

# PhD Research Proposal: International Law, Protracted Refugee Crises in Africa, and Local Host Communities: Evidence from Kakuma and Dadaab, Kenya

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## *Abstract*

The vast majority of refugees in Africa today will find themselves in a protracted refugee situation which will keep them from a normal life in their home or host country for decades. These protracted situations stress the fragile international aid system designed for their short term care, raise complex legal issues and is a source of national and regional tension. This study will approach the issue of long standing refugee camps from the local host community's perspective in the hopes of understanding the dynamic relationship between the two groups and how both national legal regimes and international law affect this complex relationship. It is the researcher's hypothesis that local social and political drivers help foster the continuation of protracted refugee situations. This forms local laws, affects national policies on refugees, the United Nations ability to assist these refugees and raises questions of the effectiveness of international refugee law in practice.

## *Introduction*

In December 2012 the United Nations High Commission on Refugees: Africa listed their Strategic Objectives for 2013. Finding a solution for protracted refugee situations was top priority. Though there has been limited success with repatriation over the last year most refugees in protracted refugee situations<sup>1</sup> have no permanent solution in sight. The plight of refugees has received a great deal of academic attention, the effects of refugee camps on the local host community however has not been as comprehensively analyzed. When the host community has been considered in the literature, the primarily focus has been on the national level. Little attention has been given to the impact on the local community or the local community's impact on the refugees. The effect of protracted refugee situations has received even less attention.

It is the objective of this research to provide a comprehensive study of two of the oldest continual refugee hosting communities in Africa, Kakuma and Dadaab, Kenya. This study will focus on the relationship between the local host community and the refugees, looking for signs of cooperation or conflict along economic and social lines as well as how international refugee law affects the complexity of their relationship. This is done in the hope that generalizable results can be extracted from the Kenyan example that could have application in other PR situations and in addressing issues of applicability of international refugee law. This is especially pertinent as time in flight throughout Africa, Asia and the Middle East has been continuously lengthening since World War II (Kunz 1973, Loescher, Baldwin et al. 2001, Adebajo 2002, Bakewell 2009).

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<sup>1</sup> Protracted Refugee Situations are defined by the UNHCR as refugees residing in a host country for longer than five years in a population of 5,000 or more. Kakuma has been open 21 years and serves approximately 70,000 refugees. Dadaab is 23 years old and serves 439,000 refugees.

It is the researcher's hypothesis that a political stalemate is created between the host government, local community and refugee community in concerns to resources gained by hosting the refugee camp and that this contributes to a protracted refugee crisis. All three are not having their full needs met and may even incur negative side effects, such as vulnerable borders and dependency on international assistance, however, the situation still provides enough to make the alternative unattractive even if rationally it is known to be unsustainable in the long term. Therefore these choices contribute to the perpetuation of protracted refugee situations.

This stalemate leaves a heavy economic and structural burden on the UNHCR which is left to stand in as the de facto government for the refugees. This role is far beyond the UNHCR's mandate. It also creates a situation where local administrations can adhere to intentional refugee standards a la carte. For instance **The 1951 UN Convention Relating to the Status of Refugees** clearly states that hosting nations must grant refugees the rights necessary to live in dignity as they await a durable solution. This includes the freedom of movement (article 26) and the ability to find wage employment (article 31). Kenya ratified both the 1951 Convention and the 1967 Protocol and yet its' refugees are limited in movement to the refugee camp and face negative consequences if found outside of protected custody (Hathaway and Neve 1997). Likewise, refugees are forbidden to work or even sell homemade goods through an NGO. Article 35 of the Convention states that signing nations must inform the United Nations Secretary-General of national laws and regulations adopted to ensure the application of the Convention.

It would seem that Kenya is not in compliance with the Convention and her refugee laws would be noted as such by the Secretary-General. However, this is not that case, Kenya is considered in compliance with international standards. This is achieved by exploiting a loop hole. By signing the 1951 Convention a nation is not required to enact national laws in reference to refugees. With the exception of identifying and registering refugees, Kenya has few national laws on the topic (Crisp 2005). However, local legislation is not subject to UN review. County and regional politicians are under stress by the local community to protect the weak peripheral job market. Regional laws do not specifically forbid refugees from working but instead limit legal employment to citizens and add heavy fines and incarceration for those who employ non-citizens (Foster 2007). Working permits are extremely rare and limited to high end fields which are not in demand in Turkana and Garissa. As most of the Somali refugees are itinerant herders by trade, working permits are nearly impossible to acquire (Horst 2008). This affectively shuts the refugees out of the local job market. Kenya is not unique in this respect, almost every hosting nation limits refugee participation as it was ratified in the 1951 Convention (Hathaway and Neve 1997, Jastram and Achiron 2001).

### *Background*

Firstly, a brief history of protracted refugee situations is necessary to continue. The current service model for the refugee care industry is based on a series of suppositions:

1. That it will be possible to define the refugee in strict legal terms as one who has fled from war and persecution, isolating the phenomena from the polycentric discourse

of war, poverty, injustice, environmental pressure, etc. Therefore making persecution the only indicator formerly considered.

2. That relief of that indicator (war) will conclude the need for the refugee's flight.
3. That the refugee will find repatriation a more appealing choice than remaining in flight or migration to another country.
4. Therefore, repatriation to one's home country is the solution for the majority of refugees with a few specialized cases requiring resettlement in third party countries.

These principles were founded in the wake of World War II in Europe as immigrating international aid organizations dealt with displaced people and were fairly successful in repatriating or assimilating these cases (Loescher, Baldwin et al. 2001). The system however has proven less successful outside of the European context where the polycentric discourse of underdevelopment may actually make the harrowing experience of flight better for the refugee than returning home. Refugees have become a constant part of the political, social and physical landscape in Africa and Asia as the consequences of host countries continuing to limit assimilation<sup>2</sup>, third party states are reluctant to resettle cases, there is lack of international or regional intervention and mediation of conflict, also lack of support for repatriation and general underdevelopment (Loescher and Milner 2005). The researcher believes that manipulation of the legal system to isolate the refugees should also be included on this list. Repatriation alone has proven to be insufficient in alleviating refugee situations, so much so that Zetter referred to it as the international community's belief in the myth of repatriations rather than the fact (ZETTER 1999). These stimuli create a situation where refugees have few options but to stay in the camp and rely on international aid.

The role of the host community in PRS is a variable that has not been extensively researched. These host communities within their national discourse are already peripheral communities both geographically and socially (Porter 2008). African political structure is dominated by metropolises of power. As one moves away from these metropolises in physical space and in the sociocultural structure, the less access one has (Alix-Garcia 2010). This point is galvanized in the very name of one of the communities; Kakuma is the Swahili word for *nowhere* (Eggers 2006). For those living in the Turkana and Garissa provinces of Kenya, access to basic infrastructure, health care, steady employment and education is limited (Okwi 2007). These locations are physically harsh, semi-arid areas that are sensitive to drought and have limited fresh water (Barrett 2006). Also the refugee population, though warehoused<sup>3</sup>, which hampers their ability to move and find

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<sup>2</sup> These limitations are directly in opposition to the 1951 UN Convention on Refugees.

<sup>3</sup> Refugee Warehousing is a term used by refugee professionals to describe the situation of people suspended in protracted refugee situations. These individuals are unable to repatriate to their home countries due to continued conflict, are not absorbed into their host country, are denied freedom of movement and employment by their host country which violated rights specified to them in the 1951 UN Refugee Convention and are not eligible for resettlement in a third party country, finally leaving them to the confines of the refugee camp and the administration of the UNHCR and camp managers.

employment, outnumbers the local citizens. The population of the town of Dadaab in 2012 was 103,671 and the population of the Dadaab Refugee Complex was 439,000. The entire population of Garissa County was only 623,060 people according to the 2012 Kenyan Census.

Though conflict and violence has occurred between the two groups in Kenya, the camps are also a source of employment and health care for many locals (Adebajo 2002). It behooves the local community to both limit the refugees' movement and employability but it also helps them by having the refugees nearby. This creates an environment where refugee warehousing best suits the local community which will exert social and legal pressure to promote that option. We can see examples of this type of situation with refugee Burmese in Thailand, Tamil in India, Burmese in Bangladesh, and Afghans in Pakistan.

The host-refugee relationship is further complicated by the artificial nature of boarder delineations in Africa. The Turkana live primarily in the Turkana province of Kenya but there are populations of Turkana in South Sudan and Ethiopia. Some of these individuals have found themselves in the Kakuma camp in Turkana. Do these individuals find more support in the community because of their shared cultural experience or does the community resent the services given to the refugee Turkana that are denied the Kenyan Turkana? What is the relationship between the local government and the camp? It is the researcher's hypothesis that national governments and local communities are willing to allow these camps to continue in their protracted state because the camp administration has a positive residual effect on the local host community, even if there is an economic or cultural tension and security concern. They provide employment and aid that the host government may have difficulty providing for their own periphery citizens. There would be no incentive therefore to assimilate these refugees out of the camps into Kenyan life as all it would achieve is creating more underserved periphery individuals. Therefore local law is used to support this while national law does not address it and the intention of international law is augmented to accommodate. The dynamics of the relationship between the host community and the refugees is complex but may provide valuable insight in creating new solutions for protracted refugee situations and help create policies that could dampen the destabilizing effects of PR situations.

### *Thesis Question*

Within the complex and interwoven structure of the phenomena of protracted refugee situations is it possible to identify the effects of the refugees on a local host population and vice versa? How is the law used to formalize these relationships? Furthermore from the given examples of Kakuma and Dadaab, which are some of the oldest PRS currently, can aspects be isolated and generalizations be made which can be applied to PRS cases worldwide?

### *Theoretical Framework*

The theoretical framework of this study is grounded in positive political theory. Positive political theory is concerned with the understanding of phenomena through analytical models which, it is hoped, yield insight into why outcomes materialize in a

certain way (Austen-Smith and Banks 2000). This approach presumes that political outcomes are the consequence, intended or not, of decisions made by individuals. The researcher assumes that all participants (organizations and individuals) are acting in their own self-interest and make social and political choices that maximize their ability to pursue those interests. As such, decision-making patterns can be isolated and generalizations can be made. Though a simple ethnographic study of Kakuma and Dadaab would be enlightening and valuable in its own right, it is the researcher's belief that they are not isolated unusual cases. Instead these cases are the oldest of a set of cases that all share some common denominators. Truly this has been proven in regards to the flight of protracted refugees through Gil Loescher and James Milner's extensive research. In which a series of causalities were identified in cases from around the world (Loescher and Milner 2005). Likewise, the host community's role to play in these situations may also help further understand the issue and create realistic solutions.

### *Proposed Methodologies*

The methods proposed for this project will have a mixed methodology approach, represented in a two stage process including both ethnographic field work and analytical model development. Though the classic methods of fieldwork will be utilized,<sup>4</sup> attempts will be made to avoid inherent bias (Conquergood 1991). Notable scholars such as Norman Denzin, Yvonna Lincoln and Linda Tuhiwai-Smith have stripped away the notion of the unobtrusive observer recording events. As Tuhiwai-Smith put it 'research' imbued with its colonial, imperialist past, is the dirtiest word in the indigenous world's vocabulary (Denzin and Lincoln 2000). Instead the researcher must recognize herself as a participant in the discourse and be forth coming about her position therein.

Multiple iterations and means of interaction create a web of information that has better opportunity of representing the truth(Conquergood 1991). Denzin and Lincoln go on to criticize mixed methods as the tool of the technocrat interested only in identifying what works. In this case, however, mixed methods is not an attempt at quantifying soft data but instead to speak a variety of 'languages' in order to provide data that is useful to a host of users. This will include the use of both ethnographic tools such as observation and interview as well as standardized survey tools which can be used to quantify data statistically.

### *Study Design*

Data collection can occur in 4, 2 month field sessions with at least one field session occurring in the rainy season and the dry season respectively to see if there is a change in data due to water and food availability. The major form of data collection will occur through site observation, interview and survey. The researcher will utilize existing connections with local church and school groups to help conduct a 20-25 question survey to local community member related to the research topic. The survey will be written in English and then translated into Swahili and Turkana by the researcher. The survey will be reviewed by supervisors and appropriate parties to ensure sensitivity to gender, culture

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<sup>4</sup> observation/participation, formal/informal interview and survey

and socio-economic bias. Though a written copy will be available for the surveyed to take and bring back to the researcher at their convenience, studies by Bakewell have shown that completion with the researcher at time of meeting greatly increases the rate of return at the expense of the anonymity of mailing in (Bakewell 2008). The survey will be reviewed after approximately 10 iterations are complete and revised to better assess the research question if need be.

The researcher will utilize her language skills to the level appropriate. Given this fact and the relative availability of English speakers, informal interpretation through local English speakers or formal interpretation with a paid or professional volunteer interpreter will be utilized when appropriate. The researcher has received extensive training both in interviewing with an interpreter and in interpretation in order to eliminate bias, intimidation and to accurately convey the persons meaning. This can be achieved at little to no cost to the project

Additionally, more intensive interviews will be conducted with local political and cultural leaders, national administrators, NGO and UNHCR officials, as well as a sampling of local community member. This will further elaborate the different players involved in the situation, their perspectives and needs. Also policy analysis of local and national laws will be conducted and comparisons made between them and current international refugee standards.

### *Potential Impact*

The potential impact of these findings could address many issues on multiple levels of the discourse. Firstly, it would provide academic insight into two sub-fields of refugee studies that are lacking in scholarship; impact on host communities and the effects of protracted refugee situations. The advancement of both of these sub-fields will help academics grasp the totality of the refugee experience and help inform a more effective response.

Secondly, the local host communities in Kenya could benefit from this research by having their issues and concerns brought into the larger discourse. This may lead to further dialogue and cooperation between the two communities. Also if, as the research suspects, universal phenomena can be gleaned from the Kenyan example other host communities throughout Africa, Asia and the Middle East might find valuable resources through the furthering of this treatise. Likewise, national governments that are hosting protracted refugees both in Africa and elsewhere may find this data extremely useful in planning for refugees and mitigating effects on their citizens. The results of this research would help service NGOs and the UNHCR improve interaction with the local host communities. Finally, this investigation can contribute to the state of research on the disconnect between legislative ideals and realities in concerns to refugee law.

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