma to a regional economy.
  - In both settings, the potential for devolution for conflict resolution needs to be invested in: for the host community to feel empowered, and accounted for, while giving a voice to refugees. At the centre of any promise for economic integration or durable solutions, is the capacity of devolved authorities to bring host communities and refugees closer, easing tensions and bringing equilibrium. Such progress is being made in Kakuma – as the land negotiations show – continued efforts are required.

- The key to strengthening devolution's promise for durable solutions is by providing incentives – fiscal and financial for Dadaab, and human capabilities for Kakuma, in priority.
  - In Dadaab, this will rest on the ability of humanitarian actors to build partnerships with development actors: bringing in development actors on board for a local partnership between the devolved government, humanitarian and development actors. Counties like Garissa depend on the ability to attract funding and programmes. Dadaab provides such an opportunity. Humanitarian actors have been engaged in the area through emergency and early recovery work. This report's recommendations will highlight the fact that this can no longer be seen as a humanitarian challenge. Development actors need to be on board. This is the *raison d'être* for the ReDSS and for the Solutions Alliance. The time is right for an effective partnership and advocacy strategy to accompany the devolved government in its priority areas of infrastructure, health, economic development and education – all priority areas for refugee populations as well.
  - In Kakuma, this will rest on local governance and capacity building initiatives that ensure proper resource management at the county level. The Turkana county government is well endowed and benefits from development interventions and perspectives. Yet, it is unable to spend all its funds. All stakeholders emphasised the need to build and invest in the capacity of the local government in Turkana to reap the benefits of devolution for refugee management.

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## CHALLENGES FOR DEVOLUTION AND DURABLE SOLUTIONS

The current challenges to such efforts are that:

- The on-going devolution implementation process is 'in progress' and constantly changing. Although it currently provides limited opportunities for another type of economic integration for refugees – mainly due to a lack of capacity of county authorities, lack of knowledge and power over refugee affairs, and lack of understanding of the positive contributions of the presence of refugees to economic development – these are constraints that can be turned into opportunities for knowledge building, advocacy and programming in North Eastern Kenya.
- On the administrative and fiscal fronts, counties do not consider refugees as part of their beneficiaries and hence fiscal budgets are allocated to benefit host populations alone. Refugees do not have access to formal employment both within and outside the camps, making the discourse on economic empowerment weak. The negative perception of refugees hinders potential gains to advocate for economic integration and in turn local integration as a durable solution. Despite the devolution of resources at the county level, county development plans prioritize the local/host communities and not the refugees.
- The devolution process has brought about significant changes to the institutional landscape for county administration – with new interlocutors remaining to be assessed both in terms of capacity and knowledge of refugee affairs. County Development Committees (CDCs) previously mandated with representing the host community to UNHCR and its partner agencies have been dissolved. Replacing them is the Sub-county Administrator's Office. It remains to be seen whether the Sub-County Administrator will be as effective as the CDCs in nurturing an environment of coexistence and conflict resolution between refugees and host communities.

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## THREATS TO DEVOLUTION'S IMPACT ON DURABLE SOLUTIONS

Most importantly, the national government is still present – and of concern are existing tensions between DRA and county governments on refugee management:

- The centralization of refugee management by the National Government puts into question the place of counties in refugee affairs. More so, the current legal framework for durable solutions and refugee management treats refugees as a transient problem, whilst the review of the Refugee Bill 2014 does not envisage county engagement for refugee management in Kenya. Of greater concern is the securitization of refugee affairs at the national level that seems to override the potential for durable solutions and in particular local integration at least from a legal standpoint.
- The Government of Kenya's preferred approach to durable solutions is repatriation. The signing of the tri-partite agreement between Kenya, UNHCR and Somalia in 2013 establishes a legal framework and other support for Somali refugees in Kenya who might eventually wish to return to their homeland. Ideally, it means that refugees have a right to choose whether they would like to go home or remain in Kenya. The government is concentrating all its efforts to ensure this is the option followed by refugees and as such are not looking into other durable solutions.

# RECOMMENDATIONS

Advocacy around positive impact of refugee presence in Kakuma and Dadaab

## **RECOMMENDATION FOR KNOWLEDGE BUILDING**

1. Mapping of decision makers and powerholders
2. Assessing the impact of illegality as an obstacle to refugees' economic integration
3. Assessing the impact of funding shocks on the local economy and in particular the impact of NGOs in the local economy
4. Creating a dialogue between devolution and migration actors through a monthly bulletin
5. Include an update on coordination and dialogue with devolved actors

## **RECOMMENDATIONS ON CAPACITY BUILDING**

6. Investing in local governance and good governance for planning and service delivery
7. Linking capacity building with knowledge building and advocacy
8. Adding county liaison officers to provide for a direct link – at the camp manager level – between the host and refugee populations
9. GD - Would be good to have in here somewhere capacity building in terms of protection standards and legal frameworks re refugees / communities at protection risks

## **RECOMMENDATIONS ON ADVOCACY**

10. Agenda setting: Improving relations between DRA and county governments – and mainstreaming refugee issues in the devolved government
11. Agenda setting: Fiscal approach to county-refugee relations
12. Using public finances for marginalised communities as an entry point in supporting the devolved government in Garissa County and linking its funding to refugee affairs
  - Pooling Resources
  - “Burden sharing”
13. Building capacity of county authorities in refugee management
14. Re-packaging the concept of local integration
15. Assessing the political and legal environment
16. Linking activities in North Eastern Kenya with DRC's regional programming
17. GD – it would be good to have a recommendation on advocacy around perceptions of refugee presence and the positive impact this has had in the areas concerned.

## **RECOMMENDATIONS ON PROGRAMMING**

18. Capacity building
19. Livelihood Programming
20. Protection of Refugees: Health and Education
21. Engaging with County Governments on their development plan: The basis of a strategy
22. Developing a humanitarian-development partnership strategy on devolution

## **RECOMMENDATION FOR KNOWLEDGE BUILDING**

If devolution is to be an opportunity for local integration, one of the assumptions is that authorities have the knowledge to provide such opportunities. What level of understanding do they have? Recommendations in this section identify gaps where further knowledge needs to be built:

- 1. Mapping of decision makers and power holders** - In order to effectively engage with the evolving devolution process, it is necessary to conduct a thorough mapping of institutional actors to identify who are the key decision makers and power holders, along with their capacity and knowledge on refugee affairs. As an example, the Sub-County Administrator's responsibilities have not been publicly shared. As a result, a thorough mapping of local power holders will be required to better understand how the implementation process is affecting refugee affairs at the national and county level.
- 2. Assessing the impact of illegality as an obstacle to refugees' economic integration** – the current discourse on Dadaab being a burden on the counties is biased due to the lack of formal pathways to economic contribution. Illegality is a constraint for all actors involved. Two instances of illegality hampering economic integration and county perceptions were identified in this report: 1) informal taxation of businesses by officials and 2) the reliance of business on aid as a resource for trade in and outside of the camps. Formalizing a taxation system covering the Dadaab camp and formalizing entry and exit of goods from the camp will ensure that counties and host communities benefit economically from the presence of refugees and their businesses.
- 3. Assessing the impact of funding shocks on the local economy and in particular the impact of NGOs in the local economy** – as a carrot and stick approach to the county governments, to showcase a cost-benefit analysis of integrating refugee affairs into the county government's development realm.
- 4. Creating a dialogue between devolution and migration actors through a monthly bulletin** to showcase facts and figures on the contribution of the refugee population to the host community, and vice versa. The bulletin will build the evidence-base for a more open conversation on engaging with refugee populations, highlighting the beneficial nature of exchanges, and the gaps in formalizing such exchanges, as an entry point into advocacy.
- 5. Include an update on coordination and dialogue with devolved actors** on the coordination agenda among UN agencies, NGOs and other actors involved in North Eastern Kenya to benefit from the lessons learned and successes of coordination. At the moment, attempts have been made by the Garissa County Government to engage with NGOs (such as LWF) and seek input from stakeholders on how to work with the refugee programme. Gains made from such bilateral or collective discussions need to be shared for the benefit of all.

## **RECOMMENDATIONS ON CAPACITY BUILDING**

While Dadaab lacks resources, Kakuma is well endowed. Financial resources are not sufficient, as the case of Kakuma has shown: the lack of knowledge is added to a lack of capacity and human resources for proper funds disbursement and planning at the local level.

- 6. Investing in local governance and good governance for planning and service delivery**  
- Capacity building of local authorities are nascent – notably through an initiative by Oxfam’s Good Governance project to build the capacity and knowledge of local authorities on the Local Authorities Transfer Funds (LATF). Oxfam’s efforts found that the county has no capacity to formulate strategies and funds disbursement.
- 7. Linking capacity building with knowledge building and advocacy** – weak capacity is worsened by the lack of knowledge on existing funds, such as the LATF and the CDF, not only among county authorities but also among the aid community. Inclusive workshops and trainings, bringing together all stakeholders, will not only serve to provide the same basis of knowledge, and build capacity of key county officials, they will also serve as a platform for information and idea sharing, and, ultimately, of advocacy with the county government on the « grey areas » of aid that can mutually benefit host and refugee communities.
- 8. Adding county liaison officers to provide for a direct link** – at the camp manager level – between the host and refugee populations – this requires commitment by the county government and the aid community to ensure that there is, at the local and daily levels, awareness of the links between devolution and refugee affairs. The sub-county authorities and MCAs may be involved in land negotiations but other issues – relating to education and health, as well as water provision – would be best handled by a direct focal point, reporting directly on issues and operations on refugees in the camps. This would provide additional support to the ongoing UN Joint Initiative in Kakuma, and provide a strong basis for coordination, in Dadaab, with the county integrated plan.

## **RECOMMENDATIONS ON ADVOCACY**

Advocacy needs to happen at three levels – cross border, national and local – given the current lack of capacity of local actors. Five key recommendations frame the proposed advocacy strategy:

9. Advocacy around the positive impact of refugee presence in Kakuma and Dadaab. At the moment, linkage between refugees and insecurity is heightened especially following the recent Garissa attacks. The national political discourse emphasis the need to close Dadaab and return refugees, who pose a security threat to their home countries. Nonetheless, as stated before, no refugee has even been convicted of a terror attack in Kenya. As such, in order to counter negative perceptions of refugees, it is important to form a media advocacy group, which presents the positive socio-economic contributions of refugees.
- 10. Including refugees in the County Integrated Plan:** Refugees are not taken into consideration in the county’s integrated plan. County authorities state that their mandate is to serve the people of Garissa and not refugees. However, it is impossible for counties to ignore the presence of refugees on their territory and they are often indirectly involved in some ‘grey

areas' such as education and health. As such, the research team advocates for the inclusion of refugees in the county's integrated development plan and for the county to have a more active role on issues pertaining to refugee management.

- 11. Agenda setting:** Improving relations between DRA and county governments – and mainstreaming refugee issues in the devolved government: At the moment, the revisions to the Refugee Bill are not taking into account the devolved government. As refugee management remains an exclusive national function, there are currently limited legal avenues for the two levels of government to interact. Establishing a working framework between the national and county governments that host refugees would be a starting point to effectively engage counties on refugee management. The priority is to effectively link up the two policy processes. County governments are not aware of the revisions to the bill. The issue of county management of refugees, on matters such as service provision for example, needs to be set on the agenda through a consultative process.
  
- 12. Agenda setting: Fiscal approach to county-refugee relations:** This report highlights the dangers of informal taxation mechanisms and refugees' feedback that they would be ready to, that they are already, paying taxes on their businesses. Setting on the agenda a fiscal contribution of refugees to county governments in exchange for recognition of community-based infrastructure, health and education programs integrating refugee locations, will provide the much-needed nexus between county governments and refugee communities at the subnational and implementation level.
  
- 13. Using public finances for marginalised communities as an entry point in supporting the devolved government in Garissa County and linking its funding to refugee affairs –** A key obstacle to greater engagement with refugee affairs at the county level is the shortage of funds. Yet, marginalised communities can receive an equitable share – whether this is confirmed will have to be assessed. The funds can be used for programmatic interventions to offset the notion that refugees benefit more than the host community. The central point to communicate to counties will be that, if refugees go home – what justification will they have for additional fiscal resources?
  - Making a case for Pooling Resources to benefit the county government from livelihoods to infrastructure work refugee programmes in Garissa should be built into county authorities' development plans. Examples of roads to Dadaab maintained by WFP for food delivery, water schemes, and institutions for technical training are all examples to learn from and to be replicated within the host community. Pooling resources and lessons learned will benefit the county government.
  - Making a case for “burden sharing” – framing advocacy strategies to increase county budgets through a burden sharing discourse: the principle of burden sharing must not be forgotten nor neglected: host counties cannot be left to shoulder the presence of refugees. Yet they require the resources for it. Migration sector actors must use their position and knowledge of the areas in Garissa, Wajir, Mandera, Turkana as well as Nairobi to make burden sharing a financial reality.

**14. Building capacity of county authorities in refugee management** is an entry point for advocating for durable solutions. Developing advocacy toolkits for refugee hosting counties to curb the lack of understanding on international, national laws on refugee matters and in particular durable solutions would be critical for building capacity at the county level

- The Refugee Consortium of Kenya's experience in the field of advocacy can be capitalized on to build on their work – sensitization workshops, training workshops with Kenya Police, DRA officials and law enforcement officials to now include workshops with devolved governmental actors on refugee law and on economic activities of refugees in Dadaab. Furthermore, given the tensions highlighted in this study between national (DRA) and county level authorities, RCK should be supported in planning joint workshops to design a complementary way forward on refugee management, to tie DRA and county authorities as partners in refugee management.

**15. Re-packaging the concept of local integration** is a safe way to engage county authorities and other national players on the already occurring informal local integration. Presenting the informal integration in a positive light and highlighting the economic benefits of the refugees can be a starting point for advocating for local integration.

- Instead of speaking of local integration, this study suggests referring to “economic interactions benefiting Garissa county” through a two way process linking host communities with the camp markets, and vice versa.
- Re-packaging local integration does not imply an end state to refugee presence. Instead, it entails building stronger livelihoods and a larger asset base that can, in turn, increase the likelihood and interest in a potential return.

**16. Assessing the political and legal environment** will be crucial in developing advocacy material and strategies on durable solutions for refugees. A technical review of current legislative debates surrounding devolution – notably on the fate of the equalisation fund, the establishment of the county development fund – will be required to ensure that advocacy can be tailored.

**17. Linking activities in northern Kenya with DRC's regional programming including its programming** on the Great Lakes Region, its engagement in Somalia on the voluntary return of refugees and its advocacy as part of the New Deal process. North Eastern is a region of Kenya that was once part of Somalia. This can be a strength to be built upon. This report confirms the stated willingness of some to return to Somalia given the lack of opportunities locally. Although a minority, their needs should be addressed. While local integration and resettlement are unlikely options politically, DRC can engage with the devolved government in Kenya, and the New Deal actors and CSOs in Somalia, to ensure cross-border sharing of information.

## **RECOMMENDATIONS ON PROGRAMMING**

From a programmatic perspective, the research aims at identifying 'entry points' for DRC and other actors to maximize the opportunities offered by the on-going devolution and integrate it within their programme framework. In Dadaab, DRC's focus has been in emergency response to refugees, construction of infrastructure, livelihood programming and activities in access to water and sanitation. Recently, DRC has moved from emergency response to more protection and livelihood activities that aim to increase community and household reliance to increase opportunities for a better life. Based on the findings that counties lack adequate knowledge on refugee affairs, but have prioritised certain sectors that benefit both refugees and host community, the recommendations for programming are:

- 18. Capacity building** – Now that counties are in charge of economic development of their jurisdiction, there is a need to build capacity on how to engage refugees and use refugees in the local economy. Building on the knowledge enhancement and advocacy work, DRC in partnership with other actors can assist the county officials to development assessment methods to identify which refugees should be 1) issued business license, 2) be allowed to trade, 3) be given access to land for commercial purposes, and 4) be taxed and at what rates. Developing a fair and transparent system of economic inclusion of refugee businesses and trade at the local level can be presented as an income generating potential for counties.
  
- 19. Livelihood Programming** - DRC currently engages in Livelihood programming in Dadaab but there is need to expand and deepen the programming. There is a need to facilitate informal exchanges between refugees and the host community through infrastructure and other projects being undertaken by the county. Expanding the current livelihoods programming to take into account the Garissa County's 11-point development plan would be a way to engage with the county on the on-going informal economic integration.
  
- 20. Protection of Refugees: Health and Education** - Garissa County engages with refugees through the health and education sectors. Interview reports find that the provision of education services is key for both host community and refugees. However budgetary allocations for the fiscal year 2013/2014 indicate that education received KSH 50,000. This is not sufficient taking into account the number of refugees in the camps and host community populations. Supporting education services for the youth within the camps can be a way to engage with the county through a sectoral approach. NGOs dealing with education and health encourage sharing of services between refugees and host community. The rationale behind this is that humanitarian agencies have invested heavily in the development of North Eastern and if refugees were to return, the investments would go to waste. This investment needs to be presented to county governments – as a strong basis that will be transitioned to county governments to build upon.

## **FOR HUMANITARIAN AND DEVELOPMENT ACTORS**

Development actors are the missing stakeholder in Dadaab and North Eastern Kenya. Development actors are needed to bridge humanitarian actors with the devolved government. It requires a paradigm shift beyond short-term interventions. The recommendations below argue for mending the broken bridge between county governments and humanitarian actors through a longer-term, sustainable and mutually beneficial approach to addressing the needs of the marginalised counties. The question remains: in what ways should INGOs engage in development work, in Garissa, and continue on development work, in Turkana? It may be construed as taking over the responsibility of county governments. The recommendations put forward a partnership strategy and a balance between the availability of funds and technical know-how (with the INGOs) and the local authority and community buy-in (with the county governors).

**21. Engaging with County Governments on their development plan:** The basis of a strategy – There is need for both humanitarian and development actors to align their programming and activities with the counties’ development plan. County development plans are for a duration of five years, which allows for sustainability. The Garissa County government has prioritized infrastructure and public work and has dedicated KSH 400,000 to this. Engaging with the county on their needs can lead to multiplier effects and dividends for both the refugee and host population.

**22. Developing a partnership strategy on devolution** - A joint platform between key development and humanitarian actors need to establish a framework on engaging with the devolution process so as to firstly keep abreast with the implementation process. Secondly such a platform would ensure that there is a link between development and humanitarian activities in marginalised counties. Such a process would in turn reduce a dependency culture on relief assistance and encourage both refugees and host communities to engage in sustainable survival and livelihood strategies by virtue of how agencies and organizations develop their programming.

“I do not see big development agencies such as UNDP present. It is a gap: we need to approach them.”

**- DRC Kenya**

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