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Analysis of Refugee Protection Capacity Kenya

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The views expressed in this report are those of its author and can in no way be taken to reflect the official opinion of UNHCR, the European Commission, Denmark, Germany, the Netherlands, or the United Kingdom

List of Abbreviations

AIDS	- Acquired Immune Deficiency Syndrome
CARE	- Co-operative for Assistance and Relief Everywhere
CTD	- Convention Refugee Travel Document
EC	- European Commission
FAO	- Food and Agricultural Organization
GTZ-IS	- Gesellschaft für Technische Zusammenarbeit – International Services
HIV	- Humane Immunodeficiency Virus
ICRC	- International Committee of the Red Cross and Red Crescent Societies
IOM	- International Organization for Migration
IP	- Implementing partner
IRC	- International Rescue Committee
JRS	- Jesuit Refugee Service
LWF	- Lutheran World Federation
MHA	- Ministry of Home Affairs
NCCK	- National Council of Churches Kenya
NGO	- Non Governmental Organization
OAU	- Organization of the African Unity
OP	- Operational Partner
RCK	- Refugee Consortium of Kenya
RESCUE	- Rational Energy Supply Conservation, Utilization and Education
RSD	- Refugee Status Determination
SGBV	- Sexual and Gender Based Violence
UAM	- Unaccompanied Minor
UN	- United Nations
UNDP	- United Nations Development Programme
UNESCO	- United Nations Education, Scientific and Cultural Organisation
UNFPA-	- United Nations Population Fund
UNHCR	- United Nations High Commissioner for Refugees
UNICEF	- United Nations Children Funds
WFP	- World Food Programme
WHO	- World Health Organisation

Table of Contents

Executive Summary	4
Legal, Political and Social Environment.....	7
Demographic Profile	7
National and Administrative Framework.....	8
International Instruments that Have Been Ratified	9
Partnerships to Strengthen Protection Capacity.....	10
Host Environment	10
Refugee Issues and National and Regional Development Agendas	13
Admission.....	14
Admission Policy and Practice.....	14
Non-Refoulement.....	14
UNHCR Access	15
Identification, Assessment and Treatment of Urgent Protection Needs.....	15
Support to Meet Basic Necessities of Life.....	16
Tracing Mechanisms.....	17
Registration	18
Registration Requirements by Law	18
Individual Registration.....	18
Registration of Prima Facie Refugees.....	18
Registration and International Standards.....	19
Legislative Framework for Determining Protected Status.....	20
Group Determination.....	20
Individual Asylum Procedures.....	20
Complementary forms of Protection.....	21
Country and Legal Information and Analysis.....	21
Protection from Violence, Coercion or Deliberate Deprivation	22
Security in Refugee Hosting Areas.....	22
Civilian Character of Refugee Hosting Areas.....	23
Mechanisms to Prevent and Respond to SGBV.....	24
Traditional dispute resolution mechanisms.....	27
Programmes to Protect Children from Abuse and Exploitation.....	27
Legal Recognition of Protected Status	29
Provision of Documents Confirming Legal Status.....	29
Documents Confirming Civil Status	29
Information Dissemination on Rights and Responsibilities.....	30
Free Movement	31
Restrictions on Freedom of Movement.....	31
Travel Documents.....	32
Arbitrary Arrest and Detention	33
Assistance in Meeting Protection Needs	35
Provision of Food, Water, and Clothing.....	35
Immediate Shelter and Long Term Housing.....	38
Access to Primary and Curative Health Care	39
Primary and Secondary Education.....	41
Equal Benefit and Protection of the Law	43
Access to Effective Remedies	43
Fair and Public Hearings without Discrimination.....	43
Traditional Forms of Justice	43
Self-reliance	45
Educational and Vocational Programmes	45
Access to Wage-earning Employment	45
Self-employment Opportunities	46
Social Security and Just and Favourable Conditions of Work.....	47
Right to Own Property.....	47

Durable Solutions	48
Voluntary Repatriation	48
Local Integration	48
Resettlement	49
Comprehensive Approach.....	50
Annex 1 Demographics.....	51
Annex 2 Province of Origin for Sudanese and Somali Refugees	53
Annex 3 International Treaties.....	56

Executive Summary

This report was prepared in the context of the Strengthening Protection Capacity (SPC) Project. Funded by the European Commission and the governments of Denmark, the Netherlands and the United Kingdom, the SPC project is aimed at devising tools and approaches to strengthen the capacity of States to receive and protect refugees, including enhancing their means of self-reliance and expanding opportunities for durable solutions.

Four countries initially are the focus of this project: Kenya, Tanzania, Benin and Burkina Faso.

This report examines the protection capacity of Kenya, a country that currently hosts 240,000 refugees, most of whom arrived during the first half of the 1990s. Initially refugees were accommodated in 15 refugee camps. In 1998, these were consolidated into four refugee camps: the three Dadaab camps in the North-Eastern Province (Dagahaley, Hagadera, and Ifo) and the Kakuma camp located in the Turkana district in the northwest of the country. Somali refugees comprise the majority of the 138,571 refugees in the Dadaab camps. The Kakuma camp hosts 65,000 Sudanese, 18,000 Somalis, and 4,100 from other countries (Ethiopia, Congo, Uganda, Sierra Leon and Rwanda).

Estimates of the number of urban refugees range from 15,000 to 60,000 people.

While this report notes the successes achieved by the Kenyan government and international community in addressing refugee protection needs, it focuses primarily on current protection gaps and challenges so as to provide a working document for the national consultations to follow. The consultations will be designed to focus on prioritizing refugee needs and identifying appropriate measures to address them.

The following is a list of some of the key gaps in protection capacity identified in this report.

Little information on the urban refugee population

Most refugees living in urban areas do so without the authorization of the government, and are in violation of the government's encampment policy. In light of this, and UNHCR's own limited resources, the programme of the Office is focused on camp based refugees, with assistance to urban refugees reserved only for those whom there is a compelling reason for residing outside the camps.

Relatively little is known on the actual size and need of urban refugee populations living in Nairobi and elsewhere in Kenya.

Lack of domestic refugee legislation

Kenya does not have national legislation specifically addressing refugee issues and the government's refugee status determination procedure was discontinued in 1993. Other legislation which has a bearing on refugee issues falls short of an asylum/refugee framework. The absence of specific legislation governing refugee affairs leaves refugees vulnerable to treatment that is not in accordance with internationally recognised protection standards.

Refugees not included in development and poverty reduction strategies

Refugees are often viewed negatively by the host population who see them as a threat to security, specifically as traffickers of small arms and drugs. They are also

believed to place a strain on social services and to harm the environment. These sentiments are reflected in national poverty reduction and development strategies which do not include refugees as beneficiaries of such strategies or as agents of change.

Absence of refugee registration by Government

Prior to 1993, the Government had a refugee determination process, and those who were found to be Convention refugees were registered. Since the discontinuance of Refugee Status Determination (RSD) by the Government, the Government has undertaken a one-off registration exercise in each of the camps; however, no regular and systematic registration by the Government is being done, and as a consequence over half the refugees currently in Kenya are not registered by the Government. This responsibility has fallen to UNHCR.

Physical insecurity of refugees

The Dadaab and Kakuma camps continue to be plagued by security problems including banditry, rape and murder. While the situation has improved over the years, women and children, in particular, remain vulnerable to abuse and exploitation. One perennial problem facing women is the risk of sexual assault while when collecting firewood outside the camps. Harmful traditional practices also affect the protection and well-being of women and girls including female genital mutilation, which is practiced amongst the Somali and Ethiopian refugees, and forced marriage, which occurs within both Somali the Sudanese communities.

Absence of documents conferring protected status

No more than 20% of refugees possess individual documentation which confirms the status of the bearer. Moreover, there is no single document that is in use. Rather there are various documents issued for different purposes including: Alien Identity Cards for government-registered Convention Refugees; Refugee Certificates for mandate refugees residing outside of the camps; movement passes for refugees transiting to/from the camps; and ration cards held by the head of household for the all camp-based refugees.

Lack of mobility

The vast majority of refugees are required to live in the isolated Dadaab or Kakuma camps. The government's encampment policy, which severely restricts freedom of movement, limits refugee access to markets, employment, and opportunities for self-reliance. It also inhibits the potential for refugees to contribute to local development. Violations of the encampment policy often result in the arrest and detention of refugees.

Inadequate assistance in meeting protection needs

While minimum standards of life-saving assistance have generally been maintained, malnutrition rates, anaemia among pregnant women, low-weight births, and neonatal death rates are unacceptably high due to nutrient deficiencies in the food baskets and limited supplementary feeding programmes. Additionally, the lack of regular non-food distributions has led many refugees to sell portions of their food baskets in order to purchase needed items, further impacting both caloric and nutritional consumption.

The majority of the refugees continue to reside in substandard shelters composed of branches covered by grass, cloth, and, when available, plastic tarpaulin which offer

little privacy or security and are, arguably, inappropriate in a post-emergency situation.

The collection of firewood, which has repeatedly been shown to put women and children at-risk for abuse and exploitation, has only partially been addressed through firewood distributions. The distributions, which cover only a portion of the need, have reduced but not eliminated women's and children's exposure to abuse.

Environmental degradation

Refugee firewood collection in areas surrounding all camps and animal grazing around the Dadaab camps has resulted in considerable damage to the local environment which has only been marginally addressed by limited rehabilitation programmes.

Low primary school attendance rates

There are a significant percentage of school-aged children who do not attend primary school. Of those who do attend, there is parity between boys and girls attendance in the early years but the latter falls dramatically in junior and senior grades.

Limited access to secondary school

Access to secondary education is severely limited. Secondary schools in the Dadaab camps, for example, only have space for 25% of primary school graduates.

Inability to achieve self-reliance

The government encampment policy, which restricts access to markets, land and employment, and the local labour laws, which prohibits refugees from engaging in economic activities, severely constrains refugees' income generation potential and, hence, the opportunity to become self-reliant.

Limited opportunities for durable solutions

Voluntary repatriation to Somalia and southern Sudan is hindered by insecurity, the absence of services in communities of return, and the lack of UNHCR monitoring presence in areas of return. Local integration is contrary to government policy and not viewed as an option for significant numbers of refugees. Further, while large numbers of refugees are resettled out of Kenya each year (4,000 - 5,000), the numbers are fairly insignificant in comparison to the entire caseload.

Limited assistance to needy, refugee-impacted host communities

The host communities surrounding the Dadaab and Kakuma camps are, in many ways, more impoverished and desperate than the refugees in the camps. While members of the host communities can access some camp-based services, particularly in Kakuma, more could be done to build a sustainable economic environment, continue to provide host community with access to camp services, further develop local infrastructure, and strengthen programmes which benefit both the refugee and host communities.

Legal, Political and Social Environment

Demographic Profile

- 1) Kenya hosts approximately 240,000 refugees, the majority of whom arrived during the first half of the 1990s due to civil conflicts in Somalia and Sudan. In response to the mass influx of refugees, the Kenyan government established 15 camps to accommodate the arrivals. In 1998 these were consolidated into four camps currently hosting 225,000 refugees. Most of the approximately 15,000 remaining refugees are located in urban areas. There are not precise figures for the urban refugee population in Kenya, and while the UNHCR uses a planning figure of 15,000, other estimates place the number closer to 60,000.¹
- 2) Somali refugees comprise the majority of camp-based refugees in Kenya. They number approximately 139,000 people, and reside largely in three camps, Dagahaley, Hagadera and Ifo, located within 10km of Dadaab in the North-Eastern Province. These camps are collectively referred to as 'the Dadaab camps'.
- 3) Sudanese refugees make up the next largest group of camp-based refugees, comprising approximately 65,000 people. They reside primarily in the Kakuma refugee camp which is in the Turkana district in the North West of the country. Kakuma also hosts approximately 18,000 Somali refugees and nearly 4,100 refugees from other countries such as Ethiopia, Congo, Uganda and Rwanda.
- 4) The Kakuma and Dadaab camps are located in remote areas, close to the Sudanese and Somali borders respectively. The climate is hot and arid. The majority of refugees have a rural agro-pastoral background with little if any formal education.
- 5) The population density in the areas surrounding the refugee camps has grown considerably since the arrival of the refugees. For example, the population of Kakuma town grew from 5,000 in 1991 to approximately 40,000 by the year 2000.² Similarly, the population in and around Dadaab also reportedly increased from 800 in 1992 to 18,000 in 2002. There are a number of reasons for this population growth including small scale labour opportunities, increased trade, and/or hopes of obtaining the material goods and services given to the refugees.³
- 6) Most refugees living in urban areas do so without the authorization of the government, and are in violation of the government's encampment policy. In light of this, and UNHCR's own limited resources, the programme of the Office is focused on camp based refugees, with assistance to urban refugees provided to those for whom there is a compelling reason for living outside the camps.

¹ See HRW, *Hidden in Plain View: refugees living without protection in Nairobi and Kampala*, 2002, available at www.hrw.org/reports/2002/kenyugan/kenyugan.pdf.

² A. Jamal, *Minimum standards and essential needs in a protracted refugee situation: a review of the UNHCR programme in Kakuma, Kenya*, EPAU/2000/05 UNHCR Geneva, 2000, at p. 28.

³ See, J. Crisp, *No Solutions in Sight: The Problem of Protracted Refugee Situations in Africa*, The Center for Comparative Immigration Studies, Working Paper No.68, December, 2002, at p.7 and 'Assistance to Somali and Sudanese Refugees in Kenya', Evaluation Report of the Joint WFP/UNHCR Evaluation Mission for Protracted Relief Operation 4961.04 1999, available at www.ennonline.net/fex/12/ev25.html).

7) Indeed while the needs of many refugees in urban areas are believed to be significant, UNHCR and partners have not yet managed to identify a workable solution that would allow needs to be met without creating a pull factor from the camps, and without acquiring an unsustainable financial burden.

National and Administrative Framework

8) Kenya does not have national legislation specifically addressing refugee issues. However the Government of Kenya did have a refugee determination procedure, which it discontinued in 1993. Approximately 12,500 refugees in Kenya were recognised as Convention refugees under this process and who, on the whole, enjoy the rights provided for under the 1951 Convention. This group of refugees are collectively referred to as 'Convention refugees' and, according to figures provided by the Government, they now number about 2500.

9) 'Convention refugees' hold Government-issued Aliens' Identity Cards which identify them as 'full status' refugees. They are entitled to reside where they wish and, although not automatically granted the right to work, they are free to apply for work permits which they are generally granted. UNHCR's Branch Office in Nairobi is currently trying to improve its knowledge of this group of refugees.

10) 'Mandate refugees' are those recognised by UNHCR under its mandate, rather than by the Government of Kenya, whether or not the refugees have undergone individual RSD conducted by UNHCR or have been recognised on a group basis as prima facie refugees.

11) Although there is no specific refugee legislation, other Acts have a bearing on refugees. The *Immigration Act* of 1967, for example, requires foreigners to be in possession of valid documentation. The *Aliens Restriction Act* of 1973 permits the Minister during times of war, imminent danger or great emergencies to require foreigners to reside in designated areas (Article 3 (1)(c).) While this is arguably the basis for the encampment policy, to UNHCR's knowledge, such an order has never been formally made.

12) These pieces of legislation fall far short of an asylum/refugee framework and even those provisions that are potentially applicable to refugees, are not consistently implemented. So, for example, while the *Aliens Restriction Act* requires foreigners to register at designated locations within 90 days of arrival in Kenya, refugees who attempted to do so in the past were turned away by immigration officials and/or officials from the National Refugee Secretariat.

13) One of the consequences of the absence of specific refugee legislation and an accompanying administrative system for its implementation is that refugee affairs cross several ministries. The key government interlocutor on refugee issues is the National Refugee Secretariat, headed by an Undersecretary.

14) The Secretariat has recently been moved to the newly created Ministry for Immigration, Registration of Persons and Refugees, placed within the Office of the President. The Undersecretary has a staff of only three persons, and is therefore unable to implement policy. Rather, it is responsible for co-ordinating activities relating to refugees and, in particular, liaising between UNHCR and relevant branches of the Kenyan Government.

15) Departments within the Ministry of Home Affairs such as the Department of Immigration, the Police Department and the National Registration Bureau also

influence refugee matters. The Attorney General's Office, the Police Department, the Intelligence Service (part of the Office of the President), and the Kenya National Human Rights Commission (part of the Ministry of Justice and Constitution Affairs) also have responsibilities and an interest in refugee affairs.

16) The absence of specific legislation governing refugee affairs leaves refugees vulnerable to treatment that is not in accordance with internationally recognised protection standards. It also means that important areas of refugee governance which fall within the state's responsibilities are being carried out by UNHCR including: reception and registration of new asylum-seekers; refugee status determination; maintenance of data on asylum-seeker and refugee population; issuance of documents confirming status; management and co-ordination of the refugee camps; and, provision of secure arrangements for critical protection cases.

17) Two anticipated legislation changes will help to remedy this situation. For the past few years the government has been undertaking a Constitutional review process. Presently, the draft Constitution contains a number of provisions relevant to refugees including the right of asylum and non-refoulement; the right to freedom of movement, and it extends naturalization through marriage to the spouses of women citizens. Also of note is that it provides for the passing of refugee legislation within six months from the adoption of the Constitution.

18) In regard to the latter, a Refugee Bill has been drafted which is expected to be put in place in 2005. The Bill defines a refugee as per the 1951 Convention relating to the Status of Refugees (the '1951 Convention'), the 1967 Protocol relating to the Status of Refugees (the '1967 Protocol') and the 1969 OAU Convention, and also includes any member of a group that is defined by the Minister. Protection from non-refoulement is provided for and there are provisions for documentation and exemption from punishment of refugees for illegal entry. General references to the protection of refugee women and the protection of refugee children are also included.

19) The draft Bill also provides for the establishment of a Department for Refugees, which is expected to have a staff of over 80 persons. It too will be based within the Ministry of Home Affairs and, unlike the Secretariat, is expected to have a presence in the refugee camps.

20) Some have expressed concerns about provisions in the Bill which would accord refugees rights at a lower standard than provided for in the Convention. These include a limited right to work (on the same terms as foreigners generally) and restrictions on movement that could permit the continuance of the encampment policy.

International Instruments that Have Been Ratified

21) The Government of Kenya has acceded to the 1951 Convention, the 1967 Protocol and several other major international human rights treaties but has yet to ratify them. The Government of Kenya ratified the 1969 OAU Convention; the 1981 Africa (Banjul) Charter on Human Rights and People's Rights; the 1990 Africa Charter on the Rights and Welfare of the Child and the Optional Protocols to the

Convention on the Rights of the Child concerning children in armed conflict and child prostitution and pornography.⁴

Partnerships to Strengthen Protection Capacity

22) Relations between UNHCR and the Kenyan Government are reportedly excellent, which is in part explained by the Government's appreciation for the scope of work undertaken by UNHCR. Relations with the various Non-Governmental Organisations (NGOs) working in the refugee field are more varied.

23) Implementing Partners (IPs) are organisations which implement programmes on behalf of UNHCR, and receive funding to do so, according to a sub-agreement signed by the two agencies. Operational Partners (OPs) are organisations working in the refugee field but do not receive funding from UNHCR.

24) In Dadaab, UNHCR's main IPs are the Co-operative for Assistance and Relief Everywhere (CARE); GTZ-IS which handles the health sector and the National Council of Churches of Kenya (NCCCK) which is involved in HIV/AIDS programmes. Both the GTZ-IS and the NCCCK also work with urban refugees in Nairobi.

25) In the Kakuma, UNHCR's main IP is the Lutheran World Federation Department for World Service (LWF). Its operational partners include the International Rescue Committee (IRC) who co-ordinates, amongst other things, health services and Don Bosco who provides vocational training and runs income generation programmes in Kakuma.

26) Other important OPs include the Jesuit Refugee Service (JRS), the Refugee Consortium of Kenya (RCK) and the International Committee of the Red Cross (ICRC). In regard to UN agencies, Nairobi is home to the third largest set of UN offices in the world after New York and Geneva. All major UN funds, programmes and specialized agencies are represented; the organizations working most closely with UNHCR being the World Food Programme (WFP), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO).

27) UNHCR has been criticized in the past for not fully consulting with IPs and OPs in the formation of UNHCR's country operation plan (COP). It now has annual retreats where IPs and OPs are invited to provide input into the COP for the following year.

Host Environment

28) Some politicians, both government and opposition, are reportedly adopting an anti-refugee line.⁵ This is evidenced in official documents such as the Kenyan Government's Interim Poverty Reduction Strategy 2000-2003 which frames refugee issues within the context of their being a threat to security, specifically by bringing small arms into Kenya.⁶

⁴ See Annex 3 for a list of international treaties signed, ratified or acceded to by the Government of Kenya.

⁵ This is particularly true of MPs from areas affected by the Kakuma and Dadaab camps.

⁶ According to UNHCR staff, a complicating factor is that the term 'refugee' is widely used to refer to any foreigner rather than being reserved for those recognised as refugees by the Government or UNHCR.

- 29) UNHCR reports that in Nairobi many people believe that refugees place a strain on the city's health and education services although there is no evidence to support this. Furthermore, many Kenyans erroneously believe that refugees are authorized to work, and are thus taking jobs that would otherwise go to Kenyans.⁷
- 30) The negative attitudes towards refugees apparent within Kenyan society contribute to low-level harassment of refugees by police and opportunism on the part of politicians who advocate for restrictive policies regarding refugees either to win popularity with voters or to avoid criticism from political adversaries.
- 31) The attitudes towards refugees by communities living around the camps, is somewhat more complex. While these communities have suffered from the environmental effects of hosting hundreds of thousands of refugees, they have also benefited from the presence of refugees in certain respects. International aid efforts for refugees in Dadaab and in Kakuma have also provided access by local communities to water⁸, education⁹ and health services¹⁰ within the camps.
- 32) In spite of the benefits the camps may have brought to the host communities in terms of services, it is irrefutable that refugees place a considerable strain on the natural resources around the camps. In particular, wood collection by the refugees has reduced large swathes of land to scrub. As noted by UNHCR with reference to the Dadaab camps, the 'majority [of refugees] may traditionally have been used to coping with water shortages, but had little prior exposure to competition for wood products and the associated need to conserve energy and protect and plant trees. The result was rapid depletion of firewood, construction materials and live fencing from around the camps, and over-exploitation of grazing areas.'¹¹
- 33) In order to address these problems, GTZ runs a Rational Energy Supply, Conservation, Utilization and Education (RESCUE) programme in both Dadaab and Kakuma which is made up of several projects including firewood distribution and the creation of 'green-belts' to regenerate the land.¹² The green belt projects, at the level currently implemented, however, cannot reverse or even arrest the environmental degradation caused by the increased population density in and around the camps.¹³

⁷ Some people in Nairobi even argue that refugees are responsible for the rising cost of renting accommodation on the grounds that refugees are willing to share 12 to a house and are therefore able to pay more in rent.

⁸ In Dadaab one bore hole has been provided at the edge of each camp for the host community and an additional borehole, with cattle troughs, is located in Dadaab town. In Kakuma the local community has access to water within the camp.

⁹ In Dadaab school attendance is limited to 20 local children per school although support has been provided for the building of two local schools. In Kakuma the local children have access to the camp schools.

¹⁰ In Dadaab and Kakuma the host community has access to health services and therapeutic feeding programmes in the camp. Although there are no precise figures, staff in Dadaab estimate that 10% of those receiving health services are from the local community

¹¹ UNHCR, *Refugee Operations and Environmental Management: a handbook of selected lessons learned from the field*, December 2002 at p.46, available at www.unhcr.org.

¹² The firewood project involves purchasing wood, collected in a sustainable manner, for distribution to the refugees. The green belt project involves fencing off a portion of land, which is tended by a volunteer, in which water traps are constructed and trees planted.

¹³ It is estimated that around the Dadaab camps alone over 500 hectares are damaged each year; yet after ten years only 555 hectares of green belt have been established, representing around 10% of what

- 34) Nevertheless, GTZ's environmental projects hold clear benefits for the local community and consequently help to abate tensions.¹⁴ Short term benefits include contracts awarded to members of the host community for the collection and transport of firewood.¹⁵ As for long term benefits, according to GTZ, members of the host community support the green belts¹⁶ because they recognize that the project will help rejuvenate the environment if or when the refugees repatriate.
- 35) Moreover, they do not mind that the green belts are fenced off because they are located in extremely bare areas which do not offer good grazing and, furthermore, all new sites are agreed in the 'Environmental Working Groups' before being established. These Environmental Working Groups, which were launched in 1995 and 2000 in Dadaab and Kakuma camps respectively, are not only an attempt to involve both the refugee and host communities in environmental management and rehabilitation but are also a positive forum for general interaction between the communities.¹⁷
- 36) Other projects aimed at encourage positive interaction between refugee and host communities include specific peace building measures implemented by the LWF in Kakuma.
- 37) Notwithstanding these efforts, some argue that good relations are primarily dependant upon food security and the general well-being of the host communities, regardless of whether or not their insecurity is caused by the refugees or not.
- 38) UNHCR and other agencies recognize that both refugees and local communities need additional support to fill critical gaps in assistance. To that end, UNHCR and UNICEF have drafted a project proposal which 'will fill critical gaps jointly identified by UNICEF and UNHCR in the social services provided to the refugees in Kenya and to the immediate surrounding population impacted by the refugees.'¹⁸
- 39) Most importantly, the programme will attempt to build partnerships with Government and other development partners such as bilateral donors, sister UN agencies, NGOs and civil society to maximize co-programming and development of a holistic approach to the needs of the refugees and the surrounding communities. For example, improvement of the school/learning environment requires provision

would be needed to halt environmental degradation. See further the Ministry of Environment and Natural Resources, Monitoring Report of firewood and refugee impact on the environment around Dadaab, 8 November 2004, which, at page 16, recommends massive extension of the green belt project.

¹⁴ While contributing to improved relations between the refugee and host communities, it is ironic that the firewood project can be a source of friction between UNHCR and host communities. As one staff member in Kakuma noted, relations between the Turkana and UNHCR are sometimes difficult and, when this is the case, this normally relates to the firewood project, in particular the Turkana contractors demanding more money for the wood.

¹⁵ In Dadaab, for example, there are 100 gatherers and 100 transporters, each contractor employing a team of around 20 people made up of both refugees and members of the host community.

¹⁶ The green belts are maintained by volunteers (in Dadaab, for example, there are 120 volunteers from the refugee community and 16 from the host community) who, after 3-4 years, are allowed to graze some animals on the sites and harvest some wood.

¹⁷ See further, UNHCR, Refugee Operations and Environmental Management: a handbook of selected lessons learned from the field, December 2002 at p.15, available at www.unhcr.org.

¹⁸ UNHCR & UNICEF, Proposal on an integrated programme for realization of millennium development goals for refugees and surrounding communities in Northern Kenya, June 2004, at p.23. The total budget for the proposed programme is 3,250,000 USD over a three year period (2005-2007); 1,700,000 USD of which to be channelled through UNICEF and 1,550,00 USD through UNHCR.

of potable water, provision of school meals, de-worming of school children to reduce absenteeism due to worm infection, and adequate and separate sanitation facilities for girls and boys. The suggested activities will target an area within 150 square kilometres of the camps. A multi agency approach is therefore envisioned. The programme will thus seek partnerships with other specialized agencies such as WFP, for provision of micro-nutrient supplements to school children in its school feeding programme.¹⁹

Refugee Issues and National and Regional Development Agendas

40) Refugees are not currently included in national poverty reduction and development strategies. The only reference to refugees in the Kenyan Government's Interim Poverty Reduction Strategy 2000-2003 is in chapter 13 (Public Safety, Law and Order), paragraph 9, headed 'Refugees and Proliferation of Small Arms', which states that:

'Regional conflicts have had major adverse impact on security and indeed, the economy of Kenya. The number of refugees from the neighbouring states continues to strain available resources and pose a security risk due to proliferation of fire arms. It is, therefore, in the national interest that such conflicts are peacefully solved and refugees returned to their countries.'²⁰

41) Similarly, the only reference to refugees in the Kenyan Government's Economic Recovery Strategy for Wealth and Employment Creation 2003-2007 is in a section on Security and Law Enforcement where it states that the Government will 'increase surveillance and strengthen immigration points at the border entry points to curb the large influx of refugees and illegal firearms'.²¹

42) With regard to international development actors, the United Nations' Kenya Country Team is, at least in one important document, equally if not more negative in its portrayal of the refugee situation in Kenya. In the United Nations Development Assistance Framework (UNDAF) Kenya 2004-2008, the first reference to refugees is in a section headed 'Disasters'²² in which it states that 'the burden of hosting large numbers of refugees, for over a decade, has led to the proliferation of small arms, crime, drug-trafficking, conflict among the refugees, and environmental damage. As a result there have been regional efforts to combat arms and drug trafficking, however, the problems persist.' While refugee matters are clearly addressed in the document, specifically in 'Outcome 9' (Strengthened response to and management of refugees' and IDPs needs and rights), they are not placed within a development context and refugees are not regarded as being a potential economic asset. Instead,

¹⁹ Ibid, p 18.

²⁰ Government of Kenya, Interim Poverty Reduction Strategy 2000-2003, at p.33, available at www.imf.org/external/NP/prsp/2000/ken/01/INDEX.HTM.

²¹ Government of Kenya, Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, Chapter 8, Arid and Semi-Arid Lands, section 8.9, at p.40, available at www.statehousekenya.go.ke/government/pdf/erp.pdf.

²² The United Nations Country Team, United Nations Development Assistance Framework (UNDAF) Kenya 2004-2008, Nairobi June 2004, p.12. Available at www.un-kenya.org/UNDAF.pdf.

the protracted refugee situation in Kenya is considered only in terms of emergency management and response.²³

Admission

Admission Policy and Practice

- 43) The majority of asylum-seekers enter Kenya undetected, crossing the border by land.
- 44) Refugees, who enter Kenya by air, generally arrive at Lokichokio airport where they are informally admitted by Immigration Officers and referred to UNHCR's transit centre in Lokichokio.
- 45) The number of refugees who enter Kenya through the Jomo Kenyatta International Airport in Nairobi ('Nairobi Airport') is believed to be small. UNHCR is only notified of these arrivals if the person comes to the UNHCR office in Nairobi to make an asylum claim, or alternatively, if contacted by the Kenyan authorities when they have detained an asylum seeker. The latter is not systematic.
- 46) Other border crossings where refugees are seen by government officials include Malaba, where Sudanese asylum-seekers enter from Uganda, and Moyale on the border with Ethiopia.
- 47) Refugees who enter Kenya by sea are often referred to UNHCR by shipping agents who wish to disembark the stowaways.
- 48) At present there are no standard operating procedures or instructions for officials who admit asylum seekers and there is no systematic monitoring or information gathering in regard to admissions at border crossings.

Non-Refoulement

- 49) The principle of non-refoulement is generally respected in Kenya.
- 50) There are however concerns regarding the treatment of asylum-seekers arriving at the Nairobi Airport with forged travel documents. They are reportedly at risk of refoulement because the Immigration Department tends to consider them as having an 'instrumental claim' to asylum, meaning that they are assumed not to have a valid claim to international protection.
- 51) UNHCR is aware of two cases of possible refoulement from Nairobi Airport in 2003. In response, UNHCR delivered a formal demarche to the Ministry of Home Affairs. In 2004 there were similar reported cases of suspected refoulement involving Ethiopian Anyuak asylum-seekers.
- 52) The lack of formal operating procedures, and in the absence of a requirement that UNHCR be notified of asylum seekers at border crossings, makes it difficult to ensure that the principle of non refoulement will be respected.

²³ 'Outcome 9' falls under 'Area 3', namely, 'contribute to the strengthening of national & local systems for emergency preparedness, prevention, response & mitigation' (see p.30). Refugees are however mentioned in relation to activities to combat HIV/AIDS, that is, '[develop mechanisms/structures for targeting HIV/AIDS/STD/drug abuse prevention activities to the refugees and other special populations (IDP, military, police, CSW, OVCs, truckers and other uniformed personnel)' (see p.46) but this does not amount to inclusion of refugees in a development strategy. While Area 4 of the UNDAF is to promote sustainable livelihoods & protect the environment (see p.18), refugee matters are at no point mentioned in connection with this objective.

53) Formal training has been provided by UNHCR to officials working in border stations, although not on an on-going systematic basis due to a lack of human resources.

UNHCR Access

54) Although UNHCR is not regularly notified of asylum seekers at entry points, the Office generally has access to them. However, at Nairobi Airport this is not automatic and has on occasion been denied.

55) Due to human resource constraints UNHCR does not systematically visit entry points and some argue that to try and do so would be inefficient as the majority of asylum-seekers do not declare themselves at border crossing points and there are no reports of refoulement at land borders.

56) In practice, UNHCR staff tends to visit border crossing points when they become aware of any new influx. For example, staff from UNHCR Sub-Office Dadaab visited the border town of Leboi when, in September 2004, there were approximately 900 new arrivals.

57) UNHCR has recommended closer monitoring of the border near Dadaab and the establishment of a transit centre because of the concern that the number of arrivals in Dadaab may bear little relation to the number of people crossing the border. The Kenyan authorities did not support the recommendation because of their concern that it would create a 'pull factor'.

Identification, Assessment and Treatment of Urgent Protection Needs

Nairobi

58) In Nairobi, UNHCR reception staff refer all asylum seekers with vulnerabilities to protection staff. They can then be referred to GTZ-IS for psychosocial assessments, home visits, rape assessments, general counselling and family tracing.

59) If an asylum seeker or refugee is particularly vulnerable with a compelling security or medical case they can be accommodated, as a temporary measure, at the GTZ Accommodation Centre.

60) Currently there are about 30 people being housed at the Accommodation Centre out of an urban refugee population numbering in the tens of thousands. The small number speaks to the exceptional circumstances under which a person would be housed at the Accommodation Centre.

61) Unaccompanied minors are immediately registered and also sent to GTZ-IS for a needs assessment that same day. GTZ-IS prepares a Best Interests Determination (BID) report setting out the action necessary in the best interests of the child. GTZ-IS staff are experienced with assisting children but apparently the staff does not include formally qualified child specialists. An RSD interview is set at the earliest possible date.

62) Unaccompanied minors are accommodated in the GTZ Accommodation Centre until such time when a foster family can be found.

63) Generally, refugees with vulnerabilities are fast-tracked through the RSD procedure and their cases determined within two weeks.

64) JRS and local church organizations provide emergency assistance to new arrivals in Nairobi who are encountering difficulties but have not been identified by UNHCR as vulnerable. There are normally 350-700 families receiving some form of

assistance each month. The beneficiaries are identified by social workers within a seven Parish network (this is called the 'Parish Outreach Programme' and is operated by JRS). The focus is on new arrivals before they go to the camps for registration. Once a decision is given by UNHCR on the status of an asylum-seeker, the person no longer receives assistance from JRS unless extremely vulnerable.

65) According to some JRS staff the biggest protection gap in Kenya concerns urban refugees who have difficulties accessing assistance.

66) Currently JRS and GTZ-IS work independently although there are discussions underway regarding the possibility of co-operation between JRS and GTZ-IS on a Victims of Torture support project which may help to enhance co-operation between the two organizations.

Camps

67) Vulnerable individuals arriving in the camps, including unaccompanied minors and separated children, are identified by CARE community services staff and LWF staff in Dadaab and Kakuma respectively. They are brought to the attention of UNHCR protection staff and procedures, whether individual RSD or screening, are fast-tracked.

68) As in Nairobi, GTZ-IS does BID assessment, although concern was expressed that GTZ-IS did not visit Kakuma often enough for this purpose. Moreover, some LWF staff expressed a concern that UNHCR needed to better coordinate with IPs and monitor the situation of children more effectively through, for example, the creation of a shared data base of vulnerable children .

Support to Meet Basic Necessities of Life

69) Refugees who arrive in Nairobi are expected to move to the camps and are provided with a movement pass to do so once they have been pre-registered. Somali and Sudanese refugees do not need to pre-register but are simply advised to proceed to the camps. Assistance is generally not provided to refugees prior to their move to the camps.

70) Refugees who have received exceptional leave to remain in Nairobi from the government authorities, may be assisted by the GTZ-IS once they have pre-registered. JRS will provide emergency assistance for new arrivals who have not yet pre-registered.

71) Somali refugees who go to Dadaab, however, are not assisted until they have been pre-screened and registered. They are expected to be assisted by relatives. This limitation is imposed so as not to encourage Kenyan Somalis to come to the camps in search of assistance, posing as refugees.

72) Non Somali refugees in Dadaab are accommodated at transit centres where they receive assistance pending their relocation to the camps once they have been registered.

73) Refugees who cross the border and those arriving at Lokichokio, heading to Kakuma, are accommodated at the UNHCR transit centre run by LWF. Here they are screened, a process that takes between 2-4 weeks. They are provided with food and non food essentials. If they pass the screening, they are taken to Kakuma and registered.

74) Refugees who cross the border, but choose not to move onto the transit centres or the camps, do not have access to assistance.

Tracing Mechanisms

75) Family reunification issues are handled by UNHCR's Protection staff, with priority given to UAMs.

76) Family tracing is initiated immediately upon RSD and prior to transfer to the camp.

77) In Nairobi, UNHCR refers cases requiring tracing to ICRC, sometimes via GTZ-IS. In the camps, protection staff co-ordinate with the IPs to initiate tracing requests through ICRC in Lokichokio, Nairobi, or through the Kenyan Red Cross in Garissa. Receiving feedback on tracing requests can take up to two years.

Registration

Registration Requirements by Law

- 78) All Convention refugees that were recognised by the Government of Kenya (Government) prior to its discontinuation of RSD in 1993 are required to be registered by the National Registration Bureau. UNHCR does not have access to the Government's data base of registered refugees.
- 79) Although not systematic, the Government has undertaken a one-off registration exercise in each of the camps; however, no regular and systematic registration by the government is being done, and as a consequence over half the refugees currently in Kenya are not registered by the government. This responsibility has fallen to UNHCR.
- 80) UNHCR undertakes systematic and continuous registration of asylum seekers, Convention refugees, and refugees under its mandate. For the past year and a half UNHCR's policy has been for all registration to be undertaken in the camps, subject to limited exceptions.
- 81) Since September 2003, most asylum seekers who approach the UNHCR office in Nairobi directly are summarily interviewed to gather biographical data and then issued with a Movement Pass valid for thirty days to facilitate their travel to the camps, where asylum seekers are registered and a RSD done. The exception to this procedure is for those people identified by the UNHCR as being particularly vulnerable and at risk in being in the camps.
- 82) Individual Movement Passes are issued to all asylum seekers aged 16 and above. They are computer generated, and carry printed photos of all family members. Applicants are informed that if they do not pursue their application within the period of validity of the document, they will be considered to have withdrawn their application.

Individual Registration

- 83) In the camps, the head of family, spouse and dependants are registered together, after which a ration card is issued. Spouses and immediate dependants of the head of family who are 16 years of age or older are given separate registration documents.

Registration of *Prima Facie* Refugees

- 84) Somalis and Southern Sudanese are regarded as refugees on a *prima facie* basis upon registration at the camps. A screening process is in place to determine whether the asylum seeker is eligible for *prima facie* status. It serves to screen out, for example, Kenyan Somalis, those who already have registered, or those claiming false origin.
- 85) Rejected applicants can appeal the decision and their case is reviewed by UNHCR within two weeks of receiving the request.
- 86) A verification exercise involving the Government is planned in Dadaab for the first half of 2005.

Registration and International Standards

87) The registration of asylum seekers in Kenya complies, in part, with international standards in that it is a continuous process; it abides by the fundamental principles of confidentiality; it is, to the extent possible, easily accessible; takes place in a safe and secure location (namely UNHCR offices); it is conducted in a non-intimidating manner by trained staff; and, all relevant information is recorded. Individual identity documents, however, are not, at present, issued.

88) In 2004 UNHCR began to use a new registration and data management software called 'proGres' which, amongst other things, should facilitate better file management and record keeping, an area highlighted as of particular concern in Kakuma. 'ProGres' stands for Profile Global Registration System and was developed in collaboration with UNHCR's Division of Operational Support and Department of International Protection. It is a standardized refugee data collection tool designed to be continually updated.

89) There have been technical glitches with the move to proGres from the previous system but, once in place, proGres will enable UNHCR to have a wider, and more up to date, range of information than was previously possible. The system is designed to be updated whenever a refugee's file is opened for whatever reason. Previous information held by the Sub-Offices is currently being migrated to the new database. Information held in the system includes places of origin and areas of return as well as level of education and economic background.

90) A major concern of staff, in both Dadaab and Kakuma, is their relative inability to detect 'recyclers'. The proGres software, which includes digital photographs, can help but does not prevent multiple registrations. If the asylum-seeker registers under a new name then he/she will not be detected. There is consequently a call for biometric identification systems from UNHCR staff in both Dadaab and Kakuma camps. The progress software will have the capacity to collect biometrics by the fall of 2005.

91) It is expected that the Kenyan authorities will commence registration of Mandate Refugees in the camps with the passing of the Refugee Bill, although there is no legal reason why recruitment and deployment of government staff to register refugees could not happen before this time. UNHCR is ready to provide registration software but will require a formal commitment to confidentiality before giving access to UNHCR's data.

Legislative Framework for Determining Protected Status

Group Determination

92) As noted, all refugees from southern Sudan and Somali refugees (excluding those from Puntland or Somaliland) are accorded prima facie refugee status. This accounts for approximately 97% of the camp based refugees in Kenya.

Individual Asylum Procedures

93) UNHCR has undertaken individual RSD since the government discontinued doing so in 1991. RSD is done in the camps, and in exceptional cases in Nairobi for those who can not be appropriately assisted in the camps or whose case raises complex legal issues.

94) Asylum seekers are not required to make an application within a certain period of time upon arrival in Kenya. Asylum seekers are not excluded from the RSD process on the basis that they travelled through another country where they may have found protection. Asylum seekers will only be refused access to the RSD process, if they had found protection in another country, and if they can be formally readmitted there. This type of case is rare.

95) RSD is conducted by UNHCR who have access to relevant, publicly available country of origin information. While there are leaflets explaining the process to refugees, they are not consistently distributed, and the information posted on notice boards tends to be concerned mostly with measures to combat corruption. Applicants, however, are advised at their RSD interview of the process.

96) Asylum applicants are not provided with free independent legal advice but are counselled by UNHCR staff at the interview. Interpreters are provided.

97) Female applicants are interviewed separately and as far as possible by female interviewers, using female interpreters. UAMs generally are accompanied by members of their foster family and are interviewed by UNHCR staff with experience in interviewing children.

98) Written decisions are rendered in English and negative decisions are accompanied with information on the appeal process (re-interview on the merits). In Dadaab, rudimentary reasons for negative decisions are provided, whereas in Kakuma no reasons accompany a negative decision.

99) The time it takes to render a decision from the moment the application is made varies: in Dadaab it is approximately 4 months; in Kakuma it takes from 6-9 months and in Nairobi the process takes 8 months on average. Cases involving vulnerable individuals can be fast tracked as can those that are considered to be manifestly unfounded.

100) Staffing constraints is the most commonly given rationale for the lack of information provided on negative decisions coupled with the relatively long processing times in Dadaab and Nairobi and the backlog of cases that is growing in Kakuma.

101) UNHCR recovers the ration cards from applicants who receive a negative decision and informs the government authorities of the decision. In Kakuma, however, it is believed that many rejected asylum seekers continue to live in the camps.

Complementary forms of Protection

102) As previously stated, Kenya is a signatory to the 1951 Convention, the 1967 Protocol, and the 1969 OAU Convention. These instruments cover all persons seeking asylum in Kenya. Accordingly, there are no complementary forms of protection provided in this country.

Country and Legal Information and Analysis

103) UNHCR staff have access to country and legal information and analysis. This includes copies of national legislation, international instruments, international jurisprudence, country of origin information, and UNHCR policy papers and guidelines. These are available electronically through the internet and UNHCR's intranet, in hard copy, and on UNHCR's Refworld CD-Rom series.

104) Staff are generally familiar with how to access this information, and use reference materials regularly. Staff expressed appreciation for the support they receive from the Protection Information Section (PIS) within Department of International Protection at UNHCR, Geneva and expressed satisfaction with the large volume of information contained on the Refworld series. They noted, however, some significant constraints they face, particularly in accessing up to date country information.

105) For example, UNHCR intranet service does not always have the kind of detailed country of origin information needed by staff in Kenya. Moreover, internet access, especially in Dadaab and Kakuma, while improved, still runs into technical difficulties. In addition, some sites on the internet only provide information for a fee and this can be costly. Other sites, although freely available, are not of proven reliability.

106) The turnover of junior staff means that research skills are not necessarily taught in a timely manner.

107) As there is no functional and effective GoK department responsible for refugee determination, the UNHCR does not share any information with respect to country condition research to government officials.

108) UNHCR protection staff in Nairobi is principally responsible for monitoring developments in Kenyan national immigration/refugee legislation, and in providing it to PIS for UNHCR's global information and monitoring needs.

Protection from Violence, Coercion or Deliberate Deprivation

Security in Refugee Hosting Areas

- 109) The Kenyan government is responsible for maintaining security in the refugee camps. In Dadaab there is one police station in the town and one police post in every camp.
- 110) Refugees also participate in ensuring their own security. In Dadaab there is a Security Committee that organises refugee patrols and refugee guards for the markets. Similarly, in Kakuma there are refugee guards who receive a small stipend as an incentive from LWF. They are present at food distribution sites and help patrol the camp at night. Of the 118 refugee guards, only 19 are female.
- 111) Monthly security meetings are held the Dadaab and Kakuma camps between the police, heads of agencies and refugee leaders.
- 112) Despite these measures, physical security within the refugee camps continues to be a concern. Refugees are subject to threats from outside and within the camps.
- 113) In Dadaab, incidents of banditry and rape continue in spite of more robust policing and community involvement in security management in recent years. Having said that, the incidence of serious crime has fallen over previous years reportedly due to improved collaboration with the police and with the refugee community and due to more rigorous prosecutions for rape which it is believed have lowered the incidence of rape within the camps. While the numbers are small, perpetrators have been convicted and sent to jail.
- 114) UNHCR has identified the need for more women police officers to ensure that there is always a woman on duty at the police station and police posts.
- 115) Although it has a population one third smaller than the size of the population in Dadaab, the security situation in Kakuma is reportedly worse. Robberies, rapes and murder are chief among the reported crimes there. Some of these are perpetrated by members of the local Kenyan community, many of whom perceive refugees to be a privileged group.
- 116) In 2003 major fighting broke out between Sudanese refugees and local Turkana over a reported incident of cattle rustling which led to the deaths of 11 people as well as looting, the burning of houses and the disruption of services for days. It was eventually quelled by the deployment of paramilitary General Services Units, which were withdrawn in October 2004.
- 117) Although tensions abated, the fragility of the situation was again made manifest in November 2004 with the rape of a refugee woman by three Turkana men outside the camp. This set in chain a series of retaliatory violence which was stopped with the intervention of the police and UNHCR who assured both communities that those involved in the rape and subsequent violence would be arrested.
- 118) In addition to hostilities between refugees and members of the local community, there are also problems amongst the refugees themselves. UNHCR receives reports of threats from fellow refugees on the basis of clan membership, ethnicity, political opinions, family conflicts, etc. Two years ago increased efforts were made to work with the refugee leadership in resolving conflicts by peaceful means. This has reportedly led to a marked improvement in resolving inter-ethnic conflict within the Sudanese community.

119) The desire for resettlement complicates the security picture in the refugee camps. As explained by UNHCR staff, some refugees have an interest in portraying themselves as “at risk” in order to qualify for resettlement on protection grounds. This appears to be most problematic among Somalis refugees who reportedly project themselves as a minority unable to live alongside other clans. Some refugees have taken extreme measures such as burning down their own houses or inciting other refugees to attack them.

120) It is often reported that domestic and other forms of violent crime are related to the lack of opportunities provided in the camp environment to become self-reliant and the absence of foreseeable prospects for durable solutions.

121) In regard to the security of refugees who live outside the camps, very little is known since there is no organised reporting or recording system and no means for UNHCR to verify the security complaints it receives. UNHCR staff believe, however, that the incidence of robberies and muggings against urban refugees is very high and probably higher than in the camps.

122) In Nairobi, UNHCR protection staff frequently receive reports from Ethiopian refugees who report abductions and disappearances perpetrated by agents from Ethiopia. UNHCR has no means to effectively verify these claims.

Civilian Character of Refugee Hosting Areas

123) The Dadaab camps are approximately 100km from the Somali border while the Kakuma camp is approximately 110km from the Sudanese border. These distances meet the ‘reasonable distance’ requirement of the OAU Convention.²⁴ It should be noted, however, in the context of camp security, that all the camps in Kenya are considerably larger than recommended in the UNHCR Handbook for Emergencies, which states that camp populations over 20,000 should be avoided.²⁵

124) It is difficult to come to a definitive conclusion about the extent of weapons in the camps or the degree to which the camps are influenced by military factions, due to the different impressions provided in studies on the subject and the experiences of those currently working in the camps.

125) Some commentators claim that military factions have operated within the camps such as Somali militias in Dadaab and the Sudanese Peoples Liberation Army (SPLA) in Kakuma.²⁶ Their activities reportedly ranged from arms trafficking, influencing political decisions within the camps and obliging men and adolescents to leave the camps and fight in support of a particular clan or faction in the country of origin.²⁷ According to UNHCR and others working in the camps, however, presently there are no concerns of military recruitment or involvement within the camps.

²⁴ Article 2(6) of the OUA Convention states that, ‘[f]or reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin’. A distance of 50 kilometres is normally viewed as the minimum safe distance.

²⁵ See UNHCR’s Handbook for Emergencies 2nd Edition, at p. 137, available at www.unhcr.org.

²⁶ E. Mogire, A Preliminary Exploration of the Linkages between Refugees and Small Arms, Bonn International Center for Conversion, Paper 35, July 2004, p. 51.

²⁷ Crisp, J. A State of Insecurity: The Political Economy of Violence in Refugee-Populated Areas of Kenya, EPAU Working Paper No.16; UNHCR Geneva 1999 at p.5.

126) An independent investigation, referring to sources from 1999 and 2000, suggested that 'illegal weapons traffickers are operating a sophisticated network linking Somalia, the camps and Nairobi' and that 'arms networks also exist between Sudanese refugees and Turkana tribesmen, who not only buy the weapons but also have become middlemen in the arms trade'.²⁸ More recent interviews with those working in the camps did not suggest, however, that major trafficking in fire-arms was on-going in the camps. There are believed to be illegal weapons, however, which cannot be properly investigated and seized with the current level of security officers in the camps.²⁹

Mechanisms to Prevent and Respond to SGBV

127) There is little information concerning the prevalence of SGBV among the refugee communities living in urban settings. The majority of these refugees are not authorized to live outside the camps and therefore, according to UNHCR, the only cases likely to be reported to the Branch Office are those which the refugees believe may result in resettlement.

128) Sexual and Gender Based Violence (SGBV) is a serious problem within the camps. The most common form of SGBV is domestic violence which is primarily attributed to the psychological effect of a lack of socio-economic activities in the camps, leaving the majority of the adult population idle and dependent upon international aid.

129) There are several harmful traditional practices that seriously impact upon refugee women and girls, amongst which the most common are forced marriages which occur in both the Somali and Sudanese communities and Female Genital Mutilation (FGM) which is practiced by the Somali and Ethiopian communities. In Kenya, both underage marriage³⁰ and FGM are illegal.

130) Forced marriages take place in a variety of different contexts and include ghost marriages where a woman is forced to marry a man already deceased and then impregnated by one of his relatives to preserve his lineage.

131) The pressure upon young girls to undergo FGM, as well as on their mothers to ensure it takes place, is enormous. Women and men who resist, or who offer support and counsel to those who do, report being ostracized by the community, discriminated against and verbally and physically abused. Some of the girls who have not undergone FGM face verbal harassment at school and therefore prefer not to attend.³¹ There are also reports of relatives taking girls to undergo FGM without the knowledge of their parents. As well, female circumcisers who refuse to continue the practice lose the source of earnings they previously relied upon.

²⁸ E. Mogire, A Preliminary Exploration of the Linkages between Refugees and Small Arms, Bonn International Center for Conversion, Paper 35, July 2004, p. 48. See also Austin, K. 'Open Letter to the United Nations High Commissioner for Refugees' 13 November 2000, available at www.fundforpeace.org/programs/acp/letters/ogata.pdf

²⁹ From January-November 2004, a few grenades and a pistol were seized in Kakuma, while in Ifo camp, Dadaab, 18 rifles were collected. The police also seized weapons from the Turkana community around Kakuma. This number of collections is not viewed as a clear indication of the number of illegal firearms in circulation.

³⁰ The minimum legal age for marriage for girls is 18.

³¹ UNHCR Sub-Office Kakuma reports that it is not uncommon for girls, due to the harassment they face in the community, to ask to be circumcised (see Monthly SGBV Report, October 2004).

132) The practice is therefore very difficult to combat, especially since doing so goes against deeply held cultural beliefs that circumcision is necessary to ensure the purity and therefore marriage eligibility of young women.

133) As mentioned, rape continues to be a concern, although both staff and refugees in Dadaab report dramatic improvements in the levels of rape occurring in the camps over the last five years.³² This reduction is attributed to increased policing, the reduced need for women to go outside the camps to collect firewood and the impact of campaigns to raise awareness of SGBV issues.

134) Notwithstanding this apparent reduction in the number of incidents, the figures are still high and it is widely recognized that sexual violence is significantly under-reported.

Prevention

135) In the camps, UNHCR, in cooperation with NGO partners and the Government of Kenya, runs community-based programmes aimed at educating the refugees about the negative effects of practices such as FGM, early marriages, child abduction, spouse inheritance, and about women and child rights in general – and available avenues for assistance and legal redress. The Kenyan Police officers and other officials deployed in and around the camps are also periodically involved in training events meant to sensitize them to these particular types of crimes.

136) Other measures to prevent SGBV include monthly co-ordination meetings which are held to share information, analyze trends and develop common approaches; as well as workshops³³ which target, not only a cross section of the camps' population, but also UNHCR and NGO staff and the police.

137) Community-based initiatives have also been started. In Dadaab 'Committees against Violence' (CAVs) have been formed by refugees in each of the camps. The CAVs act as a reporting channel for incidents of SGBV as well as offering support to survivors. The Committee members are trained in social and para-legal counselling and work in close cooperation with CARE's Community Development Workers. Membership of the CAVs is growing with, significantly, increasing numbers of men participating.

138) Other activities in Dadaab camps to raise general awareness include the formation of an 'Anti-FGC football team'³⁴ and radio broadcasts held through the African Learning Channel. These are provided by First Voice International³⁵ on

³² In Kakuma, there has not been a decrease equivalent to that in Dadaab. Ten cases of rape were reported in Kakuma in 2002, 23 cases of rape and defilement in 2003, and six cases of rape from January – November 2004. (see UNHCR 2002 Kenya Country Report and UNHCR 2003 APR).

³³ For example, in October 2004, UNHCR, NCKC and CARE organised a four day training session in each of the Dadaab camps for refugee leaders. The training focused on SGBV, general human rights and 'positive leadership'.

³⁴ CARE uses the term 'Female Genital Cutting (FGC)' rather than FGM.

³⁵ First Voice International is an NGO specialising in information dissemination, primarily through satellite radio, to facilitate relief and development projects. See further www.firstvoiceint.org/How/UNHCR.html.

topics such as early marriage and HIV/AIDS prevention and are popular amongst the refugees.³⁶

139) In Kakuma, UNHCR is working with police and doctors to improve their understanding of the SGBV and, in particular, the importance of gathering evidence in alleged rape cases in response to the number of acquittals due to lack of evidence.

140) An important rape prevention measure is the provision of firewood since many women are at risk of being raped when they leaving the camp to collect firewood. However, budget cuts have negatively impacted on UNHCR's ability to provide firewood. In 2003 for example, the distribution of firewood in Dadaab and Kakuma could not meet more than 7.3% and 14% of the respective need, with the result that women still have to leave the camp in search of wood. In November 2004, CAV members in Ifo camp, while noting a general reduction in incidents of rape over the longer term, linked recent increases to the lack of firewood distribution for the previous three months.

141) For its part, however, GTZ -IS in Dadaab claims that due to an improvement in camp security and a marked decrease in the number of reported rapes, its firewood project is increasingly focused on combating environmental degradation rather than reducing the prevalence of rape.

142) Other prevention and response measures that have been instituted focus on complaints against staff working for UNHCR or other agencies in the camps. Those that have complaints can approach the sub-offices directly. In Kakuma, UNHCR has three field posts in the camp where staff from Community Services are available every Wednesday to meet with refugees. There are also suggestion boxes in both Dadaab and Kakuma camps where refugees can leave written complaints concerning staff and suggestions for improvements.

143) Notwithstanding this system, staff of UNHCR and its partner agencies, in Dadaab and Kakuma feel that more prevention interventions are needed. In light of this, the US Bureau of Population, Refugees, and Migration (BPRM) has funded a 'Prevention of Sexual Exploitation and Abuse' (PSEA) project, which will be run in both Dadaab and Kakuma camps. This project will work towards improving the complaints mechanism as well as further raising awareness of SGBV issues.

Support

144) Both legal and social support is provided to survivors of SGBV. UNHCR sub-offices in Dadaab and Kakuma camps have SGBV lawyers who assist with the prosecution of cases. Partner organizations, notably CARE in Dadaab and LWF and JRS in Kakuma, provide social support including counselling and conflict resolution within the communities.³⁷

145) CARE and LWF's Community Services sectors have various components all of which play some role in responding to, and preventing, SGBV. Counselling is one of the components, which provides particular support to survivors of SGBV. Both organizations have specific workers to whom refugees can present their problems and from there be referred to UNHCR where necessary.

³⁶ For example, in October 2004, there were 20 'listening clubs' with were organised in the camp with a total of around 300 listeners, 130 of them female (see further UNHCR Monthly SGBV report, October 2004).

³⁷ In Nairobi, counselling for victims of SGBV is provided by GTZ-IS.

146) In Kakuma, JRS runs a 'Safe Haven' for survivors of SGBV which was originally planned to provide temporary shelter for 4-6 women at any one time until a more permanent solution was identified. However, high numbers of referrals coupled with an apparent inability to find a more permanent solution in a timely manner, has resulted in the Safe Haven accommodating on average 40-60 mothers and children, often for six months to a year.³⁸

147) If the victim can not be protected in the camp, the person can be transferred to either the Protection Area at Kakuma camp or to one of the Dadaab camps. The Protection Area is a fenced enclosure within the Kakuma camp accommodating approximately 120 families. It is intended as a temporary measure but some refugees stay for prolonged periods of time. There is concern that the protection area is not safe, that persons have to spend too long within it, and that there is no access to education for children living within the protection area.

148) A drawback to women at-risk being sent one of the Dadaab camps from Kakuma is that it can be quite isolating. However, JRS staff believe that transferring cases to Dadaab is, in many cases, an effective solution. In light of this, they regret that this protection tool is not being pursued as systematically as it has been in the past.

149) Both UNHCR and partner organizations identify a lack of UNHCR staff to follow-up on SGBV cases as contributing to delays in finding individual solutions.

Traditional dispute resolution mechanisms

150) UNHCR discourages the use of traditional courts for criminal cases. Not only should Kenyan law be applied as a matter of principle, but the traditional courts sometimes treat the injured party as being the victim's relatives, rather than the actual individual concerned.

151) Nevertheless, general lack of confidence in the Kenyan Justice System results in many families preferring to use the traditional courts - 'Maslaha' in Dadaab and 'Bench Courts' in Kakuma. In spite of the introduction of the mobile court system in the districts, cases move very slowly due to delays. Moreover, there is no protection for the witnesses or the complainants. In addition, the high turnover of medical staff reportedly hampers effective prosecution of SGBV offenders.

Programmes to Protect Children from Abuse and Exploitation

152) Children are victims of SGBV including rape, sodomy, early/forced marriages and unwanted pregnancies.

153) SGBV programmes takes into account the special needs of the abused child, and the type and extent of the harm suffered. There is more programmatic planning to tackle sexual abuse and exploitation of children. Children's Rights Clubs have been formed in the schools, incorporating out of school youth, providing a forum to discuss issues, identify challenges and providing a way forward to children who are or may be abused.

154) During 2003, four cases of rape of a minor were reported in Dadaab and six in Kakuma. As with other incidents of SGBV, such cases are probably under reported,

³⁸ As originally envisaged, the Safe Haven was not intended to provide shelter for more than three weeks.

particularly when they occur within the family. According to investigations undertaken in Dadaab in 2002, approximately 20% of rape survivors were minors.³⁹

155) Children who are survivors of violence are interviewed by staff experienced with working with children and they are referred to recovery programmes which include sports, drama and art clubs. Family counselling sessions are held, especially when the perpetrator is also a family member. Medical examinations are done by a child specialist in the presence of (non-perpetrator) parents to reassure the children.

156) More involvement and interaction with the Children's Department has also enabled the situation of refugee children be more visibly included in the national agenda for children. Refugee children have been invited for meetings, workshops and trainings on protection and care of children, allowing greater participation of refugee children to discuss specific issues that affect them. Other forums of interaction include regular inter- camp debates by refugee children on topical issues such as FGM, child labour and other forms of abuse

157) In Dadaab, the welfare of children is monitored through weekly peer sessions held in the camps to address children's concerns and provide a forum for the members to devise solutions to their problems. Pre-school and nursery programmes offer an opportunity, not only to introduce children to formal learning, but also to identify special needs and possible problems at home.

158) As of January 2005, unaccompanied minors, separated children and orphans number approximately 1,445 in Dadaab and 1,462 in Kakuma. They live with foster families and their well being while in the camp is monitored by CARE and LWF respectively.

159) In Dadaab and Kakuma, Action for the Rights of Children (ARC) workshops are conducted jointly by UNHCR and IPs. The aim is to increase the capacity of UNHCR, government and NGO field staff to protect and care for children and adolescents. It uses a participatory approach involving children and adolescents themselves. In Dadaab Children's Rights clubs organized by CARE in the various camps provide a forum for discussion and members are assisted in conducting trainings on Children's Rights.

160) There has been no systematic survey of child labour in the camps. However, it is known that girls are often required to do unpaid domestic work in their own home or work as maids in other families' homes.

161) Foster children are reportedly at risk of being treated worse than biological children and are often requested to do additional domestic work. For that reason, UNHCR has recently decided to require all guardians to sign a commitment not to subject minors in their care to FGM, forced or underage marriage, SGBV and to facilitate their attendance in school.

162) Children with physical or mental disabilities number 2,718 in Dadaab and 1,160 in Kakuma. In Dadaab, CARE provides services including physiotherapy, orientation and mobility activities, and occupational therapy. In Kakuma, services for disabled children are provided by LWF and a limited number of scholarships for disabled children are provided by JRS.

³⁹ Save the Children USA Report on Child Protection, following a mission to Dadaab, 26 June – 6 July 2002, (referred to in UNHCR 2002 APR, at p.40).

Legal Recognition of Protected Status

Provision of Documents Confirming Legal Status

163) All Convention Refugees are issued Alien Identity Cards by the National Registration Bureau. New cards are in the process of being issued and, unlike previous identity cards which were of indefinite validity, the new cards will only be valid for two years.

164) Mandate refugees recognized under an individual refugee status determination procedure are issued Refugee Certificates as are prima facie refugees who have been granted exemption from the encampment policy and reside outside the camps.⁴⁰ These certificates are valid for one year and include a photograph of the principal applicant. All spouses and dependants above the age of 16 receive separate certificates.

165) Ration cards are the only form of documentation held by refugees in the camps and they are only provided to the head of households.⁴¹

166) UNHCR staff, therefore, estimate that no more than 20% of refugees in Kenya possess individual documentation which confirms the status of the bearer.

167) The utility of UNHCR issued documents as evidence of legal presence in Kenya, and particularly in Nairobi, varies. While such documents may not prevent arrest, there is anecdotal evidence that possessing such documents may facilitate an agreement with the police, and secure release even without UNHCR intervention.⁴²

Documents Confirming Civil Status

168) The Office of the Registrar of Births in Nairobi and at the district level registers all births and deaths, including those of refugees in the camps.

169) Births and deaths are initially recorded in Kakuma and Dadaab by IRC and GTZ-IS respectively.⁴³ The information is then provided to UNHCR on a monthly basis. UNHCR in turn notifies the authorities and arranges for the issuance of birth and death certificates from Lodwar and Garissa, the provincial capitals. UNHCR pays the government fees for the certificates and has at times provided secretarial support to the authorities for the typing of certificates.

170) For several years there has been a backlog of pending applications for birth certificates in Kaguma district.

171) In the camps, refugees obtain marriage certificates without the involvement of UNHCR. Kenyan law recognizes Civil, Hindu, Muslim, Christian and African Customary marriages. Religious leaders issue marriage certificates for free which are

⁴⁰ Refugees whose status is determined in Nairobi all receive a Refugee Certificate.

⁴¹ If the refugees leave the camps they leave behind their ration cards and are therefore unable to prove their status to the authorities if they have not secured, prior to their departure, an official 'movement pass'.

⁴² If UNHCR is informed in time, and certifies to the police (or the Court) that the person in question is a registered refugee or asylum-seeker, release is normally secured regardless of documentation which may or may not be held by the refugee and deportations are not implemented.

⁴³ Both IRC and GTZ-IS are confident that they are recording almost all the births, although the majority take place in the community, and the vast majority of deaths. GTZ staff explain their confidence that they are capturing the majority of deaths in the Dadaab camps on the grounds that they are informed by refugees because GTZ is providing burial shrouds.

provided by the Government. Civil marriages, under the Marriage Act, can be entered into at the District Commissioner's office in the presence of two witnesses for a fee of 6,000 KES. Marriages celebrated according to accepted African customs are not formally certified, though legal and recognised.

Information Dissemination on Rights and Responsibilities

172) Information is disseminated by UNHCR in both the Dadaab and Kakuma camps via meetings and verbal information campaigns targeting refugee leaders. The refugee leaders are then expected to pass the information on to members of their communities.

173) Some staff expressed concern that refugee leaders may not be as conscientious as they might be in sharing information and keeping persons informed of activities within the camp, and so alternative approaches are being explored. One such approach that is being considered involves the establishment of an FM radio station by the organization InterNews who run similar stations in the refugee camps in Tanzania.

Free Movement

Restrictions on Freedom of Movement

Residence

174) Convention refugees are able to move freely within Kenya, while Mandate refugees are required to reside in refugee camps and not move from the immediate vicinity of the camps without permission.⁴⁴

175) The Aliens Restriction Act permits the Minister to require aliens to reside and remain within certain places or districts, in circumstances of a state of war, or in circumstances of imminent danger or great emergency. The Minister has not formally declared such conditions as provided by law, which has led some to question the policy's legal validity.

176) Government officials explain that the encampment of refugees is necessary to maintain public order. The unrestricted movement of refugees it is argued could lead to increased criminality and conflicts between refugees and locals due to competition for limited economic resources.

177) UNHCR can request permission for identified refugees to reside outside the camps and does so for those persons who may face protection problems in the camps; persons who need to remain in Nairobi in order to access medical treatment unavailable in the camps; and for persons enrolled in tertiary education in Nairobi.

178) In 2003 these requests were sent to the National Refugee Secretariat (NRS) who generally granted them. Those granted the exemption were issued a letter with a photograph which indicated that the person was registered with the government and the UNHCR and was thereby meant to fulfil the requirements of the Alien's Restriction Act. Only one such letter was issued in 2004.

179) Some government authorities do not recognize the validity of the NRS issued document, which can pose problems for the refugees who are then accused of being outside the camps without authorization.

Travel

180) Refugees residing in the camps need to obtain a 'movement pass', which is prepared by UNHCR and authorized by the District Officer,⁴⁵ in order to leave the immediate vicinity of the camps. These passes can be issued for medical, educational or 'compelling' personal reasons. However, securing a pass is not automatic, and many refugees leave the camp without authorization, or overstay their

⁴⁴ In Kakuma, refugees can move freely within the camp and Kakuma town. Similarly, in Dadaab, the refugees can move between the camps and to Dadaab town. However, a movement pass is required to travel further.

⁴⁵ In Kakuma, the UNHCR Sub-Office receives the requests for movement passes and prepares the documents for signature by both UNHCR and the District Officer. In Dadaab, the District Officer receives requests directly from the refugees and then forwards those requests he will approve to UNHCR for preparation of the movement pass, which is then returned to the District Officer for his signature.

authorization, counting on the possibility of coming to an informal agreement with the police if stopped, perhaps involving a bribe.⁴⁶

181) The movement passes, which include a digital picture, are time-limited, typically ranging from 15 days for those travelling for personal reasons, one month for medical treatment and up to one year renewable for students studying outside the camps. Some refugees in Dadaab complain that passes, especially those requested on personal grounds are unreasonably restrictive in terms of duration.⁴⁷ Furthermore, during periods when there is high demand for passes, such as holidays, movement passes for personal reasons are generally not issued at all,⁴⁸ indirectly encouraging refugees to travel without authorization.

182) Asylum-seekers pre-registered by UNHCR in Nairobi for onward travel to the camps are also issued with non-renewable movement passes valid for thirty days (Sudanese and Somali asylum-seekers, who are recognized on a prima facie basis, are neither pre-registered nor issued with movement passes). In Nairobi, the movement passes are issued by UNHCR and include a digital photograph of the principal applicant and dependents under the age of 16. Dependents aged 16 and above obtain their own movement pass. The movement passes may also be issued to refugees returning to the camp after an authorized visit to Nairobi (for example, for medical treatment) if the movement pass issued at departure has expired.

183) The restrictions placed on residence and travel by the encampment policy seriously curtail refugees' chances of improving their level of self-sufficiency through access to markets and informal work.

Travel Documents

184) Convention refugees are issued with Convention Travel Documents (CTDs) on a routine basis. The issuance of CTDs to Mandate refugees is discretionary and normally requires the refugee to justify the reason for the request. The CTDs are issued by the Department of Immigration.⁴⁹ UNHCR must endorse new applications for CTDs, while renewals are usually automatically granted. CTDs are valid for two years, are provided free of charge and usually have no geographical restrictions.

185) Procedures for the issuance of CTDs to Convention refugees have reportedly become smoother and more predictable over the last few years and UNHCR knows of no cases in which holders of valid Kenya-issued CTD have had problems returning to Kenya. Issuance of CTDs to Mandate refugees has also become flexible although usually a longer process than for a Convention refugee.

⁴⁶ UNHCR staff report that, even with a valid movement pass, refugees sometimes face harassment from Police. Nevertheless, possession of a movement pass certainly facilitates travel, as evidenced by the high demand for passes.

⁴⁷ For example, refugees report that movement passes to Garissa town, which is a day's journey from Dadaab, are often valid for only three days.

⁴⁸ The reason given for the short duration of passes is the need to counter fraud (if passes are for a short duration they are less prone to being forged as there is less benefit) but some UNHCR staff feel that this is not a proportional response. They argue that it would be better to provide documents to refugees for more generous periods of time in order to avoid encouraging clandestine travel or overstaying the authorisation; both practices potentially leading to a waste of Government resources in terms of higher numbers of refugees detained.

⁴⁹ The Kenyan Government is provided with CTD booklets which are printed by UNHCR and which incorporate anti-fraud security features.

Arbitrary Arrest and Detention

186) Most of the arrests of refugees and asylum-seekers occur in Nairobi, usually for breach of the encampment policy (failing to register with a government official as required by the *Aliens Restriction Act*), with the most common charge being illegal entry and presence in Kenya.

187) Possession of UNHCR-issued documents⁵⁰ (and sometimes even government-issued authorizations) does not necessarily prevent refugees and asylum-seekers from being arrested, although reports suggest that such documents make arrest less likely.

188) According to UNHCR staff, those so arrested can often resolve the matter without UNHCR assistance through informal negotiations with the police, sometimes involving the payment of a bribe. If UNHCR is informed,⁵¹ or if the detainee is found during a routine visit to police stations, UNHCR intervenes to certify the status of the person in detention and the person concerned is usually released.⁵² If UNHCR becomes aware of the case only after the person has been charged, UNHCR's intervention with the court may result in acquittal, and will ensure that deportation does not take place.⁵³

189) In 2003, UNHCR Nairobi intervened in 92 cases of refugees being arrested (of whom four were women and one was a minor). Although the actual number of detentions was almost certainly higher⁵⁴, this figure represents a considerable decrease from the 1,075 arrests of refugees and asylum-seekers reported in Nairobi during 2002.⁵⁵ This marked improvement is explained by general efforts made by the Government to increase the accountability of the Police Service and perhaps also illustrates the impact of UNHCR's lobbying that refugees and asylum-seekers not be charged with illegal presence.

190) UNHCR generally has no difficulty accessing people in detention, usually due to the co-operative approach of the officers in charge rather than any Ministerial instructions or standard operating procedures requiring officers to inform or co-operate with UNHCR. There have, however, been difficulties securing access to persons detained at the Nairobi Airport.

⁵⁰ Refugee Certificates held by Mandate Refugees or Appointment Slips for interviews with UNHCR, which double as identity documents of asylum-seekers.

⁵¹ UNHCR Nairobi learns about detentions from various sources, often the detainee's friends, relatives or neighbours. In some cases, the police contact UNHCR directly, especially if the refugee has some documentation, in which case the police request UNHCR to verify the documents before releasing the detainee into UNHCR's care for registration. Immigration Officers also approach UNHCR in order to verify the authenticity of the documents held by new arrivals in Kenya who are being detained but have not previously been in contact with UNHCR.

⁵² If the detainee is a new arrival, that is, she has not previously contacted UNHCR, the UHCR Protection Unit will conduct a short interview to find out when she arrived in Kenya and why she came in order to assess whether or not she is of concern to UNHCR, and hence whether to intervene.

⁵³ Even if not previously aware of the case, UNHCR is normally informed when refugees, having served a sentence, are handed over to the Immigration Department for deportation. The Immigration Officers themselves generally contact UNHCR. There are less than ten such cases a year, partly because UNHCR is most often already contacted at the trial stage.

⁵⁴ UNHCR is not aware of all cases of detention of refugees and asylum-seekers, not least of all because there is no administrative instruction to Police obliging them to inform UNHCR of such cases.

⁵⁵ Similarly, in 2003, unlike in previous years, no 'urban sweeps' to round up foreigners were reported (UNHCR 2003 APR, p.70).

191) The arrest of refugees outside Nairobi is also common for reasons of travelling without authorization. UNHCR is informed by relatives of the detainee or by the police themselves.⁵⁶ UNHCR sub-offices liaise with the authorities when learning that refugees are detained and UNHCR can normally secure the release of those detained for travelling without a movement pass. While the most common way for UNHCR to be informed is by relatives of the detainee, in Dadaab, the mobile court will also inform UNHCR of any refugees being detained in Garissa.⁵⁷

192) Arbitrary detention also occurs when refugees and asylum-seekers are arrested on legitimate grounds but are not charged within the timeframe prescribed under Kenyan law.⁵⁸ Prolonged detention of this type affects Kenyans equally and is a consequence of lack of police capacity. Similarly, the judiciary is overburdened which often results in prolonged pre-trial detention.

193) Detention facilities are generally overcrowded and lack proper sanitation and sufficient supplies of food and water.⁵⁹ Refugees are held in the same facilities as Kenyan citizens and there are no reports that they suffer any discrimination on grounds of nationality.

194) Since there is no legal aid and little pro-bono assistance in Kenya, refugees are usually not represented by lawyers due to an inability to pay.⁶⁰ In some cases, the Refugee Consortium of Kenya is able to provide legal aid to refugees appearing in court, normally in Nairobi, and the Legal Resources Foundation (both NGOs) runs a paralegal programme which visits prisons in Nairobi and informs UNHCR of any persons of concern they discover in detention.

⁵⁶ UNHCR Sub-Office Kakuma, which has conducted training with the police along the main transit route between the camp and Kitale, systematically visits detention facilities at Lodwar, Kitali, Eldorit and Bungoma.

⁵⁷ Most refugees, if arrested between Dadaab and Garissa, are brought back to the camp by the authorities.

⁵⁸ According to the Constitution, S.72(3), persons cannot be held in custody without charge for more than 24 hours. In the case of persons arrested in the act of committing a capital criminal offence, or in order to prevent its commission, detention can be extended to a maximum of 14 days without charge.

⁵⁹ Due to poor conditions within detention facilities, UNHCR sometimes provides limited assistance, such as soap and blankets, to persons of its concern held in detention. The Kakuma Sub-Office, for example, visited and provided limited assistance to 63 detainees during 2003.

⁶⁰ UNHCR has no funds to provide legal representation to refugees but has on particular occasions managed to facilitate the pro-bono attendance of lawyers belonging to NGOs focussing on women or child rights (UNHCR 2003 APR, p.36).

Assistance in Meeting Protection Needs

195) Minimum standards in lifesaving assistance have generally been maintained although problems persist related primarily to food security, malnutrition and maternal and child mortality.

196) UNHCR's budget in 2004 for its Kenya operation was approximately \$19.5 million. In the current Country Operation Plan, US\$21,890,731 is being requested for the 2005 programme. Combined with partners' contributions of US\$6,231,734, the projection for the 2005 refugee programme budget is US\$28,122,465. However, in preparation of the 2005 Country Operation Plan (COP), UNHCR and its partners in Kenya found that the budget needed in 2005 to meet minimum standards of emergency humanitarian assistance would be US\$49.4million.⁶¹ Therefore, as in previous years, the shortfall will culminate in deteriorated refugee health, high malnutrition rates, poor education facilities, and perilous living conditions for refugees.

Provision of Food, Water, and Clothing

Food

197) The entire refugee population in the camps relies on food rations. This is largely due to the lack of possibilities for income-generation - a result of the encampment policy coupled with the camp locations in remote areas offering limited economic opportunities and scarce natural resources.

198) The basic food ration is provided by the UN World Food Programme (WFP) which, on 1 July 2004, took over management of the food distribution points from UNHCR. Monitoring of the situation is ongoing with yearly nutrition surveys conducted in the camps by the relevant implementing partners - IRC in Kakuma and GTZ-IS in Dadaab.

199) In both Dadaab and Kakuma, levels of malnutrition are alarmingly high. The Global Acute Malnutrition (GAM) rate in 2003 was 23.9% in Dadaab and 21.2% in Kakuma.⁶² This is much higher than the UNHCR standard of 5% for stable refugee situations and higher even than the World Health Organization's Critical Intervention Threshold of 15% which indicates an emergency.⁶³

200) Micronutrient deficiency is also extremely high, with 75% of pregnant women being anaemic.⁶⁴ As a consequence, there is a high rate of low-weight births (10-12%

⁶¹ Appendix 1 to the 2005 COP, Overview of Funding Requirements for the 2005 UNHCR Refugee Programme in Kenya.

⁶² UNHCR/UNICEF, Proposal on an integrated programme for realization of millennium development goals for refugees and surrounding communities in Northern Kenya, June 2004, at p.11. The report goes on to state that malnutrition rates over the past five years have fluctuated around 18%.

⁶³ For example, the Southern Sudan Nutrition Taskforce places the nutritional emergency benchmark at 15% GAM. (see UNICEF, Overview of the Health Situation in Southern Sudan 2002, prepared by Dr Michaleen Richer, at p.29, available at http://www.unsudanig.org/publications/assessments/data/health_overview.pdf.)

⁶⁴ One current initiative to address the situation is the introduction of Double Fortified Salt (DFS) - salt fortified with iron and iodine. It is being trialled in the camps by UNICEF, IRC and UNHCR in partnership with the Canadian Micronutrient Initiative (See <http://www.micronutrient.org/work2/miafrica/salt.asp>). 80 families have been selected in Kakuma to take part in the acceptability survey in preparation for the introduction of the DFS.

against a target for refugee populations of 4-5%) and a considerable number of neonatal deaths, again reported at 10-12% while actual figures are probably much higher.⁶⁵

201) The reasons for malnutrition in the camps are manifold. Factors such as the precarious nature of the food pipeline,⁶⁶ the quality of the food basket (in particular the lack of micro-nutrients), and the limited opportunity for refugees to access alternative sources of food⁶⁷ all combine to have a severe impact on malnutrition levels in the camps.

202) The average ration is often below the minimum requirement in terms of the target calorific value of 2,100 Kcal per person per day.⁶⁸ Additionally, many refugees are forced to sell a portion of their food in order to buy alternative food stuffs and non-food items which they cannot otherwise obtain.

203) In Dadaab, no complimentary food was provided during 2004. The UNHCR 2005 Country Operation Plan, however, allows for limited provision of complementary food.⁶⁹ Meanwhile, a limited amount of complementary food was provided in Kakuma during 2004. However, as the complementary food provided was already contained in the standard food ration, it did not provide additional nutrients.⁷⁰

204) Supplementary and therapeutic feeding programmes are implemented in both the Dadaab and Kakuma camps. In Kakuma, there are roughly 1,500 beneficiaries of the supplementary feeding programmes and approximately 150 under the therapeutic feeding programme for severely malnourished. The number of refugees in need of these services, though, is estimated to be much higher. Some 10% of the beneficiaries of these services are from the host communities.

205) School-feeding programmes are being implemented in both the Dadaab and Kakuma camps, by LWF and CARE respectively. The programmes are intended not only to improve the students' health but also to encourage attendance.

206) Refugee women participate directly and indirectly in the management and distribution of food and non-food items. In Dadaab, half of the members of the

⁶⁵ See UNHCR/UNICEF, Proposal on an integrated programme for realization of millennium development goals for refugees and surrounding communities in Northern Kenya, June 2004, at p.11.

⁶⁶ In both Kakuma and Dadaab, it is not uncommon for the food basket to be incomplete. WFP are, in particular, experiencing on-going problems with the food pipeline between Mombassa and the Dadaab camps which have resulted in delays to food distribution and added to the insecurity experienced by refugees.

⁶⁷ While additional food can be purchased on the free market, most refugees do not have the financial means to do so and, furthermore, the range of food stuffs available is limited in part due to the locations of the camps. For example, one staff member explained that 'Kakuma enjoys a splendid isolation - which means no fish and no green vegetables'.

⁶⁸ See UNHCR, Handbook for Emergencies, 2nd Edition, at p.192; and The Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, 2004, at p.138 (hereafter, the Sphere Handbook). According to the UNHCR Handbook on Emergencies, a 'minimum requirement of 2,100kcal per person per day is used as the planning figure for a developing country population at the beginning of an emergency'.

⁶⁹ The June 2004 Mid-Term Review Team found that the nutritional situation in Dadaab made it 'imperative to identify funds' to distribute complementary food to the most vulnerable refugees in Dadaab by the second half of 2004. Unfortunately this was not possible and, furthermore, funding for the complementary feeding in 2005 is now under question.

⁷⁰ See UNHCR July Mid-Term Review, at p.45.

Community Self-Management (CSM) committees who represent each section and block during food distribution are women as are 40% of those working as 'food scoopers'. In Kakuma, half of the food committee members are women as are all of the 'food scoopers' at the food distribution points.

Water

207) The only sources of potable water are the boreholes and tap stands operated by CARE and LWF in Dadaab and Kakuma respectively. Water provision, in terms of quantity, appears to satisfy minimum standards in both Dadaab and Kakuma.⁷¹

208) In Dadaab, where water supply averages 15-18 litres per person per day, as much as half of the supply may be given to the refugees' livestock, which raises concern about whether water to humans is falling below minimum standards. It can also lead to the resentment of local populations, who during dry periods experience great difficulties in securing enough water yet witness water in the camps going to livestock.

209) In both Dadaab and Kakuma, the quality of the water provided meets minimum standards and is clean at the point of collection.

210) Water tanks in Dadaab are chlorinated on a daily basis, with bacteriological tests being conducted each week in conjunction with Moi University.

211) While the water supply is also treated on a daily basis in Kakuma, there are a lack of suitable water containers at the household level, resulting in possible water contamination, a contributory factor to malnutrition and other health problems.

Clothing and Firewood

212) Clothing distributions are ad hoc, based on infrequent donations provided to UNHCR or other agencies working in the camps. For example, in June 2004 World Vision Japan was able to provide used clothes which were distributed on a needs basis through the refugee committees.

213) In Nairobi, the only clothing assistance provided was school uniforms to 200 school children supported through the National Council of Churches of Kenya (NCCCK). Individual refugees requiring assistance can be provided with financial assistance to go towards shelter, food, and clothing.

214) In Dadaab, 0.21Kg of firewood is provided per person per day, well below requirements estimated at 1.5Kg per person per day. Firewood distribution carried out by GTZ in Kakuma has, like in Dadaab, faced severe budgetary constraints and consequently only 58% of the minimum requirement for household fuel was provided in 2004.

215) Faced with shortages in non food items, refugees sell their food rations in order to purchase non food items, with attendant negative health consequences. Moreover, women and children are put at risk of attack when forced to leave the camp in order to collect firewood, and continued environmental degradation caused by unsustainable firewood collection practices.

⁷¹ The Sphere Handbook, 2004, recommends at least 15 Litres per person per day, depending on environment (see p.63). The UNHCR Handbook for Emergencies, 2nd Edition, recommends 15-20 Litres per day (p.217).

Immediate Shelter and Long Term Housing

216) The majority of shelters, in both Dadaab and Kakuma, are made from branches covered in grass, cloth and, where available, plastic tarpaulin. While sufficient for the semi-nomadic lifestyle the majority of refugees enjoyed prior to their flight, in the more permanent setting of the refugee camps, they offer little privacy or security.

Dadaab

217) In October 2003, UNHCR and CARE assessed that 31,000 families, which is the entire population of the Dadaab camps, were living in sub-standard housing. An 'improved housing' pilot project was embarked upon in order to facilitate the building of mud-brick houses with corrugated iron roofs which, although basic, would mark a significant improvement on existing shelters.

218) In the pilot project, 1,500 mud-brick shelters were constructed using community participation, both in the selection of beneficiaries and the actual building of the structures. These shelters were completed by mid-2004 with an additional 1,800 planned for the remainder of 2004 and another 2,200 planned for 2005. However, a total of 5,500 units for the three years falls far short of the estimated need of 31,000.

Kakuma

219) In Kakuma, an assessment at the end of 2003, found that 13,500 refugees were accommodated in shelters which did not meet the minimum standards for emergency humanitarian assistance. It was therefore planned that 3,000 shelters would be targeted for construction or repair during 2004.

220) UNHCR halted construction of new shelters due to the availability of 1,800 shelters vacated by the resettled Somali Bantu refugees. Refugee leaders, however, were not supportive of the idea due to location and security.

221) The vacated shelters have since been looted or salvaged by UNHCR with the materials provided to refugees affected by the November 2003 floods. The current strategy to improve shelter conditions in Kakuma is therefore unclear with some suggesting a 'wait and see' approach due to the possibility of voluntary repatriation of Sudanese refugees.

Urban situations

222) Refugees outside the camps may rent accommodation on a commercial basis. There are no restrictions in this sense and no requirement that the tenant show proof of legal status in the country.

223) Asylum-seekers and refugees residing in urban areas do not, as a rule, receive assistance from UNHCR. Exceptional cases, including those who face risks to their security may receive a financial disbursement to enable them to secure accommodation. Financial assistance is provided, through the NCKK, to 25-30 vulnerable individuals.

224) The GTZ-IS Accommodation Centre in Nairobi, which has a maximum capacity of 75 persons, provides temporary accommodation to medical referrals from the camps as well as cases referred by the Protection and Community Services units.

225) Refugees transiting Nairobi for resettlement to a third country were being accommodated at a centre run by GOAL, on behalf of IOM.

226) Refugees facing high security risks and who find themselves in an exceptional circumstance particular to their situation may be eligible to receive a financial handout of about 90 USD to assist them in locating accommodation. These funds are sufficient to assist in finding accommodation.

Access to Primary and Curative Health Care

227) Primary health care services are provided to refugees in the camps, with services run by GTZ-IS in Dadaab and IRC in Kakuma. Resources are concentrated on treatment of common childhood diseases and on the provision of reproductive health services. The most common problems are malaria and respiratory conditions.

228) The Crude Mortality Rate (CMR) and the Under-5 Mortality Rate (U5MR) are below the estimated levels for developing countries such as Kenya.⁷²

229) Maternal mortality in the camps stood, at the end of 2003, at around 400 per 100,000 live births, as opposed to 100 per 100,000 expected in stable refugee situations. The situation improved somewhat by May 2004, with rates at 148 per 100,000 in Dadaab and 137 per 100,000 in Kakuma.

230) There are insufficient number health workers in the camps resulting in each health worker conducting, on average, 100 outpatient consultations per day, thus affecting the quality of care. This is double the UNHCR recommendation of 50 consultations per health worker per day.

231) There are hospitals in each of the Dadaab camps. The main hospital in Hagadera camp takes referrals from the other camps. The three Dadaab camp hospitals provide a total of 265 beds (one bed for each 490 refugees). The Garissa Provincial Hospital provides the next level of referral.

232) In Kakuma there is one hospital and four outpatient clinics. The hospital has a total of 90 beds (approximately one bed for each 1000 refugees). 10% of hospital beds are allocated to the host community.⁷³ The Mission Hospital, located about one kilometre from the camp, is the first point of referral for Kakuma followed by the Lodwar District Hospital. IRC also uses the IOM diagnostic facilities and refers a limited number of refugees to ICRC in Lokichokio.

233) In 2004, Kakuma referred 889 refugees, 34 of whom were sent to Nairobi for specialised medical services. Dadaab referred 1,000 refugees of whom 179 were sent to Nairobi. This notwithstanding, many refugees continued to await elective surgeries in the camps. To address this problem, an arrangement has been made for specialist doctors to travel to the camps and to attend to the medical needs of more refugees in 2005.

234) Sexually transmitted diseases are among the top 10 causes of morbidity in the camps. Their treatment is hampered by lack of sufficient privacy in the health posts,

⁷² According to the UNHCR/UNICEF Proposal, June 2004, the CMR in the camps is 0.13 per 10,000 per day and the U5MR is 0.37 (see UNHCR/UNICEF, *Proposal on an integrated programme for realization of millennium development goals for refugees and surrounding communities in Northern Kenya*, June 2004, at p.7). The UNHCR Emergency Handbook 2nd Edition, at p.161, puts the average CMR in developing countries at 0.5 per 10,000 persons per day while the Sphere Handbook notes, at p.260, that the average baseline CMR for Sub-Saharan Africa is 0.44 per 10,000 persons per day and the baseline under-five mortality rate for Sub-Saharan Africa is 1.14 per 10,000 children per day.

⁷³ It is difficult to know to what extent the host community are accessing other health services but IRC estimates that 50% of the beneficiaries of the supplementary feeding programme at Clinic II are from the host community (the Turkana).

which includes the inability to carry out physical examinations out of sight from the other patients. In Dadaab, lower number of female patients (only about 25.8%) suggests that it may be more difficult for women to access these services, because of concerns regarding privacy, but also because some of the clinics do not have the necessary equipment.

235) The turn-over of medical staff is extremely high and recruitment of new doctors, particularly women, is difficult, and not helped by the fact that there is a general shortage of doctors in Kenya.

236) HIV/AIDS is, according to UNHCR, less prevalent among the camp population than among the local community.⁷⁴ It is, however, recognized as major threat to refugee health. Its spread is facilitated by early sexual activity and certain traditional practices such as wife inheritance, ritual scarification, polygamy, and by sexual violence. The condition attracts social stigmatization, which leads to reluctance to undergo testing and counselling, particularly in camp setting where confidentiality is perceived to be jeopardised by the use of refugee counsellors.

237) A multi-sector approach to HIV/AIDS prevention and treatment was introduced in 2003, involving all agencies. IRC, GTZ and NCKK have assumed key roles in coordinating activities.

238) There is one Voluntary Testing Centre (VTC) for HIV/AIDS in the Ifo camp (Dadaab) and two in Kakuma which are run according to the standards of the National AIDS and STI Control Programme (NASCP). A second VTC for Dadaab is being established in Dagahaley Camp. Anti-retroviral drugs, however, are currently not available in the camps.

239) Voluntary Counselling and Testing centres have received 2,328 clients in Kakuma and 105 in Dadaab in 2004, with positive test rates of 2.2% and 1.9% respectively. Of these, 1,394 have joined the "post-test" clubs and have become engaged in raising awareness and breaking the silence and stigma associated with HIV/AIDS. Only one refugee has however thus far publicly declared his HIV status; fear of discrimination, rejection and violence remains high.

240) Refugees in Nairobi have access to subsidised anti-retroviral drugs but there are reports of HIV+ refugees in Nairobi not being able to afford even the subsidised rates⁷⁵

241) Beyond the establishment of VTCs, the NASCP does not currently address refugee needs in their planning. However, a baseline Behaviour Surveillance Survey examining interaction between the refugee and host communities in relation to HIV/AIDS is currently being conducted in Kakuma, funded by the World Bank. Initial data is expected in early 2005.

⁷⁴ The UNAIDS 2004 Report on the Global Aids Epidemic, notes at page 179, that, between 2001 and 2003, the UNHCR and its partners measured HIV prevalence among pregnant women in more than 20 camps housing some 800 000 refugees in Kenya, Rwanda, Sudan and Tanzania. The results: refugee populations in three of the four countries had significantly lower HIV prevalence than the surrounding host communities. For example, in north western Kenya, 5% of refugees were HIV-positive, compared with an 18% HIV prevalence in the surrounding host country population.

⁷⁵ UNHCR 2004 Mid-Term Operation Review, p.82.

Primary and Secondary Education

Education within the camps

242) In Dadaab approximately 56% of children of primary school age attend school, many others attending Duksis and Madrasa. In Kakuma, the proportion is much higher, at approximately 82%. The boy/girl ratio for the early years is relatively on par, with sharp decline in girls' attendance in later years, falling to less than 15% in secondary school.

243) A number of different factors negatively affected girls' attendance, including insufficient distribution of sanitary material. Cultural biases, however, remain the predominant reason for the relatively small number of girls attending school. Expectations of early marriage, teenage pregnancies and pressure to devote many hours to housework all account for poor attendance rates.

244) Attempts to increase the retention rate of girls attending school through programmatic activities, such as the extension of supplementary feeding at secondary school level and other initiatives including provision of uniforms and sanitary materials and construction of latrines for girls, have helped to some extent to counteract negative factors affecting girls' drop-out rates.

245) The Angelina Jolie School, a boarding facility for girls, scheduled to open in Kakuma in 2005, is expected to boost efforts to retain more girls in schools. Additionally, the Jesuit Refugee Service runs a scholarship programme in Kakuma that enabled 50 girls and 17 boys to attend grade 6-8 of primary school as boarders in institutions outside the camp. At secondary level, the organization sponsored 42 girls and 49 boys to attend boarding schools outside the camp. The beneficiaries included 4 students with physical disabilities, 6 deaf students, 2 blind and 4 with mental disabilities.

246) The education system in all the camps is under strain, particularly at the secondary school level.⁷⁶ Children are selected for secondary school on the basis of exam results with many refused admittance due to lack of space, rather than lack of ability or desire.

247) Access to tertiary education for secondary school graduates is extremely limited and normally only possible for those who secure a scholarship.⁷⁷ Refugees who do not benefit from a scholarship have to pay foreign student rates - around 150,000 KES per semester (approximately twice the amount required of nationals).

⁷⁶ Other indicators, as provided by the UNHCR 2005 COP (appendices three and four) and valid as of the end of 2003, illustrate the strain on the education services across the board: in Kakuma, 80% of boy students and 50% of girl students completed the school year and enrolled in the next level (target 90% for each); the Classroom to student ratio was 1:115 in lower primary and 1:85 in upper primary (target 1:50); the teacher to student ratio was 1:58 (target is 1:40); and the textbook to student ratio was 1:8 (target 1:3). In Dadaab, the data is as follows: 97% of boys and 93% of girls enrolled completed the school year and enrolled in the next (target 90%); the classroom student ratio was 1:70 (target 1:50); the teacher to student ration was 1:98 (target 1:40); and the text book to student ratio was 1:5 (target 1:3).

⁷⁷ JRS has 40 higher vocational and university scholarships in Nairobi which are available to refugees throughout Kenya, whether in urban centres or in the camps. In Kakuma, JRS also facilitate a distance learning programme with the University of South Africa for 32 students and Windle Trust Kenya provide English language courses as well as university scholarships under the World University Programme of Canada (in 2003 25 scholarships were awarded).

248) Even those students who have managed to access higher education are generally unable to find work upon completing their studies due to restrictions on Mandate Refugees securing work permits.

249) There are no longer any Kenyan teachers in the primary schools in Dadaab. Refugee teachers have not benefited from attending teacher training college; however, they receive teacher's training during school holidays. In Kakuma, over 95% of teachers have not received formal training at Teacher Training Colleges.

250) Despite its weakness, the education system in the camps is better than that in surrounding communities and indeed is a pole of attraction for children and parents in countries of origin (notably in Southern Sudan).

Education in urban settings

251) In January 2004 free primary education was introduced in Kenya. Refugee children residing in urban centres are now able to attend primary schools free of charge, although schools sometimes require parents to provide contributions such as chairs and desks. There remains, however, a financial burden associated with primary education relating to uniforms, text books and transport.

252) In Nairobi, UNHCR continued to run a programme benefiting a small number of vulnerable Convention refugees in cooperation with NCKK. The programme targeted 120 pupils in primary school and 80 in secondary school. Girls represented 56% and 36% respectively. Additionally, an unknown number of urban refugees were able to access private education as self-payers or under the sponsorship of a church group or NGO. A significant number of children of refugees and asylum seekers from the Great Lakes attend private schools in French that have been set up for them by NGOs and interested groups.

Equal Benefit and Protection of the Law

Access to Effective Remedies

253) Refugees have equal access to the courts and are able, if they can afford it, to obtain legal representation. However, since there is no legal aid and little pro-bono assistance in Kenya, refugees, like poor Kenyans, are usually not represented by lawyers.

254) UNHCR does not generally provide legal representation to refugees. On occasion, however, UNHCR has been able to facilitate the attendance of lawyers belonging to NGOs focusing on women's or children's rights.

255) In order to increase access to the courts, in 1998 UNHCR facilitated the establishment of Mobile Courts in Dadaab and Kakuma. In principle, mobile courts from Garissa and Lodwar visit the Dadaab and Kakuma camps once a month. UNHCR monitors the proceedings and provides advice and material assistance to allow witnesses to attend the trials.

256) The idea of Mobile Courts is to bring the administration of justice closer to the community in a region with a dispersed population over large areas and with little economic means to travel. There have been problems with their functioning. For example, most of the 2003 sessions in Dadaab were cancelled due to the unavailability of a magistrate. These problems led to postponements and prolonged pre-trial detention for some of the accused. While last year saw a marked improvement with regular court sittings in Kakuma and Dadaab, it remains the case that the police and judiciary are overstretched. Further, instances of inefficiency, resulting in delays in proceedings is one of the reasons refugees often prefer traditional ways of settling disputes.

Fair and Public Hearings without Discrimination

257) The mobile courts are closely monitored by UNHCR while there is limited capacity to monitor other courts. In general, however, refugees have access to fair and public hearings on an equal basis as Kenyan citizens.

Traditional Forms of Justice

258) In both Dadaab and Kakuma, traditional dispute resolution mechanisms are practiced. They, at times, however, exceed their powers by hearing criminal cases, such as rape, which should be dealt with by the Kenyan courts. The process can disregard the rights of the victim and have little deterrence effect. For example, in a rape case, the perpetrator may be ordered to provide compensation to the family of the victim and/or be required to marry the victim. As such, the traditional courts do not generally emphasize the rights of the individual, and in particular women.

Dadaab

259) The traditional courts in Dadaab are called 'Maslaha' and generally deal with the resolution of minor disagreements, for which refugees find them effective. They are presided over by the elders of the clans involved in the dispute. They generally reflect tribal values and proceedings normally involve monetary compensation disbursed by the clan of the guilty party to the clan of the aggrieved. They are ill

suited to decide on issues concerning criminal offences. UNHCR is not informed of their sessions and therefore is unable to monitor the proceedings.⁷⁸

260) The Maslaha are influenced by the relative position of the clans involved and their negotiating power. Nevertheless, many refugees prefer the Maslaha system as it is part of their culture, it applies a concept of justice that is easily understood, and because it delivers at least monetary compensation while formal Kenyan justice is perceived as complicated, lengthy and often inconclusive.

Kakuma

261) The Sudanese community in Kakuma use 'bench courts' which are intended to complement the Kenyan legal system and resolve conflicts in the refugee communities that are of a civil, rather than criminal, nature.⁷⁹ Sub-Office Kakuma trains the 'magistrates' in human rights law and Kenyan law and monitors the sessions of the bench courts to keep abreast of conflicts in the communities and to ensure that the bench courts do not exceed their authority, in particular in relation to excessive punishment.⁸⁰

⁷⁸ This is one of the reasons the Terms of Reference for Refugee Leaders in Dadaab explicitly state that the leaders shall discourage use of the Maslaha courts and UNHCR encourages all cases to be reported to the police, particularly criminal cases and cases of domestic violence.

⁷⁹ There are several courts that operate within this set-up. There are low-level 'payam' courts where the complaints begin, of which there are two: the Kongor Payam and the Bahr-el-Ghazal Regional Courts. The next level is the Bench Court and then the Appeal Court, which is the highest court. The elders sitting in the lowest courts do not receive financial incentives from UNHCR or other agencies but charge the plaintiffs money to listen to their cases. The cases in the lower courts are heard in the open and the elders, who are mostly men, sit under the trees. The public is free to go and listen. Unsatisfied complainants can raise the matter before the bench court. A down payment is necessary to open the proceedings at the bench court. The final resort is to the Appeal Court. LWF offers financial incentives (in lieu of salaries) to the Appeal Court elders.

⁸⁰ The main reasons for conflict in the Sudanese community are disputes over marriage and payment of dowry, scarce commodities, such as firewood and shelter, and problems arising from excessive alcohol consumption. The bench courts are also sometimes invested with the adjudication of minor conflicts between the refugees and the local Turkana population.

Self-reliance

262) Refugees in both Kakuma and Dadaab camps are not self-reliant. They remain dependent upon food rations as geographic conditions, movement restrictions, and absence of work-permits, inhibit opportunities for self-sufficiency.

Educational and Vocational Programmes

263) Vocational training programmes benefit men and women equally and have a positive impact in enhancing self-esteem and in teaching useful skills for both within the camps and for when durable solutions have been achieved. However, the scale of these programmes is extremely small and the opportunity for students to utilize their newly acquired skills are limited.

Dadaab

264) In Dadaab, vocational training programmes are organized by CARE. In October 2004, for example, there were 375 trainees (of whom 173 were female). There is a high demand for the programmes which cannot be met due to a lack of training equipment and raw materials resulting from limited funding. Outside of the camp, there are also 70 refugee trainees (18 of whom female) at the North Eastern Province Technical Training Institute in Garissa.

265) There is a planned project for the Dadaab camps called Community Training Learning Centres which will be funded by Microsoft and is expected to begin in 2005. The Centres will provide training on information technology.

Kakuma

266) The NGO Don Bosco offers vocational training in tailoring, carpentry, masonry, mechanics and computer applications. The vocational training programmes are well organized and popular, with much demand for the limited places available. There is, however, very little outlet for the newly acquired skills of the trainees within the camp.

Access to Wage-earning Employment

267) Convention refugees, while not automatically allowed to work, are eligible to apply for, and are normally issued with, work permits, although the procedure can be lengthy. A local NGO in Nairobi, African Refugee Training and Employment Services (ARTES), assists Convention Refugees in processing the paperwork for their work permits and assists them in locating employment.

268) Government policy prohibits Mandate Refugees from obtaining work permits. In 2003, however, with UNHCR's assistance, two Mandate Refugees were able to secure work permits. This was done on an exceptional basis and may not mark any decisive shift in policy.

269) There is little paid work available in the camps. The main opportunity for wage-earning employment is with the NGOs as an 'incentive worker'. For example, CARE has over 400 incentive workers in the Dadaab camps and IRC has approximately 800 in Kakuma. Some refugees have jobs in Kakuma town but this is rare⁸¹ as Mandate

⁸¹ There are few employment opportunities in Turkana town and this goes for both the refugees and the host community. Indeed, members of the host community seek work from refugees in the camp,

Refugees cannot secure work permits and, in any case, unemployment levels in Kenya are extremely high.

Self-employment Opportunities

270) Mandate Refugees, while not allowed to engage in economic activities according to Government policy, are allowed to participate in income generating activities in the camps. Refugees run small businesses such as shops, bars and restaurants, although the market is not sufficient for these businesses to thrive.

271) There are micro credit programmes in Dadaab and Kakuma as well as in Nairobi. JRS runs one such scheme in Nairobi with approximately 60 loans currently active.⁸² The loan scheme is reportedly effective but reaches only a small percentage of the refugee population in Nairobi.

Dadaab

272) In Dadaab, CARE runs a revolving loan fund which focuses primarily on vulnerable individuals such as single female headed families.⁸³ Initial loans are small, 5,000 KES being provided to a group of five people,⁸⁴ but sufficient to set up businesses in the camp markets. Market trading is complicated, though, by the encampment policy which makes it difficult for refugee traders to access goods from Nairobi and Garissa without going through Kenyan middle men.

273) There are no animal husbandry projects being implemented in the camps as refugees are not officially allowed to keep animals. In spite of this, some suggest that in Dadaab each refugee household has 2-3 goats.

274) In Dadaab, the local government imposed a ban on seasonal farming in May 2004 as refugees were fencing large areas of land and thereby restricting the host community's access to prime grazing. Conflicts over resources between the host and refugee communities are discussed in the Environment Working Group which meets in Dadaab every two months and brings together both communities as well as Government officials. There are also sub-working groups in each of the Dadaab camps.

275) While seasonal agriculture has been banned in Dadaab, the Multi-Storey Garden (MSG) technique for growing vegetables is promoted in both Dadaab and Kakuma.⁸⁵

whether on a temporary basis, such as carrying food and water, or more permanently, such as household help.

⁸² In total, JRS has managed over 250 loans in Nairobi. They are provided to Convention Refugees as well as Mandate Refugee in possession of Refugee Certificates from UNHCR. The JRS programme in Nairobi also includes a marketing aspect in the form of a craft shop where refugees can sell their goods. JRS also organises exhibitions of refugee products which can be bought over the internet.

⁸³ 4,778 individuals, just under 4% of the population, have, as part of a group, benefited from these loans as of October 2004. In total, there have been 984 groups of which 487 are still active. There is an increasing focus on business skills training with, for example, 124 persons trained in October 2004 in record keeping and marketing.

⁸⁴ The amount increases as the repayment cycle goes on.

⁸⁵ This is a technique for growing kitchen vegetables in a water efficient manner by growing the vegetables in sacks donated by WFP rather than in the ground. It is much less popular in Kakuma than Dadaab but, nevertheless, GTZ and WFP will be expanding the project in 2005. The project is described by staff in Kakuma as 'partly useful' in that it at least provides an affective use for waste water.

Kakuma

276) In Kakuma, Don Bosco implements a micro credit programme aimed at solidarity groups of 3-5 refugees, under which in-kind assistance is provided such as supplying a sewing machine or providing stock for a shop.⁸⁶

277) LWF also assist refugees to establish production systems for soap and sanitary materials. These production systems, which are fully run by the refugees, have the capacity to produce all the soap and sanitary materials needed in the camp but resource constraints are preventing them from doing so. The programme is run by six refugee committees and involves approximately 50 workers. The refugees are also setting up bakeries along similar lines.

278) JRS runs a poultry project which is gradually expanding. There are currently 26,000 chickens and ducks in the camp being tended by 1,260 refugees. Other agricultural and livestock opportunities for the refugees are limited. In Kakuma, pressure on resources has led to what is described as 'a ban on refugees owning any animals with four legs'. It is unclear whether this is an official policy decision or simply the result of high levels of animal rustling by the Turkana.

Social Security and Just and Favourable Conditions of Work

279) Convention refugees are, once they have secured work permits, treated without discrimination in the work place. However, the majority of refugees work in the informal sector without clear legal protection.

Right to Own Property

280) Refugees and asylum-seekers do have the right to own property and many cases heard in the mobile court in Kakuma, for example, involve theft of property owned by refugees.⁸⁷

⁸⁶ While some members of the host community, the Turkana, are able to benefit from these programmes, both vocational training and micro-finance, it is only a small percentage.

⁸⁷ Human Rights Watch has expressed concern relating to women's rights to own property in Kenya. See for example, the paper, *Double Standards: Women's Property Rights Violations in Kenya*, March 2003 available at www.hrw.org/reports/2003/kenya0303/kenya0303.pdf.

Durable Solutions

Voluntary Repatriation

281) With the exception of return to Somaliland, voluntary repatriation has not occurred on a large scale. UNHCR is not currently promoting return to Sudan or Somalia. The Office has a presence in Somaliland and Puntland, but only a minimal presence in the Centre South, where it is in no position to monitor return.

282) Return to Sudan will be impacted by the role played by the Sudanese People's Liberation Movement (SPLM) representatives in Kakuma. Further, the presence of the Ugandan Lord's Resistance Army in parts of southern Sudan, in particular the Equatorial region, which is an area of intended return for many refugees in Kenya, fuels uncertainty with regards to repatriation prospects in parts of the country.

283) UNHCR has drafted a contingency plan for large-scale return to Sudan and is working at a similar plan for Somalia in the hope that recent encouraging developments take hold and pave the way to peace.

284) UNHCR did not assist any refugees to return to Centre-South Somalia during 2003 but did assist 708 refugees to return to Puntland and Somaliland where the situation is relatively stable.⁸⁸ There are currently 49 cases (109 individuals) willing to return to Somaliland or Puntland and the Danish government is reportedly interested in facilitating this return coupled with a reintegration project.

285) In 2003, eight Rwandan refugees were assisted to repatriate while during the same year, 302 new Rwandese arrivals were registered.

Local Integration

286) Local integration in Kenya is currently not viewed as an option for significant numbers of refugees and indeed is contrary to government policy. Kenyan citizens do not, in general, view local integration favourably due to high levels of unemployment in the country and problems in the health and education sectors.

287) Host communities around Kakuma have more access to camp-based services than those around Dadaab. This difference may be the result of attempts to abate tensions between refugee and host communities in Kakuma, where the refugee and host communities are of different ethnicities.

288) While there is some inter-marriage between host and refugee communities in both Kakuma and Dadaab it is on an extremely small scale and mainly involves refugee women marrying Kenyan men. This may in part be explained by the fact

⁸⁸ This number was considerably smaller than the 3,800 anticipated returns, with many refugees deciding not to repatriate because they believed the economic situation in Northern Somalia was not conducive to return and UNHCR was unwilling to provide financial incentives rather than the standard nine months repatriation ration. Of the 708 refugees who did voluntarily repatriate to Puntland in 2003, anecdotal evidence suggests that around 80% were able to establish themselves in small businesses and fishing; although part of this group were forced to flee, at least temporarily, due to renewed fighting. (UNHCR reportedly has no monitoring capacity in Puntland.) Reports suggest that a number of the returnees failed to integrate due to a lack of community support in the areas they were attempting to settle and so, when their nine month food ration was exhausted, they had to leave and return to the Dadaab camps.

that foreign women marrying Kenyan men can easily be naturalized, whereas it is much more difficult for foreign men marrying Kenyan women.⁸⁹

Resettlement

289) The Kenya BO has been working to enhance and reinforce resettlement delivery with particular attention to priority cases and the strategic use of the group resettlement methodology. Specific targeted activities have included working to identify and profile refugee populations for concerted resettlement intervention; and to develop strategic and integrated approaches to strengthen resettlement delivery.

290) The Branch Office submitted approximately 3,000 refugees for resettlement in 2004. Approximately 60 percent were submitted under the group resettlement methodology while the remainder comprised individual resettlement submissions, of which 64 individuals were resettled on an urgent basis. The United States of America received about 70 percent of the total resettlement submissions in 2004.

291) Over 11,500 refugees departed Kenya for resettlement in 2004, including those in the backlog from previous years, which was a record high in the history of resettlement from Africa.

292) Several measures were taken to ensure the integrity of the resettlement operations including refining standard operating procedures; fully integrating resettlement within the Kenya-wide operation; strengthening a framework for using resettlement as an efficient protection intervention for urban refugees in need; enhanced coaching / training and supervision of resettlement staff; and use of quality assurance processes and oversight of resettlement activities.

293) In addition, the Office continued to implement the protection profiling of vulnerable Sudanese women and girls at Kakuma for resettlement consideration. This project, which commenced in 2003, involved expertise from UNHCR's implementing partner and an ICMC consultant. Indeed, the majority of Sudanese resettlement cases in 2004 were resettled under the women-at-risk category. Still, of the 286 refugees resettled as women-at-risk, Somali refugees comprised the majority (163 persons; 57 percent), while Sudanese refugees comprised 35 percent of women-at-risk submissions.

294) Implementation of group verification activities in the Kakuma camp – planned for late-2004 – were postponed due to a number of operational constraints. These constraints have been addressed and UNHCR expects to commence implementation of Kakuma group verifications in early 2005 resulting in eventual resettlement of approximately 1,500 persons.

295) Individual referrals for resettlement of urban refugees are also managed by the BO in Nairobi. Last year the Office developed an internal case referral system to identify individuals with special needs to help the Office determine where resettlement intervention is necessary to address security claims presented by urban refugees.

296) According to UNHCR, while resettlement activities provided effective critical coverage, the resources were insufficient when considering the operational requirements to meet refugee needs and the expectations of resettlement countries.

⁸⁹ The Draft Constitution published on 22 September 2004 rectifies this anomaly, making it equally easy for foreign men, as for foreign women, to acquire citizenship when marrying Kenyan citizens.

297) BO Kenya is working to ensure the strategic use of resettlement, and in particular as part of a comprehensive durable solution strategy. Specifically it is looking at the nexus between resettlement and voluntary repatriation, and in particular how to mitigate the impact that a pro-active resettlement programme might have on building momentum towards voluntary repatriation. The idea is to take care in identifying sub-groups within the overall refugee population who could benefit from resettlement, to minimize the impact on the ability and willingness of the majority to return. At the same time, options for the local integration of residual groups of refugees who may have no realistic option of either return or resettlement need to be explored with the Government of Kenya.

Comprehensive Approach

298) UNHCR is not promoting return to either southern Sudan or Somalia - with the exception of Somaliland - since conditions do not yet exist which are conducive for safe, dignified and sustainable return in either area. However, planning is underway to ensure that, when the time comes, voluntary return can be efficiently facilitated. Further, local integration runs counter to the general thrust of the Government's refugee policy. This leaves resettlement as the primary durable solution currently being implemented in Kenya. However, as mentioned, it is the aim of UNHCR staff to integrate resettlement into a broader durable solutions strategy.

Annex 1 Demographics

Camp populations according to country of origin:⁹⁰

Country of Origin	Dadaab	Kakuma	Total
Somalia	133,456	22,860	156,316
Sudan	810	62,800	63,610
Ethiopia	2,424	2,715	5,139
Congo	28	478	506
Uganda	61	356	417
Rwanda	16	262	278
Burundi	1	161	162
Eritrea	52	29	81
Central African Republic	0	1	1
Sierra Leone	0	1	1
Tanzania	1	0	1
Total population	136,849	89,663	226,512
<i>Percentage of population female</i>	48.89%	40.50%	45.57%

Age and gender breakdown:⁹¹

Sudanese refugees in Kakuma						
Age Group	Male	%	Female	%	Total	%
0-4	4,103	6.61	3,592	5.79	7,695	12.40
5-17	13,742	22.15	8,967	14.45	22,709	36.60
18-59	19,724	31.78	11,118	17.92	30,842	49.70
60 and >	336	0.54	474	0.76	810	1.30
Total:	37,905	61.08	24,151	38.92	62,056	100.00

Somali, Ethiopians, Rwandese, Ugandans, Congolese, Burundian, Eritrean and Angolan refugees in Kakuma camp.						
Age Group	Male	%	Female	%	Total	%
0-4	2,583	9.59	2,181	8.10	4,764	17.69
5-17	5,024	18.65	4,159	15.44	9,183	34.09
18-59	7,244	26.89	5,437	20.18	12,681	47.07
60 and >	146	0.54	164	0.61	310	1.15
Total:	14,997	55.67	11,941	44.33	26,938	100.00

Somali refugees in the Dadaab camps						
Age Group	Male	%	Female	%	Total	%
0-4	9,982	7.61	9,477	7.23	19,459	14.84
5-17	24,414	18.62	21,543	16.43	45,957	35.05
18-59	30,406	23.19	31,818	24.27	62,224	47.46
60 and >	1,923	1.47	1,542	1.18	3,465	2.65

⁹⁰ Figures as of June 2004, taken from note prepared by BO Nairobi as submission to a UNDP report on the UN in Kenya (forthcoming). These figures do not reflect the registration exercise conducted in Kakuma camp from 29 May to 23 July 2004. The new headcount in Kakuma is approximately 85,000, a drop explained by the departure of around 4,000 Somali Bantu for resettlement.

⁹¹ These figures are taken from the 2005 Country Operations Plan (April 2004).

Total:	66,725	50.89	64,380	49.11	131,105	100.00
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Burundi, Congolese, Eritrean, Ethiopian, Rwandan, Sudanese, Tanzanian and Ugandan refugees in the Dadaab camps

Age Group	Male (in absolute numbers)	(in%)	Female (in absolute numbers)	(in %)	Total (in absolute numbers)	(in %)
0-4	238	5.12	214	4.60	452	9.72
5-17	504	10.84	455	9.78	959	20.62
18-59	1,369	29.44	687	14.77	2,056	44.21
60 and >	37	0.80	1,146	24.65	1,183	25.45
Total:	2,148	46.20	2,502	53.80	4,650	100.00

Somali, Sudanese, Ethiopian, Rwandese, Ugandan, Congolese, Burundian, Eritrean, Zimbabwean, and Liberian refugees residing in urban areas.

Age Group	Male	%	Female	%	Total	%
0-4	572	3.81	630	4.20	1,202	8.01
5-17	2,645	17.63	2,397	15.98	5,042	33.61
18-59	5,086	33.91	3,385	22.57	8,471	56.48
60 and >	112	0.75	173	1.15	285	1.90
Total:	8,415	56.10	6,585	43.9	15,000	100.00

Annex 2 Province of Origin for Sudanese and Somali Refugees

Sudanese refugees in Kakuma according to place of origin

During the head count which took place in Kakuma in May 2004; 80% of Sudanese refugees (51,821 individuals) expressed their desire to return to Sudan and were consequently asked to specify the areas to which they would return.

Province	Number
Kordofan	980
Upper Nile	33493
Bahr El-Ghazal	8094
Equitoria	9168
Khartoum	56
Darfur	30
Total	51,821

Camp population of Somali refugees according to province of origin

Dadaab		Kakuma	
Province	Number	Province	Number
Lower Juba	83577	Lower Juba	8167
Middle Juba	14293	Middle Juba	7371
Gedo Region	10367	Mogadishu	5028
Mogadishu	7292	Kismayo	1011
Bay Region	5841	Bay	264
Salagle	2111	Jilib	205
Marerey	1549	Juba Dahe	163
Lower Shabelle	1220	Baidoa	154
Madina	816	Lower Shabelle	121
Doble	752	Marka	108
East Bari Region	683	Benadir	58
Hamar	624	None	55
Missing Value On For	555	Gardo	42
Kol Bio	541	Banadir	21
Gogani	469	Moq	20
Bakool Region	422	Shebal	14
Banadir	402	Banta	13
None	278	Gedo	12
Alenley	274	Galgadud	11
Afgoi	255	Mugambo	10
Hosingo	246	Woqooyi Galbeed	10
Bulahaji	225	Madina	8
Hiran Region	133	Mofi	8
Gududey	129	Mudug	8
Farjano	117	Juba	6
Bardale	90	Beleth	5
Berhaney	85	Hargesa	4
Mudug Region	85	Marerey	4
Middle Shabelle	74	Marica	4

Kamsuma	71
Sagale	70
Mugambo	60
Sool Region	60
Mandera	51
Bender Beyla	46
Hurawa	46
North West Region	38
Fafadun	33
Galgaduud	32
Liboi	30
Bay	27
Gedo	25
Togdheer Region	25
Anjel	24
Baryare	24
Galhareri	24
Shabelle	24
Adale	23
Dalayad	22
Goobweyn	21
Hamar Jadid	21
Baydhal	20
Afder	19
Farhan	19
Audhegle	18
Babnusa	17
Awdal Region	16
Gagure	16
Jidwaq	16
Quntwarey	16
Tuafiq	15
Yontoy	15
Jarti	14
Kobole	14
Kiyam Buni	13
Agalbahare	12
Nugaal Region	11
Shalam Pod	11
Dir	10
Mago	10
Taba	10
Kismayo	9
Asabot	8
Bulogadod	8
Garbo	8
Harawe	8
Jabi	8
Kuda	8
Lokoluwo	8
Malka Afwein	8

Bari	2
Hamar	2
Middle Shabelle	2
Jigjiga	1
Sakow	1
	22913

Sanaag Region	8
Beledwera	7
Burdubo	7
Dujuma	7
Gurhiray	7
Bedesa	6
Dema	6
Dukiyo	6
Kasahdere	6
Malaika	6
Same As Province/Dis	6
Shangani	6
Yaqshed	6
Baladkarim	5
Bilisa	5
Central Shabelle	5
El Waq	5
Gomeni	5
Guibet	5
Hargeysa	5
Sinai	5
Abay	4
Fanole	4
Haragise	4
Mubarak	4
Northern Somalia	4
Township	4
Bakaraha	3
Bossaso	3
Garlagube	3
Rabdhurre	3
Chiqley	2
Danwathaq	2
Debra Libanus	2
Fijiwa	2
Ganale	2
Manamufa	2
Okaw	2
Qanadalo	2
Qardho	2
Wakhle	2
Run Nirgood	1
Usbole	1
Yei	1
	134,850

Annex 3 International Treaties

The following international treaties have been signed, ratified or acceded to by Kenya:

1951 Convention Relating to the Status of Refugees, acceded 16 May 1966, no reservations;

1967 Protocol Relating to the Status of Refugees, acceded 13 November 1981, no reservations;

1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified: 23 June 1992;

International Covenant on Economic Social and Cultural Rights (1966), acceded 3 Jan 1976;

International Covenant on Civil and Political Rights (1966), acceded 23 March 1976, no reservations;

International Convention on the Elimination of All Forms of Racial Discrimination (1965), acceded 13 October 2001, no reservations;

Convention on the Elimination of All Forms of Discrimination against Women (1979), acceded 8 April 1984, no reservations;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), acceded 23 March 1997;

Convention on the Rights of the Child (1989), acceded 2 September 1990, no reservations;

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), ratified 12 February 2002;

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000), signed 8 September 2000;

The African (Banjul) Charter on Human and People's Rights (1981), ratified 23 January 1992;

The African Charter on the Rights and Welfare of the Child (1990)
Ratified 25 July 2000.