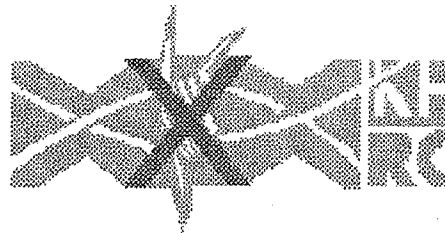


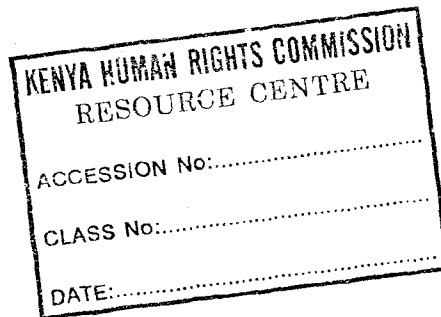
Haven of Fear:
**The Plight of Women
Refugees in Kenya**

KENYA HUMAN RIGHTS COMMISSION
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Kenya Human Rights Commission

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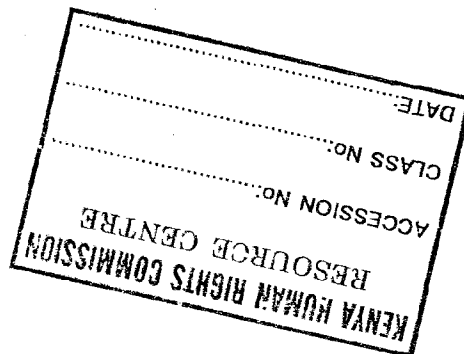
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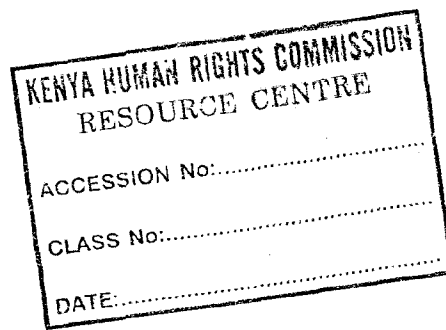
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Preface

The development of refugee law is a recognition that refugees are individuals with special vulnerability. As non citizens in foreign countries, they are more open to human rights abuses than citizens of their host countries. And as non-citizens, they enjoy less rights. This is true of all refugees, men or women.

However, owing to their gender, women refugees find themselves specially vulnerable to human rights abuses. Whether in flight, at border crossing points or in the camps, women are faced with the dangers of sexual assault and rape.

Although a 1998 conviction by the International Criminal Tribunal for Rwanda has placed sexual violence into the books of crimes against humanity, international human rights and humanitarian law largely remains devoid of protections for women refugees.

Almost always, conflict situations involve mass rapes and sexual violence. Women become the spoils of war. Yet rape is not a recognised ground for refugee status. It is not a war crime as per the Geneva Conventions. Neither is rape even covered as torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. W

The 1949 Geneva Convention taking cue from history describes rape as a "a crime against the honour of a woman." It is not a war crime. And it extends the division between the private and the public sphere. That the sexual atrocities do not constitute human rights violations but crimes against individual dignity. Mass rapes constitutes a crime in genocide when it is used as a strategy to

exterminate an ethnic group or race.

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in 1969 and the 1951 Convention relating to the Status of Refugees also propagate the private/public divide. For one to be granted refugee status, the grounds are largely in what is called the "public sphere." This is a sphere that involves power and is largely inaccessible to women. They are not in politics because their position consigns them to the home. They have less access to education and hence are locked out of the high positions in the government.

Women face persecution from disobeying customs such as early marriages, female genital mutilation, or for becoming active in women's movement or bearing children out of wedlock. However, under the present refugee legal regime, these do not constitute grounds for asylum.

Even after crossing borders and settling in refugee camps, the invisible persecution continues. Women remain vulnerable to rape and sexual assault from camp officials, marauding bandits and rebels, and fellow refugees. As refugees in mass exodus settle in camps as whole communities, women still find themselves subject to the same gender disadvantages of their source countries. They may, in addition, find themselves subject to the gender relations of their host countries which regard women as inferior to men.

When they opt for outside-camp settlement refugee women constantly find themselves vulnerable to sexual exploitation to survive as they often have little education or local connections. And those who live alone are viewed as prostitutes.

In the event of resettlement, women refugees are often resettled

as dependents. And again they are subjected to the double gender inequalities of their source and host countries.

It is against this context that the Kenya Human Rights Commission in, this report, assesses the plight of women refugees in Kenyan refugee camps. Following the collapse of the Somalia Government, over 350,000 Somali refugees fled into Kenya.

These refugees were concentrated in camps in North Eastern region, an area ruled and overrun by bands of marauding bandits. In these camps, as this report reveals, women found themselves victims of continuing sexual violence from bandits, common criminals, security officers as well as fellow male refugees.

The report documents a total of 195 cases between January 1996 and December 1997 in the Dadaab caps complex of the North Eastern Kenya. By January 1998, these had risen to a total of 351. Many of these women had been raped by bandits while collecting firewood outside the camps. Most were gang rapes. Some cases involved the police and fellow refugees.

Unfortunately, as the report notes, "the prosecuted cases were negligible. Many rape perpetrators went scot-free."

The UNHCR, the report observes has been a reluctant defender. It did not pass on information against the police to the Attorney general for prosecution. Consequently rape survivors have been reluctant to pass on information for fear of reprisals.

That, however, does not mean that the UNHCR has not taken any action regarding the rapes. With the financial support of the United States Government, the UNHCR in conjunction with NGOs, especially, the German Gesellschaft fur Technische Zusammenarbeit

(GTZ), has embarked on a project of providing firewood to refugees in exchange for work within the camp.

The report concludes that the popular image of refugee camps as safe havens is largely misplaced and recommends that the Kenya Government undertake practical measures to stamp out banditry. The UNHCR should also re-invigorate its protection mandate by taking issues with the Government over refugee protection and intensify and strengthen security measures already in place.

Acknowledgements

This report has been authored by Mwangi Kagwanja, a historian and researcher. Currently he is a PHD Candidate at the University of Illinois, USA. It was edited by Mutuma Rutere and Njuguna Mutahi.

Many other individuals made immense contribution to this report by way of interviews and comments. It was funded by NOVIB, but it does not necessarily reflect their views.

Introduction

Against the backdrop of a worldwide anti-refugee backlash and the consequent assault on asylum policies in the post-Cold War era, Kenya has practised an asylum policy which restricts refugees to remote camps in the northern part of the country which has a long history of insecurity associated with banditry, rustling and a weak government presence. In the 1990's, massive inflows of sophisticated arms from the troubled zones in the Horn had turned the area into a whirlpool of grisly trails of rape and death. The country has since been in the firing line for underwriting a policy which, contrary to the Organisation of African Unity (OAU) Refugee Convention of 1969, exposes refugees to security risks and undermines their safety and human rights. Furthermore, the policy has condemned camp refugees to what has been dubbed "a condition of 'infrarights' or 'non-rights' where their social and political freedoms, including the freedom of movement, have been severely restricted.¹ Many human rights organisations have carried revealing reports of sexual assault and violence, especially against Somali women refugees in Dadaab camps complex (comprising of Ifo, Hagadera and Dagahley) in North Eastern province.² How this new policy orientation is responsible for the pre-

¹ Caloz-Tschopp, M. C., "On Detention of Aliens: The Impact on Democratic Rights" *Journal of Refugee Studies*, Vol 10, No. 2 1997 pp165-180; Beyani, *Restrictions on Internal Freedom of Movement and Residence in International Law*, Oxford: Clarendon Press, 1992.

² See, for example, Human Rights Watch, *Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya*, Human Rights Watch, Africa, 1993; Africa Rights, *The Nightmare Continues... Abuses of Against Somali Refugees in Kenya*, London: Africa Rights, 1993; Kabahenda Nyakabwe and Caroline Lavoie, "Sexual Violence Against Women Refugees in the Horn of Africa" *African Women*, Issue No. 10, March-September, 1995; Binaifer Nowrojee, *Target for Retribution* Human Rights Watch/Africa, Summer, 1997.

vailing gross violation of the rights of refugees, especially sexual assault and violence against women, is the subject of this report.

The number of refugees fleeing civil wars, human rights abuses and the myriad consequences of the utter breakdown of social, political, and economic order, -including destruction of infrastructure, villages and towns; theft of property such as crops and animals; famines and droughts – in some countries in the Horn and the Great Lakes region, especially Ethiopia, Sudan and Somalia; has increased many fold. From a total of 14,000 in 1991, the number of refugees assisted by the UNHCR in Kenya reached an all-time record of 427,000 by August 1992, not to mention 55,000 to 100,000 unassisted refugees living in towns, especially Nairobi and Mombasa.³ The collapse of the autocratic regime old Siad Barre and the ensuing clan warfare and drought in Somalia, for example, drove some 350,000 into Kenya, by far, the single largest refugee influx ever. These refugees have often found themselves victims of human rights violations within the refugee camps. Women refugees, the majority, are on the wrong end of the stick in regard to human rights violations; fleeing violence at home only to find terror in asylum.

Double Jeopardy: The Plight of Women Refugees

Refugees as a vulnerable group find themselves in double jeopardy: they escape from human rights violations in their countries only to find themselves without protection in asylum. In spite of regional and international instruments of refugee protection⁴ being gender-neutral, it is almost indisputable that

³ See, UNHCR, *Results of Dadaab Revalidation Exercise*, May 1998; *Kakuma: Field-Based Registration System*, May 1998.

⁴ Convention relating to the Status of Refugees (1951)

women refugees are everywhere confronted with a double jeopardy. Over and above the common human rights dilemma which this vulnerable group faces, refugee women have to contend with an additional persistent problem: their physical safety. Women have been attacked by pirates, bandits, common criminals, security officers, as well as their fellow male refugees. Yet, violence against women is seldom reported.

In 1980, the United Nations General Assembly underlined the "particular vulnerability of refugee and displaced women to intimidation, exploitation, and physical and sexual abuse". Furthermore, it urged the member states and donor agencies "to ensure women's right to physical safety".⁵ In effect, the right of women refugees to physical safety is firmly linked to the mainstream discourse and domain of human rights.

Much ground has been covered by various agencies and groups in elaborating the guidelines for the protection of women refugee rights. In the 1990's the UNHCR for example, adopted detailed guidance on equitable protection of and assistance to (refugee) women to prevent their marginalisation. The guidelines say in part:

Refugee women who are unable to feed, clothe, and shelter themselves and their children will be more vulnerable to manipulation and to physical and sexual abuse in order to obtain such necessities... Refugee women who must bribe guards to obtain firewood, water or other essential goods will be more susceptible to sexual harassment. Moreover, refugee women who formerly had a means of expressing their views in the community may find themselves unable to do so in the camp management committees established by assistance organisations."⁶

⁵ "Refugee and Displaced Women" General Assembly Resolution 35/135 of December 11, 1980: See, particularly, preamble and para. 4.

⁶ *UNHCR, Guideline on the Protection of Refugee Women*. Geneva, 1991, p. 9.

The problem of protecting women refugee rights has been accentuated by the prevailing asylum crisis in the post-Cold War period. Evidently, the basic human rights issues relating to refugees have hardly changed much since the creation of the United Nations High Commissioner for Refugees (UNHCR) at the end of the Second World War. But their social and political context has shifted radically since the dawn of the New World Order in the early 1990's. The world-wide violation of the rights of refugees – which has reached alarming proportions in the rich industrial states of the West⁷ – is fast gaining currency in the poorer countries.

The poor states – which also have the lion's share of global caseload of refugees – have resorted to such policies as closing borders to those seeking entry, detaining refugees, violating their freedom of movement by restricting them to closed camps, and forcibly returning some to their country of flight. Women have received the full butt of the prevailing systematic erosion of asylum policies by the state.

One consequence of conflict is the break-down of social structures which protect women from violence thus exposing them to rape by soldiers during flight and to bandits in asylum. Warring factions have used rape as a weapon against women from rival ethnic groups or clans. Women become chips in a wider political game and targets by fellow refugees who often infiltrate the camp in order to

⁷ As a recent issue of the *Refugees*, (No. 111, Spring, 1998 p. 9), has aptly remarked: "Fortress Europe" has already entered the vocabulary as a hardy sound-bite to signify general tightening of asylum laws in the West. Governments worldwide are fine-tuning the rules and regulations and barring would-be asylum-seekers, increasing penalties, increasing penalties against airlines or shipping companies carrying suspect passengers, or approving innocuous sounding arrangements such as the 'safe third country' rule which allows officials to reject people in flight who have already transited another state. And if those rules don't work, some states simply expel even bona fide refugees.

dominate and punish members of rival groups. In many African societies, victims of rape are considered outcasts and are no longer able to marry. Thus rape becomes a double-tragedy for women and girls. This is the case with the Somali Community in Dadaab.

A Dangerous Refuge

Prior to the 1991 refugee influx, the bulk of the refugees in Kenya resided in towns, most of them as self-settled urban refugees. After this, the Kenya government adopted a policy which required refugees to live in closed camps.⁸ To that end, the Kakuma camp was set up in North Western Kenya adjacent to the border with the Sudan in order to shelter Sudanese refugees. In the same breath, the Dadaab camps of Ifo, Hagadera and Dagahley were established in North Eastern province about 100 kilometres from the border with the war-torn Somalia to accommodate Somali refugees.

Moreover, the UNHCR closed down the predominantly Somali camps of Swaleh Nguru, Hatimy, Jomvu and Utange at the Coast. Apparently, this was done at the behest of the Kenyan government which argued persistently that refugees placed severe stress on its capacity to offer social services, undermined its economy, especially the tourist industry, and threatened national security. By 1997, thousands of refugees in the coastal camps were transferred to Dadaab axis camps and over 16,000 refugees relocated to Kakuma camp.

Northern Kenya – where these camps were located – has for long been the hearth and home to bandits, rustlers and criminal ele-

⁸ The Kenya Government has no official policy on refugees. There is however one by practise which requires refugees to live in closed camps.

ments as well as the country's main killing fields where the authority of the state is only felt peripherally. As one journalist cuttingly remarked: "Here, government is spoken of in past tense, mocking its claim to being in charge."⁹ Hence, by locating these camps here, the government was not only exposing refugees to risks, but was also undermining the principle of safe location for refugee camps, as laid down by the OAU Refugee Convention of 1969. This requires that, for reasons of security, refugees be settled in safe locations as far as possible from the frontiers of their countries of origin.¹⁰

Camp	1996 (September)	1998 (May)
Dadaab Camps	117,658	106,222
Ifo	37,109	38,691
Dagahley	39,100	30,304
Hagadera	41,449	37,227
Kakuma	33,636	60,192
Coastal Camps	*16,803	—
Hatimy	3,312	—
Swaleh Nguru	8,260	—
Jomvu	5,231	—
Grand Total	168,097	166,414

Source: UNHCR, *Information Bulletin, Kenya and Somalia Cross-Border Operation*, November, 1996; UNHCR, *Kakuma: Field-Based Registration System*, May 11, 1998; UNHCR, *Results of Dadaab Revalidation Exercise*, May 26, 1998.

* Most of these refugees were relocated to Kakuma by November 1997.

The influx of firearms, including remotely detonated mines from

⁹ Peter Njuguna, "Grisly Trail of Deaths in Northern Kenya" *Expression Today*, No. 2 October, 1997, pp. 1-2.

¹⁰ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, September 10, 1969, Article ii (6).

the conflict spots in the Horn accentuated the security situation in Northern Kenya. This did not only turn the traditional practice of raiding among the Rendille, Gabra, Burji, Somali, Garii, Boran (Oromo) and Turkana pastoral inhabitants of the area into a dangerous game of death, but exposed security forces, personnel of humanitarian agencies and refugees to a serious banditry problem. Between 1995 and 1997 for instance, 24 police officers were killed in Dadaab area alone. The most horrifying incident involved the murder of the area chief, police inspector, a sergeant and 11 constables who were killed in two separate incidents in January and September 1997.

During the 1997–1998 period, 18 people were reportedly killed along the Kakuma-Lokichoggio road, according to UNHCR sources.¹¹ Besides bandits, Somali and Sudanese militia also unleashed havoc in the area. In December 1997, two Kenyan police officers were shot dead by the Sudanese People Liberation Army (SPLA) militia in Lokichoggio¹².

Somali militia from across the border also launched frequent attacks against convoys, thus making police escorts a double-edged sword. During the 1996–1997 period, there were about 25 attacks on UNHCR and other NGO's personnel. As Table 2 shows, 106 cases of banditry involving firearms in the Garissa-Dadaab area were recorded in the period 1996-97.

Table 2: Average Incidents of Banditry, 1996—1997

Year	Banditry Cases
1996	51
1997	55

Source: UNHCR, *Incident Reports*, 1998

¹¹ UNHCR, *Incidence Reports*, 1998

¹² UNHCR, *Incidence Reports*, 1998.

A History of Ethnic Discrimination

At Independence in 1963, Kenya's ethnic Somali supported the nationalist goal of unifying Italian Somaliland, British Somaliland, French Somaliland and parts of Ethiopia and Kenya, which are inhabited by Somali, into a hypothetical 'Greater Somalia'. In the war against the 'Shifto' (1963-1967) – as the Somali secessionists who were backed by Somalia came to be called – systematic discrimination against Kenya's ethnic Somali was institutionalised. In 1968, the Somali government relinquished its claim on the North Eastern Province. Nonetheless, the Kenyan government continued to exercise a quasi state of emergency in the region until 1991.

The North Eastern Province and Contiguous Districts Regulations (1966) which empowered the Kenyan authorities to detain without trial, set up special courts, and impose death penalties for illegal possession of fire arms, was the lynch-pin of this 'emergency'. Remote and isolated from the glare of the Kenyan public and from the international spotlight, the area became a back yard of state abuse of human rights from ethnic Somali. As Kathurima M'Inoti has observed:

Under those conditions of ignorance and nonchalance on the part of the general public, it was possible to erect in the Province a draconian legal edifice granting the government and its agents the most tyrannical of classical emergency powers... With the government frequently down-playing the conduct of its agents and with those agents operating under the cover of a thick camouflage of public ignorance, the incredible goings-on in the Province hardly came to light. They escaped critical scrutiny without so much as a whimper.¹³

¹³ Kathurima M'Inoti, "Beyond the Emergency in the North Eastern Province: An Analysis of the Use and Abuse of Emergency Powers". *Nairobi Law Monthly*, No. 41, February/March 1992.

Ethnic pogroms along the lines of the Wajir Massacre of 1984 in which at least 2,000 ethnic Somali were killed, became the norm.

Northern Kenya is the country's most neglected area, with no roads, schools, hospitals, and no significant economic activity which could guarantee refugees a modicum of social and economic rights, including the right to work, to education, health care, housing, and to an adequate standard of living. Besides these systematic factors for the erosion of refugee rights, was what is widely perceived as state discrimination against Kenya's ethnic Somali, which, in turn, quickly translated into xenophobic discrimination against Somali refugees upon their arrival.

When Somali refugees began trickling into Kenya in the late 1980's, the government introduced a nation-wide screening of the Somali ostensibly to identify the foreigners, and required them to carry separate pink identity cards to prove their nationality, a measure that was discriminatory on the basis of ethnic origin. This suspicion and discrimination against Kenya's ethnic Somali translated into a profound sense of xenophobia against Somali refugees.

The vast majority of Somali refugees in Kenya hailed from the Darod clan, with its numerous sub-clans including the Marehand, Margetine Ogaden, Dolbahante, and Warsengeli, and the Hawiye clan to which most of the Kenyan Somali also belong. Somali refugees and Kenya's Somali alike were lumped together as Shifta or bandits and singled out for punishment whenever there was an attack on security forces by bandits. In August 1992, for instance, Kenyan police killed 15 refugees to avenge their four colleagues who had been killed by bandits. Following the killing of four police officers by bandits in March 3, 1993, 20 policemen fired into a crowd of 1,000 refugees assembled for food distribution at Dagahaley camp, killing three refugees and seriously injuring six.¹⁴

¹⁴ B. Nowrojee, "Target for Retribution", Human Rights Watch/Africa

The Raping Fields

Sexual assault and violence against women refugees has been more pronounced in Dadaab camps complex than in the Kakuma camp, and more among the Somali than other refugee groups. In Dadaab, the Somali comprise over 80 percent of the camp's 106,222 refugees¹⁵. Reported rape among the Sudanese in both Kakuma and Dadaab is relatively low. If it occurs within the group, it is seldom reported. Again with only 10 reported cases, rape among the Ugandans in Dadaab is extremely rare. Moreover, unlike the Somali women, Ugandan Sudanese and Ethiopian women are rarely exposed to rape since their men are not inhibited by customs to collect firewood. Not surprisingly, therefore, reports on sexual assault and violence against women have focused on Somali women.

Table 3: Reported cases of rape in Dadaab camps, 1993–1997

Year	Approx. Annual No.
1993	200
1994	100
1995	70
1996	*99
1997	105

Sources: B. Nowrojee, "Target for Retribution", *Human rights Watch/Africa; Lawyers Committee for Human Rights, African Exodus p. 71; UNCHR, Incidents Reports, 1998.*

* Data for the months of February and March is not available.

Between March 1992, when the first camp was established in Dadaab, and November 1993, hundreds of Somali women refugees were sexually assaulted in and around the camps as they foraged for firewood or herded animals. As Table 3 indicates, reported rape cases reached an annual toll of 200 by 1993. The remarkable de-

¹⁵ UNCHR, Incidents Reports, 1998.

cline of incidence of rape after 1993 followed a plethora of measures by the UNHCR partly in response to damning reports by several human rights organisations and other concerned agencies. Reported incidence of rape stabilised at nearly 10 cases per month in 1996 and 1997. (see Table 4)

While in January 1998 16 rapes were reported in one camp alone, in February and March, 17 rape victims were treated in Ifo hospital alone. A rider to nearly all the reports of Medicines sans Frontieres (Belgium) (MSF-B) on rapes in Dadaab warns that not all cases were reported because some women refugees preferred not report their ordeals either to the hospital or to the police. Speaking to the delegation of Lawyers Committee for Human Rights way back in May 1993, a rape counsellor intimated that the 107 cases reported to her in February and March were just the tip of the iceberg.

Table 4: Incidents of (reported)Rapes in Dadaab Camps
January 1996—December 1997

Year	Ifo	Dagahaley	Hagadera	Total
1996	37	34	19	90
1997	36	44	25	105
Total	73	78	44	195

Source: MSF-Belgium, Monthly Reports, 1996; UNHCR, Incidents Report, January 1998 p. 19.

Table 5 gives figures of rape survivors in the three camps of Dadaab by January 1998. Like other vulnerable cases, the 351 rape survivors needed constant care. Some of them were so traumatised and pathologically afraid of being raped again that they could not carry out their daily survival activities, especially foraging for firewood or herding their animals beyond the camp precincts.

**Table 5: Cases of Rape Survivors in Dadaab Camps,
January 1998**

Camp	No. of Cases
Ifo	165
Hagadera	81
Dagahaley	105
Total	351

Source: CARE, Vulnerable Persons Statistics, January, 1998

That some of the rape victims developed pathological fear of venturing outside their camps is not unusual because some of them were gang-raped at gunpoint by bandits. There are examples galore, both in police reports and in the monthly medical reports of MSF-B, regarding women who were gang-raped. For instance, on December 27, 1993, a female refugee is reported to have been raped more than ten times by four bandits. In another incidence on September 25, 1995, two men raped a 32-year-old woman at Hagadera camp. The case was reported to the police. And on the same day, another woman was raped by three men for almost three hours. In January 1996, four women going back home to Hagadera camp were confronted by 13 bandits.¹⁶ While two of the women escaped, the other two were gang-raped and one of them was seriously injured.

In the same month, another woman was gang-raped by bandits while collecting firewood 10 km from Dagahley camp, and another beaten while resisting rape. Three other women in her company escaped. Another woman collecting firewood was raped by two men, one armed with a gun and another with a knife outside Ifo camp. There are isolated cases where women are said to have been kidnapped from the camp at night and raped. For example, in July 1996, three women were abducted by bandits from Hagadera and

¹⁶ MSF-Belgium, Monthl Report, January-December, 1996

gang-raped.

However, Somali women refugees are not the only group that has been sexually assaulted. Five Ethiopian refugee women were part of a total of 165 rape survivors in Ifo camp by January 1998. Nor were assailants of these women refugees exclusively Somali nomads or bandits. Yerusalem, an 18-year-old Ethiopian girl from Oromo tribe, was raped many times over by a fellow male refugee. Having fled to Kenya with members of her family in early 1990's, Yerusalem was left under the care of a family friend, a Sudanese refugee who proceeded to rape and imprison her. Even when she escaped to Nairobi, he pursued and raped her once more, before the police caught up with her and put her behind bars on two occasions. Traumatized, Yerusalem entered and fled two schools before going into hiding.

Sudanese women refugees, both in Kakuma and Dadaab which they are often raped by fellow refugees but opt to keep quiet for fear of reprisal by their male aggressors. In fact, some respondents intimidated that even when they are raped, Sudanese female refugees deny vehemently that anything ever happened to them. This, to a large degree, accounts for the few reported rapes in Kakuma camp where the Sudanese constitute more than half of the refugee population.

There is also the unusual report on one international staff member, an NGO nurse, who was raped in Dadaab in early 1993. Male refugees, accompanying women targets are often killed or maimed. In September 1996, bandits threatened to rape a woman four kilometres outside Dadaab town. A man who was accompanying her was shot in the leg.

Some women victims of rape in Dadaab reported that their assailants demanded to know to which clan they belonged. Where the attackers belong to the same clan as the women, chances that the

victim would be spared are high. In the case of Dadaab camps, proximity to Somalia (barely a 100 kilometres from the border), the site of the conflict that displaced them in the first place aggravates the risk. Rape victims do not tell their husbands or relatives that they were raped for fear of being ostracised. This is because, victims of rape are ostracised and, in the case of girls, are no longer marriageable. As one rape victim in Dadaab said: "One is loathed or treated like dirt by their community."

The Defiled Child

The traumatising experience of the Ethiopian girl, Yerusalem is not an isolated case. Since the late 1994, refugee girls have increasingly become principal targets of assailants thus constituting a higher percentage of rape victims than ever before. This is because it is young girls who continue to leave the protective umbrella of relative camp security to collect firewood and grave livestock.

On January 26, 1996, an unknown man raped an 11-year-old girl who was herding goats along the Ifo-Dagahaley road. She reported to the police where she was told to go to the Ifo Hospital. On January 3, 1996, a 14-year-old girl in the company of three other girls collecting firewood outside Info camps, was raped by two bandits at gunpoint. Between February 2, and March 31, 1998 a total of 17 women were sexually assaulted and treated at Ifo camp. Two of the victims were 15, one was 18 and two were 20-year-old girls.

In Dagahaley, there were few reports of bandits abducting girls from the camps and raping them particularly before the camp was fenced. Indeed, sexual assault of girls has been a weapon in inter-clan feuds and wars, a phenomenon, which has been exacerbated

by the civil war since 1990. Commenting on the persecution of the Majeerteen clan by the Barre regime in 1979, Dr. Said Samatar, for instance, observes that: "it was customary for the army to abduct 12 and 13-year old Majeerteen girls and hold them as "temporary wives for the troops". Perhaps more than any other act, rape of girls exposes the utter defencelessness of the entire community and drives home the point that more than any other act, rape of girls exposes the utter defencelessness of the entire community. It is the exercise of ultimate power and control by the aggressor over the target community.

Who Will Guard the Guardians?

The extent of the involvement of Kenya's security officers in acts of sexual assault against women refugees has been a subject of raging debate and controversy. In its 1993 report, however, Human Rights Watch states that: "While most refugee women have variously complained about the Kenya Police, they say that the police are generally not responsible for widespread sexual assault".¹⁷ On its part, Africa Rights indicated that many, though not a majority of rapes, were committed by police and soldiers.¹⁸ Indeed, of the 10 cases it painstakingly recounted, half involved the police and soldiers. In its relatively benign and judicious report, the Lawyers Committee for human Rights observed that: "Seven out of 192 cases reported to UNHCR between February and August 1993 involved police, although the true number was

¹⁷ Human Rights Watch/Africa, 1993, *Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya*

¹⁸ Africa Rights, 1993, *The Nightmare Continues... Abuses Against Somali Refugees in Kenya*

probably much higher.”¹⁹

Profoundly embarrassed by the extensive media publicity and human rights reports which put the spotlight on widespread sexual violence in refugee camps-and more so the implication of some of its security officers in rapes-the Kenya government’s initial response was one of indignation. In his response to a question in Parliament, for instance, an Assistant Minister in the Office of the President, Mr. Julius ole Sunkuli, denied the allegations of widespread rape. He charged that the claims were meant to “attract sympathy and give the government negative publicity”. If the allegations were true, he declared women should report them to the police.²⁰

The government did take decisive steps to arrest the situation, at least at the time. It increased the number of police and tightened security in the camps. In March 1994, it ordered a public inquiry into events in Dadaab in August 1992 in which security personnel were alleged to have violated the Human rights of refugees, including women. In spite of repeatedly delayed to make public the findings of the inquiry, a serial rapist was successfully prosecuted in 1995.²¹

More perpetrators of violence against women began to appear in court. In September 1995, for instance, a rape suspect at Dagahaley camp was positively identified by a victim and was taken to court in Garissa. Another assailant, was arrested by the police on January 22, 1996, was arraigned in Garissa court on charges of attempted rape along the Ifo-Dagahaley road. However, in view of

¹⁹ Lawyers Committee for Human Rights, 1995, *African Exodus: Refugee Crisis, Human Rights and the 1969 OAU Convention*

²⁰ Daily Nation, (Nairobi) July 29, 1993; Standard (Nairobi), July 29, 1993

²¹ Amnesty International, June, 1997, p. 21

the high number of rapes that continued being reported, the prosecuted cases were negligible. Many rape perpetrators went scot-free.

The police claimed that they were unable to make arrests because, the victims failed to report quickly enough for them to pursue and arrest the attackers. Since the bulk of the refugee population is made up of women and children, it is considered that this segment would benefit immensely from the services of policewomen. However, no women police officers were posted to the area despite the Kenya Government's promises that it would send them once housing was provided by the UNHCR. Moreover, relations between the police and the refugee population have remained tense, especially with some officers incriminated in the assault cases. Police are often reluctant to investigate rape allegations against their own members.

In regard to the overall security concerns of the area, however, the government continued to pass the buck to other actors. In 1993, the UNHCR had requested the government's involvement in the UNOSOM to speed up the deployment of forces along the Kenya-Somalia border to stop bandit raids. In the following year, the Kenya government complained to the United Nations that UNOSOM troops had not been deployed to prevent cross border attacks. Yet nothing was done to address the problem of attacks from Kenya.

Corrective Measures

The UNHCR has been censured by human rights organisations for what they characterise as failures to fulfil its protection mandate.²² Nonetheless, it is worth pointing out that, like the refugees it set out to protect, the UNHCR was, from the outset,

²² Africa Rights, 1993, *The Nightmare Continues*

a hostage of the same insecurity which, in the first place, were responsible for widespread violence against refugees in general, and refugees women in particular.

From 1994, the UNHCR adopted a wide spectrum of measures geared towards reducing, if not alleviating the menace of rape of refugee women. In the first instance, the need to institutionalise procedures through which sexual violence in the camps could be monitored was recognised. This was a necessary step in triggering quick response from the Geneva Office and other well-wishers to bring in resources and trained personnel with expertise in the area to address the situation. To that end, it launched an appeal for funds to improve security in the camps.

In addition to adopting guidelines to address violence against women, the UNHCR initiated *Women Victims of Violence Programme*. New positions of Senior Co-ordinator and Regional Co-ordinators on women issues as well as a Rape Counsellor were created to assist women refugees. In tandem with its NGO partners, UNHCR established a support programme on behalf of women victims of physical and sexual violence in 1993.²³

Furthermore, a special project of fencing the refugee camps by planting live fences of thorn bushes for security purposes was introduced in 1994-96 period. With the help of the German Gesellschaft für Technische Zusammenarbeit (GTZ), Dadaab's refugees constructed more than 120 km of live thorn fencing around their compound.

In addition to this, UNHCR took concrete measures to strengthen the Government's capacity to provide security within and around the camps and to ensure that police did not perpetrate violence against women refugees. It assisted in the construction of a police

²³ MSF-Belgium, *Hagadera Refugee Camp Report*, January 1994

station in Dadaab, three police post, one in each camp, and provided material support, including donating vehicles and radios to law enforcement officers in order to have more control of the roads between Dadaab town and the three camps and to have very tight schedules for armed escorts. Police presence was greatly beefed, including helicopter patrols. UNHCR set aside \$4,500 (KSh. 280,000) per month as incentives to all police officers based in Dadaab. It also organised training on human rights to police officer to sensitise them on the need to protect refugees.

The cumulative impact of these measures is that, the overall number of reported rapes went down from over 200 cases in 1993 to 76 and 70 in 1994 and 1995, respectively.²⁴ The average monthly number of rapes declined correspondingly 30 in 1993 to fewer than 10 percent in the next two years.²⁵ Yet it was still felt that not enough was done to give a prompt and automatic assistance to women refugees at risk.²⁶

A Reluctant Defender?

Legal representation of rape victims is, no doubt, still the most under-exploited policy option in the protection of women rights. Individuals and organisations throw salvoes at UNHCR for not taking this option seriously, for instance, a Kenyan lawyer, Mohammed Ibrahim, who filed a civil suit for damages on the account of 37 Somali refugees who drowned in an accident as they were being repatriated arrived at his scathing conclusion.

²⁴ Nowrojee, 1997

²⁵ Lawyers Committee for Human Rights, African Exodus p.71

²⁶ Binaifer Nowrojee, Target for Retribution, Human Rights Watch, 1997

The UNHCR does not provide any legal representation for any refugee in Kenya. (It) never attends any court and Provides no legal support or advocacy in nay of the various Proceedings to which refugees are subjected. There is no advocacy for bail. At the very best they may send a letter confirming that a particular person is registered with UNHCR as a refugee but this is by no means the usual practice.²⁷

More damning are charges of its reluctance to prosecute Kenyan security officers suspected of perpetrating violence against female refugees. As the Lawyers Committee for Human Rights, noted "UNHCR was initially slow to help refugees advance their complaints against the authorities in cases where the perpetrators of abuse were the security forces themselves."²⁸ It neither passed complaints against the police to the authorities for investigation nor to the Attorney General for prosecution was seldom brought against police perpetrators of rape. Consequently, refugees have been reluctant to report abuses by the police for fear of reprisals.

Two legal avenues are open to UNHCR: filing a civil suit for damages against the perpetrators and, under the laws of Kenya, initiating a private criminal prosecution. Against the backdrop of extensive media coverage of sexual crimes against Somali refugees In Dadaab camps, the UNHCR contracted the Kenya branch of the Federation of International Lawyers (FIDA) to provide legal service to women survivors of rape.

But even with legal counsels, bringing perpetrators to justice is still a tall order. The long distant to the nearest court in Garissa, (over 100 km away) as well as an overburdened court calendar account for long delays in prosecution of the perpetrators.

²⁷ Africa Rights, *The Nightmare Continues* p.44

²⁸ Lawyers Committee for Human Rights, *African Exodus: Refugee Crisis, Human Rights and the 1969 OAU Convention*, 1995

Bailing out Women Rape Victims: The Firewood Project

In Dadaab camps, 95% of the female refugees walk 4–6 hours to the bush to fetch firewood two to four times a week. The cost of the firewood is beyond the reach of most refugee household. Firewood is sold in the form of a bundle of five sticks, a wheel burrow-load and a donkey-cart load at KSh. 5, KSh. 140 and KSh. 260, respectively. Furthermore, massive harvesting of firewood by the refugee population-concentrated in 5–10 km radius around the camps-has not only increased environmental degradation, degradation, but has also triggered social conflicts between local Somali population and the refugee community over resource utilisation.

In the Somali community, the task of foraging for firewood is traditionally reserved for women and girls. Consequently, the women in camps have not only suffered from the constant fatigue and backaches because of walking long distances under the hot sun but have also been exposed to armed bandits. It is while herding livestock or gathering firewood in the bush that the vast majority of the women and girls are raped.

Gleaning from the reports of the UNHCR and the NGOs working in Dadaab, it is clear that over 90% of more than 200 women and children victims of rape between January 1996 and December 1997, were actually attacked outside the camp while gathering firewood. Since 1994 an increasingly large proportion of rape victims have been young girls.

In view of this, the daunting task has been to find ways of preventing women and girls from venturing outside the camp areas. Initially UNHCR proposed to hold a meeting with the elders to encourage the community to send women for firewood only in big

groups accompanied by men. This proposal was not new. In most of the communities men refused to accompany women as collecting firewood is a women specific task.²⁹ Moreover, the war left many women in charge of their families, with no protection from men, a phenomenon unknown before the war. There are 256 single parent families in Dadaab, not to mention that many of the male heads of the 28,480 families in Dadaab are mostly absent, and women have been left in charge of their household. Another suggestion is that men should switch roles with women and start collecting firewood. It is women themselves who have vehemently opposed this idea. Most women would rather be raped than have their husbands killed in the bush. Due to inter clan feuds, Somali men are likely to get killed in the Bush while women will "only be raped."³⁰

The Lawyers for Human Rights Committee recommended that: "The provision of fuel would be an important step towards further reducing the incidence of rape."³¹ In the late 1997, the United States Government extended financial support to the UNHCR to design and implement a comprehensive intervention that would address the problems relating to lack of access to firewood, especially exposure of refugees to banditry and rape attacks as well as environmental degradation. In conjunction with NGOs working in Dadaab, especially GTZ, the UNHCR has planned to set up a wood-for-work programme which provides firewood to refugees in return for work within the camp.³² But besides collecting firewood, other social

²⁹ MSF-B, Kenya Dadaab, Monthly Report, January 1996

³⁰ Gitura Mwaura, "Bandits Terrorize Refugee Women in Dadaab Camps" *The East African*, July 27-August 2, 1998, p.iv

³¹ Lawyers Committee for Human Rights, *African Exodus*, p. 71

³² UNHCR, Branch office for Kenya, Dadaab Firewood Project, Nairobi, January 1998. Action Plan for the Project phase and Proceedings of the Project Design Workshop, 12-14, January 1998

and economic factors, including herding, are likely to deliver women and girls into the hands of bandits.

Conclusion

Under the international law, governments retain the power to designate places of residence for refugees and refugee camp sites. But they are also obliged by the same law to settle refugees in safe locations and places where they are not exposed to risks to their life and violation of their human rights. By and large, long standing repression and discrimination against Kenya's ethnic Somali shaped the Kenya government's response to the refugee influx, which in turn, determined its choices of the insecure Northern parts of the country as site for the camps. The establishment of camps in the insecure Northern parts of the country exposed both refugees and the humanitarian organisation to great risks, including death, sexual assault, and the theft of property, against the OAU Refugee Convention's principle of safe location of refugee camps. The widespread rape of women and girl refugees is the most visible implication of the violations of this principle. These rapes have been perpetrated by bandits, militia, fellow refugees and the police and soldiers, especially during the initial years of the establishment of the camps. In the 1995-1998 period, the involvement of security officers in sexual assault has subsided.

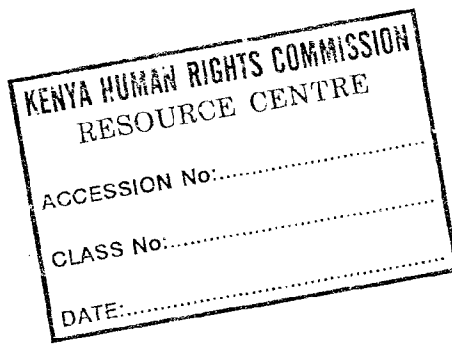
Security measures taken by both the UNHCR and the Kenya Government have succeeded in reducing the degree of rapes within the camps or abduction of women and girls from the camps by bandits and militia. However, the menace of bandits still lurks in the bushes and along the main roads as a majority of women and girls are raped in the bush when gathering firewood or herding animals.

The firewood project is a shot in the arm which has the potential of reducing the exposure of women and girls to rapists. It however, reinforces the image of camps as safe havens in an area where insecurity looms large. Yet there is need to emphasise the need for comprehensive security which can be guaranteed by situating camps in safe locations.

Recommendations

To the Kenya Government

- The government should re-dedicate itself to international human rights instruments and refugee protection, including the United Nations conventions on genocide and torture and the OAU and bring to book all those involved in violating the rights of refugees. To that end, it should:
 - i) respect refugees' fundamental rights
 - ii) provide means so that refugees can stay in safety
 - iii) eliminate all biases and xenophobia against segments of the refugee community especially the Somali
- Since refugees in Kenya are already settled near the borders of the countries from which they fled and which have a long standing history of insecurity and banditry, focus should be directed to ensuring the security in these camps and their environs. Special attention should be given to:
 - i) Combating banditry with the aim of stamping it out and restoring security on a permanent bases.
 - ii) Closely monitoring its borders with Somalia to check the cross-border migrations by Somalia militia.
 - iii) Disarm refugees and any other person crossing the border to Kenya
 - iv) Increase police personnel in and around Dadaab area and strengthen the capacity of the police station in Dadaab and



- the posts in the camps to respond to and contain banditry by improving on their weapons and equipment.
- iv) Post police women to the area to address the issues of security of women.
 - v) Train those personnel involved with refugees such as security officers in human rights and refugee protection under international law.
 - vi) set up a special unit dealing with refugees, possibly within the Ministry of Home Affairs, to monitor abuses against refugees and women refugees in particular and facilitate quick and effective response.
 - vii) Prosecute members of its security who have violated the rights of refugees, especially sexual assault.
- Priority should be given to establishing a court of law in Dadaab area to hasten the process of bringing justice to the refugees. The court can ease the problem of over-burdened court calendar and long distance that the affected party has to travel to the court in Garissa. With a population of over a 100,000 people such a move is justified.
 - In future settlement of refugees should be guided by the principle of integration rather than the establishment of camps in designated and often isolated areas.

To UNHCR

- Re-invigorate its protection mandate by taking issues with the government whenever it renege on its obligation to protect refugees and instead expose them to unnecessary risks.
- Should continue to project its image as a benevolent, neutral but uncompromising defender of the rights of refugees from encroachment by either criminal elements or government agents. It should never be seen as an extension of the government.
- Strengthen its capacity to legal protection and defence refugees under it by:

- i) Providing legal representation to refugee victims of abuses.
- ii) Instituting private criminal prosecution against those undermining the rights of refugees.
- iii) Filing civil suits for damages against government agents involved in violation of refugee rights.
- iv) Advocate for the establishment of a court within the vicinity of the camps in order to hasten the trial of assailants refugees, particularly women and girls.
- Establish training programs for responsible officials of UNHCR NGOs and the host government as well as the refugee community, to appraise them on the need to protect refugee rights, including violence against refugee women.
- Intensify and strengthen the security measures already put in place such as fencing of the camps.
- Implement measures that will minimise the movement of women and girls alone into the bush outside the camps, which exposes them to bandits. The firewood project is a viable project towards this objective and should, therefore be implemented expeditiously.
- Strengthen its services to rape survivors by:
 - i) Providing medical and counselling services to traumatised women and girl victims of rape.
 - ii) Increased advice and advocacy services for refugees rape survivors.
 - iii) Keeping proper records of rape victims
 - iv) Exploiting the potential of clans and sub-clans protecting women against sexual abuses.
 - v) Encouraging men to take part in herding as a response to the changed security environment and to reduce the exposure of women and girls to bandits.

To Non-Governmental Human Rights Organisations

Currently, human rights organisations in Kenya have given peripheral attention to human rights issues relating to refugees. It is therefore, recommended that they should:

- Give priority to research and reporting on:
 - i) Government's fidelity to domestic and international obligations to protect the rights of refugees.
 - ii) Cases of gross violations of the rights of refugees.
- Where domestic measures prove not effective enough to compel the government to adhere to its obligations to refugees, resort to international instruments, including the African Commission for Human and Peoples' Rights and the Various UN instruments on human and refugee rights.
- Provided assistance and advocacy on behalf of refugees seeking redress in regard to violation of their rights through litigation.