



Refugee Policy and Selective Implementation of the Comprehensive Refugee Response Framework in Kenya

Milan Jacobi
Rose Jaji

Summary

Kenya's refugee policy has morphed over time due to factors that include security threats, regional geo-politics and strategic interests. This policy brief addresses the relevance of national and regional geo-strategic interests for refugee policy in Kenya. It provides a historical overview of refugee policy in the country, highlighting the factors that account for policy fluctuations, contradictions and differential treatment of refugees hosted in Kenya, which is one of the pilot countries for the implementation of the Comprehensive Refugee Response Framework (CRRF). For policy-makers seeking to localise international refugee governance frameworks, it is important to situate frameworks such as the CRRF within the relevant national contexts because refugee hosting does not take place in a political vacuum or an ahistorical context (Jaji, 2022).

Kenya is an interesting case study because the contradictions in its refugee policy take a bifurcated approach, in which it has approved the implementation of the CRRF's main objective to promote refugees' self-reliance in north-western Kenya, where it hosts the mainly South Sudanese refugees in Kakuma camp and simultaneously put on hold the implementation of the same in the north-east in Dadaab camp, which predominantly hosts Somali refugees.

Over the years, the government of Kenya has threatened to close the two camps, the most recent threat being in April 2021, when it announced that it wanted UNHCR to repatriate refugees within 14 days. Although the implementation of KISED P made closure of Kakuma refugee camp a logical course of action, the non-implementation of KISED P in Garissa County raised concern in humanitarian circles regarding the fate of Somali refugees if Dadaab camp were to be closed without an integrated settlement similar to Kalobeyei.

The geo-political context accounts for the policy discrepancies and ambivalence evident in how the Kenyan

government has implemented the CRRF in Turkana County but not in Garissa. The complex relations between Kenya and Somalia are salient for the implementation of the CRRF in Garissa County, where the majority of Somali refugees in Kenya are hosted. Kenya and Somalia are locked in a maritime border dispute, which cannot be overlooked in trying to understand Kenya's policy towards Somali refugees. The government of Kenya views Somalis as a threat to national security and blames them for the terrorist attacks in the country. Based on an analysis of these factors, we offer the following recommendations:

- International processes such as the CRRF should be sensitive to the security and geo-political interests of host countries. Security issues between Kenya and Somalia have a uniquely negative impact on Somali refugees in Kenya, which makes humanitarian operations harder to implement in Garissa County.

UNHCR and its partner organisations and funders should:

- encourage Kenya to implement KISED P and provide sustained financial contributions under burden-sharing, which would provide more incentives for Kenya to remain committed to implementing the CRRF.
- clearly present the economic benefits of implementing the CRRF in terms of promoting self-reliance not only for the refugees, but also for Kenyans in both Turkana and Garissa counties.
- maintain support for Kenya's efforts to engender self-reliance for refugees in north-western Kenya and commend the country for implementing the CRRF under KISED P while also remaining aware of Kenya's securitisation of Somali refugees in north-eastern Kenya.
- consider the insights from Kenya in addressing contextual issues in other host countries that have agreed to implement the CRRF.

Introduction

In March 2021, the Kenyan government announced its intention to close Kakuma and Dadaab, the two refugee camps in the country, leaving more than 400,000 refugees uncertain about their future. In a tweet posted on 24 March 2021, Interior Minister Fred Matiang'i demanded a roadmap for closure from UNHCR and issued a 14-day ultimatum for the closure, stating that there was no room for negotiation. Announcements to close the camps, especially Dadaab, had also been made in the past. The deadline for the closure, 30 June 2022, quietly passed without the camps being closed. This created the impression that the threat was part of a political strategy to pursue national interests, for example to gain an upper hand in the ongoing maritime dispute with Somalia. These interests are a priority for the Government of Kenya, even if they may contradict international humanitarian obligations such as the implementation of the CRRF, which is part of the Global Compact on Refugees, adopted by the UN General Assembly in December 2018. The main objective of the CRRF is to increase the socio-economic self-reliance of refugees in host countries. As one of the pilot countries for the implementation of the CRRF, Kenya made a commitment at the 2016 UN Summit on Refugees and Migrants to increase refugee integration. Even so, Kenya faces hurdles in implementing the CRRF, mainly due to its national and security interests as well as its fraught relations with Somalia, which is the country of origin for the majority of refugees in Dadaab refugee camp.

Against this backdrop, the Kenyan government has approved and supported the implementation of the Kalobeyi Integrated Socio-Economic Development Plan (KISED) with the goal of creating the Kalobeyi integrated settlement, where refugees in Kakuma camp and host community Kenyans in Turkana County would live together. The goal is to accommodate both refugees and locals working together in projects designed to promote self-reliance, which is in line with the CRRF. The Kenyan government has

conversely not implemented the equivalent Garissa Integrated Socio-Economic Development Plan (GISED) for refugees in Dadaab camp and Kenyans in Garissa County, where the camp is located.

In order to understand Kenya's implementation of the CRRF in one site and reluctance to do so in the other, it is important to consider the country's national and regional geo-political and strategic interests in view of their implications for Kenya's refugee policy. Finding ways to ensure uniformity in the different sites and promoting comprehensive implementation where there has been hesitation or reluctance on the part of the Kenyan government to fully embrace the CRRF require taking these interests into consideration.

This Policy Brief discusses the policy discrepancies in Turkana and Garissa counties and attributes them to the tension between national security interests and humanitarian obligations in Kenya. It also situates this tension within the geo-political configuration in the Horn of Africa and explains how these politics pose challenges to the implementation of the CRRF.

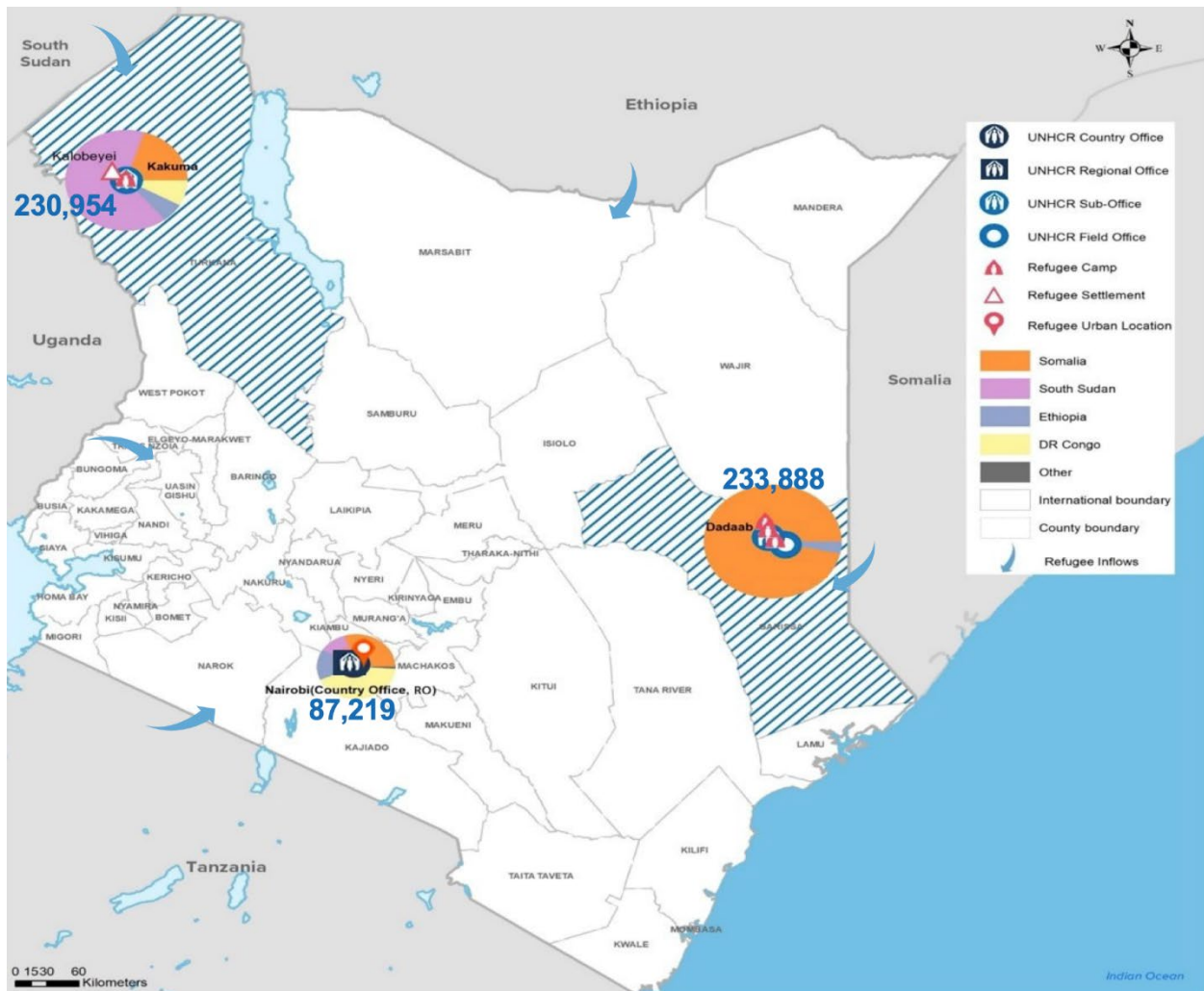
Background and country context

Kenya has a long history of hosting refugees, and it is among the countries that supported anti-colonial struggles by providing sanctuary to refugees and liberation movements, mainly from Southern Africa. Even after the last bastion of colonialism and apartheid had fallen in Southern Africa, with South Africa transitioning in 1994 from apartheid to a democracy, political volatility in Central Africa and the Horn of Africa resulted in Kenya hosting even more refugees fleeing long-drawn-out, intermittent and cyclic violent conflicts in these regions. For instance, Kenya has, over the years, hosted large numbers of refugees from Burundi, the Democratic Republic of Congo (DRC), Ethiopia, Rwanda, Somalia, Sudan, South Sudan and Uganda. The country's generous policy towards refugees, often described in the literature as *laissez-faire*, continued into the 1980s as it embraced refugees from Uganda, whom it

saw as assets through the contribution of professional skills. However, the same Ugandan refugees would later be accused of taking jobs from Kenyans and henceforth treated as a security threat (Verdirame & Harrell-Bond, 2005). A massive refugee influx in the early 1990s, coupled with diminishing international donor support, led to a shift in Kenya’s open-door policy towards a more restrictive encampment approach (Milner, 2019). Kenya established Kakuma and Dadaab refugee camps in 1992 in response to influxes of refugees from Sudan, Somalia and

Ethiopia. Dadaab refugee camp hosts predominantly Somalis, whereas Kakuma refugee camp accommodates the majority of refugees from South Sudan and Central African countries such as DRC, Burundi, Rwanda and Uganda. It was during the 1990s that refugees’ entanglement in national security and regional geo-politics – in ways that were detrimental to the country’s laissez-faire policy – became particularly conspicuous. Encampment as the centrepiece of Kenya’s refugee policy persisted until the latest Refugees Act of 2021. The map below shows the location of Kakuma and Dadaab refugee camps in Kenya.

Figure 1: Map of Kenya



Source: UNHCR Kenya (2022) – CC BY 3.0 IGO

Evolution of Kenya's refugee law

The 2006 Refugees Act designated camps as the places of residence for refugees. It severely curtailed refugees' freedom of movement and capacity to participate in the local economy. UNHCR reinforced refugee encampment by directing humanitarian assistance only to refugees living in the camps. It explained that assisting refugees outside the camps would be tantamount to going against the Government of Kenya. This left refugees who had moved to urban areas such as Nairobi with limited support. It was also during this time that refugees became vulnerable to raids and arbitrary arrest because UNHCR handled refugee status determination, and the Kenyan police did not recognise the ID cards issued by the refugee agency. Although encampment was Kenya's official refugee policy, the government did not strictly enforce this policy, leading to some refugees self-settling outside the camps, especially in urban areas. Kenya also allowed refugees who lived outside the camps to work on the condition that they apply for Class M work permits. However, refugees who defied the encampment policy could only work in the informal sector, as most of them could not afford the Class M work permits, which are necessary for the formal employment of refugees.

Following Kenya's commitment to implement the CRRF, parliament passed in 2017 a new refugee law whose provisions included the right to seek employment and own land and property. This law was, however, withdrawn at the last minute by President Uhuru Kenyatta for the reason that no public consultation had taken place. A new bill, published in June 2019, had lost many of the progressive elements of its immediate predecessor (Hargrave, Mosel, & Leach, 2020, p. 12). In August 2019, the Kenyan government passed the Refugees Bill 2019, but parliament referred it back to the relevant ministry to conduct further public engagement and consultation. In fact, the Refugees Bill 2019 was under consideration for two more years, meaning that the severe restrictions on movement in the Refugees Act of

2006 remained in place until President Uhuru Kenyatta signed the bill into law in November 2021. In general, the language of the Act is perceived as positive because the wording in the new Act tries to increase the involvement of the county-level authorities, who handle the administrative and practical issues of hosting refugees. Other parts of the Act also indicate that the Refugee Affairs Secretariat, or even the Cabinet Secretary responsible for refugee affairs, will consult county authorities on certain decisions. However, the Act uses ambiguous language in its replacement of refugee camps with "designated areas", which will be decided by the Minister of Interior. The Act does not explain the form that these "designated areas" will take and how different they will be from camps. Thus, it remains a possibility that the camps will be retained.

Regional geo-politics and implications for refugee policy

Kenya's refugee policy is not detached from its national and geo-strategic interests in East Africa and the Horn of Africa. Kenya, which has a Somali population that found itself on the Kenyan side of the colonial border, is also wary of Somali ethno-nationalism, irredentism and what it sees as the need to balance ethnic numbers, which is crucial for national elections. Kenya's government also specifically links Somali refugees to the terrorist attacks that it has experienced, notable examples being the simultaneous attacks on the US embassies in Nairobi and Dar es Salaam (Tanzania) in 1998. It also blames Somalis for the attacks on Westgate Mall in 2013 and Garissa University College in 2015, among others. The conflation of Somali refugees and terrorists has effectively securitised refugee politics in Kenya. Security concerns thus play a central role in Kenya's decisions on matters relating to refugees, especially Somalis.

The country walks a tightrope as it seeks to balance humanitarian obligations with national and regional geo-political and strategic interests. In Africa, this is not unique to Kenya, as illustrated

by Libya and Morocco, which have used – and continue to use – refugees as bargaining chips in their relations with the European Union (EU).

Al-Shabaab attacks in Kenya and the Kenyan military's incursion into Somalia in 2011, intended to protect the country by nipping terrorism "at its roots", had a discernible impact on Somali refugees' livelihoods, exemplified by the raids and arbitrary arrests targeting Somali refugees in Kenya, especially in urban areas such as Eastleigh in Nairobi (Human Rights Watch, 2013). Faced with criticism by the international community for blocking Somali asylum seekers from crossing the Kenya-Somalia border when violence escalated in Somalia in January 2007, Kenya accused Western countries of hypocrisy and made specific reference to the EU's externalisation of its borders in order to deter African migrants and asylum seekers attempting to cross the Mediterranean Sea into Europe.

Conclusion and recommendations

Kenya has adjusted the direction of its refugee policy several times throughout its history of hosting refugees. National and geo-strategic interests have always played a role. Even the most recent developments in refugee law – despite their positive wording, which indicates an inclination for a more humanitarian policy towards the refugees – show that Kenya is prepared to meet its humanitarian obligations only to the extent that these do not pose a threat to its security interests. Kenya's government continues to associate Somali refugees in Dadaab camp as well as in urban areas with terrorism. Therefore, realistic assessments of the implementation of the CRRF need to take into account these security politics and their relevance to refugee policy. Recognising this complex political reality enables the international donor community to set realistic goals and provide the needed support to Kenya, which has borne a heavy burden of hosting refugees for decades. This would also enable the donor community and other relevant partners to

take Kenya's socio-political concerns seriously and find ways to address them in the process of localising the CRRF. A more sensitive approach to Kenya's position also includes appreciating instead of downplaying the country's security concerns and acknowledging Kenya's complicated geo-political neighbourhood and shared history with Somalia and the other countries in East Africa and the Horn of Africa. Many countries that host significant numbers of refugees, especially in the Global South, pay attention to how rich countries in the Global North react to refugee influxes, and it should come as no surprise that they see criticism of their refugee policies by such countries as unfair, if not hypocritical.

For host countries such as Kenya, whose own citizens are experiencing economic hardships, sustained financial support and commitment to burden-sharing will go a long way towards easing the political roadblocks to CRRF implementation. Building a sound understanding of the security and domestic politics that influence refugee policy in countries such as Kenya can help donors more holistically work with host countries in similar circumstances that have agreed to implement the CRRF.

References

- Hargrave, K., Mosel, I., & Leach, A. (2020). *Public narratives and attitudes towards refugees and other migrants. Kenya country profile*. Retrieved from https://cdn.odi.org/media/documents/kenya_migration_country_profile_final.pdf
- Human Rights Watch. (2013). *"You are all terrorists": Kenyan police abuse of refugees in Nairobi*. New York, NY: Human Rights Watch.
- Jaji, R. (2022). Historical complexities and transformations of refugee policies in Kenya and Tanzania. *Africa Today*, 69(1-2), 88-109.
- Milner, J. (2019). A history of asylum in Kenya and Tanzania: Understanding the drivers of domestic refugee policy. *Monde(s)*, 15, 69-92. <https://doi.org/10.3917/mond1.191.0069>
- UNHCR Kenya. (2022). Kenya statistics infographics. May 2022. Retrieved from <https://data.unhcr.org/en/documents/details/93559>
- Verdirame, G., & Harrell-Bond, B.E. (2005). *Rights in exile: Janus-faced humanitarianism*. New York, NY: Berghahn Books.

Milan Jacobi was a researcher in the “Transformation of Political (Dis-)order” programme at the German Institute of Development and Sustainability (IDOS).

Dr Rose Jaji is a senior researcher in the “Transformation of Political (Dis-)order” programme at the German Institute of Development and Sustainability (IDOS).

Email: rose.jaji@idos-research.de

Published with financial support from the Federal Ministry for Economic Cooperation and Development (BMZ).

Suggested citation:

Jacobi, M., & Jaji, R. (2022). *Refugee policy and selective implementation of the Comprehensive Refugee Response Framework in Kenya* (Policy Brief 9/2022). Bonn: IDOS. <https://doi.org/10.23661/ipb9.2022>

Disclaimer:

The views expressed in this paper are those of the author(s) and do not necessarily reflect the views or policies of the German Institute of Development and Sustainability (IDOS).



Except otherwise noted, this publication is licensed under Creative Commons Attribution (CC BY 4.0). You are free to copy, communicate and adapt this work, as long as you attribute the German Institute of Development and Sustainability (IDOS) gGmbH and the author(s).

IDOS Policy Brief / German Institute of Development and Sustainability (IDOS) gGmbH

ISSN (Print) 2751-4455

ISSN (Online) 2751-4463

DOI: <https://doi.org/10.23661/ipb9.2022>

© German Institute of Development and Sustainability (IDOS) gGmbH

Tulpenfeld 6, 53113 Bonn

Email: publications@idos-research.de

<http://www.idos-research.de>

Printed on eco-friendly, certified paper.

