

## IN KENYA; EN ROUTE TO AMERICA -THE PROMISED LAND: SOUTH SUDANESE REFUGEES AND DISCRETION IN POLICY IMPLEMENTATION

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### Abstract

The purpose of this paper is to help bridge the gap between policy and implementation practice in the management of refugee services in Kenya. We explore and describe points at which administrative discretion is important in-service delivery from the vantage point of street-level workers who handle cases of refugees from South Sudan living in Kenya. We identify points at which discretionary decisions are most impactful. At the end, we call for greater sensitivity to refugee needs and ethical reflection in bureaucratic actions.

**Keywords:** Street –Level Workers, South Sudanese Refugees, Discretion, Policy Implementation

### Introduction

Studies on public policy in Kenya have not paid much attention to field –level officials who interact with recipients of public services. The scarcity of works on administrative discretion at the frontline limits our understanding of governance because the street level officials shape policy in profound ways. Many of the frontline policy implementers such as case workers, out-reach stations and immigration clerks make decisions that permanently affect the lives of people in their care. The behavior of street –level officials makes a difference in understanding the role of government and non- profit organizations in implementing public policy. This work seeks to understand the norms and behaviors of street–level bureaucrats towards refugees. More precisely, the policy towards refugees from South Sudan is discussed with the intension of exploring the dynamics of social justice in street –level work.

### Overall Policy on Refugees

These bureaucrats are expected to faithfully execute national refugee policies. The overriding policy on refugees, is not well-understood and has been in a state of flux. This, by itself, is a factor that creates much bureaucratic discretionary actions. The official policy toward management of refugees is based on principles articulated in several documents, including the Kenya National Migration Policy, the draft National Labor Migration Policy, the National Diaspora Policy and the Kenya Vision 2030 development blueprint. These document and legislative statutes including the Refugees Act, the Kenya Citizens and Foreign Nationals

Management Service Act, the Counter Trafficking in Persons Act and the Kenya Citizenship and Immigration Act the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act provide glimpses of important values that should be expressed in the treatment of refugees and other persons going through migration procedures.

From the standpoint of practice, the refugee policy in Kenya can be described as dependent on “mood swings” and a *laisse affair* mentality within the ruling elite circles. Migration into Kenya goes back to the early 1960s when refugees from neighboring countries trickled into Kenya. In the 1980s, refugees were allowed to settle anywhere in the country (Odhiambo –Abuya 2004). The vast majority of refugees come into Kenya through cross-border migration patterns. Then, Thika Reception Center was the government designated location for sorting out asylum seekers and determining who was eligible for Refugee Status. When Uganda experienced erratic and despotic rule under Idi Amin, several Ugandans escaped into Kenya where many served as workers and even teachers. Ugandans constituted the vast majority of the 15,000 refugees in the 1980s (Crisp, 2005, p. 616). In the 1990s, the numbers of refugees from Congo, Rwanda, Burundi, Somalia and Ethiopia more than doubled. Because South Sudan has been in war situation for decades, their refugees were also included in the mix. Many asylum seekers were protected under the Geneva Accords and by the UNHCR (UNHRC 2009). Majority of refugees in Kenya have “prima facie” status, which means that officially they are allowed to work.

Kenya chose to establish camps for those designated as refugees. For the most part, these camps are designated or segregated according to national origins and gender, religion, and security calculations (Goodwin-Gill, & McAdam, 2007; HelpAge International, 2011; Horwood, 2009; Kamau, 2017; Lindley, 2011; Makena, 2017; Ngugi, 2017; Sanghi, Onder, & Vemura, 2016). The vast majority of refugees from South Sudan (Sudan) and Ethiopia were accommodated in Kakuma camp in Turkana County, the second largest camp. Refugees from Somalia were subjected to greater security vetting and monitored (Kirui & Mwaruvia, 2012). The encampment versus decampment and integration debate continues today with the World Bank favoring integration and making recommendations that counties where camps are located be given priority in terms of development (Sanghi, Onder, & Vemura, 2016). This follows reported tensions between local hosts and refugees, with the former arguing that refugees receive better services than locals. The case of clashes between refugees and residents of Kakuma, Turkana County, has been widely reported in local media. Needless to say, in Kenya where the issue of land is emotive, integration within the rural settings as was the case in Ulyankulu settlement in Tanzania was not viable (Wanga- Odhiambo, 2014, 75.)

#### *Understanding administrative discretion in policy implementation*

The first idea that comes to mind is to recognize the essentiality of intergovernmental actors in policy implementation. From the outset, we have to note that decisions made by the Government of Kenya (GOK) regarding refugees are confined and structured by the structure of international organization. In other words, state sovereignty allows GOK privileges that are limited by membership in international society. The context of administrative discretion in intergovernmental contexts was best articulated in George Gordon's work (1986). He posited that governmental interactions within formal institutions were enforced through collaborations and formal agreements involving different units. Although he did not include international actors in the Intergovernmental Relations (IGR), these are valid players in refugee management and policy making decisions. Through complex networks in management of global crises, IGR involves the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), International Non-Profit Organizations, which include religious organizations (e.g. Catholic Charities and NCKK), and agencies such as the United

States Agency for International Aid (USAID). These organizations share information and conduct complex transactions among each other, including managing programs specific to refugee needs. In many instances, resettlement remains a joint initiative involving multiple agencies.

These organizations are not hidden from the public eye. For the most part, the organizations have become more pervasive in the delivery of public services. African governments, including Kenya, have ceded much discretion to these organizations in matters to do with refugees. The scope and impact of IGRs has grown with the proliferation of conflicts and natural disasters, which cause refugee crises. There is tremendous increase in use of discretion in IGR involving refugee policy implementation, partly because the funding of refugee resettlement and relief services is externally sourced. Categorical grants from the international organizations such as UNHCR are designated for use in agreements spelled out between the organizations and the Government of Kenya. The importance of administrative discretion is highlighted because many of the decisions made reflect the values of the respective bureaucrats. In terms of IGR, there is evidence that Kenya's weak bureaucratic capacity has resulted in international policy actors circumventing GOK initiatives and, at times, duplicating the roles due to lack of clear policy guidelines. As Pressman and Wildavsky (1984, p.34) observed, coordination of services affects delivery of services. Weaknesses in coordination of refugee administration has been reported. And instances of GOK pursuing contradictory goals has emerged due to government's association of refugee camps to insecurity. Broad policy directives send signals to frontline workers leading to outcomes that may not be desirable. While discretion at the managerial level matters, it is much confined by international treaties and obligations. That cannot be said for the street-level bureaucrats who have to meet refugee needs.

#### *The role of street-level workers in policy implementation*

Most of the literature on street-level workers beginning with Michael Lipsky's (1980) looked at police, teachers, and case workers who made a huge difference in policy implementation. Lipsky (1980, p.3) described street –level officials as those who directly interacted with citizens in the course of their jobs, and who used substantial discretion to execute public policies. The case workers are known to use discretion when making difficult decisions about client needs. At the street –level, the case workers, at times present

their own interpretations of policy and advice clients on ways forward. In many instances, street-level discretion promotes workers self-regard and encourages beneficiaries to believe that frontline workers hold key to their well-being (Lipsky, 1980, p. 15). In many instances, the choices that street-level officials make affect policy outcomes in more than one way. Among the outcomes is public safety and health, often manifested as resilience and overcoming huge challenges.

In the case of refugees transitioning through Kenya, the decisions of street-level workers can break or make a refugee seeking to transfer to another country (receiving countries). The street-level workers, on behalf of the government are the face of government policy toward refugees.

**Methods and Multiple Settings**

The observations in this paper are based on fieldwork in Kenya and also interviews with South Sudanese Refugees who passed through camps in Kenya. There were also those who lived in Kenyan towns and interacted with government officials. Although the overall project focuses on refugees from South Sudan, including those dubbed as “lost boys and girls,” en route to the United States of America. The following section describes the points at which uses and abuses of discretion in the management of refugee services is manifest. The presentation covers the vast majority of front line workers who offer services to refugees.

BOX 1: *Key Refugee Services Offered at Street-Level: Discretion and Points of Attention*

<b>Agency/Organization</b>
Churches: Kenya Catholic Services (KCS) in Nairobi, Coptic Churches, Catholic Church- outreach stations
<i>Services Offered and Comments</i>
Provided rent for desperate cases but choosing who deserves is left at the discretion of the street-level officials. (Frontline Father or pastor). Churches gave South Sudanese students transport and meals to school and limited scholarships
<b>Agency/Organization</b>
National Council of Churches of Kenya (NCCCK) – also had a refugee desk and became partner with UNHCR

<i>Services Offered and Comments</i>
NCCCK started refugee desk in 1983 UNHCR referred refugees to the NCCCK: Distribution of foodstuffs, Maternity allowance, financial aid to refugees who want to marry at discretion. NCCCK buried bodies of unclaimed South Sudanese refugees. NCCCK scholarships, HIV Aids Counseling also offered.
<b>Agency/Organization</b>
Saint Joseph’s Dispensary
<i>Services Offered and Comments</i>
At Saint Joseph’ the Worker’s dispensary, the entry into clinic was controlled by church workers who determine who would receive medical attention.
<b>Agency/Organization</b>
Jesuit Refugee Services (JRS) The Jesuit Order of the Catholic Church
<i>Services Offered and Comments</i>
They ran Tangaza College in Nairobi. They also offered interpretation service and translated English for the refugees. Many South Sudanese women spoke Arabic, Dinka, Nuer and Didinka. JRS gave priority to “the refugees who may have been forgotten:” those not spoken about, e.g. urban refugees (Wanga –Odhiambo, 2014, p.101). And the undocumented (Wanga –Odhiambo, 2014, p. 102). Vocational training selection e.g. at St. Kizito and also at Catholic University of EA; Information and Temporary referrals; Counseling services to women who had been raped, tortured, traumatized, and depressed. JRS screened refugees to identify the needy cases (Wanga –Odhiambo, 2014, p.102)
<b>Agency/Organization</b>
GOK –Police and Intelligence, Children Services, and Department of Immigration
<i>Services Offered and Comments</i>
Kenya Security personnel guarded compound of the Kenya Catholic Services but would at times control who would get in and receive services. The police also guarded St. Joseph the worker hospital in Kagemi. This hospital particularly served the injured SPLA soldiers, hence its tight security. Government

oversees registration of refugees, which leads to determination of eligibility interviews. Manage child abuse and trafficking; Profiling of refugees and issuance of alien cards and work permits.
<b>Other Organizations:</b>
SWAN formed partnerships with the United Nations Development Fund for Women (UNIFEM) and International Refugee Trust of Ireland. Lutheran World Relief, Operation Lifeline Sudan, the Royal Netherlands Embassy in Nairobi.
<ul style="list-style-type: none"> <li>• Support to Sudanese women to be self-reliant and for networking both locally and internationally.</li> <li>• Help was given those who remained in Sudan especially by Operation Lifeline Sudan which distributed food and water-filters.</li> </ul>
NGOS established schools for refugees e.g. Kabiria School for Refugees in Satellite. Windle Trust Fund sponsored school children in post-secondary education and education in colleges.
<ul style="list-style-type: none"> <li>• Education for refugees; Nairobi which helped in printing out material like fundraiser cards, photocopying books and materials; Trained members on organizing small business and financial responsibility, English classes, workshops.</li> </ul>
Sudanese Mothers Action Group (SMAG) under SWAN;
<ul style="list-style-type: none"> <li>• Miscellaneous humanitarian services</li> </ul>
Sudanese Literature Society in Westlands
<ul style="list-style-type: none"> <li>• Miscellaneous humanitarian services</li> </ul>
Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ) (i.e. German International Development Agency), Lutheran World Federation (LWF), Oxfam, Save the Children, International Rescue Committee

IOM
<ul style="list-style-type: none"> <li>• Screening of Refugees for onward resettlement and repatriation to other countries</li> </ul>
UNHCR
<ul style="list-style-type: none"> <li>• Overall policy responsibility for refugees</li> </ul>

**Final Remarks and Conclusions**

Box 1 above is a synopsis of the key points at which street-level officials from a network of organizations interact and offer services to refugees. In some instances, these officials have too much discretion and cases of abuse have been reported. For example, police asking for bribes from refugees and also misconduct by way of harassment through unauthorized swoops (Sudanese Tribune, 2016; Wanga –Odhiambo, 2014, p. 106). And instances of theft of relief items and medicines donated for use by refugees are fairly common. Still, cases of sexual harassment on camps are not accorded the deserved attention. However, not all police are engaged in corruption or abuse discretion (Wanga –Odhiambo, 2014, p. 106). Furthermore, arbitrary decisions involving who should receive money should be streamlined through proper rule making. Most important, national policy on refugees should offer clear guidelines and include efforts to confine and structure discretion.

Not all is negative. There are numerous reported cases of charity and compassion for refugees. There are numerous stories of street-level workers who have treated South Sudanese refugees with outmost compassion and in dignified ways. In conclusion, we suggest that those involved in screening procedures need to receive sensitivity training. And reforms to improve public service to inculcate ethical reflection in service delivery must include all frontline workers who work with refugees. Hopefully, we have been able to trigger a discussion on improving refugee policy implementation not only for South Sudanese but all refugees in Kenya.

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