

# Revisiting the Politics of Asylum in Africa: Explaining Kenya's Sub-National Policy Variation

by

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## **Abstract**

The politics of asylum in Africa are changing. In recent years countries in Africa have taken increasingly different approaches from one another in the development, interpretation, and implementation of asylum policy. However, the advent of such variation is not just occurring between sovereign states, but also *within* them. It is no longer possible to refer to a generalized ‘politics of asylum in Africa,’ nor is it possible to omit discussions of sub-national politics from our analyses – as I contend that they play a valuable role in determining policy outcomes. To understand these changes, I ask *what explains contemporary sub-national variation in the politics of asylum in Africa’s major refugee hosting states?* This dissertation uses Kenya to conduct a within-case comparison that examines the interpretation and implementation of Kenya’s national asylum policy in its three major refugee hosting regions: the Dadaab refugee camps in Garissa County, the Kakuma refugee camps and the Kalobeyei Integrated Settlement in Turkana County, and the urban refugee population in Kenya’s Capital City, Nairobi.

This dissertation argues that sub-national variation in Kenya has been facilitated, at least in part, by the introduction of the 2010 Constitution and the introduction of devolved governance to the country. Replacing Kenya’s previously highly centralized political structure with democratically accountable county governments is expected to influence the political calculus of local elites, creating space for more diverse policy options in these contexts. As the scope of what is politically possible widens, so too does the potential for mutually beneficial outcomes that support both the refugee and local host populations. The politics of devolution in Kenya, while a key facilitating factor, is not the sole influence on the outcomes observed in each major refugee hosting region. I further argue that additional contextual factors unique to each major refugee hosting area such as the level of involvement from the central government, refugee population demographics, and local political opportunity structures work to shape and condition the limits of political possibilities at the sub-national level.

## **Dedication**

*This dissertation is dedicated to the memories of my late grandmothers: Joan Horner & Sandra Barkley. Neither were able to see me achieve this milestone, but their love and support carried me through to the end.*

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## **List of Acronyms**

ANC – African National Congress

AU – African Union

BBI – Building Bridges Initiative

CIDP – County Integrated Development Plan

CIDP II – Second County Integrated Development Plan (Turkana County)

CBO – Community Based Organization

CRRF – Comprehensive Refugee Response Framework

DRA – Department for Refugee Affairs

DRC – Danish Refugee Council

EAC – East African Community

FORD – Forum for the Restoration of Democracy

FORD-Asili – Forum for the Restoration of Democracy (Asili)

FORD-Kenya – Forum for the Restoration of Democracy (Kenya)

HRW – Human Rights Watch

HSO – Head of Sub-Office

ICC – International Criminal Court

IDP – Internally Displaced Persons

IEBC – Independent Electoral Boundary Commission

IFI – International Financial Institution

IGAD – Intergovernmental Authority on Development

IMF – International Monetary Fund

INGO – International Non-Governmental Organization

KADU – Kenya African Democratic Union

KANU – Kenya African National Union

KDF – Kenya Defence Force

KISEDP – Kalobeyei Integrated Settlement Economic Development Plan

KNCHR – Kenya National Commission for Human Rights

KSH – Kenyan Shilling

LGBTI – Lesbian, Gay, Bisexual, Transgender, and Intersex

MCA – Member of County Assembly

MENA – Middle East and North Africa  
MP – Member of Parliament  
NARC – National Rainbow Coalition  
NEP – Northeastern Province  
NFD – Northern Frontier District  
NGO- Non-Governmental Organization  
NMS – The Nairobi Metropolitan Services  
NRC – Norwegian Refugee Council  
OAU – Organization for African Unity  
ODM – Orange Democratic Movement  
PNU – Party of National Unity  
RAS – Refugee Affairs Secretariat  
RCK – The Refugees Consortium of Kenya  
RSD – Refugee Status Determination  
SAP – Structural Adjustment Program  
SPLA – Sudanese People’s Liberation Army  
TANU – Tanganyika African National Union  
UNHCR – United Nations High Commissioner for Refugees  
USD – U.S. Dollar  
WASH – Water, Sanitation, and Hygiene Projects  
WFP – World Food Programme

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## Map of Kenya



**Illustration 1 Map of Kenya – Noting locations of Major Refugee Hosting Areas and General Climate (Source: USAID 2020)**

# **Chapter 1: An Introduction**

## **1.1 Introduction**

The politics of asylum in Africa are changing. In recent years we have seen countries in Africa taking increasingly different approaches to asylum policy. In contrast to past approaches, when African states were broadly aligned in implementing restrictive asylum policies, there are several examples that highlight a wider range of approaches taken within these policies. For example, there has been a wholesale shift in Tanzania's approach to asylum policy. The 2008 decision in Tanzania to grant citizenship to 220,000 Burundian refugees that had been in the country since 1972 gave way to the more recent agreement with the Burundian Government to repatriate refugees that fled to Tanzania in the wake of political violence in Burundi in 2015 (Milner 2014a; Milner 2014b; Human Rights Watch 2019). By contrast Uganda has recently developed a growing reputation as one of the world's most welcoming refugee host states. This reputation stems from the emphasis placed on refugee self-reliance programming in Uganda coupled with the provision of farmland on top of basic humanitarian assistance (Pincock et al. 2020). Uganda's acceptance of Afghan Refugees following the Taliban's capture of Kabul in late 2021 has further consolidated this reputation (Canal 2017; Odongo 2021). One need not be an expert to notice the different approaches to refugee policy taking hold across the African continent.

As the politics of asylum in Africa shift, so too must our analytical frameworks; however, the academic literature on this subject has stalled and remained relatively unaffected by these recent developments. The existing literature, its theoretical foundations, and analytical frameworks from the early 2000s remain stubbornly rooted in

monocausal assumptions of state vulnerability, centralized responses, and reliance on external donors. This literature, explored more thoroughly in Chapter Two, is unable to adequately explain the variation that is observed not only between individual states, but also within them. This is unlike the emerging body of literature that assesses the politics of asylum in the Middle East after the Syrian Civil War which began in 2011 (Betts et al. 2017; Mourad 2019). This emerging body of work has made significant strides in acknowledging the potential for and the integral role of sub-national variation in the implementation and interpretation of asylum policy. The literature on the politics of asylum in Africa has recently started to recognize of the potential for variation in how specific refugee populations may experience host state policies differently (Abdelaaty 2021). However, much of this discussion is still predicated on state-centric assumptions and does not account for many of the developments observed over the last decade. Our understanding of the politics of asylum in Africa must evolve in order to account for these recent policy changes. To do so will require a revised analytical toolkit capable of addressing contemporary policy variation, unburdened by the assumptions of the past. To contribute to this growing discussion, I ask *what explains contemporary sub-national variation in the politics of asylum in Africa's major refugee hosting states?*

While the potential scope of inter-state variation across a continent with 54 sovereign states is wide, the most difficult to assess is the variation that occurs within states. Internal variation is easily obfuscated at the national level through national policies, politics, and international commitments. It is here that I intend to make a key contribution to the literature, as I focus exclusively on the case of Kenya. Kenya is one of the most widely studied cases of protracted refugee situations and has been ubiquitous in much of

the research conducted on the politics of asylum in Africa after 1992 (see: Loescher 1992; Crisp 2000; Loescher and Milner 2006; Milner 2009; Lindley 2011; and Betts 2013a; Miller 2018a; Farah 2019; Abdelaaty 2021; Betts 2021). If scholarship on the politics of asylum in Africa is to evolve and more fully reflect the contemporary realities on the ground, Kenya is an ideal place from which to begin the discussion as the variation is stark.

This analysis diverges from existing country-level analyses of asylum policy in Africa by providing an in-case comparison at the sub-national level that examines the interpretation and implementation of Kenya's national asylum policy in its three major refugee hosting regions: the Dadaab refugee camps in Garissa County, the Kakuma refugee camps and the Kalobeyei Integrated Settlement in Turkana County, and the urban refugee population in Kenya's Capital City, Nairobi. By emphasizing the role of sub-national actors in determining outcomes for refugees and asylum seekers, this dissertation pushes back against the state-centric models that have prevailed in the academic discourse surrounding asylum policy in Africa (Milner 2009). In doing so, the roles of regional and local elites are brought into sharper focus – looking beyond the central government permits discussion and analysis of the different political opportunities and points of contestation that can emerge internally.

As I began my fieldwork in Nairobi in July 2019, it became clear that refugee policy in Kenya is not monolithic or easily generalizable. It was also evident that a strictly textual analysis of Kenya's 2006 *Refugees Act*, which espoused a highly centralized and encampment-based policy, was unable to explain the nuances of the politics of asylum in practice. This was noted in the very first interview conducted for this project; where Kenya's policy was described as one policy but as "policy existing in four corners"

(Interview with Kenya Program Coordinator, Danish Refugee Council 2019). This implies that the way policies are applied, interpreted, and experienced in Kenya are subject to significant internal variation. In Kenya, sub-national variation can be observed both through the gap between policy and practice as well as in the different practices that emerge *between* the major refugee hosting regions. Taking note of the lack of uniformity within a single national context leaves us with a stronger analytical argument for disaggregating the state into its sub-national components to examine the consistency with which policies are implemented over space and time.

I argue that sub-national variation in Kenya has been facilitated, at least in part, by the introduction of the 2010 Constitution and the introduction of devolved governance to the country. Replacing Kenya's previously highly centralized political structure with democratically accountable county governments is expected to influence the political calculus of local elites by creating space for more diverse policy options in these contexts. As the scope of what is politically possible widens, so too does the potential for mutually beneficial outcomes that support both the refugee and local host populations. The politics of devolution in Kenya, while a key facilitating factor, is not the sole influence on the outcomes observed in each major refugee hosting region. I further argue that additional contextual factors unique to each locale will shape and condition the limits of political possibilities in Kenya's politics of asylum.

## **1.2 Moving Beyond Past Assumptions**

Revisiting and problematizing the key assumptions that permeate much of the existing academic literature about the nature of the state in Africa forms a crucial first step in this analysis. Much of the work dating from the 1990s and early 2000s has emphasized that post-colonial state development in Africa has led to the propagation of political entities

that are extremely centralized and are defined by their vulnerability to external shocks as well as their reliance on international support for political legitimacy (Ayoob 1995; Clapham 1996). Challenging these assumptions and arguing that they no longer hold as consistent or given features of African states will illuminate the evolution of the political opportunity structures affecting internal political decision-making. Focusing specifically on the politics of asylum in Kenya permits an observation of changes within a single policy area allows for clearer inferences to be drawn about the state's movement away from the previously assumed policy trajectories (Milner 2009; Betts 2013a). To effectively move beyond these assumptions, it is important to acknowledge the power dynamics that have been baked into the politics of asylum.

Southern host states are presented as passive recipients of refugees and asylum seekers, while Northern states are viewed as more active arbiters of both donor funds and the gatekeepers of resettlement. The ontological assumptions grounding analyses of the politics of asylum in the global North are diametrically opposed to those focusing on the global South. This discrepancy is noteworthy here as it has functioned to broadly solidify the conceptual distinction between host states and donor states. In so doing, asymmetrical relationships between the global North and the global South are further reified through the dominant approaches to asylum. The policies of the global North are generally framed as policies of active exclusion, with the intent of employing a variety of domestic and international strategies aimed at preventing asylum seekers from arriving at northern borders. In characterizing themselves as donor states, these regimes of exclusion fund efforts to keep asylum seekers in their regions of origin (Chimni 2009; Slaughter and Crisp 2008; Betts 2021). Despite the provision of financial and other in-kind supports for programming and refugee assistance in the global South, the responsibility for these populations falls to those tasked with physically hosting them in their territories. Therefore, host states in the global South are left to manage increasingly protracted populations and often rely on inconsistent and often insufficient funding streams from the international

community. This status-quo has made long term development-oriented planning a challenge as much of the attention remains focused on the provision of emergency survival assistance.

Matthew Gibney's (2004) *The Ethics and Politics of Asylum* addresses the policy process in the liberal democratic countries of the global North and argues that they possess much more autonomy over the types of policies they adopt when contrasted to those in the global South. Alternatively, Mohammed Ayoob (1995) highlights how state survival is the primary concern of 'Third World States' and that nearly all policy decisions are driven by considerations about state and regime survival. Captured within Ayoob's (1995) discussion is the notion that 'Third World States,' particularly African states, are beholden to the interests of Western liberal democracies as they are assumed to be the primary benefactors supporting the survival of both the African state and their governments (Ayoob 1995; Herbst 2014). The observed tension between the above perspectives highlights the asymmetrical power dynamics between states in the global North and their Southern counterparts. However, recent empirical evidence from states in sub-Saharan Africa highlights how these dynamics have become increasingly complex over time. It is necessary to look within the state to examine which factors, actors, and interests influence the process of policy development, governance, and elite interactions with external stakeholders.

Manifestly the assumptions of the *inherent* vulnerability of African states and purely asymmetrical power relations between these states and the international system do not hold across the continent. This is evident in many contexts where states act in ways that are incongruent with their characterizations (see: Clapham 1996; Ayoob 1995; Bayart

2009; Herbst 2014). As these political realities continue to diverge from one another, it should be anticipated that more exceptions to such idealized standards are likely to emerge. Given this transition, making broad generalizations about a diverse set of actors is increasingly problematic. One need not look further than the notable transitions in government across the continent in recent years that have unseated stalwarts of post-colonial governance without inciting dramatic overhauls in policy positions, as might be expected if we take Betts' (2013a) notion of 'elite interests' at face value. There are larger structural factors conditioning the political behaviour of elites within the state that must be better accounted for.

Betts (2013a) also argues that the ways in which African states interact with the international system are primarily motivated by the interests of the elite echelons of central governments. However, there are recent examples of dramatic shifts of elites in leadership positions that have occurred without a corresponding change in the governing party.<sup>1</sup> The durability of the wider programmatic functions of African political parties and their continuity amidst unprecedented uncertainty suggests that these structures are both more durable and institutionalized and are not as tied to central elites than has been assumed in previous analyses. Furthermore, it supports the notion that a wider array of actors and interests can affect decisions of policy relevance aside from concerns of state survival, external influence, or the personal politics of the political core of the state.

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<sup>1</sup>For example, in South Africa, the end of Jacob Zuma's scandal plagued presidency in February 2018 after nine non-confidence votes from his own party, the African National Congress (ANC), occurred with relatively minor fanfare after months of speculation (Onishi 2018). Furthermore, the rapid expulsion of President Robert Mugabe from office in Zimbabwe, and subsequent instillation of Emmerson Mnangagwa as President occurred with an uncharacteristically high degree of efficiency (Ma 2017).

Kenya, in particular, has exhibited its ability to push back against international norms, as well as the will of international donor states and institutions. First, the invasion of Somalia (in collaboration with Ethiopia) by the Kenya Defence Force (KDF) in 2011 to counter the threat posed from Al-Shabaab insurgents was an outright rejection of the non-intervention clause of the Organization for African Unity (OAU) Charter and the revised 2009 African Union (AU) Non-Aggression and Common Defence Pact (Barkley 2015).<sup>2</sup> These agreements guarantee that member states will not violate the international legal sovereignty or the established territorial integrity of one another. Second, Kenya has been vocal in its desire to challenge the legitimacy of the International Criminal Court (ICC) which has brought and subsequently dropped charges of war crimes against high-level figures, including President Kenyatta and Deputy President Willian Ruto (Brown and Raddatz 2014; Simons and Gettleman 2016). Kenya has joined a chorus of African states in denouncing the ICC for anti-African bias in its proceedings, thus further challenging the legitimacy of the international judicial body.

Third, Kenya continues to periodically threaten to expel hundreds of thousands of Somali refugees residing in major camp and urban setting citing perceived national security threats as their main motivation (Mogire 2011; DW News 2021). Doing so would drastically disrupt refugee protection in Kenya as well as in neighbouring states. These threats have proven effective in enacting some changes on the part of international actors by increasing efforts to voluntarily repatriate as many Somali refugees as possible. Therefore, neglecting the domestic interests of elite actors at the national and sub-national levels would be problematic. These interests are pivotal in drafting and enforcing the

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<sup>2</sup> The OAU was replaced by the AU in 2001.

domestic policies that dictate the terms within which the external humanitarian actors must operate, which directly affects how interactions occur with key stakeholders and refugee populations in Kenya.

### **1.3 Context: Contribution to the Literature**

Through this dissertation, I seek to contribute to a growing academic discourse exploring the importance of the interactions between local political actors, national governments, and the development and implementation of asylum policy. Most of this existing work has emerged in the context of the Middle East through examinations of the responses of host states such as Lebanon and Jordan to Syrian refugees that have fled the Syrian civil since 2011. In considering similar dynamics in the context of Kenya, one of the most well-studied protracted refugee situations in Africa, this analysis underscore both the pervasiveness of these arguments in other contexts and the value in re-evaluating protracted refugee situations with a focus on local governance.

Alexander Betts, Ali Ali, and Fulya Memişoğlu (2017), writing in the context of the 2015 Syrian refugee crisis and its subsequent effects on major regional host states, argue for closer scrutiny and political analysis at all levels of governance. Lama Mourad (2019), in her analysis of Lebanon's response to the same issue, discusses the role that the *inaction* of the central government plays a significant role in structuring the options available to sub-national actors in developing their own responses. These analyses are important as they assist in identifying many of the contextual factors affecting the quality of refugee protection that are obfuscated when viewed solely from a statist perspective. Opening the analysis to the sub-national level permits an exploration into the decision of a central government to intervene or not, whether by virtue of choice or inability. This is a

critical variable in determining the degree of autonomy and the scope of political decision-making in specific sub-national contexts. I pick up here on one of the unexplored lines of inquiry identified by Mourad that there is value in understanding the “effects of different institutional structures of decentralization, including political and fiscal autonomy of municipalities, on the *scope* and *type* of responses of local authorities” (2019, 190 emphasis in original). The distinct institutional configuration of decentralization in Kenya and the unique relationships that have developed between Kenya’s political core and the refugee hosting regions on the margins form a critical component of this analysis and contribute to filling this gap in the literature.

Comparative studies that can contrast and track the differences in the “presence/absence, timing and thrust of public policy responses in different jurisdictions” are particularly well-suited to assess the role that central inaction can play in determining specific sub-national outcomes (McConnell and ‘t Hart 2019, 657). Therefore, I have constructed this comparative political analysis to engage in a cross-jurisdictional analysis within a single state. Doing so acknowledges the capacity of sub-national bodies, actors, and elites to affect the behaviours of individual African states and can assist in further explaining how and why the assumptions discussed above can no longer be applied indiscriminately.

Refugee protection and the receptiveness of host states in Africa has generally been characterized as occurring with relative homogeneity (Crisp 2000; Rutinwa 2002; Milner 2009). The observation of variation in refugee protection and asylum policy *between* states in Africa represents a significant shift away from these existing assumptions that African states act with uniformity in this space. The increased variation observed over the last decade will be used to support the position explored throughout Chapter Three and Four,

that this represents a new phase in the politics of asylum not only in Kenya – but across the continent.

Some states, such as Uganda, have chosen to adopt more inclusive approaches leading to solutions for refugees. Meanwhile others have opted to restrict the rights of refugees. This has often resulted in containment policies, as seen in Kenya, and instances of premature repatriation as evidenced by recent treatment of Burundian refugees in Tanzania. While inter-state variation such as this comprises one piece of this overarching puzzle, the main concern of this project is the emergence of variation *within* state borders that may be overlooked by generalizing policy outcomes within a single state. This focus contributes to the larger position that making such assumptions across state boundaries is increasingly problematic. In disaggregating the state to assess the internal mechanisms contributing to the development and implementation of asylum in Kenya, I am able to take advantage of Kenya's position as a prominently featured case-study (as described in section 1.4 below). The prominence of Kenya in the existing literature supports the process tracing that is required to fully map how these changes have occurred, how they relate to Kenya's political structure, and how they have shaped the role of the international humanitarian sector in the major refugee hosting areas of the state.

#### **1.4 Methodology**

I have chosen to engage in a single-country case study which operationalizes Kenya as what Eckstein (1975) called a ‘critical case’ through which theories and assumptions may be tested against a representative case. King, Keohane, and Verba (1994) challenge the value in Eckstein’s approach to single critical cases for three key reasons:

(1) very few explanations depend upon only one causal variable; to evaluate the impact of more than one explanatory variable, the investigator needs more than one implication observed; (2) measurement is difficult and not perfectly reliable; and (3) social reality is not reasonably treated as being produced by deterministic processes, so random error would appear even if measurement were perfect (King et al. 1994, 210).

I account for these critiques in two key ways, first this single-country case study has been divided into a comparative analysis of the relevant sub-national bodies (Garissa County, Turkana County, and Nairobi City County). Second, there are several explanatory (intervening) variables assessed within each sub-national context (i.e., critical inaction, refugee demographics, and local decision-making capacity). Sub-national analyses present a viable tool to assess the variation that occurs within state borders that may otherwise be hidden by purely state-level analyses. Assessing multiple explanatory variables across each context ensures a multifaceted research design capable of examining internal policy variation at the sub-national level.

Kenya is an extremely well-represented country-case in the existing academic literature. It has been heavily studied for its response to the ongoing presence of Somali refugees in the Dadaab camps since 1991, as well as large populations from South Sudan, the Democratic Republic of the Congo, Rwanda, Burundi, among others in the Kakuma camps (for example, see: Pincock et al. 2020; Betts 2013a; Milner 2009; Mogire 2011; Crisp 2003; Loescher and Milner 2005). It is possible to draw on the observations from this body of literature to trace developments and effects of the explanatory variables over time and their role in creating divergent outcomes at the sub-national level. This is particularly useful in exploring the effects that this localization has had on the politics of asylum in Kenya.

	<b>Approach to Asylum Policy</b>	<b>Political Devolution</b>	<b>Refugee Population</b>	<b>Core-Regional Relations</b>
<b>Garissa County</b>	Status-quo, emphasizing security concerns.	Strict adherence to the delegated authorities.	<ul style="list-style-type: none"> <li>Highly visible encampments.</li> <li>Strong ties to local host community through economic, cultural, and familial connections.</li> <li>Total Population: 230,137 (UNHCR 2021b)</li> </ul>	<ul style="list-style-type: none"> <li>Historic rooted in ethnic tensions between the central government and Kenya's ethnic Somali populations.</li> <li>Generally deprioritized on national development agenda(s).</li> </ul>
<b>Turkana County</b>	Liberal interpretation, emphasizing economic benefits	Stretching the limits of devolution and county jurisdiction.	<ul style="list-style-type: none"> <li>Highly visible encampments.</li> <li>Growing economic ties to host community through investment in local economic integration initiatives.</li> <li>Total Population: 220,913 (UNHCR 2021c).</li> </ul>	<ul style="list-style-type: none"> <li>Historically marginalized, treated as frontier region.</li> <li>Generally deprioritized on national development agenda(s).</li> </ul>
<b>Nairobi City County</b>	Blindness to the needs and status of urban refugees in the capital city.	Reabsorption of key county responsibilities by the central government.	<ul style="list-style-type: none"> <li>Less visible refugee population.</li> <li>Refugees are dispersed throughout the city.</li> <li>Economic ties exist between refugee and host communities as access to humanitarian support is restricted, and refugees must integrate into local economy.</li> <li>Total Population: 82,432 (UNHCR 2021a).<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>Political and economic core of the state.</li> <li>Overlapping jurisdictions between the central and county governments.</li> </ul>

**Table 1 – Variables Affecting Asylum Policy in Kenya’s Major Refugee Housing Areas**

By examining each major refugee hosting region, this project makes contemporary comparisons that account for the simultaneous variation between contexts *within* a single state, while also accounting for changes in the overarching political structure over time. Therefore, a deep analysis of the changes and variations that have emerged over time within

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<sup>3</sup> Population data is inclusive of urban refugee populations in Nairobi, Nakuru, and Mombasa.

the Kenyan context can yield significant inferences about the changing nature of the state in Africa and how increasingly diverse governance structures can affect both how decisions are made and how policies are implemented.

#### **1.4.1 Case-Study Analysis, Process Tracing, and Key-Informant Interviews**

This research employs a single case study methodology to address the project's core research question. According to Eckstein (1975), case studies are an effective mechanism for generating theory or challenging candidate theories. George and Bennett (2005, 19) have further identified four advantages of case study methods that make them particularly useful in the testing of hypotheses and the development of theory, "...their potential for achieving high conceptual validity; their strong procedures for fostering new hypotheses; their value as a useful means to closely examine the hypothesized role of causal mechanisms in the context of individual cases; and their capacity for addressing causal complexity" (George and Bennett 2005, 19). Case study methodology provides the basis to examine the perceived variation between the expectations laid out in the existing literature and the empirical evidence provided by assessing a critical case. This method permits the generation and testing of new hypotheses as research progresses and may uncover additional factors that either confirm or refute prior assumptions about the African state as exhibited through their asylum policies.

Engaging with a single country context divided into three sub-national sites of inquiry provides a unique opportunity to conduct a deeper analysis that is capable of accounting for new variables that may have been previously overlooked or undervalued. Diving into a single national context can provide detailed insight into the influence of specific actors, interests, and additional variables that might otherwise be overlooked in a

larger-n study. The systematic evaluation of the interactions between sub-national governance structures, the central government, and external actors across regions and over time is a key benefit of this approach that will reveal the intricacies of asylum policy and refugee management across all three major contexts. Furthermore, without such a cross-cutting research methodology it would not have been possible to discern that the expression of Kenya's asylum policy in each sub-national context are contingent on the level of inaction or intervention by the central government, the demographic composition of the refugee population, and the development of distinct sub-national political opportunity structures after the implementation of devolution.

Strict controlled comparisons were not a feasible or useful tool in assessing Kenya's asylum policy and its implementation processes at the sub-state level. Process tracing enabled this study to examine key intervening variables over time and assess their relationship to asylum policy and refugee protection practices in Kenya. By connecting data derived from digital archives, the existing academic scholarship across disciplinary boundaries in the social sciences, and the primary research obtained through semi-structured key-informant interviews, a more complete explanation of the observed sub-national variation in Kenya has emerged. The use of process tracing has made it possible to draw on a combination of data sources to provide an explanation of how the relevant processes have evolved and uncovered the new linkages and comparisons that provide well-rooted explanations for the observed phenomena (George and Bennett 2005).

Digital archival material and grey literature (i.e., official government policy documents, UNHCR reports, and non-governmental organizations' [NGOs] publications) have formed a key component of this research. In the lead-up to my fieldwork in 2019, a

wide array of grey literature was consulted to obtain the clearest possible picture of Kenyan politics and Kenya's response to the ongoing protracted refugee situation in the region. Reports and publications from key national and international NGOs were consulted to obtain a more holistic perspective on some of the key issues facing refugees and the refugee protection community in Kenya. These documents were particularly helpful in obtaining preliminary knowledge about the legal challenges and activist initiatives that have been undertaken by such organizations over time. Included in this initial scan were documents from: The Refugees Consortium of Kenya (RCK), Amnesty International, Human Rights Watch (HRW), the Norwegian Refugee Council (NRC), the Danish Refugee Council (DRC), and HIAS Kenya, among others. Policy documents and reports from the UNHCR and the Government of Kenya provided additional insight into the official strategies, commitments, policy frameworks, and the budgetary considerations guiding the realities of refugee protection and governance in Kenya.

In addition to creating a solid foundation of knowledge from which to embark on this project, these activities also made it possible to develop a preliminary list of interview contacts as well as the draft questions for key-informant interviews. As interviews materialized and were completed, informants were able to provide additional materials that were not included in my initial scan of what was available digitally. Without this component of the research, it would be impossible to adequately understand the relevant recent historical narratives that have played a role in shifting the parameters of political opportunity structures and sub-national policy outcomes.

Semi-structured key-informant interviews form a central component of process tracing; they allowed this research to uncover the factors, actors, and interests in each

setting that have led to or influenced the observed institutional changes. Key-informant interviews are also capable of highlighting issues and contexts that may not be captured in the secondary literature or in existing archival records. The interview-based research required for this analysis was conducted over the course of nine weeks (from July-September 2019) of fieldwork in Kenya as well as online remote interviews after returning to Canada in November 2019 and again in July 2021. Carleton University's Research Ethics Board provided the initial approval for this project in March 2019 and was renewed twice prior to completion, first in March 2020 and again in March 2021 (Ethics Protocol Clearance ID: Project #110237). The primary research conducted here has provided key insights into the decision-making processes of local and national elites in Kenya and assisted in better understanding the relationships between various levels of governance.

In total, 20 key-informant interviews were conducted between July 2019 and July 2021. The informants were distributed between the three major refugee hosting areas, with 11 in Nairobi, 4 in Kakuma, and 5 in Dadaab. Interviews with informants from Nairobi and Kakuma were conducted in person, and interviews with informants located in Dadaab were conducted remotely. Most of these interviews were secured through general e-mail inquiries directed to organizations, whereas others were secured through in person networking while in Kenya. Informants living Dadaab were introduced to me (via e-mail) by my doctoral supervisor, Dr. James Milner, as he had previously worked with them.<sup>4</sup> Additionally, many initial informants were able to connect me with other individuals that were interested in participating in this study.

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<sup>4</sup> This connection was required to ensure that adequate data-collection across each of Kenya's major refugee hosting regions, as significant barriers prohibited direct access to the Dadaab Refugee Camps in Garissa County (further explained in section 1.4.2 below).

Interviews were targeted to address the perceived variation in the application and implementation of Kenya's refugee and asylum policy between the designated hosting site in Kakuma and Dadaab as well as the undesignated urban spaces in which refugees reside (primarily in Nairobi).<sup>5</sup> Interviews were conducted with senior and mid-level government representatives, representatives from the UNHCR working in various capacities, and representatives of major international and national NGOs that feature prominently in Kenya's existing refugee protection regime. I also conducted interviews with individuals living in both Kakuma and Dadaab refugee camps that are involved in refugee-led community-based organizations. Many of the interviews that were conducted in Nairobi discussed the circumstances of all three major refugee hosting areas, as many of the operations are coordinated centrally through the head offices of organizations in Nairobi. In order to best protect informants from negative repercussions, I have elected to keep the identities of interviewees who do not occupy a public-facing or senior government position (e.g., an NGO Country Director, or a Deputy Head of a Government Agency) anonymous. Where possible, if identities have been withheld, I have included informants' position title and affiliated organization unless directed otherwise.

While I was able to conduct in-person interviews in Kakuma, ongoing security concerns in Garissa County and other areas in northeastern Kenya prevented travel to the Dadaab refugee camps. The security concerns highlighted in the areas of Kenya bordering Somalia include: the threat of kidnapping, robbery, and the repercussions of ongoing counter-terrorism initiatives in Somalia. Given these risks, the UNHCR and its implementing partners in Dadaab were not willing to facilitate research trips due to the

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<sup>5</sup> See Appendix A for sample interview questions.

high risks associated with such activity. Additionally, both Moi University (as the Kenyan institution hosting me for the duration of my fieldwork) and Carleton University were unwilling to assume the level of risk associated with travel to Garissa County due to the ongoing security threats noted above. This combination of risk-factors led me to seek out key-informants in Nairobi with direct knowledge of the Dadaab camps in addition to the pursuit of remote interviews with individuals living and working in Dadaab.

#### **1.4.2 Limitations**

The different levels of access between Garissa County, Turkana County, and Nairobi City County were somewhat limiting. However, most informants were able to respond to questions pertaining to multiple sub-national contexts, therefore interviews were not always exclusively focused on the location in which it took place. Through the combination of primary field data, previous scholarship, and contemporary grey literature I was able to obtain as complete an analysis as possible.

Additional limitations within this research design include the selection of a single country case. This makes it difficult to fully problematize past assumptions made regarding the ‘state’ in Africa, which makes developing a generalizable theory both impractical and unlikely. However, there is value in actively seeking out the degree of explanatory richness that is unique to a single case study rather than pursuing parsimonious theories with broad, far-reaching applicability (George and Bennett 2005). I actively make this trade-off to develop a thorough understanding of the causes and implications of the internal variation observed within Kenya between its major refugee hosting regions.

I am not arguing here that the case of Kenya will provide broad generalizable theoretical implications for all refugee hosting states in the global South or in Africa, as

there are many domestic specificities that will not be present or translatable to other contexts. However, it does represent the principle that domestic contexts matter and that the variation perceived at the sub-national level can have substantial influence on how the international refugee regime interacts with different levels of governance as well as the formal and informal levers of power. Additionally, it is possible to argue that different actors in different sub-state contexts may be subject to different political opportunity structures that change the calculus of their decision making and yield different levels of receptiveness to interventions from either above (through the international humanitarian sector) or below (through sub-national governments or refugee-run organizations). While these structures may not be analogous between different refugee hosting states, the potential for structural variation *within* the state remains relevant for the forward planning and future of the international refugee regime and the donor states that continue to drive much of the agenda.

## **1.5 Structure of the Dissertation**

Following this introductory chapter, Chapter Two further establishes and outlines the bodies of literatures consulted, defines key terms and concepts, and explains the theoretical parameters of this dissertation. The theoretical framework emphasizes the role that political opportunity structures have on defining and limiting the possible decisions of political elites at various levels of governance within Kenya and how these structures differ internally. From this point, the dissertation is structured to become increasingly narrow in focus. Beginning with establishing the ‘big picture’ of the politics of asylum at a continental level (Chapter Three), it then assesses how Kenya has been implicated in these politics of asylum over time (Chapter Four), this is followed by a targeted analysis of

Kenya's major refugee hosting regions and the marked policy variation observed in each context (Chapters Five, Six, and Seven).

Chapter Three builds on the theoretical framework developed in Chapter Two and applies a narrative for understanding the progression of the politics of asylum in Africa over time. This narrative builds directly upon the work of Bonaventure Rutinwa (2002), which had initially divided the history of asylum policy in Africa into two phases: the open-door policies of the 1960s through to the 1980s, and the restrictive policies of containment that emerged in the 1990s. This Chapter advances the argument that a third phase of asylum policy has begun on the continent, which has predominantly characterized by the inter- and intra-state variation as suggested above. I contend that this third phase of asylum policy began circa-2009, in the wake of the global financial crisis and ensuing macro-level shifts in international policy priorities.

Chapter Four begins applying the theoretical framework established in Chapter Two and the narrative in Chapter Three to the Kenyan context. This Chapter traces the high-level changes and shifts in Kenya's political environment, and directly connects each phase of Kenya's political development to the phases of asylum policy previously explained in Chapter Three. Crucially, this chapter lays the foundation for clearly understanding how Kenya's long held political opportunity structures that have undergone sufficient change to permit the observed sub-national variation in the interpretation and implementation asylum policy.

From here, Chapters Five through Seven examine each sub-national context in succession. While none of these sites at the sub-national level exist in isolation from one another, as they all exist within the same overarching policy framework under the same

central government, it is important to address each of them in turn. Doing so also provides room to unpack the specific political dynamics and governance arrangements unique to each sub-national context. By providing each major refugee hosting county its own chapter, this dissertation is well-positioned to assess variations across Kenya's layered political opportunity structures and provide explanations as to why outcomes have diverged.

Chapter Five looks to the Garissa County in Kenya's northeast, which is home to the Dadaab refugee camp complex. Garissa County has, over the last decade, maintained a tenuous status-quo that has been highly regulated by the central government's securitized approach to refugee governance. Chapter Six discusses the marked variation observed in the context of the Kenya's northwest Turkana County which possesses both the Kakuma refugee camps and the Kalobeyei integrated economic settlement. Here, we see a widely demilitarized approach that emphasizes the shared roles and responsibilities of refugee and host communities in a way that stretches Kenya's 2006 *Refugee Act* to the limits of interpretation. Chapter Seven examines the refugee population living in Kenya's political and economic capital, Nairobi City County. This Chapter uncovers the unique predicament of urban refugee populations in Kenya which stands in contrast with both Dadaab's strict enforcement of refugee law and Kakuma/Kalobeyei's more liberal interpretation of asylum policy. This distinction is due to the fact that, from an official point of view, Nairobi's large population of refugees go unrecognized, undercounted, and unassisted through official state channels. In this context, refugee protection is done on a more ad hoc and emergency basis administered by NGOs on the ground.

Chapter Eight draws comparisons and conclusions that contrast each of these sub-national contexts and highlights how key changes in local political opportunity structures

have affected the political calculus of local (county-level) elites and how they interact with their national and international counterparts in the realm of asylum policy and refugee protection. Further, this Chapter reiterates the argument that variation in asylum policy at the sub-national level cannot emerge without the prior existence of a devolved political structure, a sustained refugee presence, and the existence of uneven and asymmetrical relationships between different sub-national bodies and the central government. Additionally, the form of such variation is influenced by three key intervening variables: the action/inaction of the central government in sub-national affairs, the demographic composition of refugee populations, and the capacity for independent decision-making by county governments in Kenya. Chapter Eight concludes by presenting the potential implications of this analysis and by highlighting areas for future research.

Together, these chapters use the case of Kenya to develop the argument that the politics of asylum in Africa are changing and that these changes can be characterized not only by the presence of policy variation between states, but also by the presence of variation *within* them. My goal in this dissertation is to contribute to new thinking on the politics of asylum in Africa and elsewhere in the global South by highlighting the important roles that sub-national actors may assume in determining policy outcomes and highlighting the variables responsible for both facilitating and conditioning internal variation of asylum policy in refugee hosting states.

## **Chapter 2: Organizing Interdisciplinary Discussions and Framing an Analysis**

### **2.1 Introduction**

The puzzle at the centre of this research is that the politics of asylum in Africa are changing in ways that cannot be explained by the existing tools or frameworks that have been used to previously assess the topic. An updated analytical framework capable of reflecting such developments must clearly acknowledge both the contributions and the limitations of previous scholarship on the politics of asylum in Africa. One of the central assumptions underpinning much of this work is the maintenance of a relatively static view of the state in Africa. The salience of this assumption across disciplinary boundaries has created structural limitations that have resulted in an inability to account for potential explanations for state behaviour from below, or to account for the observed phenomenon of sub-national variation in the politics of asylum. An updated analytical framework will problematize and look beyond the assumptions that African statehood is defined by vulnerability, centralization, and external reliance, instead focusing on the unique political opportunity structures that have emerged between the central and sub-national levels.

The theoretical framing of this project is informed by discussions of political opportunity structures in comparative politics. Political opportunity structures form the structural boundaries of potential decisions or options that are available to political elites and in doing so, they effectively set the parameters of ‘the possible’ within a given political environment. Changes in political opportunity structures can create conditions that are either more favourable or more restrictive to policy innovation. These conditions can also affect the ability of new actors to enter the political arena as well as autonomy of both new

and existing actors. I suggest that multiple political opportunity structures can coexist at different levels of governance within a single state. These structures can be layered atop and/or alongside one another to facilitate different outcomes based on the specific structural constraints determining the limitations of elite decision-making capabilities.

Lastly, this chapter defines the key terms and concepts that are operationalized throughout this analysis. It is necessary to clearly define terms and concepts such as the state, refugees, asylum policy, and elites here as it provides a clear depiction of where these terms appear within the established literature and facilitates an assessment of if and how the overall form and function of these variables have shifted over time within Kenya's politics of asylum.

## **2.2 The Politics of Asylum: Crossing Disciplinary Boundaries**

This project aims to fill a gap in the literatures of forced migration and refugee studies and African comparative politics, which have not systematically engaged with the potential for sub-national variation in policy development, implementation, and experience. Focusing on the drivers of sub-national variation in asylum policy and refugee protection in Kenya presents a divergence from existing political science scholarship on the topic of asylum policy. Such work is primarily framed through international relations and global governance discourses due to the dominant role of the UNHCR and other international institutions in shaping analyses and outcomes. International relations as a discipline inherently focuses on ‘the international’ as its object of study and primarily employs social and political factors as they exist and are “stretched across national borders” (Abrahamsen 2017, 129).

The tools provided by comparative politics are better positioned to facilitate the inclusion of local and national political actors, interests, and institutions as key variables. While the UNHCR and other international NGOs are indeed dominant actors in Kenya, the primary focus here is how policy and governance diverge *within* the state and what factors and interests play a role in determining these outcomes. This project is primarily a work of African comparative politics that strives to explain the observed within-case variation in Kenya and argue that the role of sub-state actors should feature more prominently in our analysis of the politics of asylum and refugee protection.

### **2.2.1   Forced Migration and Refugee Studies**

To begin, this dissertation engages with, and contributes to the discipline of Forced Migration and Refugee Studies which, according to Chimni (2009), can be sub-divided into four distinct phases of development: 1914-1945; 1945-1982; 1982-2000; 2000-present. Throughout each of these phases, the types of questions it addresses and issues it focuses on are driven by the dominant issues, trends, and events in international politics. The emergent discipline in the early 20<sup>th</sup> Century focused on the inter-war period as a tool to find practical solutions to the problems facing states emerging from the First World War and yielded the first Office of the High Commissioner for Refugees within the League of Nations.

The second phase was heralded in with the mass displacement observed in Europe after the Second World War and the subsequent creation of more robust international institutions specifically tasked with addressing this issue: the International Refugee Organization and the UNHCR which succeeded it. Furthermore, it was during this time that both the 1951 Convention and the 1967 Protocol were established and set out state

responsibilities for those fitting the 1951 Convention definition of a ‘refugee.’ The third phase saw the development of refugee studies as a distinct academic discipline and Refugee Studies Programs were developed at major universities in the global North (e.g., Oxford University). Research during this period focused on growing instances of refugees moving from the global South to the North; however, much of the knowledge developed within this context worked to bolster and justify the emerging *non-entrée regime* which functioned to keep refugees from the global South within their regions of origin, rather than allowing entry into Northern countries (Chimni 2009).

The most recent developments in the discipline have broadened the analytical scope to include forced migration as the frame of reference. This permits an accounting of those individuals to which the Convention definition does not apply, such as internally displaced persons (IDPs), despite the legal distinctions and definitions remaining static. To reconcile this growing gap between what is studied and how policy frameworks exist, it is necessary to re-think how ‘asylum policy’ is defined and operationalized. However, the widening of the discipline has created much more latitude for critical analysis of state policies and behaviours, including of the global North’s *non-entrée regime* (Chimni 2009; Gammeltoft-Hansen 2014). Furthermore, there has been a larger move towards the inclusion of refugee ‘life-worlds’ and lived experience as a legitimate area of study which has facilitated more recent discussions on refugee participation as a means of improving policies, livelihoods, and general outcomes for refugees themselves.

Despite the widening of the scholarly agenda and the inclusion of perspectives from many different disciplines (e.g., Anthropology, Sociology, International Law, Political Science, International Relations, and Geography), two key shortcomings remain. First is

that the discipline faces significant barriers to access, as the location of knowledge production remains predominantly within the academic institutions of the global North. Second, even with an increased focus on the relevance of research acknowledging ‘the refugee’ as an individual, the discipline itself remains firmly rooted in its state-centrism. The interests and agendas of sovereign states remain salient, especially as analyses of the politics of asylum within this broader research program remain constructed upon notions of sovereign statehood, and the assumptions that have been built into these assessments particularly when the asymmetries between the global North and the global South are accounted for (Loescher 2001; Chimni 2009).

Of the key assumptions regarding African states that are built into assessments of their asylum policies is the notion that African governments remain beholden to the interests and desires of International Financial Institutions (IFIs) and other bilateral and multilateral lenders (Milner 2009; Landau 2006; Crisp 2000). This was less of a concern in the years following independence as rapid economic and political development across the continent served as a boon for stability. Refugee flows at this time were modest and easily managed by newly independent governments (Crisp 2000). Such conditions were fueled by sentiments of anti-colonialism and pan-Africanism and facilitated the development of an asylum system whereby host states assumed much of the logistical and economic responsibility for refugee populations yet remained supported by international assistance. The presumption of ‘burden sharing’ allowed for host states to provide the land necessary to house such populations, while the bulk of the supporting funding would come from external actors, usually by way of the UNHCR (Crisp 2000). However, the principles of this system have proven untenable in the long run, as refugee populations increased

exponentially, and international donors became fatigued by the prospect of protracted refugee situations.

Furthermore, the assumption of relative weakness and an absence of agency as highlighted in Ayoob (1995), become particularly evident when contrasted to the discussions of refugee policies in liberal democracies (Gibney 2004). For Gibney (2004), it is generally accepted that Western liberal democracies can actively choose to develop policies based on their own interests and values, whereas such choices are noticeably absent from discussions of their ‘developing’ counterparts in the global South. Additionally, it is assumed that African states will continue to host refugee populations on an indefinite basis due to their proximity to many areas of instability; therefore, removing much of the agency allotted to those Western states afforded the luxury of geographic distance from sources of insecurity. Phil Orchard (2014) explains this phenomenon as resulting from the framing of the post-Cold War international refugee regime. Orchard calls this phase the *non-entrée regime* as it, “continues to support the notion that refugees require protection but is equally based in the use of extraterritorial measures to limit the direct responsibilities for developed states toward refugees” (2014, 241).

Crisp (2000) further notes that the tendency to project disproportionate responsibility for the ‘burden’ of refugees onto developing host states, occurs in tandem with the absolution of responsibility by industrialized western states. In addition, when African states attempt to rationalize their own policies by precedents set by Western states, they are often met with hostility and a degree of public shaming by the very donor states and institutions that have scaled back their own commitments and contributions to the international refugee regime (Crisp 2000).

Throughout much of East and Southern Africa, most official refugee camps are located on the periphery of the host state's territory, at times relatively close to countries of origin (Loescher and Milner 2005). The peripheral areas of African states have historically lacked effective control by a central government; often leaving the bulk of the responsibilities for maintaining such camps to external partners. This has facilitated the increasing number of refugees that have ventured into urban centers in search of safer environments and better opportunities. Urban refugees are often explicitly excluded from accessing the resources and legal protections granted through the international refugee regime (Betts and Collier 2017). Preventing refugee access to assistance outside of camps changes the ways in which they interact with local populations, the host state, and the wider economy. It also effectively creates different standards of recognition of refugee status within a single state. This situation reinforces the relevance of various local interpretations of the norms underpinning the theory and practice of asylum policy. Host states are thereby able to retain the ability to apply sovereign authority and international responsibilities differently within their own borders based on inherently political considerations.

Finnemore and Sikkink (1998) provide a critique of political science's treatment of sovereignty as a norm unto itself, rather than as the expression of the collected function of many complimentary norms. Rethinking the conceptual foundations of sovereign statehood in this manner, provides an important starting point within the literature whereby debate about the state's existence as a single cohesive entity is enabled. Further to this argument Amitav Acharya's (2004) concept of norm localization, where cascading international norms interact with local contexts and adapt to fit within local logics of appropriateness, assists in explaining how macro-level normative, legal, and political developments are

translated and adapted into local contexts over time. From an empirical perspective, local administrators and organizations can interpret and apply a broad range of tactics to pursue their own locally defined agendas and political opportunity structures despite the limitations that may be prescribed at the national level. Acknowledging and accounting for variation within individual states based on local contexts and interpretations of policy norms allows for an innovative case-study design capable of accounting for variation across local sub-national contexts.

The works that have begun directly addressing the sub-national variation of asylum policy (Betts et. al. 2017; Mourad 2019) have initiated a conversation within the literature that enables research to move beyond many of the conceptual boundaries that have shaped and limited research into the politics of asylum in Africa (Ayoob 1995; Clapham 1996; Crisp 2000; Landau 2006; Milner 2009; Herbst 2014). Moving the focus away from uniform state-centric explanations enables assessment of how the specific ‘identities’ and ‘interests’ of political elites at *different* levels of governance can influence outcomes for both refugees and refugee-hosting communities (Betts et al. 2017).

Abdelaaty (2021) provides a bridge between Betts et al. (2017) and this analysis, as her analysis provides a direct comparison between the politics of asylum in the Middle East and North Africa (MENA) and the politics of asylum in (sub-Saharan) Africa. Through case studies on Turkey, Egypt, and Kenya, Abdelaaty (2021) has begun unpacking many of the key determinants shaping form and function of asylum policy in the global South over time. This study revealed the ongoing “relevance of sending country relations and ethnicity affinity in shaping group-specific asylum policies” in Kenya (Abdelaaty 2021, 181). Acknowledging the historic influence of ethnicity on influencing how specific

refugee populations are treated by Kenya's refugee regime begins the crucial work of looking beyond and below the state to achieve a more accurate understanding of how asylum policies are both developed and implemented. Abdelaaty's (2021) analysis of Kenya stops just short of the time-period being assessed in this dissertation, and as such it does not account for the effects of Kenya's 2010 Constitution and significant political restructuring that it brought through devolution. I pick up some of these major themes and carry them forward into this analysis, while also explicitly assessing how other political, economic, and historical variables interact with the new elites, bureaucracies, and institutions at the sub-national level.

### **2.2.2 African comparative politics**

While many of the problematic assumptions associated with the African state also permeate many analyses within African comparative politics, the discipline provides the theoretical and methodological space to account for historical, discursive, and material factors that have influenced the development and ongoing evolution of state institutions at various levels (Hacker 2004; Streeck and Thelen 2005; Pierson 2006; Mahoney and Thelen 2010; Capoccia 2016).

Mahoney and Thelen's (2010) framework to account for gradual institutional change within states is useful here. This work notes that such changes can occur across diverse spatial and temporal contexts, and that incorporating these theories of institutional change will assist in unpacking the causes of the sub-state variation in Kenya. Additionally, the works of Hacker (2004) and Pierson (2006) each note that large-scale public policies, such as the policies governing asylum, constitute institutions in and of themselves and warrant analysis as such. This is due to the propensity of such policies to shape, constrain,

and regulate human behaviour in the same manner as institutions. As this project endeavours to unpack the endogenous drivers of change in state asylum policies, this literature provides a solid foundation upon which to build.

Since the large-scale decolonization of the continent, states in Africa have maintained notable stability in their officially recognized borders and have placed an emphasis on sovereignty to strategically prevent inter-state conflicts (Organization for African Unity 1969). With few exceptions, this commitment to the preservation of independence-era borders has persisted in the face of internal tensions and upheaval (Herbst 2014). Pierre Englebert's (2009) analysis highlights the relationship between internal political violence and the integrity of the state. Through this analysis, Englebert (2009) notes the exceptional rarity of secessionist movements on the continent when compared to other regions. Most political violence in Africa generally avoids the promotion of secessionist agendas, even though minority populations on the peripheries of defunct states have ample motivation to seek such outcomes. Englebert (2009, 21) points to the example of Chad, as throughout its numerous political upheavals centered around who should lead the state, none of the belligerent groups doubted whether the Chadian state *ought* to exist as a cohesive whole. The relative stability of territorial claims and the perception of authority this provides to governments can assist in maintaining international acceptance and reinforcement of their authority.

Emphasizing the primacy of ‘the state’ by framing it within the rhetoric of state sovereignty and integrity limits the scope of analysis by preventing a critical examination of intra-state dynamics. Moving away from the use of state sovereignty as a cornerstone in determining analytical boundaries allows for a more natural integration of sub-national

political bodies into these discussions. Acknowledging that such sub-national entities can challenge the positions of the central government without threatening the integrity or survival of the state permits a more nuanced understanding of the internal dynamics influencing state behaviour beyond only those of state survival. This allows for more subtle processes of endogenous structural and institutional change, that may be otherwise overlooked in discussions and analyses of African statehood, to be accounted for.

Yet, discussions of security and state survival persist throughout the discipline. Christopher Clapham (1996) denotes this in the very title of his book: *Africa and the International System: The Politics of State Survival*, and by making state survival the focal point of his analysis, he actively assumes that the persistence of statehood and sovereignty on the continent faces existential threats to its security and survival. Similarly, Ayoob (1995) constructed his assessment of ‘Third World Security’ on the same assumption that the *de facto* position of African states in the international system is one of vulnerability, precarity, and uncertainty. After the end of the Cold War, there was a waning of security considerations as the central focus of relations between the ‘West’ and African states. Subsequent analyses from the 1990s onward were oriented towards unpacking questions of economic development, human rights, and democratization in Africa (Brown 2005; Levitsky and Way 2010; Hyden 2013).

Goran Hyden (2013) engages in a useful, albeit very generalized, discussion of core arguments about how the international community has approached the conversation of how best to ‘develop’ Africa. These approaches are summarized into three positions, “(1) Africa is best off left alone; (2) the rest of the world must show greater sympathy for the African predicament; and (3) Africa has no choice but to follow the prescription of the neoliberal

paradigm that currently dominates the international development agenda” (Hyden 2013, 256). None of these approaches, however, are adequate in their provision of supposed solutions to the issues faced across the continent.

The first position, that Africa is best left alone, is broken down into two differing schools of thought: the idealist and the postmodernist. Idealists (see: Rodney 2012 [1972]; Ayittey 1991) in this context argue that “Africa will and can develop through the effort of its own people” and that the lasting effects of colonialism stunted and displaced indigenous institutions (Hyden 2013, 256). In this context, developing the continent in an effective way would require such indigenous institutions to be allowed the requisite space to re-establish themselves without interference from external actors. The postmodernist school of thought (see: Chabal and Daloz 1999) argues that the political norms and practices in Africa do not align with what is observed elsewhere. Hyden elaborates that, “politics in Africa turns on the instrumentalization of disorder... [and leaders] benefit from this and have no real incentive to work for a more institutionalized order of society” (2013, 257). Maintaining that it is not worthwhile to engage with the continent as African leaders are disincentivized from pursuing ambitious economic and political development goals reinforces the narrative that neopatrimonialism and the politics of consumption (see: Bayart 2009) reign supreme (Hyden 2013, 258). Hyden (2013) is correct in emphasizing that neither of these approaches are feasible – nor even desirable – given the ever-increasing rate of global interdependence shaping realities on the ground.

Hyden’s (2013) second and third approaches regarding development rely on the notions of Africa’s asymmetric positionality in the international system from both the political and economic perspectives. The second perspective focuses in on the limited

capacity of individual African leaders to direct international political and development agendas and their bargaining positions have only deteriorated since the end of the Cold War's superpower politicking. Thus, leading to the conclusion that it is quite naïve to expect the international community to change its behaviour to better suit the needs of Africa. The argument that the pre-eminence and inescapability of the global neoliberal economic order has forced the hands of African states in acquiescing to the demands of IFIs and international donors in instituting the reforms tied to aid or assistance packages. The asymmetric bargaining positions in this context are also informed by the lack of understanding that many IFIs and donors have of the social and political realities that exist in many African states. Meaning that, reforms-in-policy do not necessarily equate to reforms-in-practice. The potential superficiality of the conditions tied to assistance only augments the potential for these types of development initiatives to become part of the problem and exacerbate the political and economic inequalities they aim to correct (Hyden 2013, 262).

There is more tension here with traditional notions of state sovereignty, given the tethering of international development assistance to internal political and economic reforms. National governments may perceive such conditional assistance as an infringement on their sovereignty, especially as donor states have been known to attempt to use their influence to push for political reforms in recipient states with varying degrees of success. However, as Stephen Brown and Rosalind Raddatz (2014) point out, these discussions tend to undervalue the agency of African states given the perception of an asymmetric relationship between donor and recipient states. In their analysis of Kenya, it is made clear that:

Kenyan politicians have been very adept at using Western officials' fear of violence and disorder and their reliance on cooperation in the realm of security, among other factors, to resist to a significant extent Western pressure for democratization and accountability for large-scale political violence. To a lesser extent, in the past decade, Kenyan leaders have also invoked the availability of support from China...to attempt dissuade Western donors from using political conditionality (Brown and Raddatz 2014, 46).

Kenya's strong connections and relationships with many major donor states, as well as regional and international security partners provide leverage in other areas that those in the political realm may operationalize to pursue their own agendas and limit the efficacy of such external protests. If leaders are able to navigate this game effectively and render many of the threats of external actors benign, then it is important to probe observations of significant structural and political change for potential endogenous sources in addition to the – at times artificially – amplified voices of the international donor community. Therefore, to advance our conceptual understanding of agency and decision-making within the state, it is necessary to both engage with the dominant frameworks of development and security, and to challenge them.

### **2.2.3 Navigating a Conceptual Path Forward**

Comparative politics has approached analyses of Africa through two dominant narratives: security and development. Under each of these umbrellas, there has been a preoccupation with questions of how state sovereignty in post-colonial Africa has shaped interactions between the continent and the wider international community. These analyses have predominantly approached the issue through broad generalizations that aim to identify the characteristics of 'African politics' (Clapham 1996; Chabal and Daloz 1999; Bayart 2009; Englebert 2009; Hyden 2013). While it is not contested here that there are elements of political life that are common across the continent, there is room within comparative

politics to look inside the sovereign state. Employing the comparative method to unpack the internal mechanisms of decision making is necessary as there is often more to the story than what can be discerned from observing the relationship between the state (as represented by the national/central government) and the international community.

As an interdisciplinary body of work, forced migration and refugee studies has focused on a wide array of topics from deep anthropological works of ethnography to structural analyses of international law and conventions. However, when addressing questions of politics, there has been a much tighter focus on the relationships between national governments – in both the global North and global South - and the international refugee regime (Gibney 2004; Milner 2009; Betts 2013a). In noting the immense inequalities in the principle of burden sharing between the global North and the global South, the existing literature does an excellent job in explaining that Southern states disproportionately host the majority of the world's refugees due to their proximity to the sources of large refugee movements (Milner 2009).

Meanwhile, states in the global North have aimed to uphold their *non-entrée regime* thereby limiting resettlement possibilities amidst ever tightening budgets for the UNHCR and its partners. As noted above, it is well documented that states in the global South use the same rhetorical devices employed by their counterparts in the global North as justification for limiting their involvement in the international refugee regime. Yet in doing so, they often face threats and backlash to a disproportionate degree, often from these same states in the global North (Gibney 2004). However, the literature is only beginning to grapple with the potential for sub-national variation in how policy is interpreted and implemented by influential actors other than the central government (Betts et al. 2017).

The gap identified through each of these bodies of work is that there is a shortage of scholarship that accounts for authoritative voices on issues of policy from actors other than the central government within the state. To address this, it is important to know how dominant narratives and conceptions of the state in Africa have shaped contemporary thinking about the international refugee regime. Yet, to facilitate a more holistic understanding of how specific outcomes are negotiated by a diverse array of actors at different levels of governance we must move beyond the *de facto* assumption that all decisions of consequence are filtered through centralized bureaucratic and political filters.

### **2.3 Analytical Framework: Political Opportunity Structures and Elite Decision-Making**

To facilitate this analysis, I draw on understandings of political opportunity structures as the basis of my analytical framework to explain sub-national variation in asylum practice in Kenya. Political opportunity structures are well suited to this task as they define the limits of what decisions are both possible and plausible within a given social, political, and historical context. These decisions can be made by key, or elite, actors within a given polity. Herbert Kitschelt, writing within the context of political protest movements, observes that “political opportunity structures are comprised of specific configurations of resources, institutional arrangements and historical precedents for social mobilization, which facilitate the development of protest movements in some instances and constrain them in others” (1986, 58). Beyond the context of large-scale social and protest movements, political opportunity structures have also been operationalized more recently into analytical frameworks assessing other forms of political phenomena including political participation, political organization, political mobilization, and decision-making (see:

Tarrow 1994; Malloy 2017; Vráblíková 2014). As political opportunity structures have become a key tool for comparative political analysis across a wide variety of policy spaces, they are also able to provide a framework from which we can better explain the differential implementation of national asylum policies at the sub-national level.

Sidney Tarrow and Charles Tilly, in their discussion of the broader application political opportunity structures as an analytical tool in comparative politics, describe these phenomena as “the features of regimes and institutions that facilitate or inhibit a political actor’s collective action and to changes in those features” (2007, 440). As they define the *structural* parameters within which elites deliberate on issues and reach decisions. Tarrow and Tilly outline the characteristics that can define and redefine the parameters of elite decision-making:

the multiplicity of independent centers [*sic*] of power within the regime; the relative closure or openness to new actors; the instability of stability of current political alignments; the availability of influential allies or supporters; the extent to which the regime facilitates collective claim making; [and] decisive changes in these properties (Tarrow and Tilly 2007, 440).

This list, while not exhaustive, provides a solid foundation on which to construct an analysis of how contentious elite interests may shape and reshape policy frameworks. It is especially important to better our understanding of how such potential structural changes at one level of analysis or governance can have unintended or unanticipated effects at other levels. Kenya’s implementation of devolved governance has facilitated the creation of a ‘multiplicity of independent centres of power,’ which has subsequently increased access for new political actors to emerge at the sub-national level (even in opposition to the central government) and has thereby further widened the potential networks of support and patronage that can influence decision making at different levels of governance.

According to Sidney Tarrow (1994), changing opportunities must be observed alongside more stable structural components of the state. Included in this are the “strength or weakness of the state, the forms of repressions employed by it and the nature of the party system – all of which condition collective action” (Tarrow 1994, 81-82). Observations along these lines assist in denoting how much space has been created within the state for new types of political contestation, protest movements, and/or opportunities to emerge. The more space that is created for involvement in these areas permits a diffusion of collective action throughout new and existing social networks at various levels. This inherently creates new incentive structures for elite actors and decision makers at multiple levels of governance. In a country like Kenya, where social, political, and patronage networks are key features of political life, understanding the creation and evolution of such incentive structures are essential to unpacking how decisions are made in both the core and peripheral areas of the state. In doing so, we can develop a clearer picture of the opportunity structures dictating what is both politically possible and plausible in a given policy space.

Further to this discussion of what is politically possible in Kenya, political opportunity structures not only determine the scope or content of potential policy options available to a particular actor, but also determine whether an agenda of action or inaction is ultimately pursued. This initial decision that a political actor must make, whether to act or not, may appear innocuous at first glance – but it is integral to understanding the subsequent structures that determine the scope of action for a particular entity. McConnell and ‘t Hart define ‘policy inaction’ as, “*an instance and/or pattern of non-intervention by individual policymakers, public organizations, governments or policy networks in relation to an issue within and potentially within their jurisdiction and where other plausible*

*potential policy interventions did not take place*” (2019, 648, emphasis in original). In this definition, policy actors can include individuals, public organizations, governments, and political networks; therefore, it can provide a foundation to assess how actors may employ *inaction* intentionally and strategically to achieve specific outcomes or to align with a particular ideology.

Adopting a wide scope for who may be a ‘policy actor,’ allows for a deeper assessment of decisions affecting issues across jurisdictional boundaries or occupying a contested political space (McConnell and ‘t Hart 2019). For example, should the central government decide to pursue a policy of inaction on a particular issue, its departments and agencies that may claim jurisdiction over this policy space will be considerably more restricted in their ability to act, whereas other actors outside of government may be emboldened to step in to fill the void. Lama Mourad (2019) addresses this issue specifically in her analysis of the localization of asylum policy in Lebanon after the arrival of Syrian refugees in 2011.

Mourad (2019, 66) argues that the inaction of central authorities in Lebanon in response to the mass-arrivals of Syrian refugees in the country permitted a quasi-legitimizing process for the *ad hoc* and potentially illegal actions of Lebanon’s municipalities to take place. In this instance, inaction at the centre formed what she dubbed a macro-level factor in permitting the emergence of sub-national variation. This means that it created the precipitating conditions that enabled actions at the “meso and micro levels” to further exacerbate observed sub-national variation in the implementation of asylum policy (Mourad 2019, 66). I adapt this framework to the context of Kenya to explain the sub-national variation observed between its major refugee hosting regions. I contend that

the decisions of the central government, specifically whether or not it decides to wield its legislated jurisdiction by acting, creates significant down-stream effects on the development of sub-national political opportunity structures and the extent to which they can deviate from that of the central government.

When discussing the parameters of decision-making in regarding asylum policy in liberal democratic states, Matthew Gibney (2004) has noted the evolution of how the political risks associated with open and inclusive asylum policies have evolved over time. It is argued that liberal states must strike a balance between upholding their commitments to the international norms associated with the international refugee regime (i.e. *non-refoulement*) and avoiding significant political backlash domestically. These political elites must account for not only the security and well-being of their populations, but also for the will of the people as dictated through the mandates provided by regular electoral processes. Meaning that, “how much any state – or to be more specific, any *government* – can do for refugees will be determined largely by the possibilities afforded by its domestic political environment, and that environment will be shaped by a changing array of social, institutional, and economic forces, both domestic and international in origin” (Gibney 2004, 213). In other words, the political opportunity structures within a specific state or jurisdiction dictate policy trajectories that are both possible *and* plausible on a specific issue. The relevance of such political determinants of asylum are no longer exclusively relevant to the industrialized liberal democracies of the global North, as domestic and indeed increasingly local political concerns have become integral to understanding the asylum policies of host states in the global South.

### **2.3.1 Structural and Conditioning Factors**

As noted above, there are several key elements that affect the degree to which political opportunity structures can be widened or narrowed. Within the context of this analysis, there are three structural and three conditional factors that are integral to understanding the degree to which the political opportunity structures affecting the politics of asylum may vary between sub-national entities. The first structural factor is the presence of devolved governance. The implementation of competitive democratic processes at the county level have created multiple audiences able to adjudicate decisions made by sub-national governments; namely, their counterparts in the central government, local political competitors, and the voting public. This has affected the ability of sub-national actors and elites to assess the risks associated with their decision-making. Furthermore, the expansion of the formal structures of political power provides more opportunities for involvement at various stages of the political decision-making process. Devolved governance increases the potential for different and context contingent outcomes at the sub-national level.

The second structural factor is the (officially sanctioned) presence of protracted refugee situations. The presence of a high concentration of refugees within a specific sub-national jurisdiction for a protracted period of time, is a key *a priori* factor in determining whether asylum policy will factor into the political priorities and influence decision-making at the sub-national level. In areas where refugees are only a far-flung or abstract concern, asylum policy and its implications will understandably be deprioritized or fully absent from sub-national priorities. The contrast between the centrality of protracted refugee situations to policy development in some sub-national contexts, and its outright

absence in others further highlights the potential for variation in the political agendas at the sub-national level due to immense diversity of concerns at the local level.

The third structural factor is the presence of asymmetrical relationships between the political core and periphery of the state. Further to this point, the asymmetry is not isolated to just the relationship with the central government but also how these relationships vary across sub-national jurisdictions. For example, different counties in Kenya may have different types of relationships with the central government based on a myriad of factors, such as historic relationships, ethnic politics, or resource distribution.

The first conditional factor is the degree of interest, involvement, and influence that the political core exerts over sub-national governments. As discussed above, the central government's decisions regarding whether to act or to remain absent from specific regions and policy spaces significantly shapes the character of the asymmetry between sub-national governments. The level of influence that is exerted from the centre through social, political, partisan, and patronage networks will either create or constrain opportunities for collective action at lower levels of governance. Furthermore, where central intervention is low or absent, there is a greater likelihood that sub-national governments will be able to stretch the limits of the relevant political opportunity structures working to determine what is politically possible. This supports Tarrow and Tilly's (2014) argument that the availability of influential allies and supporters will affect the parameters of decision-making; as networks become more diverse and diffuse, key actors at the sub-national level are more capable to forge new relationships that can either increase or decrease their capabilities.

The second conditional factor is the demographic composition of the refugee population within a designated area. Much as Abdelaaty (2021) argues that ethnic politics

affect the development of group-specific asylum policies, this analysis agrees that refugees' ethnic identities and countries of origin can play a key role in shaping how involved or uninvolved the central government is in a particular refugee hosting area. This also significantly affects the way in which refugees are framed and depicted in national narratives and discussions. In Kenya, where Somali refugees are often described as security threats and a drain on limited state resources, other populations may not be treated as such. Where refugee populations are more diverse in ethnicity and origin, the likelihood of the central government 'scapegoating' such populations diminish. The salience of these national narratives affects the relative openness of local political opportunity structures, especially where the central government applies additional limitations by invoking national security concerns.

The third conditional factor is the capacity of sub-national governments to make decisions autonomously. The ability of a sub-national government to exercise jurisdiction over the devolved responsibilities for which it is constitutionally authorized is determined in part by its relationship to the political core, and by the tenacity and political acumen of local political elites. If sub-national governments are able to fully exercise the agency afforded to them, then there is a higher likelihood that elites at this level of governance will be able to play a more significant role in shaping the limits and parameters of the political opportunity structure they operate within.

### **2.3.2 Layered Political Opportunity Structures**

I contend that to understand how the above conditioning factors are arranged and rearranged at the level of sub-national governance in Kenya, viewing political opportunity structures as layered entities is necessary. Borrowing this language from Mahoney and

Thelen's (2010) discussion of institutional change is helpful to not only illustrate that political opportunity structures – like political institutions – are susceptible to change over time, but they can also exist simultaneously in multiple forms at multiple levels of governance within the same national context. Like Amitav Acharya's (2004) discussion of norm localization, political opportunity structures are also capable of adapting to local contexts, logics of appropriateness, as well as to the various arrangements of the conditioning factors outlined above.

Conceiving of political opportunity structures as 'layered' both atop and alongside one another can facilitate a clearer understanding of how the political calculus of elite actors can vary at both different levels of governance (i.e., central versus county governments), as well as between actors operating at the same level, but in different contexts (i.e., variation between counties). Therefore, this framework permits the conduct of a comparative analysis that addresses the ability that political opportunities and structural conditions have in shaping policy development, implementation, and experience differently within a single national context.

## **2.4 Key Terms and Concepts**

Before proceeding further with this argument, it is important to identify and define the key terms and concepts that will be operationalized throughout this analysis. This section provides such definitions, positions them within the existing academic literature and explains how they will be used going forward in this dissertation.

### **2.4.1 The State**

Most attempts to define the state begin with Max Weber's criteria, that the state is embodied by those who wield the monopoly over the legitimate use of force within a

specified territorial boundary. While this provides a decent point of departure, it does not provide sufficient detail for the execution of a multi-level comparative analysis. As this analysis problematizes dominant assumptions about the nature of the state in Africa, it is a worthwhile endeavour to unpack what exactly is meant by the state and how it has been represented in the existing literature.

Emma Haddad (2008, 48) describes the sovereign state as “a political entity which is treated as a sovereign by other sovereign states...[and] the principle of sovereignty demands that states must recognise one another as equally sovereign.” A central component of this perspective is the ability to delineate between individual states through territorial boundaries within which no outside state is permitted nor able to interfere. Ernst Gellner (2008, 4) criticized the Weberian monopoly over the legitimate use of force by noting that it is inherently Eurocentric and assumes the existence of a well-centralized Western style state. However, Gellner (2008, 4) also constructed his analysis on the foundation provided by Weber to note that, “the state is that institution or set of institutions specifically concerned with the enforcement of order...[and] exists where specialized order enforcing agencies, such as police forces and courts have separated out from the rest of social life.” Here, Gellner (2008) moves his definition in the appropriate direction for African states, as it acknowledges that the state can be perceived in different ways depending on how society is ordered as well as *if* and *how* that order is enforced.

Ayoob (1995) also presents a more refined analysis of the state beyond the opaque ‘billiard balls’ advanced by realist and neorealist international relations scholars (Morgenthau 1993[1948]; Waltz 1979; Mearsheimer 2014) by highlighting characteristics unique to states in the global South, or as labelled by Ayoob (1995): ‘Third World States.’

Ayoob (1995) argues that state survival is the primary concern of ‘Third World States’ and that all policy decisions can be viewed as being primarily driven by considerations about the survival and continuity of the state and in many cases, the governing regime. Captured within this discussion is the notion that ‘Third World States,’ and particularly African states, are beholden to the interests of western liberal democracies as they are assumed to be the primary benefactors supporting the survival and legitimacy of African states (Ayoob 1995; Herbst 2014). These political elites (those holding prominent positions in a state’s government, political party/parties, or bureaucratic institutions) are perceived here to have internalized the dominant values of the Westphalian state system because of an acute sense of internal and external insecurities (Ayoob 1995). This perspective maintains that the external recognition sovereignty remains essential to the survival of the state *and* the governing regime.

While Ayoob (1995) contributes a degree of nuance to our understanding of how states may prioritize security differently, his analysis maintains and reinforces a relatively narrow understanding of the state. However, broader conceptions of the state can account for the iterative processes of state formation, development, and the maintenance of the state’s composite institutions. Buzan (1991, 60) notes that the state has to be conceptualized broadly enough to encompass not only the relationship between the internal dynamics of individual territory-government-society packages, but also the larger systemic dynamics of the way in which these packages relate to each other.” Buzan (1991, 69) furthers this by noting that the state emerges through the unique interactions between the idea of the state, the physical base (territory) of the state, and the institutional expression of the state. By adopting a relational understanding of the state, we can unpack how the

unique interactions between a state's constituent institutions manifest in specific forms of governance. These elements are mutually constituted through an ongoing iterative processes of state development; therefore, to accurately assess the nature of any specific state or grouping of states it is important to engage in an analysis at multiple levels in order to capture as much of these dynamic processes as possible.

In any discussion of African states, one must address the reductive generalizations that have been applied to independent entities in the international system. One of the more problematic generalizations that must be probed further is that of neopatrimonialism. Broadly, neopatrimonialism refers to the emphasis on the coexistence and coevolution of patron-client relationships alongside the development of a state's official bureaucratic and administrative infrastructures (Bach 2011, 277). Daniel Bach (2011) points to two variations on neopatrimonialism: 'regulated neopatrimonialism' and 'predatory neopatrimonialism.' The former is identified by an "emphasis laid on cooptation and redistribution, rather than coercion, [which] contributes to a culture of mutual accommodation" (Bach 2011, 278). Predatory forms of patrimonialism further blur the line between the office and the officeholder, leading personal rule over the state and its resources to become toxic to the ongoing function of its bureaucratic and administrative institutions. The latter scenario is often viewed as a sign of the collapse or failure of the state itself (Médard 1991; Bach 2011). In such instances, the elites that benefit from predatory neopatrimonial structures have, through their 'personalization' of politics, in effect captured key state institutions to further their own interests.

Zubairu Wai (2018) makes a nuanced and compelling argument against using the neopatrimonial framework as the sole means of assessing the perceived successes and failures of African states. Wai notes that:

Neopatrimonialism has become a catch-all conceptual staple in Africanist scholarship; it is used to explain every perceived problem in African states and societies – corruption, institutional decay, communication breakdown, authoritarian rule, development failure, economic dysfunction, poor growth, civil and political unrest and, especially armed conflicts, and so forth. It depicts states in Africa as undifferentiated and schizophrenic political formation in the sense that rational-bureaucratic institutions formally exist but function through patrimonial rules so that there is limited or no distinction between office and officeholder. While these states have all the formal outward trappings of modern political institutions, they, in reality, function as anachronistic and backward organizations defined by interpersonal rules and patron-client relationships (2018, 36).

In a sense, its attempt to make broad generalizations about political life on the African continent leads the concept of neopatrimonialism to become analytically vacuous. Furthermore, Wai's argument critiques both the state-centric and society-centric approaches to explaining neopatrimonial relationships. Such explanations either wholly blame elite desires to control resources through predatory politics or blame the societal norms and practices implicit in an imagined (and often homogenized) 'African society' (Wai 2018). Both approaches assume the absence of rational action on behalf of African states, elites, and institutions; meanwhile reinforcing the 'Eurocentric tropes' that paint Africa as being in a constant state of vulnerability and fragility. This perspective perpetuates the perception that Africa represents the antithesis of an idealized concept of development.

Such tropes are often echoed in the literature discussing how, when, and why states fail (Jackson 1990; Clapham 1996; Gros 1996; Carment 2003; Bates 2008). While there are varying degrees of sophistication amongst these discussions, most cite a failure of the

state to live up to established expectations of ‘stateness’ – which often carries the implicit assumption that the liberal Western state embodies an ideal type. Oftentimes state failure or collapse is characterized by state mechanisms no longer being able to provide essential goods (food, shelter, security, etc.) to the general population, which leads to a breakdown of the state’s perceived legitimacy.

Betts notes that there is some value to this in the context of forced migration as it may provide some explanatory power to better understand the “changing nature of displacement and the adequacy or inadequacy of existing international protection responses when the assumed relationship between state and citizen breaks down and states are unable or unwilling to provide for the rights of their citizens” (2013b, 4). This reinforces the importance of understanding the state, not as a rigid set of criteria centered around the state’s coercive properties as is the case in most Weberian frameworks, nor as a binary understanding of the Western ideal versus the so-called fragile states of the global South. Instead, viewing the state in a more fluid and iterative fashion, as advanced by Buzan (1991) makes it possible to account for the changing relationships and dynamics that emerge from the ongoing interactions between elites, civil society, the state, and the international system.

#### **2.4.2 Elites**

‘Elites’ generally refer to those that possess the power and authority to set the agenda and decide which issues are prioritized within a given context. Elites are important to define here because of the critical role they play in operationalizing local interests and turning them into both political rhetoric and policy. In this analysis, I use the term ‘elites’ to capture those with a meaningful capacity to influence decision making or decision-

making processes at the political level. ‘Elites’ vary between contexts but can include: elected officials, senior bureaucrats, members of the business community, and local/community level representatives or organizers. Recent advances in the ability of local elites to gain influence and control over county governments in Kenya through legitimate democratic means must not be overlooked. Sub-national governments that often represent parties in opposition to the central government in Nairobi can establish their own priorities and agendas within their jurisdictions. Acknowledging such local capacity is critical to fully understanding how Kenya’s contemporary political structures operate.

Various elites can coexist simultaneously within specific states in different spheres of influence. In the context of this analysis, elites that coexist at multiple levels of governance in Kenya are likely to have a stake in how asylum policies are developed and implemented. The interests of political elites can differ or be complimentary to their counterparts in the business or civil society sectors. These interests shape how domestic elites may respond to the needs, goals, and incentives of the international refugee regime. For example, Betts (2013a, 191) notes that “the kinds of incentives that have matters at the domestic level have included public opinion, electoral politics, the role of civil society, and business interests. At the international level, incentives have come from international financial assistance and the importance of international legitimacy.”

For an incumbent governing regime to maintain a prominent political position, the assistance of elites in the civil society or business spheres may be required. Internal negotiations within and between these alternative domestic spheres can alter policy outcomes and shape interactions between sub-state, state, and international actors, especially when varying and often competing interests are accounted for. Such negotiations

are often conducted against a contextual backdrop that may limit the range of possible decisions and outcomes, which changes the context in which a given elite or group of elites make decisions.

#### **2.4.3 Institutions and Institutional Change**

Douglas North (1990, 3) defines institutions as “the rules of the game in a society or, more generally...the humanly devised constraints that shape human interaction.” Institutions in this context are responsible for managing the various functions of the state. Institutions are deeply embedded in the structural composition of the state and serve as an ordering mechanism for both the distribution of responsibilities as well as authority. Much of the scholarship in comparative politics unpacks the ways in which institutions can change over time. According to James Mahoney and Kathleen Thelen (2010), there are four main ways in which institutions can change gradually over time. These include the supplantation of existing institutions with new ones through *displacement*; the addition of new institutional elements on top of existing institutional foundations through *layering*; allowing institutions and/or institutional components to become obsolete through *drift*; and the amalgamation of multiple institutions or institutional components through *convergence* (Mahoney and Thelen 2010).

Finnemore and Sikkink’s (1998, 891) claim that institutions are identifiable as ‘norm aggregates’ allow for each of these concepts to be opened up to an analysis of their composite norms. By regarding institutions as more than just the sum of their parts, we can better account for processes of endogenously driven change rather than relying solely on explanations predicated on exogenous shocks that disrupt institutional stability (Mahoney and Thelen 2010; Thelen 2006). While their ability to condition behaviour and generate

predictable outcomes for constituent units (states) is not in question here, it is important to acknowledge that regimes are not solely the result of top-down decision-making. Like Acharya's (2004) discussion of 'norm localization,' regimes and their composite normative elements do not manifest in a vacuum but encounter extremely dynamic and heavily contested political environments.

By operationalizing these processes that offer explanations of both domestic institutional change as well as the normative pressures that promote the diffusion of dominant international institutional arrangements into new contexts, we are better equipped to address how institutions may change across both space *and* time. Consequently, operationalizing this conceptualization of institutional change allows for an accounting of variation within the same global institution in *different* spatial contexts at the *same* time (Betts 2013a, 35). I wish to push this one step further and argue that variation may not only exist within an international institution writ large, but variation and the indicators of change may be perceived simultaneously within individual national contexts. Additionally, these approaches allow for the acknowledgement that, in some contexts, elites have captured institutions and have been able to manipulate their internal dynamics to better serve their specific interests.

#### **2.4.4 Refugees and the International Refugee Regime**

The most widely recognized understanding of the term refugee is articulated in the 1951 Convention Relating to the Status of Refugees (hereafter, 'The 1951 Convention'), which stipulates that the term 'refugee' shall apply to anyone that:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having

a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNHCR 1951).

The initial criteria applied only to those refugees affected by events prior to 1 January 1951; however, situations producing new refugee populations continued to emerge well beyond this date. It was recognized through the 1967 Protocol Relating to the Status of Refugees (hereafter, ‘The 1967 Protocol’),<sup>6</sup> and the 1969 OAU Charter. The 1951 Convention that the category should not be temporally bound and thus became much more fluid and forward looking in its applicability to new and unanticipated situations. These core pieces of international law also form the institutional mechanisms through which the international refugee regime functions.

Regional bodies have also exercised agency in determining how the 1951 Convention’s baseline definition will be applied within their jurisdictions. The OAU catered their conception of the term refugee to better suit the types of situations that had emerged in a post-colonial Africa. Article 1.2 of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which extended the definition of a refugee to include:

...every person who, owing to external aggression, occupation, foreign domination or events seriously *disturbing public order* in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (OAU 1969, 3, emphasis added).

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<sup>6</sup> The 1967 Protocol expanded the geographic applicability of the 1951 Convention beyond the borders of Europe.

These addendums to The 1951 Convention are examples of the expanding international refugee regime, as the parameters of the definition changed to incorporate more individuals in a greater variety of circumstances (Betts 2013a).

Extending the applicable timeframe allowed for this regime to extend into the future, while the OAU provided a regionally oriented expansion of the context in which the term ‘refugee’ applies. Including ‘events seriously disturbing public order’ to the list made it possible for large, forced movements of persons to be granted *prima facie* recognition as refugees within African host states (Organization for African Unity 1969). However, these large-scale initiatives were primarily top-down in nature, meaning that states (and their governing elites) negotiated these expansions of the international refugee regime at the international level. It is important to acknowledge that change is not only driven from the top and by accounting for variation within and between specific national contexts, we can take the actions of local elites and refugee hosting communities into consideration when discussing how asylum policies are susceptible to change and where these changes are likely to occur.

Betts (2013a) addresses the potential malleability and adaptability of the international refugee regime through his concept of ‘regime stretching.’ Regime stretching is defined as, “the degree to which the scope of a regime at the national or local level takes on tasks that deviate from those prescribed at the global level” (Betts 2013a, 34). Conceptually, regime stretching accounts for the adaptation that can occur at the national and local levels. Stretching can occur in two different directions, either consistent or inconsistent with the core objectives mandated from the (internationally situated) centre (Betts 2013a). I argue that the case of Kenya shows that the implementation of international

institutions or their composite norms does not end at the national level, but that there is an ongoing contestation at the sub-national level that results in significant internal variation. Hence, ‘regime stretching’ has the potential to continue within the state, at the sub-national levels when different sets and combinations of elite actors interact with these broad international structures. This creates the potential for the appearance of different implementation structures for the same international institution – in this case the international refugee regime – within a single state.

#### **2.4.5 Asylum Policy**

Milner (2009) notes that a state’s asylum policy is represented by the set of actions, decisions, and rules that organize the officially sanctioned responses to those individuals or groups of individuals that arrive in a given state’s territory claiming to be refugees. States must therefore, “decide how to respond to these claims and how to accommodate refugees for the duration of their exile” (Milner 2009, 8). While asylum policy can differ in an operational manner between states, its unifying subject-matter maintains the formal and informal connections of such domestic policy responses to the arrival of refugees and asylum seekers.

Asylum policy and the provision of refugee status provided therein, serves to guarantee the specific rights and protections enshrined within the international refugee regime to asylum seekers and refugees. Paramount to that is the right of *non-refoulement* – or the right of a refugee not to be forcibly returned to their state of origin. It is also constructed on several key principles that are key to the proper functioning of the regime, such as non-discrimination and non-penalization. In addition to not being forcibly returned to their country of origin, refugees should not be subject to policies or practices that

actively target them based on their status as either refugees or asylum-seekers. Also enshrined in the regime are the rights that are aimed at ensuring a basic standard of living for refugees. To enable this, signatory states agree that refugees shall receive proper documentation confirming their legal status, access to national judicial bodies and the protections located therein, as well as the ability to pursue gainful employment and education (UNHCR 2010).

Treating asylum policy as an institution unto itself allows for the above concepts to be married in a cohesive analytical framework as a collection of rules and norms within the state regulating specific forms/areas of action. Pierson (2006) emphasizes the importance of applying institutional analysis to large-scale public policies, while also advocating for a research agenda that assists in unpacking the effects of policy, its relationship to public opinion, and the drivers of endogenous change over time. Qualifying asylum policy as an institution provides the conceptual tools necessary to trace how structural change can create new areas of political contestation through which new actors and interests are able to play a role in changing outcomes.

By connecting the “micro-level links between policies and important political variables” we can go beyond a rudimentary understanding of what these connections *actually* look like and examine how they manifest themselves within a given political environment and how they can affect the wider institutional arrangements of Kenya’s asylum regime (Pierson 2006, 121-122). Applying a broader conceptual lens to ‘asylum policy’ permits an analysis that is not limited by the confines of a host state’s legislation or the international agreements it has signed. Instead, this analysis positions ‘asylum policy’ as the result of iterative processes that rely on dynamic relationships between a

variety of actors at multiple levels of governance. Doing so permits the inclusion of additional actors, interests, and policy spaces in this analysis, the effects of which may not be acknowledged or fully appreciated using a more limited definition of ‘asylum policy.’ For example, accounting for the ability of sub-national actors to work with the international humanitarian sector in interpreting national legislation and policies to suit local needs and conditions allows for a more comprehensive understanding of how endogenous institutional change has occurred over time.

## **2.5 Conclusion**

This Chapter has provided this analysis with a strong conceptual foundation rooted within existing academic literatures of forced migration and refugee studies and African comparative politics. Doing so permits this analysis to draw from as a variety of perspectives in the development of a revised analytical framework that can be used to assess the sub-national variation in asylum practice in Kenya. Chapters Three and Four continue to provide context both to the academic interrogation of the politics of asylum and refugee protection in Africa, as well as the specific political structures and developments in Kenya over the same period. The goal of these complimentary chapters is to highlight that while the political conditions in Kenya had been conducive to the broad generalizations about the politics of asylum in ‘Africa’ through to the early 21<sup>st</sup> Century, the reshaping of political structures in Kenya have created an increasingly complex domestic environment which mediates the functionality of the international refugee regime in different ways *within* the state. This will clarify the roots of the argument that the politics of asylum and refugee protection are becoming increasingly diverse both within and

between states in Africa, which warrants a reconceptualization of how such policies are discussed and analyzed.

## **Chapter 3: The Politics of Asylum in Africa: A Tale in Three Phases**

### **3.1 Introduction**

This Chapter engages in a macroscopic analysis of the politics of asylum in Africa since independence, specifically focusing on its characterization through academic discourse. Assuming a continental lens in this Chapter facilitates an understanding of the way in which the politics of asylum in Africa have been approached both by academics as well as practitioners in the humanitarian sector since the 1960s. I build upon Rutinwa's (2002) classification of such post-independence policies into two periods by suggesting that a third phase has begun which is characterized predominantly by the presence of inter- and intra-state variation. Before further narrowing the analysis into the case of sub-national variation in Kenya, it is necessary to unpack previous approaches that were used to create a generalized understanding of asylum policies and refugee protection practices in Africa. Doing so positions this dissertation to engage in a more targeted discussions of how previous phases have occurred within a single national context and provide a more nuanced understanding of the variables that have facilitated the emergence of sub-national variation within this new phase.

Paul Zeleza (2014a) identified key changes in Africa's post-independence development paradigms and processes that are roughly consistent with this approach, but do not single out the politics of asylum as a frame of reference. These periods are also broken down into three windows, “[f]irst, the era of authoritarian developmentalism from 1960 to 1980; second, the period of neoliberal authoritarianism from 1980 to 2000; and third, the current phase of *possible* democratic developmentalism” (Zeleza 2014a, 24-26 emphasis added). By discussing these three development paradigms, we are better

equipped to understand the ‘big picture’ that asylum policies of refugee hosting states in Africa have aligned with and been directly affected by the politics of post-colonial development. While this Chapter will explore how the three phases of asylum policy are mapped onto such macro-level processes, Chapter Four will then narrow this discussion to assess how the politics of asylum and post-colonial political development have occurred within the case of Kenya.

The periods of transition where significant shifts occurred to the form and function of state responses to refugees in Africa, affecting their relationship to the international refugee regime will be addressed below. The first major period of transition between Phase One and Phase Two coincided with the end of the Cold War and the onset of large-scale democratization initiatives and Structural Adjustment Programs (SAPs) aimed at implementing neoliberal economic reforms. Internationally driven development agendas and global geopolitical realities resulted in external actors having a disproportionate level of influence on domestic decision-making as it pertains to asylum. The second major transition period occurred in the wake of the 2008 financial crisis, which refocused international priorities and shook the neoliberal foundation on which decades of development priorities had been constructed. The cracks in the neoliberal foundation have made it possible for new actors such as China to emerge as alternatives to traditional Western donor states and drastically alter the policy landscape (Brown and Lekha Sriram 2008; Dent 2011; Weiss 2013). While there may be some contention over where the third phase or period begins, I use the onset of the 2008 financial crisis as it marks a critical juncture for the global economic system and its neoliberal foundations which are fundamental in characterizing the second phase of asylum policy in Africa.

### **3.2 Contextualizing the Dominant Narratives of the Past**

Bonaventure Rutinwa (2002) identified two main phases in the development of asylum policies across Africa. These phases provide a useful overarching structure to understand the characterization of the African state, in addition to shifts in the tone and tenor of African asylum politics over time. The variables affecting the development and expression of asylum policy in each phase can fit within three broadly consistent categories. These categories include: the types of international pressures placed on refugee hosting states, domestic political structures and regime types, and the power arrangements within that structure (i.e., centralization of authority). The first phase occurred between early 1960s to the late 1980s and the second from the late 1980s to the early 2000s.

In the first phase, the open-door policies of African states in response to refugees generated from anti-colonial and anti-apartheid conflicts took centre stage. In comparison, the second phase was characterized by increasingly restrictive encampment policies fuelled by a combination of factors. Restrictive asylum policies became commonplace as the xenophobic rhetoric alongside populist politicking by politicians and governments became useful strategies in newly democratized states and in instances where multi-party elections were being institutionalized at the end of the 20<sup>th</sup> Century.

Each of these phases were driven by the agendas of centralized national governments and were (at least officially) implemented with uniformity across national territory. Underpinning this reality is the notion that the state is a single, cohesive, and authoritative entity and the assumption that the locus of power within that state is highly centralized. Highly centralized states have vested the significant powers of state decision-making within the executive and are influenced primarily by those with close ties or

patronage linkages to the head-of-state. In such highly centralized circumstances, there is a presumed uniformity in the interests of central elites, as power branches out from the core. Those presumed to wield such power tightly control policy agendas and state priorities which both creates and perpetuates relatively narrow and restricted political opportunity structures that increasingly limit the autonomous decision-making capacity of actors as one travels further away from the political core.

The consolidation of elite voices within a bureaucratically homogenous state structure permitted consistent responses to the international refugee regime in ways that were perceived to be of benefit to the central elites with whom power resided. Such circumstances persisted throughout the first two phases discussed below, as most newly independent states in phase one were interested in supporting other independence and anti-apartheid movements (including the refugees they produced) on the continent to both secure and legitimize their own existence as sovereign states. During phase two, ongoing democratization and the rise of multi-party electoral politics permitted populist agendas to point to refugees as potential sources of instability, environmental degradation, and resource strain (Rutinwa 2002). This perception, in combination with the resentment fostered amongst host communities caused by the inability to access the benefits of the international humanitarian assistance provided to refugee populations set the stage for extremely contentious relationships at all levels of governance. Therefore, the continuation of open-door asylum policies became increasingly untenable as refugees became a target for rapid politicization.

### **3.2.1 Asylum Policy in Africa: Phase One**

The first phase of asylum policy in Africa can be described as the ‘open door’ phase. According to Rutinwa (2002), this phase emerged as the European colonial administrations began to recede from the continent beginning in the mid-1950s through to the mid-1990s. This phase is primarily characterized by relatively accepting asylum policies across the continent that did not create excessive barriers for asylum seekers. Such policies were in line with notions of Pan-Africanism and the widely accepted notion that accepting and recognizing the claims of asylum seekers fleeing wars of national liberation (whether anti-colonial or anti-apartheid) was in their collective interest. Underpinning the sentiments of solidarity, Rutinwa (2002) has argued that traditions of African hospitality were a major factor in precipitating this ‘golden age’ of African asylum policies. Jeff Crisp (2000) agrees that such traditions may have had some influence in determining outcomes but cautions against relying too heavily on them. Instead, he argues that the uniting ideologies of Pan-Africanism and anti-colonialism provided support to maintaining relatively liberal asylum policies; this was further sustained by the prosperity of African states after independence, the relatively modest size of refugee flows, as well as the reliable support of international donors during this period (Crisp 2000, 161).

This phase of asylum policy was not, as is the case with latter and contemporary policy frameworks, characterized by the image of sprawling refugee camps. Instead, refugee populations were integrated into their host communities as a key component of the ‘zonal development’ approach to refugee settlement. This approach was characterized by “refugees [being] allocated land, granted the right to work and encouraged to pursue self-reliance through a range of economic activities” (Milner 2009, 21). These policies garnered

much praise for African states from the international community, as most refugees on the continent were accommodated in such a manner in major host states including Zaire (now the Democratic Republic of the Congo) and Tanzania through to the end of the 1970s (Milner 2009).

Tanzania is often emphasized in discussions of this period, as the East African nation had a long tradition of receptiveness to refugee populations (Rutinwa 2005). The perception of hospitality continued in some way through to the second phase and was particularly evident in the initial receptiveness to Burundian refugees that fled insecurities in the 1970s, as they were eventually fully integrated into local communities and granted citizenship in Tanzania (Milner 2009). The perception of hospitality was also applied to Tanzania's response to Congolese refugees fleeing across Lake Tanganyika from The Congo Wars of 1996-1997 and 1998-2003. This resulted in over 150,000 refugees fleeing to the Kigoma region of Tanzania (Betts 2013a). Betts (2013a) further argues that the receptiveness to these populations stems from a longstanding tradition of travel and migration between the regions. Yet, alternative explanations for policy development beyond hospitality are necessary to fully understand the nuances of Tanzania's approach to asylum policy and refugee management, especially as Tanzania repeatedly expelled self-settled refugees from Burundi; first in 1987 and again in 1993 and repeated this process with Rwandan refugees after the genocide in 1994 (Kibreab 2003).

Milner (2009) does not discount that an element of hospitality is relevant to this discussion but argues that this era of policy development was primarily driven by explicitly political motivations. However, it is important to avoid negating the roles of either formal political motives or informal cultural institutions. One must allow for such variables to

maintain their relevance at multiple levels of analysis, for example – traditions of hospitality may be much more influential at shaping interactions between refugee populations and their local host communities rather than their relationship with the central government. Alternatively, relationships between leaders of refugee-sending and refugee-hosting states may temper and condition the official political stance of the government and shape their response to the presence of asylum seekers at their borders.

Crisp (2000) points to six key variables that assist in explaining the transition that occurred between the first and second phases of asylum policy in Africa. The list is by no means conclusive, nor equally representative across the continent. Yet, it provides a solid explanation of the general trends that can be perceived as the Cold War ended and significant geopolitical shifts affecting the development of asylum policies ensued. Crisp's (2000) first point echoes the earlier discussion of Gibney (2004), of the perceived risks associated with open asylum policies by states in the global North. These states have effectively created the precedent to impose the more restrictive asylum policies that assisted in eroding the norms of refugee protection and the right to asylum in both the global North and South.

Second, many representatives of African states that have historically hosted large refugee populations feel that their generosity has been too quickly forgotten, nor adequately compensated under the principles of burden sharing. Milner (2009) highlighted the arguments made by the Tanzanian delegation to the 1998 meeting of the UNHCR's Executive Committee which underscored the asymmetrical relationship between host states and donor states. In lamenting the absence of any international regulatory body to ensure that responsibilities were evenly distributed or adequately compensated, the

Tanzanian delegation noted that any assistance provided to host states remains a ‘matter of charity’ and a direct result of the interests of individual donor states. Further to this point, it was argued that those hosting the vast majority of refugees within their borders do not have much influence over the forms of international assistance made available to them (Milner 2009, 53).

Third, international donor states are less likely to support long-term programs that provide vital assistance to refugee populations. The appetite for evermore instantaneous returns on their humanitarian investments by international donors drove down the willingness for donors to entertain the idea of providing long-term development assistance in response to the arrival of refugees. The pervasive assumption that refugee arrivals were ‘emergencies’ and temporary-by-default prevented prominent donors and many host states from pursuing durable solutions other than eventual promise of voluntary repatriation and, in very rare instances, resettlement in a third country.

Fourth, building on the dwindling support of the international donor community for reliable long-term funding for refugees in this period, the prosperity experienced in the post-independence era reversed course as donor states embraced the Washington Consensus and the ensuing promotion of the market-oriented reforms of Structural Adjustment Programs (SAPs) (Clapham 1996; Milner 2009). This resulted in the abandonment of the state-led development models that donors had previously promoted, and an environment where international development assistance was often closely tied to market success and investment potential (Crisp 2000). The low or negative economic growth rates in many African states created a significant strain on resources, which made the provision of adequate protection and assistance for refugees increasingly challenging.

Fifth, many governments cited the negative environmental effects on local communities that resulted from housing large populations in densely populated and underdeveloped regions. The trend of housing refugees in sparsely populated peripheral areas of the state created unrepresented demand in resource-scarce and infrastructure poor areas. Given this reality and the already stretched international resources in many instances, complaints of environmental degradation and competition with local communities can be more clearly understood. Finally, each of these factors were compounded by the growing perception that protracted refugee populations were a threat to both the social and political stability of host states (Crisp 2000, 162-164). Therefore, states were able to justify the shift from inclusive to much more restrictive asylum policies.

To measure the distinctions between phases, it is essential to compare the key variables noted above (e.g., the international pressures, the domestic political structure, and the internal power dynamics). Doing so facilitates a clear understanding of how systems across levels of analysis interact and reshape themselves in response to specific forms of stimulation and how such changes affect what is possible within specific policy spaces. This echoes the arguments noted in Gibney (2004) that elite decision-making surrounding asylum policies is inherently constrained and conditioned by the respective political environment. I take this one step further to account for the conditioning factors and variables that extend across levels of analysis. Within the context of post-independence asylum policy in Africa, the arrangement of these variables took a particular form that influenced not only the expression of policy but also the trajectories for subsequent phases of policy development and implementation.

The most notable international pressures that shaped the first phase were the broad geopolitical effects of the Cold War, the rise of pan-African idealism inspired by the rapid decolonization of the continent after the Second World War, as well as the support for militant movements amongst states still in the process of fighting for independence or against South African apartheid. Given the influence of the Cold War newly independent states often sought development assistance from either the Soviet Union or the United States. Access to such assistance was often used to shape or characterize their respective domestic political systems – through the ideological lens of being either communist or anti-communist. Western donor states have been less concerned with the relative degree of democratization enshrined within domestic political systems than they were with their stance on the ideological spectrum. This allowed for the propagation of more authoritarian leaning governance structures and the dominance of one-party systems across the continent with minimal opposition from their international benefactors.

The domestic political structures emerging in this phase were broadly consistent with the above, in that they were generally more authoritarian and limited in their competitive capacities. Although several regime variants and configurations existed,<sup>7</sup> the disproportionate strength of the state relative to political opposition forces, local government/governance bodies, and civil society served as a constant feature. The power arrangements within this system were concentrated within the central government whose reach extended outward through strong patronage and neopatrimonial networks

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<sup>7</sup> Michael Bratton and Nicolas van de Walle (1997, 77-82) note the existence of five regime types in their analysis of democratization and regime transitions in Africa from independence through to 1989. These include, the plebiscitary one-party system, the military oligarchy, the competitive one-party system, the settler oligarchy, and the multiparty system.

(Lemarchand 1972). Power in such unitary states was highly centralized within the executive branch and membership within such inner circles remained limited; however, avenues for active engagement in political life persisted amongst the grassroots.

Such a diffusion of political engagement was a testament to the ability of political parties to penetrate rural and peripheral areas of the state. Hyden's (2013) discussion of Tanzanian politics in 1965 highlights this when he notes that those residing in rural northwestern areas of the country had not only 'joined the bandwagon' of the governing party (Tanganyika African National Union [TANU]) but possessed a high degree of knowledge and familiarity both with the key political actors and the dominant issues of the day. This high degree of political knowledge amongst the general public was seemingly unaffected by other variables such as proximity to the urban political core, level of education, or level of commercial engagement. The effectiveness of such political organization was a testament to the cultural pervasiveness of politics, and the shrewdness with which of post-independence political parties were able to navigate this environment. Joel Barkan (1979a) argued that even in the most centralized and authoritarian leaning contexts, African states with well-established one-party systems during this phase were able to retain elements of political competition at the local level.

Where local party machinery is absent, elected representatives are far more likely to be held accountable by their respective districts based in their ability to procure resources, development projects, and investment for their constituencies. It was the ability of these representatives to communicate local desires to the centre that would drastically improve their ability to retain their position and their role within the 'national cake' (Barkan 1979a, 270). This relationship created direct connections between localities and

the central government, thereby reinforcing the centralized nature of the political system as well as the relative uniformity of elite interests (Cheeseman 2016).

Oftentimes the pursuit of development at all costs as a means of maintaining political legitimacy motivated governments and central elites to capture institutions and resources to ensure that development projects were secured for key constituencies (Hyden 2013; Zeleza 2014a; Dyzenhaus 2018). Elite capture of institutions and the solidification of patron-client relationships extending from the centre assists in explaining the uniformity of elite interests and policy implementation that characterized this phase. However, a consistent feature that carried through from the first to the second phase, was that the interconnectedness of these variables created strong incentives for national elites to comply with donor state agendas. Maintaining external support during the post-independence phase constituted a legitimizing force for the regime that was then reinforced by the influx of resources that come from securing that international support, as well as military and development assistance (Levitsky and Way 2010; Zeleza 2014a).

### **3.2.2 Asylum Policy in Africa: Phase Two**

The second phase of asylum policy in Africa is characterized by an increase in the limitations placed on the rights of refugees, such as the restrictions placed on mobility and the right to work, and the declining interest and support from international donors for protracted refugee situations. This combination of factors resulted in a decline in both the quantity and quality of asylum as encampment and alienation became the dominant policy paradigm on the continent (Shacknove 1993; Milner 2009). Such circumstances were expedited over the course of the 1990s by a drastic increase in the numbers of refugees and

asylum seekers in Africa. For example, from 1993-1994<sup>8</sup> the number of persons of concern identified by the UNHCR rose from 7.1 million to 11.8 million (UNHCR 1994). The unprecedented rise in asylum seekers across the continent led the international community to make unprecedented requests of African states to host these populations for an indeterminate period of time

By an accident of geography, such host states located within immediate proximity to some of the world's most severe and protracted humanitarian crises saw the largest influx of refugees within their borders (Rutinwa 1996). African host states became expected to provide the land and physical space for refugees, with the UNCHR and other international NGOs being held responsible for financing the endeavour. As populations grew, additional concerns such as those surrounding national security and environmental degradation began to permeate policy discussions and further complicate the landscape in which asylum policies were developed.

Underlying the shifting trends of asylum in Africa were significant structural changes to the wider international order. With the end of the Cold War in 1991, the strategic significance once placed on the global South, including Africa, by the global North diminished (Loescher and Milner 2005). Yet, the lasting effect of engagement by the United States and the Soviet Union in conflicts across the continent throughout the Cold War exacerbated many of the humanitarian crises that accompanied such conflicts and

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<sup>8</sup> This 12-month period is telling as it encompassed numerous points of conflict and ongoing tensions throughout sub-Saharan Africa that resulted in major forced population movements including those in: Zaire, Rwanda, Burundi, Somalia, and Sudan. It also coincides with the end of apartheid in South Africa, which significantly altered the geopolitical context and the political pressures exerted on southern African states.

dramatically increased the number of refugees on the continent (Loescher and Milner 2005).

The subsequent retreat of ‘Africa’ from global foreign policy agendas at the end of the Cold War left many of these conflicts and crises open ended and without resolution. Rutinwa (1996, 323) noted that there was a mismatch between the overarching structure of international institutions developed in the wake of the Second World War, and the evolving interests of Western donor states. This inconsistency became more notable after the Cold War, where Western governments developed foreign policy agendas with less focus on supporting long-term assistance programs, instead working to see such programs ended (Crisp 2000). Furthermore, the foreign assistance that was directed to Africa was more frequently tied to the implementation of democratization and economic liberalization agendas which did little to assist the growing number of asylum seekers and refugees (Crisp 2000; Loescher and Milner 2005).

As refugee situations became increasingly protracted, this approach compounded the existing concerns and problems with the system and made it more difficult to find a solution that would be agreeable to all parties involved (host states, international donor states, national NGOs, and international non-governmental organizations [INGOs]). One of the major dividing points between these parties surrounded the effectiveness of burden sharing across the continent. Host states have expressed frustration with the fact that they shoulder a disproportionate share of the responsibilities associated with refugee protection and asylum when compared to the wider international community and the comparatively meagre resettlement initiatives of the global North. However, most lacked the capacity to upset the status-quo due to the asymmetric power relations that rarely worked in the favour

of refugee hosting states in the global South. Morel (2009) argues that the burden for reaching a durable solution for a given refugee crisis is often framed as being the responsibility on the respective host state. Specifically, Morel (2009, 109) notes that:

it seems unreasonable to expect from a developing country, that has its own economic difficulties, not only to host a huge number of refugees but also to provide local integration as a durable solution, when the community of developed countries shows reluctance towards burden-sharing through resettlement or financial assistance.

Instead, Morel (2009) shifts the responsibility for the absence of durable solutions to the international community due to the lack of any clear institutional mechanisms to reach durable solutions through transnational cooperation. Triaging refugees in a manner consistent with short term emergency situations was the preferred approach by parties at multiple levels. The absence of long-term planning created an unsustainable environment within the international refugee regime that allowed for stagnation and the perpetuation of protracted refugee situations (Morel 2009; Crisp 2003).

Many of the responsibilities placed on host states can be attributed to the fact that states in the global South are in closer proximity to refugee generating situations. Meanwhile states in the global North, being physically distant from these situations, were found to be committing fewer and fewer resources to the international refugee regime and to protracted refugee situations in particular. The priorities of the global North were centered upon finding solutions within refugees' regions of origin and a desire to implement extra-territorial processing to ensure such global containment measures were maintained even when Northern states were accepting of resettled refugees (Slaughter and Crisp 2008). Consequently, restrictive policies policing the presence of asylum seekers and refugees passed through many African governments during this period. Notable amongst

them are the containment and encampment measures employed in Botswana, Uganda, Tanzania, and Kenya (Government of Uganda 2006; Milner 2009; Betts 2013a).

The proliferation of restrictive politics facilitated the transition from an emphasis on local settlement and integration to one that identified repatriation as the most favourable ‘durable solution’ to the ongoing protracted refugee situations. This came at the expense of either resettlement to third countries or integration in the host community (Slaughter and Crisp 2008; Morel 2009). During this phase, refugee hosting states in Africa scaled back on their commitment to the refugee populations within their borders and increasingly adopted more restrictive policies and were more adamant in their position that “they would only admit and refrain from the *refoulement* of refugees if the needs of such populations were fully met by the international community” (Slaughter and Crisp 2008, 128). The UNHCR, as the primary representative of the international humanitarian sector, in acquiescence began to serve as a ‘surrogate state’ by providing services fulfilling functions within the refugee camps that had been the traditional purview of states. Such circumstances meant that refugees oftentimes had access to more resources and support than their counterparts within the local host community (Slaughter and Crisp 2008; Miller 2018a). This stark distinction between the refugee and local communities and the politics of exclusion, that affected both sides, served only to drive a wedge between them and increase both tensions and animosity.

The underlying logic of physical separation and containment to the periphery – both within their respective host states and international system writ large – persisted through many of the proposed solutions during this phase. The international community sought to keep the vast majority of refugees away from the borders of Northern states, in their regions

of origin. Meanwhile, in Southern host states, refugees were often isolated to the underdeveloped peripheral areas of the state that segregated refugees from the majority of the host population (Milner 2009). In this context, as Africa's overall refugee population expanded to 6.7 million in 1994, refugee rights guaranteeing freedom of movement and work were increasingly restricted by hardening camp borders. Furthermore, by locating encampments in peripheral border regions, they were placed within close proximity to some countries of origin and the conflicts that continued therein. Refugees, such as those living in Kenya's Kakuma refugee camp (see Chapter Six) are located less than 100km from the border with South Sudan. Such individuals are faced with insecurity in the form of deprivation as well as from the potential for spill-over conflict into their place of exile.

Looking to asylum policy in Africa after the Cold War, the arrangement of the key variables noted above were rearranged in such a way as to enact a much more restrictive and security-oriented approach to asylum policy and refugee management. At the international level, this occurred within the context of the 'Third Wave of Democratization' that connected access to support, resources, and development assistance from the international community to democratic reforms in line with the hegemony of Western liberal ideology in the immediate aftermath of the Cold War (Levitsky and Way 2002).

The structure of political systems at the domestic level were inherently influenced by the democratization and neoliberalization agendas of the major donor states in the West. As a result, many states in Africa introduced multi-party elections among other political and economic reforms in order to maintain some level of support from the international community. Levitsky and Way note that, “[i]n Africa, a contraction of resources caused by the end of the Cold War sponsorship and the conditionality imposed by international

financial institutions left some governments too weak to co-opt or repress relatively feeble opposition challenges” (2002, 63). While some regimes were susceptible to new opposition forces, others maintained their hold on the reins of power and defaulted into a system of ‘competitive authoritarianism.’ Levitsky and Way define ‘competitive authoritarian regimes’ as, “one particular type of ‘hybrid’ regime...[where] formal democratic institutions are widely viewed as the principle means of obtaining and exercising political authority. Incumbents violate those rules so often and to such an extent, however, that the regime fails to meet conventional minimum standards for democracy” (2002, 52).

The relative weakness of opposition parties in comparison to the well-equipped machines of the former one-party system when multiparty elections were introduced, meant that the odds were often stacked against the opposition parties as they worked to get their bearings in a system heavily dominated by the incumbent regime (Rakner and van de Walle 2009). The uphill battle faced by opposition forces was not only caused by their inexperience and lack of resources but also by incumbent regimes’ efforts to harass opposition candidates and supporters, attempts to control or skew media coverage, or to misuse state resources to gain an advantage (Levitsky and Way 2002; Rakner and van de Walle 2009). The institutionalization of some democratic norms into the process of governance throughout this period was not enough to fully distinguish these regimes from the authoritarian stylings of their previous systems. The advent of multiparty elections did little else than facilitate “a greater degree of controlled competition at the national level” (Cheeseman 2016, 190).

In addition to the democratic reforms that were imposed by donor states under the banner of Western liberalism, IFIs also sought to incorporate broad economic campaigns

that would restructure developing economies to privatize and deregulate national industries, bringing these states in line with and placing them at the whims of global capitalist markets (Dent 2011). The pre-eminence and inescapability of the global neoliberal economic order forced the hands of African states into acquiescing to the demands of IFIs and international donors. This circumstance led to the institution of significant economic and political restructuring to move away from the centralized development planning that had characterised state priorities in preceding decades (Hyden 2013).

The shift towards tied aid in the form of international loans and assistance packages was contingent on such restructuring and often undermined the ability of recipient states in Africa to pursue their own agendas. The asymmetric bargaining positions in this context are also informed by the limited understanding that many IFIs and donors have of the social and political realities that exist in many African states, as well as the overwhelming ideological commitment to the merits of the free-market capitalism that emerged from the Washington Consensus (Milner 2009; Pitcher and Teodoro 2018). Meaning that, reforms-in-policy did not necessarily equate to reforms-in-practice and could, in fact, widen existing socio-economic cleavages rather than reducing them (Hyden 2013, 262).

As the changes to the political systems of individual states in Africa in the post-Cold War international environment had little time to institutionalize and internalize these normative reforms, many of the initial changes to the actual distribution of power and resources within the state were perfunctory at best and wholly superficial at worst. Therefore, the third variable assessed here – that of centralization – remains relatively untouched from the previous phase. However, within the new international framework for

procuring international development assistance, donor states found themselves less motivated and less willing to commit resources which increased competition for access to such increasingly limited resources. Therefore, recipient states were expected to do more with less, which made offloading asylum protection regimes onto international agencies and reducing the supports provided by host governments a much easier decision to make (Odhiambo-Abuya 2004).

### **3.3 Entering a Third Phase**

I argue that after 2009 a shift into a third phase of asylum politics in Africa has occurred. This phase is characterized by the increasingly diverse approaches to asylum that differ between states, as well as within them. As policy variation has increased both internally and externally, it has become exceedingly difficult to make generalizations about either the form or function of asylum policy in Africa. The proliferation of new non-state, sub-national, and trans-national actors that have assumed many roles traditionally reserved for or assumed to be the explicit purview of national governments has led to a diffusion of power and decision-making capacity. The diffusion of authority has required humanitarian action to become more targeted and necessitated the development of strategic approaches to asylum policy that are more sensitive to the needs of local host communities in addition to refugee populations.

Additionally, the prominent role of international parties outside of the traditional donor class of Western nations, such as China, has reshaped the traditional international dynamics that upheld the structure of the international refugee regime during the first two phases. While it is generally understood that even such alternative actors are first and foremost motivated by their own self-interest, the presence of a viable alternative to

Western development dollars has altered this landscape (Brown and Lekha Sriram 2008; Dent 2011). By weakening the degree to which states in Africa must adhere to the strict conditions for receiving foreign investment, states in Africa are less beholden to the interests and demands of specific donors. There has been a requisite shift in the dynamics between donor and recipient states as a greater deal of agency, autonomy, and negotiating power is being invested in the latter. Thus, taking homogenous policy approaches to such a dynamic and multi-faceted space is insufficient within a contemporary context. This new phase demands a more appropriate lens through which to understand the development, implementation, and experience of asylum policy in African states.

A more fruitful analytical lens can be found through dispensing with the notion that an archetypical African state exists and by arguing instead that a disaggregated approach is better equipped to account for the simultaneous emergence of divergent political opportunity structures at multiple levels. To do this successfully, we must continue to call into question the presumed constraints placed on the activities of African states both by domestic political situations as well as those developed through the asymmetric international relationships. The diverse responses of African states to the arrival and ongoing presence of refugees over the last decade have been stark. These responses range from Uganda's growing reputation as a progressive haven for refugee policy to Tanzania's about-face turn from progressive to regressive responses to Burundian refugees after 2015. The potential for such deviation between states leaves us with unsatisfactory explanations about state responses to refugees in Africa as analysed through the frameworks provided by either the first or second phases of asylum policy described above.

With the potential for such diversity, I argue that a key explanatory variable for the emergence of variation at the national level cannot be adequately unpacked without an acknowledgement and evaluation of the potential for policy variation at the sub-national level. Huntington and Wibbels note that, “there remains a dearth of scholarship in Africa that exploits variation over time and across subnational units to understand local governance and economic development outcomes” (2014, 626). Revisiting the politics of decentralization and devolution in Africa will provide a helpful lens in assessing political machinations at the sub-national level and the degree to which local politics can influence national and international outcomes (see: Barkan and Chege 1989; Boone 2003; Green 2008; Koelble and Siddle 2013; Riedl and Dickovick 2014; Erk 2014; Lewis 2014). Applying an analysis of the effects of political decentralization on the politics and practice of asylum will fill a portion of this scholarship gap.

There is also some emerging work within international relations that has begun the process of disposing of the *de facto* assumptions of weakness and marginality associated with African states (see: Abrahamsen 2018; Wai 2018). However, as with the literature on decentralization noted above, these works do not clearly address variation in the development and implementation of asylum policies. Nor do these works account for the interactions occurring across levels of analysis through the local, national, and international actors. A more systematic analysis of these policy agendas is required to fully understand how the observed outcomes are shaped by a series of negotiated processes and contentious politics at both the national and sub-national levels.

At the international level, the hegemony of Western liberalism is no longer going unchallenged as it did in the immediate post-Cold War period. Where no challenge exists,

it becomes easier for one ideological model to dominate and set the criteria for receiving international development assistance, as was seen throughout the second phase's tying of development assistance to the democratic and economic reforms discussed above (Levitsky and Way 2002). In the contemporary environment, a direct challenge to the Western model for development comes from states such as China, Saudi Arabia, India, and the United Arab Emirates as they have collectively made upwards of 12% of official humanitarian assistance contributions in recent years. Such states are poised to have a higher proportion of influence over the response and politicization of issues in their own backyards, as their assistance is targeted based on their respective interests (Weiss 2013). China's approach to foreign investment is often pointed to as a direct challenge to traditional Western models, as they do not require systemic changes to domestic political or economic environments (Dent 2011; Zeleza 2014b).

China's approach to providing untied loans has been inclusive of the continent's more problematic regimes such as Sudan during former President Omar al-Bashir's reign (1993-2019) and Zimbabwe under President Emmerson Mnangagwa as well as former President Robert Mugabe. This practice has led to criticism from the United States and European Union that China is acting as a rogue creditor. The provision of assistance to states on the proverbial naughty list is perceived as undermining Western calls for ethical and transparent business and governance practices in Africa (Brown and Lekha Sriram 2008; Dent 2011). This is not to say that the provision of investment by states such as China occurs without its own conditions or to suit its own interests, but that these interests diverge from the political and economic conditions applied by Western donors (Weiss 2013).

The dearth of success stories stemming from the Western approach to development in Africa since the end of the Cold War promptly becomes a point of contention, as Chinese representatives have been quick to point out that international criticism of their approach is paramount to Western hypocrisy (Dent 2011). However, there is a strong argument to be made that the willingness of China to invest in such ‘pariah states,’ where human rights abuses are well documented, plays a role in legitimizing such behaviour and undermining good governance practices (Brown and Lekha Sriram 2008; Dent 2011). Despite the ethical conundrum created by the presence of such funds, the creation of an alternative avenue for international support, assistance, and investment have undoubtedly altered the development landscape and reduced the reliance of African states on the interests of traditional Western donor states. Such national governments may now find themselves in a position to choose from a wider array of policy options from their political toolbox.

Even in the presence of alternative sources of international investment, domestic political systems in Africa have progressed significantly along the process of democratization. Multi-party elections and transitions of power are more common across the continent than in previous phases of their post-independence development. Carbone and Pellegata capture this phenomenon in their comprehensive dataset of electoral transitions in Africa from 1960 to 2013, they note that “in a single decade [1990-1999] 79 pluralist elections for the executive took place, as against 42 such elections during the preceding 30 years” (2017, 1968). Moreover, of the leaders that came to power between 1990 and 2013, 46.2% did so through an election whereas this number was only 7% between 1960 and 1990 (Carbone and Pellegata 2017, 1969). Beyond the perfunctory

exercise of elections, there are additional signs that incremental change is possible even in some of the more autocratic regimes.

In states such as Uganda where President Yowri Museveni has been in power since 1986, new media landscapes and communications technology have permitted unprecedented levels of opposition organization and notoriety – even if it has not yet yielded a successful transfer of power. Global recognition of popular musician and Ugandan opposition leader Robert Kyagulanyi Ssentamu - better known as ‘Bobi Wine’ – provides hints that shifts have occurred at the margins of this landscape. In the lead up to the January 2021 election, Bobi Wine was placed under house arrest and detained by the Musveni regime in an effort to intimidate the opposition and discourage further challenges (Athuman and Wroughton 2020). While Museveni ultimately retained power in Uganda, these events garnered significant international and renewed calls for free and fair elections in Uganda. Multiparty elections, however contentious their results may be, generally garner significant attention, public participation, and are hotly contested by both incumbent and opposition parties. Institutional mechanisms such as the legislature, the judiciary, and the media have shown tremendous capacity to serve as a check on unrestrained elite power and provide support for democratic institutions where they exist (Levitsky and Way 2002; Cheeseman 2016). Democratization at the sub-national level presents an interesting and underexplored extension of such institutional mechanisms that may operationalize previously marginalized areas of the state to act as a collective counterbalance to the political core.

Previous discussions of political decentralization that have appeared in various sub-fields of political science including comparative politics, political economy, and political

geography (for example, see: Boone 2003; Riedl and Dickovick 2013; Huntington and Wibbels 2014; Lewis 2014). These discussions have focused on decentralization effects on the concentration of state institutions and the power they wield (Boone 2003), as well as the role party and electoral systems have in creating variations in local power dynamics and institutional arrangements (Riedl and Dickovick 2013). Furthermore, they have also examined how variations in the quality of governance affect the distribution of state services and resources between regions (Huntington and Wibbels 2014). While decentralization has periodically emerged as a theme in African politics, it has not been systematically applied to questions of refugee governance or the politics of asylum in Africa.

Existing scholarship has not yet made a clear connection between the decentralization of state institutions or the devolution of authorities and the political opportunity structures surrounding the development and implementation asylum policies in Africa; policies which by their very nature, rely on relationships between the core (policymaking at the national level) and the periphery (policy interpretation and implementation in refugee hosting regions). Rather than just the understanding of core-periphery relationships between developed and developing states in the international system, I argue that this connection is central in understanding why there appears to be a higher degree of elite fragmentation at the sub-national level leading to more room for policy innovation within the realm of asylum policy by those outside the traditional core of the central government.

### **3.4 Conclusion**

The open-door policies of phase one inspired by independence era pan-Africanist sentiments and shaped by the effects of international Cold War politics progressed into Phase Two's restrictive encampment policies that augmented the role of international aid and development organizations in managing large refugee populations. This shift was the product of immense systemic changes at the international level that rendered the decades old strategy of courting favour with one (or both) of the Cold War superpowers essentially obsolete. This systemic shock was quickly followed-up by international donor states adopting a developmentalist framework focused on restructuring individual states to comply with emergent democratic norms as well as neoliberal economic agendas (Brown 2005). Complimentary to the pivot by donor states to emphasize political and economic conditions to their provision of aid is the politicization, militarization, and a growing emphasis on market-oriented principles to the provision of humanitarian assistance (Weiss 2013). Where risk is high and donor appetite is low or fatigued, it becomes increasingly difficult to maintain a well-resourced response to ongoing crises.

Waning direct international development assistance, in favour of loans backed by IFIs, meant that fewer funds were directly targeting to refugee support mechanisms after the Cold War. Under this new framework, refugee hosting states felt less compelled to allocate state resources to the task of managing such populations. To fill this gap international agencies like the UNHCR became the focal point for the provision of protection and assistance mechanisms – with the agency's budget peaking in the 1990s at \$1.3 billion in 1994-1995 and only continuing to expand in the years since (Weiss 2013). However, the scope of the UNHCR's responsibilities have also expanded and have

outpaced their budget growth in many circumstances. Some host states, such as Kenya, off-loaded the entirety of their Refugee Status Determination (RSD) process onto the agency and its partners during this time (1991-2009)<sup>9</sup> and the UNHCR's domestic operations in Kenya have been chronically underfunded year-over year (Odhiambo-Abuya 2004; UNHCR 2021a)

During this period, state-centric models were able to successfully account for policy trajectories in the asylum space as international donor states, international organizations, and NGOs typically dealt exclusively with central governments to negotiate access to territory, provide necessary funding, and maintain processual legitimacy. Additionally, ruling regimes of the nascent democracies of many host states saw it in their best interests to work with international donor states and other organizations as a means of procuring financial aid and developmental assistance. The influx of these resources assisted in strengthening domestic patronage networks and support through the implementation of targeted development projects to benefit key domestic constituencies (Zeleza 2014a). However, such projects and incentives were rarely evenly distributed throughout the populace.

Tactics intended to strengthen political support for elites in democratizing states with a significant refugee population eventually included the politicization of asylum and the scapegoating of refugees as a source of instability. Political scapegoating of this nature increased the impetus to implement ever-more restrictive policies and infringe on the rights of refugees guaranteed in the 1951 Convention in favour of political gain and electoral

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<sup>9</sup> The 2006 *Refugees Act* entered into effect in 2009 and marked the official beginning of a three-year hand over process for RSD from the UNHCR to the Government of Kenya. This window has since lapsed and the UNHCR remains responsible for supporting RSD functions in Kenya.

support. This process escalated after the attacks of 11 September 2001 on the United States and the ensuing Global War on Terror, where refugee camps became suspect as ‘hot beds’ of terrorism and insecurity that could easily spill across borders (Burns 2010; Niyitunga 2015). This became an increasingly poignant discussion in East Africa as cross-border terrorist attacks by the Al-Qaeda affiliated Somali group Al-Shabaab began to escalate. Al-Shabaab’s first major international attack occurred during a 2010 World Cup viewing party in Kampala, Uganda was followed in subsequent years by major attacks targeting civilians in Kenya such as the 2013 Westgate Mall attack in Nairobi which killed 61 (Burns 2010; BBC News 2013; Barkley 2015). It is important to acknowledge the irony here that policies restricting refugee movement and integration directly contributed to the creation of this supposedly new-found source of insecurity. Furthermore, it is equally important to emphasize that subsequent analyses have emphasized that there are no clear positive links between the presence of refugees and the proliferations of violence (Bolfrass, Shaver, and Zhou 2015; Miller 2018b).

Just as Phase One was driven by independence era pan-Africanism within the context of Cold War Politics and Phase Two was driven by democratization and the integration of neo-liberal economics into international development agendas, I argue that Phase Three is characterized by policy variation between and within states enabled by the growing prominence of the politics of decentralization in Africa and the permeation of local interests into the politics of asylum. Chapter Four will apply this framework to the case of Kenya and address how the processes of political development within the state have played a central role in determining what was possible within the politics of asylum. As the political power within the Kenyan state became increasingly diffuse, the political

opportunity structures that determined the limits of decision making shifted in tandem. Therefore, the next Chapter directly connects Kenya's phases of post-colonial political development to the three phases of asylum policy discussed above. Doing so assists in unpacking how state responses to the arrival of refugees are inherently tied to domestic political contexts, and as more heterogeneous political trends emerge on the continent, so too do approaches to asylum policy and refugee management.

## **Chapter 4: Tracing the Politics of Asylum through Political Development in Kenya**

### **4.1 Introduction**

In direct response to the three phases outlined in Chapter Three, this Chapter narrows the discussion to a single national context. To accomplish this, it connects the development of Kenya's asylum policy and approach to refugee management to Kenya's post-colonial political development. In doing so, the connections between Kenya's overarching political structure and the political opportunity structures shaping elite decision making at various levels of governance will be clearly established. Kenya's political development is partitioned into three major phases that roughly align with the three phases outlined in Chapter Three. The first is the immediate post-independence period from 1963 through to 1992. The second is identified through the implementation of multiparty elections in 1992 through to the election of 2007. The contested results of the 2007 election and the disruptive violence that followed paved the way for the third political phase in Kenya. This new phase was ushered in by an overhaul of Kenya's political structure through the negotiated settlement that contained a renewed commitment to constitutional reform which ultimately resulted in the 2010 Constitution. The undercurrent of this new structure was to create a political environment that was more inclusive, democratic, and locally accessible, marking a distinct shift away from the highly centralized politics that characterized much of Kenya's political history.

Recalling Gibney's (2004) argument that asylum policies are inherently either limited or empowered by the political environment of a given state, I address each of the three phases of Kenya's political development in turn and discuss the effect that the

overarching political environment had on either constraining or facilitating the development of asylum policy in Kenya. I conclude this Chapter by addressing Kenya's most recent phase of political development, specifically addressing how the introduction of political devolution through the 2010 Constitution has paved the way for significant sub-state variation in the implementation and experience of Kenya's national asylum policy. The decentralization of state power – specifically by providing county governments' authority over local development planning, healthcare, and social services – increases the opportunities for interaction between local (county-level) governments, the international humanitarian sector, and refugees themselves in a manner that would not have been possible under previous political arrangements.

#### **4.2 Phase One: The Post-Independence Politics of One-Party Rule and Developmental Authoritarianism**

After independence in 1963, Kenya like many former British Colonies, inherited a multi-ethnic, multi-lingual, and geographically diverse state. In these contexts, the reins of power were often handed off to groups that the departing colonial administrations perceived to be the most organized and capable of consolidating a modern state modelled from a colonial catalogue of ready-made political structures emulating the dominant systems of Western democracies. Barkan (1979b) described the resulting post-independence participatory government in Kenya as,

existing for the purpose of selecting one's representatives to central political institutions so that one's community might be more effectively linked to the centre and gain access to the resources the center commands. It does not occur for the purpose of changing the leadership or character of the system, and the goals – including the conception of development – to which the system is already committed to pursuing (Barkan 1979b, 27).

The importance of local relationships with central institutions and powerbrokers during this phase of Kenya's political development is not easily understated, as the dominant assumption about governance in the immediate post-colonial period emphasized the need for 'development-at-all-costs.' President Jomo Kenyatta's government embraced what Zeleza (2014) describes as an agenda of 'authoritarian development' characterized by hyper-centralized governance aimed at developing Kenya into a fully modern post-colonial state as rapidly as possible. This led local politics to be driven predominantly by the need to elect individuals best positioned to negotiate and secure the extraction of resources and development projects from the centre. The logical result is that noted by Barkan (1979b) above; that structural or even partisan change was relegated to little more than an afterthought.

Yet, the economic realities of post-colonial states in Africa meant that hurdles to development in addition to existing inequalities in wealth, education, and resource distribution persisted throughout this early phase of political development and state building. Englebert (2009) explains that the rationale for concentrating powers in this manner can stem from the independence process as newly formed democracies with extensive ethno-regional diversity embark on the project to create a single cohesive bureaucratic state. The emphasis in this type of state-building tends to be placed on building a new nationalism around the freshly sovereign state and its institutions. In doing so, "it promotes a communal idea of the self that is wielded largely against the other" (Englebert 2009, 214). The post-colonial state-building project often includes a centrally endorsed and bureaucratically driven variant of nationalism intended to supersede and even diminish other intersectional identities.

However, given the rapid decolonization of states such as Kenya, internal power structures and relations between various ethnic groups were carried over from the colonial apparatus to the newly independent state. This translation making it easier and more likely that the state could be captured by certain groups of elite-decision makers, pushing for national unity as long as benefits trickled down to their allied groups and networks, conformed to their ideals, and allowed them to continue to assert their political hegemony (Cheeseman 2016). It is through this lens that President Kenyatta's eventual decision to disbanded opposition parties and limit political participation opportunities in 1969 with a one-party system can be understood. Inherent in this early phase was the deployment of elite and patronage networks as a means of wielding power and influence to ensure that state institutions were consistently in line with Kenyatta's wider agenda. This cycle of clientelism and corruption has continued to be a central feature in contemporary Kenyan politics and continues to permeate discussions of governance and the quality of democracy at all levels (Mwangi 2008; AfriMap 2016; Cannon and Fujibayashi 2018).

Clientelism, in this context is defined as a “logic of exchange with asymmetric, but mutually beneficial and open-ended transactions” (Kitschelt 2000, 849). The pervasiveness of these networks allowed for those perceived as threats or opposition to the government to be punished by the withholding of development resources. Meanwhile, those allied with the government received a disproportionate share of the investment and development projects. This further escalated existing inequalities and only exacerbated the underlying ethnic tensions that drove much of Kenya’s political machinery.

The institutionalization of a one-party state under the Kenya African National Union (KANU) in Kenya did not result in the party itself having much influence over

Kenya's machine politics. President Kenyatta instead bypassed the party structure to develop an extensive and highly personalist network of patronage and clientelist politics using the bureaucracy and provincial administrations to exert direct control and influence over politics throughout the country from the centre. President Kenyatta's support was primarily derived from his relationships with Kikuyu leaders from his home district of Kiambu as well as coalitions built with other leaders throughout the Rift Valley and Central Province (Barkan and Chege 1989). The support networks for KANU and President Kenyatta himself were spread across a key coalition that included:

younger Kikuyu leaders in the Rift Valley Province where many Kikuyu had resettled on farms once owned by Europeans; (2) non-Kikuyu leaders from Embu, Meru, Kisii, South Nyanza, and Taita Districts; and (3) a small number of former leaders of the Kenya African Democratic Union (K.A.D.U), the principal opposition party to Kenyatta's Kenya African National Union (K.A.N.U.) (Barkan and Chege 1989, 434-5).

This coalition was built largely along ethnic lines and generally fits within Kitschelt's (2000) description of political linkages and clientelism, as central lines of control and communication were maintained that stretched from the presidency to the provincial and local levels. These linkages made the expectation of reciprocity feasible across multiple levels of Kenya's administrative infrastructure.

This political environment ensured that dissent and dissatisfaction were channeled through KANU. While the party itself could not face electoral defeat, individual Members of Parliament often faced intense competition for internal nominations. This was especially evident when the public did not perceive them to be procuring enough resources or investment for their respective constituencies. The inequalities and instances of uneven development that occurred between districts can be directly tied to the political linkages and patron-client relationships in Kenya that were amplified through the competition for

(single-member) parliamentary seats within the first-past-the-post electoral system inherited from the British colonial administration (Kagwanja and Southall 2009). In post-colonial Kenya, the citizenry became keenly aware that it was the responsibility of their representatives to work within these patronage networks to procure resources and development projects for their districts.

Hornsby (1989) argues that Kenya's Members of Parliament were of greater importance in their respective communities than they were as actual parliamentarians in the national assembly. The centralization of authority within the executive branch, created a much more limited role for elected representatives. Generally, their core functions were to act as a 'transmission belt' through which central policies were implemented in rural areas as a means of communicating constituency needs or opinions on local issues, and as vectors for the distribution (and potential misappropriation) of development funding (Hornsby 1989). Therefore, constituents' expectation that their representatives should both advocate for their districts at the national level as well as deliver common goods such as schools and hospitals to their district were not unreasonable. Those that won these competitions were likely to come from the independently wealthy business class, who could use their own fortunes to deliver the expected goods and projects to their communities (Hornsby 1989; Cheeseman 2016). Districts with representatives that were either more skilled at navigating these relationships or able to use their personal wealth to achieve political goals were able to develop to a greater degree and at a much faster rate than those with neither. The intensely competitive (internal) environment that emerged allowed observers such as Zeleza (2014a) to characterize Kenyan politics through this first phase as being 'competitive, but not democratic.'

The highly competitive nature of parliamentary elections served another purpose; candidates became the target of dissatisfaction and faced the threat of defeat at the ballot box. Kenya in this period has also been described as operating within a framework of ‘authoritarian developmentalism,’ as the perception that an independent Kenya had to develop as quickly as possible to ensure its survival; the Constitution adopted in 1963 was very similar to that of the previous colonial administration and thereby maintained the existing highly centralized power structures (Human Rights Watch 2008; Zeleza 2014a). This provided the legal foundation required for President Kenyatta to further insulate the Executive branch from the consequences of uneven development or broad popular resistance as the general population was able to direct frustrations at their immediate representatives (Cheeseman 2016). Therefore, Kenya’s highly centralized and executive-heavy government was a key component in shaping the country’s political development as well as the institutionalization of a ‘competitive authoritarian’ system of governance (Levitsky and Way 2002; Cheeseman 2016).

While centralized governance has been a key feature of Kenyan politics, discussions about the potential benefits of political decentralization as a tool to bolster rural development have occurred periodically since independence first through the concept of majimboism, which roughly translates to ‘regionalism’ in Swahili. This proposed a version of federalism that created semi-autonomous regions based on traditional ethnic territories which was included within Kenya’s first Constitution and later removed in the 1970s (Ghai 2008; Human Rights Watch 2008; Anderson and Lochery 2008). Peter Kagwanja further describes majimboism as “a form of federalist thinking as based on ethnic exclusivity and cleansing” (2009, 369-370).

Post-colonial politics in Kenya, its patronage-networks, and the potential for devolution cannot be divorced from the ever-present issue of land tenure and distribution that dates back to the colonization of the ‘white highlands’ outside of Nairobi where British settlers resided and the subsequent cooptation of these areas by what became the Kikuyu’s political elite (Kagwanja and Southall 2009). Over this initial phase, KANU’s ethnic coalition, while fluid, generally included the Kikuyu, Kalenjin, and Luo ethnic groups. These groups occupy much of the fertile band of arable land that stretches westward from Nairobi to Lake Victoria and the Ugandan border, which represents only 20% of Kenya’s total landmass (Kagwanja and Southall 2009). A confluence of factors has preserved the land issue as a central pillar of Kenyan politics.

These factors include the limited availability of arable land, Kenya’s reliance on a predominantly agricultural economy, and the salience of historic grievances caused by displacement of indigenous populations by colonial authorities as well as their post-colonial successors (Kagwanja and Southall 2009). Grievances were never properly addressed or rectified by successive post-colonial governments, which allowed its spectre to remain looming in the background of Kenyan political life ready to flare up when political, ethnic, and economic grievances reached a boiling point. The absence of competitive elections during this initial phase, tended to keep these popular grievances in check – albeit through authoritarian and anti-democratic means.

#### **4.3 Kenya’s Open-Door Asylum Policies in Phase One**

Kenya received relatively few refugees throughout the first decades of independence when compared to other East African states despite the proliferation of conflict and forced migration in the region. Milner notes that “Sudan, Uganda, and Ethiopia

from the 1960s to the late 1980s resulted in significant numbers of refugees fleeing to neighbouring countries...Kenya shared borders with all three of these states but was largely isolated from the refugee flows that accompanied these conflicts" (2009, 86). The refugees that did arrive in Kenya were predominantly from Uganda and were generally welcomed by the government, as many possessed professional credentials that were perceived to be of benefit Kenyan society (Milner 2009). Fundamentally, the facilitation of an open-door asylum policy in Kenya persisted because the individuals arriving at this time were perceived by the central government to fit within their authoritarian developmentalist agenda. The addition of a new professional class to peripheral or underserviced areas through the integration of refugees provided the government with the ability to claim that they were supporting development initiatives outside of the traditional political core.

Refugee management during this period focused on the rapid economic and social integration of refugees and relied on the 1951 Convention as its core legal framing, as no comprehensive national asylum policy had been developed (Milner 2009; Cannon and Fujibayashi 2018). Despite the absence of refugee-specific legislation, the government-led response was framed through the 1984 *Immigration Act* (Betts 2013a, 143). Government responses to refugees throughout this era were *ad hoc* and inconsistent and the fact that the total number of registered refugees residing in Kenya did not reach higher than 10,000 until 1991 prevented the case-by-case approach to RSD from being overwhelmed (Milner 2009; Betts 2013a).

The government's emphasis on the utility of refugee populations in addition to the relatively manageable numbers that were arriving in the country allowed for the expedient integration of these individuals into Kenya's economic and social framework. The

prominence of the central government's state-building and development agenda in the three decades after independence meant that this was the lens through which policies were measured. Meaning that if the value of integrating highly skilled refugees from neighbouring countries was apparent and did not undermine the political fortunes of the day, Kenya's *ad hoc* approach to asylum policy remained relatively apolitical. Such circumstances facilitated an open-door approach to asylum akin to what was exhibited in many contexts across the continent.

#### **4.4 Phase Two: Multi-Party Elections and Executive Strength**

Kenya's one-party system under KANU was maintained through a tenuous balance of authoritarian rule with limited intra-party competition. The latter was used to control opposition and to relieve some of the pressures from below when individual representatives were viewed as either ineffective or incompetent. President Kenyatta and his successor President Daniel arap Moi, who ascended to the presidency in 1978, were largely successful in maintaining this structure until external pressures mounted from international donors during the 'third wave of democratization' that swept through the continent over the course of the 1990s after the Cold War. While Kenya's reestablishment of multi-party politics in 1992 represents an important moment in Kenya's political history, it did not initiate an immediate restructuring of political life in Kenya. As opposition forces remained disparate and weak after decades of oppression under President Moi's authoritarian rule that lasted until 2002 (Zeleza 2014a). Furthermore, this structural change was unable to immediately unravel decades worth of patron-client networks, effectively limiting the episodic violence that accompanied electoral competitions, diminish the influence of the

executive branch over state institutions, or decentralizing power away from the political core.

Outbreaks of electoral violence after the reintroduction of multi-party competition operationalized majimboism to compound and galvanize existing grievances amongst Kenya's smaller ethnic groups against the larger ethnic groups which dominated Kenya's political core (Ghai 2008; Anderson and Lochery 2008). These grievances intersected with concerns over political centralization, minority marginalization, and the unaddressed issue of land tenure in Kenya. Decentralization and political devolution were often proposed as a potential solution to the underlying issues rooted in ethnic competition and land distribution, resulting in the violence that boiled over during subsequent elections (Onoma 2010). Ensuing discussions fell short of fully realized devolution, as they did not provide local governments with the ability to collect and spend revenue independent from the central government. Instead, half-hearted measures of deconcentration were generally applied, such as the deployment of field offices representing centralized institutions in peripheral areas of the state (Boone 2003). As opposed to devolving decision-making responsibilities or fiduciary autonomy, field offices served to both extend the reach of the central government whilst simultaneously inhibiting the development of local institutions (Barkan and Chege 1989).

Opening the political process to opposition parties was precipitated by both internal and external pressures placed on the Moi Government. Internal pressures were evident prior to the reintroduction of multi-party politics as evidenced through reaction to incidents such as President Moi's 1988 decision to eliminate the secret ballot voting for MPs in favour of queue voting, where voters would publicly queue behind the candidate of their

choosing. This move not only increased incidents of voter intimidation but also made instances of vote rigging more visible (Throup 1993). Much of the internal push for more democratic freedoms and reforms were driven by Charles Rubia and Kenneth Matiba, incumbent Members of Parliament (MPs) that lost their seats in the legislature through such means (Throup 1993; Cheeseman 2016)

Beginning in 1991 external pressure from international donor states, such as those in the Paris Group,<sup>10</sup> pressured the Moi administration into making these structural democratic reforms by threatening to withhold financial aid unless progress was made (Harbeson 2012). The quality of such progress left much to be desired. Yet, it was sufficient to placate the external demands as aid resumed despite very prominent instances of electoral violence, polling inconsistencies, and opposition legal challenges stemming from Kenya's 1992 election. The international community heralded the great strides made towards democratization in Kenya based solely on the resumption of multi-party elections that were clearly flawed (Brown 2001; Boone 2011).

Although legalizing opposition parties did not immediately overhaul the rules of the game for Kenya's electoral politics or explicitly address many of its underlying issues (e.g., land tenure, ethnic politics, centralization), it remains a significant milestone in Kenya's political development. It permitted the development of key opposition parties like the Forum for the Restoration of Democracy (FORD). FORD failed to sustain a cohesive counter offensive against President Moi in the 1992 election, as the party leadership was unable to agree on a single presidential candidate. The party's subsequent schism into three

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<sup>10</sup> The Paris Group is composed of the major creditor states working concurrently with other IFIs such as the International Monetary Fund (IMF).

competing parties: FORD-Kenya, FORD-Asili, and the Democratic Party further fractured political opposition in the immediate aftermath of the reimposition of multi-party elections (Human Rights Watch 2002; Zeleza 2014a).

The Moi government's authoritarianism and repressive tactics were on full display within President Moi's native Rift Valley Province where violence emerged during subsequent electoral competitions. Political bosses seeking re-election sought to prevent opposition supporters from voting by encouraging their own supporters to drive them from their homes in advance of the election. As political support has generally relied on ethnic voting blocs, such efforts to physically remove opposition supporters were tantamount to ethnic cleansing as the land expropriation resulted in the destruction of homes, murder, and forced displacement. Anderson and Lochery argue that these efforts directly "translated into a policy of political exclusion, turning the province into a 'KANU zone' through the violent elimination of political opponents. In practice, this resulted in the targeting...concentrations of non-Kalenjin voters who were inclined to oppose KANU and support rival parties" (2008, 337). Further to this, those that participated in such efforts did so with the expectation that their efforts would be rewarded with the seized land by the Moi regime upon their victory. These expectations were met through violent land reallocation campaigns that took place between 1991 and 1994 followed by another campaign in the wake of the 1997 election. The result was the substantial reduction of the non-Kalenjin population in central Rift Valley Province, thereby continuing to secure President Moi's electoral edge in the region (Kimenyi and Ndung'u 2005; Boone 2011).

Layering of new rules onto Kenya's political institutions in response to amassing internal and external pressures represents an important step in the process of gradual

institutional change (Mahoney and Thelen 2010). The process of gradual change in Kenya's electoral politics and its opening to official opposition facilitated the evolution of the overarching political opportunity as the realm of possibility for political actors of all stripes slowly began to expand despite efforts of the existing political elite to curtail the effectiveness of these reforms. Another substantial challenge to improving the quality of Kenya's democracy throughout this period was the combative, hostile, and occasionally violent way the Moi government treated potential opposition forces (Joseph 1998; Anderson and Lochery 2008).

The 2002 Presidential election in Kenya marked 10 years after the implementation of multi-party elections. This competition ended with the defeat of President Moi's intended KANU successor, Uhuru Kenyatta. The victory of the National Rainbow Coalition (NARC) led by former Vice-President Mwai Kibaki ended KANU's monopoly over Kenya's post-colonial government. President Kibaki was elected on a platform of change promising to rein in corruption, end state-sponsored violence, boost the economy, investment in public services, and a commitment to constitutional reform that would enshrine devolution within Kenya's political structure (Kagwanja and Southall 2009). Other than the significant boon to Kenya's economy over the course of President Kibaki's first term, there were few deviations from the political status-quo which left many campaign promises unfulfilled.

Endemic state-sponsored violence and ethnic fragmentation remained, corruption continued unfettered, and efforts at constitutional reform failed outright. The question of constitutional reform was the subject of a 2005 referendum which failed when nearly two-thirds of the electorate voted against the proposed constitution. The reason for such a clear

rejection of this key component of the NARC platform was the result of President Kibaki's use of executive authorities to unilaterally amend a previously negotiated draft that had undergone a wide national consultation process (Kagwanja and Southall 2009). The failure of the referendum led to 'elite fragmentation' and the dissolution of the tenuous alliance that allowed NARC to initially oust KANU. In doing so it created the conditions for wider fragmentation to occur nationally (Kagwanja and Southall 2009). The unwillingness of President Kibaki's government to rectify many of the social ills that persisted throughout the Moi Administration's most authoritarian years, made it possible for now fractured political elites in the core to mobilize their own diffuse networks of support to challenge or undermine the electoral process (Kagwanja 2009). Therefore, even though a relatively peaceful transition of power occurred in Kenya's 2002 election, the inability to rectify ongoing violent suppression of political opponents left the democratization process incomplete and institutions ill prepared for further turbulence.

The election of 27 December 2007 was a tight race between incumbent President Kibaki running under the newly formed banner of the Party of National Unity (PNU) and the main opposition challenger from the Orange Democratic Movement (ODM) Raila Odinga. Most polls prior to the election had the two front-runners within a few percentage points of each other (Brownell 2013). Nevertheless, there were very few ideological or programmatic differences between these candidates, and each drew support from their respective clientelist networks based on ethnic affiliation. Kibaki drew most of his support from the majority Kikuyu community with Odinga doing the same with the Luo community. As results came in the respective strongholds for both the government and the opposition began returning results with over 100% voter turnout – highlighting that ballot-

stuffing had continued unabated (Nyabola 2018). Kenya's electoral commission eventually announced Kibaki the victor by approximately 230,000 votes despite Odinga's previous lead, which immediately solidified the perception that the election had been rigged (Brownsell 2013).

The contested results added fuel to the fire as each side faced accusations that they directly mobilized armed groups within their respective ethnic communities to harass, target, and attack members of the others' community. The violence that broke out in early 2008 saw 1,100 people killed and 600,000 internally displaced and had the potential to escalate even further and jeopardize Kenya's reputation as being one of the most stable states and economies in East Africa (Zeleza 2014a). In their report on the violence that followed the 2007 electoral competition, Human Rights Watch noted that the "political manipulation of ethnicity is almost a tradition in Kenyan politics, along with impunity for those implicated in fermenting [*sic*] political violence" (2008, 17). The episodic violence that accompanied elections in Kenya were intrinsically tied to several issues that had become framed through the lens of ethnic competition; of the most prescient was the issue of land claims. Kenya's political elite have used such episodic state-sponsored violence to shift the issue of land tenure and distribution to one emphasizing an internal struggle over territory rooted predominantly in highly politicized notions of ethnic identity (Anderson and Lochery 2008; Kagwanja 2009).

These longstanding tensions and issues provided the undercurrent that permitted the escalation of violence after the results of the 2007 election were announced, as it became apparent that the presidential election was indeed rigged in favour of Kibaki. The dubious results in the presidential race were all the more obvious when compared to the

overwhelming ODM victory in the parliamentary elections that had its results announced in real-time. The disproportionate amount of power invested in the office of the President made it a higher-stakes race when compared to the parliamentary races. This became a flashpoint for violence fuelled by decades of territorial mismanagement and identity-based grievances (Anderson and Lochery 2008).

The ‘winner-take-all’ nature of Kenya’s elections coupled with the highly centralized political structure made it relatively easy for political elites to take advantage of existing social cleavages and mobilize their supporters. The intersection of electoral politics, centralized governance, pervasive ethnic cleavages, and unaddressed land-based grievances transformed each successive electoral competition into a winner-takes-all affair. The reconstruction efforts after the violence of 2007/2008 sought to bring Kenya back from the brink of political catastrophe and address many of the key issues that contributed to the cycle of election related violence that had become the norm.

After sustained pressure on President Kibaki from Kenya’s international allies and donors, the conflict was quelled by the introduction of a landmark power-sharing agreement that saw the (temporary) introduction of the office of Prime Minister in which Raila Odinga assumed while Kibaki remained in the Office of the President (Human Rights Watch 2008). This agreement would not have been conceivable to internal or external observers just weeks beforehand – and highlights the pivotal moment in which Kenya found itself. In addition to this renewed commitment to constitutional reform, it also introduced independent oversight bodies including the Independent Electoral and Boundaries Commission (IEBC) and the Kenya National Commission for Human Rights (KNCHR).

#### **4.5 Kenya's Encampment Based Asylum Policy in Phase Two**

Kenya's asylum policy during this second phase was characterized by the enforcement of strict encampment for refugees as the number of asylum seekers sharply increased in the early 1990s due to a proliferation of conflicts in several neighbouring countries, including (unified) Sudan, Somalia, Ethiopia, Burundi, and Rwanda. This transition was nearly simultaneous with the onset of Kenya's second phase of political development that was ushered in by the reintroduction of multi-party elections in 1992. During this time, Kenyan politics became increasingly contentious in the political core both through competitive elections as well as the perpetuation of many social tensions and illiberal political attitudes that were enabled by Kenya's incomplete democratization.

As competition over the political core increased, refugees were simultaneously pushed to the most peripheral areas of the state through this renewed commitment to encampment and the implementation of policies that restricted refugees' access to work and free movement. By ensuring refugees were not present within the intensely competitive areas of Kenya's Coastal, Central, or Rift Valley Provinces it was virtually guaranteed that refugee populations would not factor significantly into electoral concerns, ambitions, or permeate the national political discourse (Pérouse de Montclos 2001; Milner 2009; Miller 2018a). The Dadaab and Kakuma refugee camps were administered entirely by the UNHCR. Constructing these camps in two of the most remote, sparsely populated, and marginalized areas of the state deliberately limited the involvement of the central government in refugee affairs and minimized the potential effect that such a sizable population could have on mainstream politics in Kenya.

In this commitment to refugee encampment, Kenya's asylum policy in this phase tracks clearly with the second phase of asylum policy discussed in Chapter Three. The number of asylum seekers and refugees arriving in Kenya grew exponentially in the early 1990s in tandem with the pervasive instability in neighbouring states such as Sudan and Somalia. Hyndman describes the resulting political calculus as:

while they [Somali refugees] were not warmly welcomed, the Kenyan government was obliged to tolerate them, partly because of its commitment in international law to the 1951 Convention and 1967 Protocol relating to the Status of Refugees as well as the 1969 OAU Convention, and partly because it needed the continued support through foreign aid of donor countries – many of which had suspended funds to Kenya at that time. While donor countries awaited a satisfactory outcome of the country's first multi-party elections before reconsidering their aid commitment to Kenya, then President Daniel Arap Moi grudgingly allowed Somali Refugees into Kenya on the condition that they reside only in camps located near the border (2011, 10).

The recontextualization of refugees from a political perspective made it easier to justify the implementation of strict encampment policies that placed heavy restrictions on movement and abandoned the laissez-faire attitude that characterized the politics of asylum in the previous phase. Encampment policies were further enabled by a complementary shift in the political framing of new arrivals. Highly centralized decision-making combined with generally weak political opposition meant that any consternation from those living in peripheral areas where refugee camps were constructed was unlikely to affect the decisions of the core.

While Kenya's largest refugee camps of Kakuma and Dadaab were established in the early 1990s, it was not until the 2006 *Refugees Act* where their existence was given foundation in Kenyan Law. The *Refugees Act* codified Kenya's commitments to international treaties and agreements into domestic law, while simultaneously re-affirming

commitments to *non-refoulement* and the essentials of refugee protection. However, it is also in this legislation where encampment as well as the additional restrictions on employment and movement are laid out. Section 16(2)(b) of the legislation notes that the Minister of Interior and Coordination of National Government may designate, in consultation with the host community, any area to be a ‘refugee camp’ through its announcement in the *Kenya Gazette* (Government of Kenya 2006). Refugee affairs have continued to be subject to *post-hoc* legislating as even though these authorities were codified in 2006, neither Dadaab nor Kakuma were officially designated as refugee hosting areas until 2014 (Interview with Representatives of the Refugee Consortium of Kenya 2019).

The authority to designate refugee hosting areas is quickly followed in Section 16(4) by the clarification that, “every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya” (Government of Kenya 2006). In 2009, supplementary legislation to the 2006 *Refugees Act* was passed which codified (in Sections 34 and 35) the need for movement and education passes should refugees wish to travel outside the camp borders for ‘legitimate’ purposes as determined by the Commissioner for Refugee Affairs (Government of Kenya 2009). These legislative efforts put existing practices into a clear policy framework.

These longstanding practices were rooted in the significant increase in Kenya’s refugee population as well as the simultaneous ‘Third Wave of Democratization’ that had swept the global South at the end of the Cold War. It is impossible to separate the way in which the state responded to the arrival of refugees from the increasingly competitive

nature of Kenya's reinvigorated multi-party democracy. The timing of these events undoubtedly served to facilitate the rapid politicization of asylum observed during this phase of Kenya's political development. The stresses placed on Kenya's bureaucracy based on their previously *ad hoc* approach resulted in their off-loading of the RSD process onto the international community and removed any legitimate pathways to citizenship for refugees and asylum-seekers in Kenya. In doing so, the Kenyan government effectively externalized many of the decision-making processes surrounding the day-to-day management and administration of refugee camps in Kenya and centered the role of international donor states in the process. A key side-effect of off-loading RSD processes to the UNHCR was the elimination of any institutional memory or capacity within the central government's bureaucratic machine (Interview with Representative of Amnesty International-Kenya 2019).

By pursuing encampment-as-policy the Kenyan Government, like many other similarly positioned refugee hosting states in Africa, provided access to land and physical space for refugees with the understanding that the UNHCR and its partners assumed responsibility for the financial and administrative burden. Additionally, with such a policy superimposed over the existing centralized political structure, very few opportunities were created for consultation with local communities or other levels of government outside of the central government. Kagwanja (2002) observed that, while operating without a legislated policy, there was an absence of clarity in the roles and responsibilities of actors and institutions at the local level in refugee hosting areas. Integrating these actors at the lower levels of governance and closer to where refugees and other forced migrants resided could bolster the capacity of international humanitarian actors and local institutions while

simultaneously “facilitating good relations between refugees and the locals, and in the reconciliation, rehabilitation, and healing process” (Kagwanja 2002, 113). Despite such arguments, negotiations on refugee issues during this phase (e.g., land use agreements) were exclusively delegated to the UNHCR, other international donors, and Kenya’s central government in Nairobi – effectively sidelining sub-national actors where they existed.

Central to the encampment-as-policy approach is the imposition of limitations surrounding movement, work, and education. These restrictions resulted in the establishment of what Brankamp (2019) likens to the ‘permit regimes’ observed in formally occupied territories in and around Kenya’s refugee camps. This policy thereby imposes a surveillance network on the refugees living under it. Individual movements outside the camp are monitored and continuously scrutinized by local police and security forces and help up against a constantly moving threshold of legitimacy that is further complicated by endemic corruption across the political and security sectors (AfriMap 2016; Cannon and Fujibayashi 2018). The additional layer of complexity that corruption adds to the permit regime presents a significant obstacle for refugees. Not only must those wishing to travel outside the camps obtain the appropriate passes (e.g., for medical treatment, secondary or post-secondary education), and gather the necessary funds for the means of travel, but refugees must also calculate the total cost of the bribes they are expected to pay along their journey or risk being turned back, harassed, or detained (Brankamp 2019).

This situation was only heightened by the securitization (Buzan 1991) of refugee camps, as well as refugees-as-individuals after the 1998 U.S. Embassy bombing in Dar es Salaam and Nairobi and the onset of the Global War on Terror in 2001 (Lind et al. 2017). Since these events, the language of security was often invoked by the central government

to justify the implementation of extraordinary policy measures as necessary to ensure the maintenance of: “defence, public safety, public order, public morality, or public health” (Constitution of Kenya (Repealed), 2008). In framing refugees as sources of insecurity the government not only perpetuated the encampment policy, but also continued to impose restrictions on the daily lives of refugees in the name of preserving the ‘public good.’

As discussed in section 4.6 below, the promise of a new constitution after the resolution of the post-election violence in 2007-2008 provided the opportunity for a non-partisan commitment to political devolution to emerge. Uncoupling central political and financial control from local governance and service provision allowed for county governments in Kenya’s refugee hosting areas to distance their own approach to the refugee communities in their territories from the rhetoric of security and public safety that previously determined the scope of action for domestic actors.

#### **4.6 Phase Three: A New Constitution, Decentralization, and Public Participation**

As discussed above, one of the most pertinent elements to emerge from the new Constitution in 2010 was the revival of political devolution in Kenya in a manner that was a clear divergence from previous discussions of majimboism, which had been described by its opponents as both ‘tribalistic’ and ‘chauvinist’ (Human Rights Watch 2008). Kenya’s eight existing provinces were dissolved to make way for 47 county-level governments based on former colonial administrative regions rather than purely along historic claims to land rooted in ethnicity (For a discussion on majimboism and the ‘de-ethnicization’ of the Kenyan state see: Ghai 2008). The county governments received devolved authority over

key areas of policy and administration from the central government<sup>11</sup> through an unconditional transfer of funds (UNHCR 2018a). This process implemented local democratic processes for electing county governors and members of the county assemblies (MCAs) independent of the central government. Section 174 of the 2010 Constitution denotes that:

The objects of the devolution of government are— (a) to promote democratic and accountable exercise of power; (b) to foster national unity by recognising diversity; (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; (d) to recognise the right of communities to manage their own affairs and to further their development; (e) to protect and promote the interests and rights of minorities and marginalised communities; (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; (g) to ensure equitable sharing of national and local resources throughout Kenya; (h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and (i) to enhance checks and balances and the separation of powers (Government of Kenya 2010).

Implementing sub-national democratization facilitated a reorganization of elite interests and the emergence of new identities within Kenya's political landscape, the results of which are still in flux (Interview with Kenya Program Coordinator, Danish Refugee Council 2019). Reworking the structures of power and authority in this way created new avenues for local administration and assisted in the democratization of local politics (Chege 2018). In a more fundamental way, devolution has made the state accessible to marginalized populations beyond the ability to participate in the democratic process at the

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<sup>11</sup> Devolution provides the county governments with authority over the following functions: Water, Environment, Mineral Resources and Agriculture; Education, Sports, and Social Protection; Tourism, Culture, and Natural Resources; Trade, Gender and Youth Affairs; Agriculture, Pastoral Economy, and Fisheries; Health and Sanitation Services; Public Service and Disaster Management; Infrastructure, Transport and Public Works; Lands, Energy, Housing and Urban Areas Management, and; Finance and Economic Planning (UNHCR 2018a).

local level; it brought the government “closer to the people” as they could directly see and engage with the bureaucratic mechanisms of government in their own localities. Prior to the implementation of devolved governance, individuals would have had to travel long distances to Nairobi in order to interact with the central government in a meaningful way (Interview with Turkana West sub-County Administrator 2019).

Public participation is a central element of Kenyan law and policy at both the national and county levels in the 2010 Constitution. Section 196(b) reads that county assemblies shall “facilitate public participation and involvement in the legislative and other business of the assembly and its committees.” The final point in the list of the ‘functions and powers’ of county governments notes that they are responsible for “ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.” Local participation is therefore, not just required as a superficial part of the legislative process in the demand for consultation on new laws and initiatives but is a core element in building the capacity for self-governance at the local level. Directly incorporating public consultation and participation into the constitutional framework represents a stark shift from the past, where the influence of the executive branch stretched from the presidency through to the provincial administration and down to the level of local administrations and chiefs.

In addition to participation, full disclosure of all final decisions is required before county legislation takes effect. As *The Kenya Gazette* is the official means of disseminating legal decisions and laws to the public, no legislation can enter into force until it is formally

gazetted. Additionally, any amendment to an Act that predates the 2010 Constitution must be announced through *The Kenya Gazette* as well. While the use of the *Kenya Gazette* is not a new development, when viewed in conjunction with the public participation requirements of the 2010 Constitution, it is evident that a more robust institutional framework around public consultation has emerged. Such institutional arrangements have reinforced the need to consult with key stakeholders and affected communities on proposed legislative changes prior to their implementation.

The politics surrounding the process of devolution in Kenya is particularly interesting given the longstanding primacy of the imperial presidency, especially as Section 189 of the 2010 Constitution mandates cooperation between levels of government within the clearly defined parameters of their respective jurisdictions. Embedding cooperation in the Constitution may assist in avoiding exploitative relations and/or executive over-reach into county affairs in a way that would not have been possible with the patchwork of laws and amendments layered onto the previous colonial-era constitutional framework. The reintroduction of the Senate (via section 194 of the new constitution) also plays a key role in ensuring the ongoing balance and separation of powers, as senators represent the counties at the national level and must also sign off on any attempt to disband or suspend county government by the executive branch. Furthermore, the Senate retains the power to overturn such decisions at any time (Government of Kenya 2010). While the constitutional foundations provided are certainly important to the ongoing institutionalization of devolved government and separation of powers and authority in Kenya, the socialization of new elite networks and patronage systems at the local level has resulted in significant structural change to Kenya's political institutions.

The advent of independent county-level elections has permitted a layering of Kenya's political opportunity structures where new networks of elite interests have been able to emerge and establish themselves in direct contrast to those that had existed prior to devolution and fed straight into the interests of national political allegiances. As noted above, it was such direct patronage and clientelist connections that facilitated the widespread and organized nature of the electoral violence in 2007-2008. Disrupting these existing networks creates opportunities for civic engagement, but also opportunities for corruption within traditionally marginalized areas of the Kenyan state. Lind argues that, rather than "pioneering a new type of politics, devolution has entrenched existing political dynamics through reproducing at the county-level a type of patronage politics and rent seeking seen at the centre" (2018, 140). Claims of corruption at the sub-national level partially fueled the creation of the Building Bridges Initiative (BBI) that sought to walk back some of the constitutional reforms of 2010 by reconsolidating power within the executive branch.

President Kenyatta and Raila Odinga are the primary supporters of the BBI and billed it as a bipartisan way to limit the highly competitive 'winner-take-all' nature of Kenyan politics by expanding parliament to include upwards of 300 unelected members (Omondi 2021). The BBI explicitly noted that county governments are fraught with corruption, mismanagement, and nepotism; ultimately framing this as an argument to walk back commitments to devolved government enshrined in the 2010 Constitution (Presidential Taskforce on Building Bridges to Unity Advisory 2019; Franceschi 2020). In May 2021 Kenya's high court issued a major repudiation by ruling that the BBI, despite successfully passing through Parliament, is "irregular, illegal and unconstitutional"

(Omondi 2021). Therefore, although corruption and patronage politics is indeed an issue amongst county government it is not exclusive to them as corruption has been an oft cited feature of Kenyan political life at all levels. The continued integrity of the 2010 Constitution's commitment to devolution in the face of such direct challenges provides sub-national governments the time, space, and confidence needed to test the boundaries of their jurisdiction and pursue more autonomous agendas.

Key to this process is the development of local patronage networks. There is an intrinsic value to better understanding how these new networks and their respective interests may influence political life at multiple levels of governance, given the reaffirmation of their constitutionally protected autonomy. Understanding the differences in these networks between the central and county governments as well as between individual counties is crucial to effectively comprehend the ever-shifting nuances of policymaking within the state. Fully unpacking the structural arrangements that determine the parameters of political decision-making processes at multiple levels is required to account for changes over time, as local political actors can wield significant influence in certain areas of policy development and implementation. However, there is no guarantee that these arrangements are entirely consistent between sub-national contexts; therefore, it is essential to acknowledge the coexistence of multiple political opportunity structures that actively condition decision-making.

Recalling the discussion of political opportunity structures in Chapter Two – they are at their core, “features of regimes and institutions that facilitate or inhibit a political actor’s collective action” (Tarrow and Tilly 2007, 440) and that such structures are useful in assessing political organization and mobilization (Malloy 2017; Vráblíková 2014;

Kitschelt 1986). Tarrow and Tilly additionally point to six properties of regimes that are crucial in determining how internal political opportunity structures can change over time. This section will address these properties within the Kenyan context, change is noted across several of the metrics that support the argument that structural changes within Kenya's political landscape have altered the rules of the game – especially on the periphery of the state. As noted in Chapter Two, these properties include: the number of independent centres of power within a regime, the ability for new actors to engage with the regime, the relative stability of current political alignments and arrangements, the availability and ability of allies and supporters to influence the regime, the extent to which the regime either permits or represses collective claim making, as well as the overall stability of these properties (Tarrow and Tilly 2007).

Prior to the implementation of the 2010 Constitution, Kenya embodied the highly centralized characterization of African states as outlined in Chapter Three. In this context, symbols and representations of the central government were often met with mistrust in the peripheral and often marginalized regions of the country. Moreover, power at the margins often resided not with the state, but with parallel or unofficial institutions that filled a gap that the central state was either unable or unwilling to fill (Lind 2018). Given this reality, the informality of political opportunity structures on the periphery made engagement and participation in ‘the state’ less of a priority on both sides. The implementation of devolved authorities to county governments, as noted above, had significant influence on the overall democratization of local politics and made official arms of the ‘Kenyan state’ through the county governments visible to marginalized and peripheral populations.

The institutional reforms that created space for the decentralization of the Kenyan state have also created opportunities on the periphery for new centres of power to develop. While these are limited in their scope to policy areas clearly defined in the 2010 Constitution, the creation of 47 counties with some degree of institutional independence from the central government in Nairobi creates contestation based on local interests. Such political contestation at the margins of the state provides sub-state actors at the county and sub-county levels with an increased ability to participate and influence political life to a greater degree than was possible under a hyper-centralized state.

Creating democratically elected county assemblies as well as a national senate rooted in county representation, has substantially increased the number of elected officials in Kenya at all levels of governance. The creation of a senate enshrined a degree of county-based representation in the central government as the upper chamber and the democratization of sub-national politics has increased the opportunities for those from even the most marginalized areas of Kenya to engage directly with formal state institutions (Chege 2018). As the number of positions available has significantly increased so too have the employment opportunities for local communities within burgeoning county bureaucratic machines.

Political parties in Kenya have seen a great deal of fluctuation between the 2007 and 2017 elections. At the national level many of the main power brokers have remained in place but have made alterations to their respective political alliances and coalitions. President Uhuru Kenyatta, Deputy President William Ruto, and former Prime Minister Raila Odinga remain central figures within national politics and retain a great deal of their ability to influence political outcomes through longstanding patronage structures and

alliances rooted in ethno-politics. To observe this in action, one need not look further than the bipartisan support for the BBI, as described above. Support for the BBI stems from the 2018 handshake between Uhuru Kenyatta and Raila Odinga after the contentious re-running of the 2017 National Election (for a thorough analysis of this process see: Nyabola 2018) after which both committed to the BBI.

The bipartisan support at the national level for BBI, especially between those vying for presidential power, suggests an alignment of interests amongst the traditional political elites. However, the persistence of such interests may yet be tied to perceptions of electoral success. This scenario becomes all the more evident as many of the loudest critiques of the BBI are centered around it being a thinly veiled attempt to backtrack on some of the key developments made since 2010 (Franceschi 2020). Additionally, many corporate and elite bodies at the national level have retained a significant amount of control and influence despite disagreements with county governments as they work to wield their limited authority over their respective territories. Such conflicts recently came to a head when county governments sought to collect back-taxes from foreign owned tea plantations in the Kericho Valley; many of these plantations are on some of the most fertile land in Kenya and date back to British colonization (The Economist 2019). County governments have found it very difficult to enforce their policies on such well-established and deeply embedded international power brokers, especially as connections to the central government and the Nairobi elite go back decades and are deeply embedded in existing social relationships.

As illustrated above, it is evident that over the previous decade the institutional changes made to Kenya's state structure have allowed for changes in most of the priorities

highlighted by Tarrow and Tilly (2007). However, these changes have occurred unevenly with a limited opening of the state to new actors and interests at the margins. It is important to consider Kenya to have a layered political opportunity structure. The central government in Nairobi errs towards the maintenance of the pre-2010 status-quo, while county governments have worked to define local agendas and pursue local interests within their demarcated areas of authority; thereby changing the political opportunity structure in which specific decisions are made.

#### **4.7 Variation in Asylum Policy and Refugee Management in Phase Three**

Asylum policy in Kenya provides a unique gateway into understanding the layered political opportunity structures that have developed during phase three. Officially, immigration and refugee policy remain in the direct hands of the central government through the Refugee Affairs Secretariat (RAS) in the Ministry of Interior and Coordination of National Government (Government of Kenya 2021a).<sup>12</sup> The central government presents its position as continuing to be an ‘open-door’ policy insofar as refugees are not actively turned away from Kenya’s borders (Interview with Michael Oloo, Deputy Head, Refugee Affairs Secretariat 2019). Yet refugees officially exist on the margins of society, and due to the restrictive encampment policy upheld by the government the vast majority of refugees are relegated to the geographic margins of the Kenyan state. As mentioned previously, most refugees reside in Turkana and Garissa Counties and represent a very significant proportion of the population. In this context, both counties have incorporated refugee populations into their 5-year County Integrated Development Plans (CIDPs) as a

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<sup>12</sup> RAS was created in 2016 to replace the Department of Refugee Affairs (DRA) after it was disbanded. This came after the Ministry of Immigration and Registration of Persons was transformed into the Ministry of Interior and Coordination of National Government in 2013 (Government of Kenya 2021a).

means of creating more sustainable outcomes for both refugees and host populations by investing in shared physical and social infrastructure (Interview with Turkana West sub-County Administrator 2019; Interview with International Organization Representative 2019).

The devolved functions that authorize counties to provide business and land use permits directly implicates refugees, especially those engaged in entrepreneurial and agricultural activities. Local authorities have found it necessary not only to liaise with RAS, but also to partner directly with international organizations that provide services to refugees such as the UNHCR. The reworking of power relations, decision-making, and political participation has made it possible for existing local networks to expand in scope and capability and enabled the creation of new connections that may bypass the central government to directly link local and international development actors (Immigration, Refugees and Citizenship Canada 2019).

Asylum policy in this most recent phase of Kenya's political development can generally be characterized by increased variation in both policy interpretation and implementation. The advent of devolved authority to the county level, while not explicitly focusing on asylum policy, has facilitated the creation of space and financial capacity in adjacent policy spaces that can actively include refugees and their advocates in new and innovative ways. For example, the integration of refugees and refugee-input in to the CIDPs for both Turkana and Garissa counties allows for a more accurate representation of demographic data to be captured and improve the allocation and distribution of shared resources and infrastructure. There will also undoubtedly continue to be gaps in policy coverage, specifically where urban refugee populations are concerned as their numbers

may continue to be relatively amorphous despite the official inclusion of refugees into the 2019 National Census.

In the context of Kakuma and the Kalobeyei integrated settlement there is a clear economic lens that has been applied to the presence of refugees. Development actors have been able to successfully reframe the discussion from one that emphasized inter-communal conflict between refugees and the host community to one of equal opportunity for economic advancement and shared infrastructure. In Dadaab, despite the expression of interest of the Garissa County government at pursuing a similar model of integrated development, there has been an inability to remove the overtly securitized lens through which the primarily Somali refugee community have been viewed (Interview with International Organization Representative 2019; Lind et al. 2017).

In Nairobi, the presence of both the county and central governments create a uniquely competitive political environment where interactions between the levels of government are laid bare. Although attempts by the central government to reclaim some devolved functions have failed on a national level, they have successfully been able to parse off some key responsibilities from the Nairobi City County Government including health, transport, planning and management, as well as public works and ancillary services (Omulo 2020). Such a contentious political environment can overshadow the issues faced by urban refugee populations as their needs are less likely to be prioritized by those in positions of authority. Furthermore, as Nairobi is not an ‘officially designated’ refugee hosting area within Kenya, urban refugees face *de facto* criminalization under existing legislation. Therefore, much of the assistance they receive is sporadic and provided through less formal channels (e.g., informal refugee-to-refugee networks, local NGOs, religious

organizations, and some international NGOs) than is provided by the UNHCR in either Kakuma or Dadaab.

#### **4.8 Conclusion**

This chapter has sought to connect shifts in Kenya's overarching political development to the trends observed in the politics of asylum within the country since independence. Clarifying this connection is integral to moving forward with this analysis, as subsequent chapters will assess the relevant sub-national contexts in turn. Having a clear understanding of the how the political machinations in Kenya's political and economic core affect state responses to the arrival and ongoing presence of refugees is necessary to explain how the relationships between the political core and periphery of the state have evolved and begun to diverge from one another during this 'third phase' of asylum politics in Africa.

Decentralization has been a common theme and popular political promise throughout the successive phases of political development in Kenya. Often framed as a solution for Kenya's highly centralized governance, endemic corruption at the centre, and underdevelopment at the margins proposals for political decentralization took many forms over time. Beginning with the majimboism that framed early post-independence propositions to the failure of the 2005 referendum on constitutional reform, and eventually to the devolved governance enshrined in the 2010 constitution. The non-partisan commitment to constitutional reform after the post-election violence in 2007/2008 created a more conducive environment for reworking of elite networks.

Devolution increased the power and clout associated with local elites and provided them with a platform upon which to highlight their own interests and take advantage of

new spaces for contestation within the political process. The localization of political contestation in this manner has contributed to the perceived deviation from the agendas of traditional elite powerbrokers in Nairobi. Therefore, arguing that the overarching political opportunity structure of the Kenyan state has changed is possible. While the central government still retains control over key areas of policy such as national security, immigration, and international relations – there is now increasing latitude at the county level for direct interaction and negotiation across different levels of governance as well as with external actors.

Crucial to this analysis is the fact that the conceptual phases that shaped analyses of the politics of asylum in Africa are aligned with the observed changes in Kenya's political structure throughout its post-colonial development. This significantly bolsters the claim that decisions regarding asylum policy can – at least partially – be explained by the nature of a state's political opportunity structure at any given time. By viewing sub-national variation as a key feature of contemporary asylum policy within Kenya, it is possible to interrogate the interactions between various levels of governance within a single policy space and better unpack how the layering of political opportunity structures can affect policy outcomes when different variables interact with the decision-making process. The emergence of a layered political opportunity structure in Kenya therefore can assist in explaining the observed variation in the application of asylum policy at the sub-national level, as will be discussed in detail over the next three chapters.

## **Chapter 5: Garissa County: Sustaining an Unlikely Status-Quo**

### **5.1 Introduction**

Garissa County, located in Kenya's northeast, is home to the Dadaab Refugee Camp complex. Dadaab is comprised of several distinct camp sites: the Dagahaley, Ifo, and Hagadera Camps (UNHCR 2021b). The complex's population expanded to over 500,000 by the end of 2011, despite having only been constructed to host a maximum of 90,000 people (Lindley 2011). This influx was a result of several compounding factors including severe drought and famine in Somalia, in addition to the persistently unstable security situation in Somalia that dates to 1991. The security context was again brought to the forefront of the discussion by the intervention of the Kenyan and Ethiopian militaries against Al-Shabaab militants in 2011 (Barkley 2015; Malalo 2017). From 2011 onward, this has been the dominant narrative through which discussions of refugees have been framed at the central level, significantly building on historic tensions between the government, Kenya's ethnic Somali population, and Somali refugees.

This Chapter addresses the relatively static condition of asylum policy in Dadaab over the last decade. Even as rhetoric from the central government expresses an extremely overt desire to close the camps down and repatriate as many individuals to Somalia as possible, an uneasy status-quo has been maintained. Over its three decades of existence, Dadaab has become an urbanized economic hub for Garissa County, which is something that has not gone unnoticed by local elites and politicians. Furthermore, many refugees living in Dadaab have done so since its creation by building communities, families, and extended networks that transcend camp boundaries to include the local host community. The analysis below argues that such factors have been imperative in pushing back against

central hostility and calls for the camp's closure to maintain the status-quo. However, it also notes that competing interests from actors within the Garissa County government's political class aimed at preserving delicate political coalitions have resulted in a sustained hesitancy to advocate for further progressive deviation from the status-quo.

It is important to consider that, when politically charged statements are made by central government elites in Kenya, the term refugee is often taken as general shorthand for *Somali Refugees* (Interview with Representatives of the Refugee Consortium of Kenya 2019). This ethnically charged rhetoric invokes a deep history of animosity between Kenya's northeast and 'down Kenya.' Given that the demographic composition of the Dadaab Camps where over 90% of refugees and asylum seekers are Somali, when contrasted with Kakuma (18%) or Nairobi (26%) it is unsurprising that the ripple effects of central policy development and anti-Somali rhetoric are disproportionately felt in Dadaab (UNHCR 2021a). Unpacking the historical roots of this discrimination is a crucial component in addressing the central government's ongoing cultivation of specific rhetorical and policy positions pertaining to the governance and administration of the Dadaab refugee camps. It is for this reason that section 5.2 below begins by examining the region's historical relationship with Kenya's political core in Nairobi. Tracing the roots of such tense relationships allows for a more thorough understanding of the policies that have emerged over time and how they have been oriented to implicate Somali refugees in a very particular fashion. Negative assumptions about Somali refugees and asylum seekers have led popular discussions about Dadaab intended for national and international audiences to be filtered through a lens of national security and threat minimization.

Section 5.3 addresses advocacy, policymaking, and politicking at the sub-national level in Garissa County. While at an inherent disadvantage given the constitutional powers of the Central Government in the 2010 Constitution and the 2006 *Refugees Act*, the positions and actions of the sub-national government in Garissa have been oriented towards preserving the County's social and economic status-quo in the face of increasingly hostile rhetoric from the centre. This section unpacks the persistence of strong social and economic integration between the host and refugee communities that has developed over time and explores the role that these factors have played in positioning the County government to resist the central government's ambitions. Two key features emerge here, the first is the issue of intermarriage between the refugees and Kenyan nationals which creates strong social bonds that local elected officials recognize as integral to the daily lives of their constituents. Second, Dadaab serves as an important economic and transit hub for the region and as a key source of employment for the host community. Dadaab's existence as an economic centre has become an essential component of northeastern Kenya's future development. Therefore, local elites are keenly aware of the potentially detrimental effects for their electorate should the camps be closed.

Section 5.4 addresses how international organizations such as the UNHCR and its partners have navigated these divergent political agendas at the national and sub-national levels. Through engaging with the roles and actions of the external humanitarian actors in this context, it is possible to gain a more holistic understanding of why there has been such a remarkable commitment to the status-quo in Dadaab in the face of significant structural changes in national and sub-national governance in Kenya. Of the three key components identified in Chapter Two that determine the political opportunity structures within a given

context, the parameters of decision-making regarding asylum policy and refugee management in Garissa County remain intrinsically tied to the core interests of the national government in Nairobi to a much greater extent than is observed in either the Kakuma camps (Chapter Six) or even in the context of urban refugees living in Nairobi itself (Chapter Seven). Finally, Section 5.5 examines how the analysis in this Chapter contributes to this research's overarching position that a third phase of asylum politics in Africa has begun. This section operationalizes the observations within the context of Dadaab to understand the form and function of the sub-national variation observed.

## **5.2 The View from the Centre: Framing the National Discussion**

Integral to understanding the position of the central government in Nairobi – particularly their preoccupation with national security in Dadaab and the salient manner in which this perspective has been embedded in constructing a broad national narrative regarding Kenya's hosting of refugees – is the historic relationship between the central government, Garissa County (formerly part of Northeastern Province [NEP]), and its ethnic Somali population (inclusive of both Kenyan citizens and refugees). The academic literature has explained this using three dominant and interrelated narratives: historic animosity, ethnic tension, and political isolation.

There is little doubt that the relationship between the central government and Kenya's Somali population has been fraught for a long time, stretching well into the colonial era through to independence and beyond. Hyndman (2011) argues that the legacy of such tensions has created an inherently political environment that cannot be separated from the contemporary 'humanitarian spaces' of refugee camps. This relationship stretches back to Kenya's British colonial administration. The colonial administration attempted to

create a buffer zone between Britain's infrastructural investments and the white settler population in Kenya on one side, and Italian Somaliland as well as Ethiopia on the other. This project resulted in the establishment of the 'Northern Frontier District' (NFD) in 1909 (Otunnu 1992; Hyndman 2011). At this time Somalis living in this area were not permitted to travel into the rest of Kenya. These restrictions effectively began the legacy of both physical and political ostracization of Kenya's northeast and the ethnic Somali population that resided there. Subsequent strengthening of such restrictive policies by the colonial administration placed further restrictions on the Kenya's Somali population by declaring the NFD a 'closed district' and requiring them to possess movement passes (much akin to those required by contemporary refugees).

The post-independence era declaration of a 'state of emergency' in NEP (which has since been split into Garissa, Mandera, and Wajir Counties), marked a continuation of such exclusionary policies aimed at preventing the secession of territory to the newly independent Somalia after the amalgamation of the former British Somaliland in the north and Italian Somaliland in the south. The refusal to accommodate such secessionist desires led to the region's Somali population's boycott of the 1963 election which became the inciting factor for the resulting '*Shifta Wars*'<sup>13</sup> from 1963-1967 (Lind et al. 2017). These irredentist movements and the sentiments of Somali nationalism that they fostered were not only a response to the historic marginalization and underdevelopment of Kenya's northeast but were also used by the government as justification for such marginalization

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<sup>13</sup> *Shifta* translates to 'Bandit' in Swahili and this rhetoric assisted in delegitimizing the political actions of these populations by framing them as nothing more than banditry (Hyndman 2011)

and ongoing exclusion from the post-colonial state building project (Saideman 1998; Milner 2009; Hyndman 2011; Lind et al. 2017; Abdelaaty 2021).

As discussed in Chapter Four, the post-independence era was characterized by a zealous development agenda intended to modernize Kenya as rapidly as possible; however, this agenda was marked by clientelist politics that continued to explicitly exclude Kenya's Somali population. The relationship between the central government and Kenya's Somali population through what was then the NEP was only further complicated by the mass arrival of refugees following the collapse of Somalia's government in 1991.

Abdelaaty explicitly argues that the Kenyan government's linking of Somali refugees with insecurity is 'inextricable from ethnic politics' (2021, 142). Historical grievances alone therefore can only produce a partial image of what has driven central policy positions on issues affecting both Kenyan Somalis and Somali refugees in Kenya. Abdelaaty, citing an interview with an NGO worker in Nairobi, notes that "policies take on a different character when Somalis are involved, they are the reason the approach towards refugees become securitized: border control with Uganda and Sudan is less strict than with Somalia" (2021, 143). A clear extension of this position is the perception that the Dadaab refugee camps represent a threat to the well-being of Kenyans (Interview with Representatives of the Refugee Consortium of Kenya 2019).

Without understanding the role of ethnic politics in this circumstance, it is impossible to fully explain why northeastern Kenya has been historically excluded from the patronage networks and the clientelist machinery that has been integral to political life and resource distribution in Kenya since independence. As noted in Chapter Four, successive Kenyan Presidents and their networks have hailed from the most prominent

ethnic groups in ‘down Kenya’ – primarily the Kikuyu and Kalenjin. By ostracizing Somali populations as potential threats and sources of insecurity considering a history of irredentist conflict becomes a much more salient position to take when political support has been tied so closely to the ethnicity of the ruling elite. Therefore, marginalization of political communities in northeastern Kenya has been the result of both historic tensions and the contemporary identity politics. This confluence of factors has resulted in the use of refugee policy as a political wedge between the periphery and Kenya’s political core in Nairobi.

As noted in previous sections, the 2010 Constitution and the 2006 *Refugees Act* grant the responsibility for asylum policy and refugee affairs exclusively to the central government. Yet, in practice the responsibility and day-to-day management of refugee populations has generally been off-loaded to humanitarian actors. An interviewee in response to a question about how the implementation of devolution has affected the interpretation and implementation of Kenya’s asylum policy, emphasized that the ongoing process of securitizing refugees and refugee affairs has succeeded in presenting it as an issue of ‘national concern’ (Interview with Development Consultant 2019). The central government has been able to both pursue more restrictive policies and invoke Article 33(2) of the 1951 Convention, which provides a means to forcibly repatriate refugees and asylum seekers should they be determined to pose a security threat to the host state (Mwangi 2018). Creating a national issue surrounding the politics of asylum also enables the central government to be increasingly selective in the narrative it puts forward.

The commitment to this position can partially be attributed to the overarching bureaucratic structure governing Kenya’s refugee and asylum policy. It is notable that Refugee Affairs Secretariat’s (RAS) position as an arm of the Ministry of the Interior and

Coordination of National Government, led by Cabinet Secretary Dr. Fred Okengo Matiangi. This is notable because the Ministry of the Interior and Coordination of National Government is also responsible for overseeing the Department of Immigration Services, the National Police Service, as well as the Kenya Prisons Service (Ministry of the Interior and Coordination of National Government, Government of Kenya, 2021). The grouping of such government agencies under the same bureaucratic umbrella with the same Cabinet Secretary as the penultimate decision-maker (answering only to the Office of the President), permits political decision-making to be structured in such a way that the perspectives of law enforcement and security are more likely to become the primary lenses of analysis. Furthermore, as one of the most powerful arms of the central government, the placement of RAS within this structure has ensured that the financial resources benchmarked for refugee assistance and programming are subject to a high degree of central control (Interview with Development Consultant 2019). These funds are generally dispersed in a manner consistent with the government's overarching strategic goals of containing refugees and limiting their potential for integration into Kenyan society.

As RAS is positioned within one of the central government's most influential Ministries the political agenda of the central government and RAS' strategic goals are inherently intertwined. However, in the practical provision of protection and assistance to refugees and asylum seekers, the international humanitarian sector wields a significant amount of power and can influence how such centrally orchestrated plans and policies are interpreted and ultimately implemented. Camp administrators from RAS tend to assume an administrative and coordination role, while most of the work regarding service provision, claims management, and capacity building remains done by the humanitarian

sector (Interview with Development Consultant 2019). The reliance on the humanitarian sector for the routine management provides such actors with an enhanced negotiating position when dealing with the central government. While the central government remains the primary legal authority through which legislation and asylum policies can be implemented, the fact remains that “refugee management is complicated by government infrastructure because the policy is driven by an agency that is not responsible for [its] implementation” (Interview with Kenya Program Coordinator, Danish Refugee Council 2019).

Milner (2009), in discussing the types of security concerns faced by refugee hosting states, points to both direct and indirect security concerns. He notes that direct threats, in the form of potential armed incursions within the camp setting, cross-border skirmishes, raids, and guerilla conflict have the potential to have spillover effects for the host state and embroil them in further inter and intra state conflicts. Furthermore, it may raise questions about the host state’s capacity to govern its border regions should the conflict prove destabilizing. It should not come as a surprise that this has become the dominant perspective of Kenya’s central government given the tense situation with Somalia over issues including cross-border terrorist attacks and banditry, as well as ongoing land and marine border disputes with the Somali government in Mogadishu. However, these incidents have not directly implicated Dadaab nor the refugees that reside there as attacks are often elsewhere along the large and extremely porous Kenya-Somali border.<sup>14</sup> Authorities have been concerned that the camps themselves may serve as a ‘rest station’

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<sup>14</sup> Al-Shabaab’s attack on Garissa University College in 2015, approximately 100km away from the Dadaab Complex was the deadliest attack on Kenyan soil since the 1998 bombing of the U.S. Embassy by Al-Qaeda (Lind et al. 2017).

for such militants as they transit between Kenya and Somalia, however there is little substantial evidence to either support or refute this claim (Interview with Lucy Kiama, Country Director HIAS 2019). Therefore, referring to refugees and the encampments themselves as existential threats to state security leaves out much of the nuance of the overall security situation in the region and oversimplifies an extremely complex socio-political situation in the process.

Shifting focus away from the direct security concerns towards indirect security concerns that factor in the social, political, and economic realities that stem from the “context in which they [refugees] exist,” (Milner 2009, 78) there is an opportunity to widen the scope of the discussion and involve a greater array of intervening actors, such as the County government. These officials are better positioned to address issues that may act as threat multipliers compounding social, political, and economic grievances into more direct forms of insecurity.

Continuing to contextualize the presence of refugees as an issue of ‘national importance’ tied to direct security concerns also perpetuates already salient narratives regarding Somali refugees that are easily recognized by the Kenyan public. There are two key factors that have played into this, the first stems from the aforementioned historical factors that have created the strained relationships between the central government and the Somali community. The second is the perceived looming threat posed by Al-Shabaab given their successful execution of several high-profile terror attacks within Kenya in response to the Kenyan government’s military operations in Somalia after 2011, and by 2015 was responsible for nearly 40% of all incidents of conflict within Mandera, Wajir, and Garissa Counties (Barkley 2015; Lind et al. 2017; Lind 2018). Considering such

incursions, attempts to link Somali identity and refugee status to terrorism and insecurity clearly implicates the Dadaab refugee camps in a unique way given that 96% of the refugee population claims Somalia as their country of origin (UNHCR 2021b).

From an institutional perspective, the Dadaab camps have remained remarkably stable over a period of significant change and upheaval in Kenya's macro-political structures. In creating multiple levels of democratic governance, a space was created for a divergence of political incentives between the central and county governments; and the maintenance of the status-quo in Dadaab has also been perpetuated despite the increasingly hostile rhetoric emerging from the central government as well as some of the more progressive propositions made by County officials to pursue 'durable solutions' in the Dadaab context other than repatriation by supporting social and economic integration. The diametrically opposed positions from either end of the institutional spectrum have created an environment where neither can effectively pursue their goals without the acquiescence of the other.

It was reiterated by multiple interviewees that RAS lacks the capacity to fully assume responsibility for the processing of asylum claims and conducting RSD (Interview with Development Consultant 2019; Interview with Dadaab Resident B). Since the county government has no official ability to step into this gap, local actors have traditionally been better positioned to foster working relationships with the humanitarian actors that have been providing the bulk of the support mechanisms in the camp over the course of its three decades of operation. Furthermore, many of the new administrative functions granted to county governments have simplified some of the bureaucratic processes that have complicated refugees' access to legal documentation such as business permits which has

resulted in some unofficial progress towards economic integration and capacity building. However, it should also be emphasized that such progressive elements at the county level are limited by decisions made at the centre, this is especially evident when noting that both registration and RSD processes have ceased in Dadaab for new arrivals (UNHCR 2021a). These individuals are only granted partial status in Kenya and are unable to access many of the essential resources that are granted to both convention and *prima facie* refugees<sup>15</sup> all while facing the same restrictions on their movement (Interview with Dadaab Resident B).

Restricting the movement of refugees outside of the camp, coupled with the immense economic potential that their presence generates creates significant pull-factors that draw in entrepreneurial Kenyan nationals not only from Garissa County, but from across Kenya. The influx of transient populations seeking economic opportunity has created another point of contention between the national and sub-national levels of government; in that the central government is keen to maintain a commitment to the temporariness with which refugee camps were initially conceived of as emergency response rather than the semi-permanent structures they have become in increasingly protracted scenarios (Miller 2018a). In doing so, the central government has refused to invest in infrastructure projects that would have a clear and long-lasting economic benefit to the region at large and not just to the refugee population. Over time this has resulted in the expansion of the services provided by actors such as the UNHCR as they assume additional responsibilities for the host community (e.g., security and infrastructure development). UNHCR claims that investing in such additional initiatives are required to

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<sup>15</sup> *Prima Facie* refugees are determined based on ‘group status’ and are not beholden to the same RSD process as individual claimants seeking recognition under the 1951 Convention.

stabilize some areas and to create an environment in which they can fulfil their core protection mandate (Slaughter and Crisp 2008; Miller 2018a).

Two interviewees living in Dadaab pointed to the presence of traffic congestion as a persistent problem, which has only been compounded by the scrapping of plans to construct a paved road connecting Dadaab to other major centres in Garissa County (Interview with Dadaab Resident A; Interview with Dadaab Resident B). The main argument was that such investments would only create incentives for refugees to remain in Kenya and perhaps attract more new arrivals in the future. The perspective of the central government on these matters has clearly trumped the interests and advocacy of the County government that has publicly expressed their support for the further economic integration of Dadaab into the local economy and to decrease barriers to the economic participation of refugees in said economy.

The commitment to characterizing these spaces as temporary has facilitated the efforts to shrink and close the Dadaab complex of camps, with varying degrees of success in recent years. There has also been increased focus placed on repatriation efforts supported by the tripartite agreement between Kenya, Somalia and the UNHCR signed in 2013 (Mwangi 2018; D'Orsi 2019). The Kenyan government has in the years since announced their intent to close the camps on two separate occasions once in 2017 and again in 2021. However, this has not come without significant backlash from the UNHCR, Human Rights Advocates, as well as Kenya's Supreme Court – which ruled the 2017 decision to be unconstitutional (Malalo 2017). Despite this ruling, the rhetoric remains a popular tool amongst the political elites in the central government and seems to have some degree of traction with the public. These central actors have been incentivized to politicize Kenya's

refugee population as a means to achieve electoral success. As elaborated on below, the negative campaigning on the refugee issue by the central government is directly contrasted with the rhetoric emerging at the sub-national level, where the newly democratized County governments where refugees *actually* reside tend to frame the issue in a much more positive light.

### **5.3 Garissa County and the Challenge of Sub-National Governance**

Regardless of the more positive framing of refugees at the sub-national level, a variety of political positions remain in determining the most appropriate responses to the complex issues that have emerged in the area in the nearly 30 years since the camps' creation. Contestation between political actors at various levels of governance emerges as the strategic aims of these actors diverge. The traditional narratives noted above (namely: historic animosity, ethnic tension, and political isolation) continue to provide the framework within which decisions pertaining to Kenya's northeast are made by the central government and interacts in a unique manner with their concurrent reversal of a longstanding hands-off approach to refugee management, which often left daily camp management and claims processing to the UNHCR and their partners rather than being reabsorbed by the RAS.

Parallel to the reassertion of authority over the bureaucratic levers of asylum policy, the central government has doubled down on the overt securitization of *Somali* refugees and the characterization of the Dadaab camps as potential 'hotbeds' of terrorism and persistent insecurity (Milner 2009; Burns 2010). Presenting Dadaab through such a security focused lens has permitted policy positions at the centre to be developed, not only occurs against a backdrop of historic animosity, but also within a very contemporary environment

of institutionalized mistrust of the refugee population living in Dadaab. Doing so has directly contributed to the central government's position that the country's refugee camps should be closed in 2022 (DW News 2021). Furthermore, the central government's resumption of its administrative responsibilities through the RAS after a decades long hiatus has coincided with the development and strengthening of the county governments which has created the potential for new points of conflict and contention between levels of government and their bureaucracies. The complexity of this situation is further compounded by the ongoing involvement of the development sector and international organizations in providing many of the services and still assuming a disproportionate amount of responsibility for the RSD process, as the RAS has not (as of the end of 2021) developed the requisite administrative capacities to fully manage such central processes and have been unable to clear a longstanding backlog of case files (Government of Kenya 2020, 8).

In a 2019 Regional Durable Solutions Secretariat report discussing the potential solutions for the future of Dadaab's refugee and host communities, it was noted that "Kenya's devolution process offers the space for county governments in refugee-hosting areas to focus efforts on pursuing an integrated approach that include refugees in local development planning and service delivery" (Regional Durable Solutions Secretariat 2019, 4). Refugees' reinvigoration of the local economy in the early 1990s through the influx of human and financial capital to Dadaab Town offset a degree of the neglect caused by decades of central avoidance by bringing jobs, resources, and international assistance to the region on an unprecedented scale (Montclos and Kagwanja 2000). Aside from noting that their presence creates a unique urban dynamic in Dadaab, the CIDP for Garissa County

centers the discussion on strain the concentrated presence of refugees creates on the local environment rather than focusing on the long term economic and social benefits that their presence has created (Garissa County 2018).

There is little doubt that the overexploitation of limited resources in Dadaab is tied to the densely concentrated population created by Kenya's encampment policy and the urbanization it has caused in the surrounding area. The mitigation strategies addressing environmental degradation attributed to refugees included in the CIDP include support for afforestation programs and an increase in surveillance in areas where tree cover has been reduced through the overexploitation of resources, illicit logging, and poaching (Garissa County 2018). Yet, these programs address the effects, and largely ignore the causes: population density and inadequate livelihood supports for refugees. The CIDP notes that "90% of their [refugees'] livelihoods depends [*sic*] on the natural resources" (Garissa County 2018, 117) and suggests that the provision of alternative shelter or energy sources may mitigate the strain placed on the environment; however, there are no clear policies, programs, or funding proposals associated with this acknowledgement. Therefore, the county's main initiatives are highly reactionary and only address issues pertaining to refugees through a very narrow lens, that avoids directly engaging with the economic benefits created by Dadaab's urbanization.

There is also a degree of variability between the plans set out at the beginning of the CIDP process, and the subsequent implementation of projects and priorities. Such an example emerged in interviews with several Dadaab residents and is corroborated within the CIDP's initial plans (Garissa County 2018, 83). When the CIDP was first published in 2018, it contained plans to construct a paved bitumen road through Dadaab to connect it

with Garissa Town and the Somali border. This plan was intended to alleviate the immense traffic congestion passing through Dadaab Town and the refugee camps, while also facilitating further economic growth. However, these plans were scuttled by the central government as it was perceived that any improvement to such infrastructure would create an incentive for refugees to remain in Kenya and not return to Somalia voluntarily (Interview with Dadaab Resident A; Interview with Dadaab Resident B). Therefore, the central government has been willing to selectively exercise their legislated authority in limiting the scope of the political opportunity structure regulating the actions of local elites in Garissa County across a myriad of sectors. This is particularly conspicuous in matters pertaining to the Dadaab camps and its Somali refugee population since the resurgence of the central government's plans for their closure (DW News 2021).

To assist in mitigating potential economic shocks in the host community should the camps be closed and the humanitarian sector leave, there have been calls by local elites to support the host community and invest in repurposing existing infrastructure to meet local needs (Regional Durable Solutions Secretariat 2019). An opportunity emerged during the recent scaling back of operations in Dadaab could have tested such an approach. The closure of Dadaab's Kambioos and Ifo 2 camps in 2017 has left many previously occupied buildings, permanent structures, and resources abandoned in derelict condition rather than being repurposed for the benefit of the host community (Interview with Dadaab Resident A; Interview with Dadaab Resident B). Although there were discussions about the potential repurposing of these areas for the host community as late as 2019, this has yet to be realised (Astariko 2019). This scenario directly calls into question the ability to repurpose such resources *en masse* without the support of the central government. Given the history of

underdevelopment and marginalization in Kenya's northeast, it remains unclear as to whether such investments will be prioritized and whether the county government will have the capacity to pursue such redevelopment on its own. There has been some promising legislative innovation in the Kenya's 2021 Refugees Act (signed on 23 November 2021) that provides legislative support for the transfer of such infrastructure to *either* the central or county governments (Government of Kenya 2021d). Since this legislation does not enter into force until 21 February 2022, it remains unclear at the time of writing how the policies and procedures facilitating this provision will be developed. It remains likely that the implementation of such policies will be influenced by the direct lines of communication that have been established between the international development community and Garissa's political elites over decades of interaction. Such relationships may present an opportunity to leverage the international community to assist in the development of Garissa County should the camps be closed, and the area continue to be deprioritized on the national agenda.

Garissa County's CIDP does make passing mention of the social interconnectedness of the refugee and host communities, primarily through inter-marriage (Garissa County 2018). One of the downstream effects that has created a significant logistical challenge for all levels of governance in Dadaab has been the 'double registration' of individuals, whereby they are registered as both refugees in the UNHCR system as well as Kenyan nationals. The primary cause of this phenomenon has been the exclusivity of access to resources and rights between the refugee and host communities. Where humanitarian assistance and livelihood support have been disproportionately provided to refugees within Dadaab, and key rights (i.e., free movement and employment)

remain the domain of Kenyan citizens, motivation exists in both communities to seek out the benefits associated with the other. This reality is facilitated by the ethnic homogeneity between these communities, the social and familial bonds that have developed over time, limited bureaucratic capacity on the ground, and a failure to create shared services in a timely manner.

Addressing double registration requires significant resources and a commitment from all levels of government to overcome. Not only must RSD processes be strengthened, and citizenship verified, but the political inertia discussed above must also be overcome in order to reach a viable solution that does not strip individuals of the rights to which they are owed. This issue also presents a major roadblock for the ambitions of the central government, as any attempt to close the camps would require a reliable method of disentangling such confusion and determining the status of each individual residing in and around the Dadaab complex. For the central government to provide meaningful support to this endeavour it needs to shift away from the security-oriented lens through which decisions pertaining to Dadaab are generally filtered to ensure that claims are processed, and status is verified. Simultaneously, the central government would need to invest both time and resources to support Kenyan citizens in Garissa County that may have sought out refugee status to gain access to services that the state has continuously failed to provide. Garissa County does not have the resources available to address the issue of double registration on its own; it remains committed to the maintenance of the status-quo whereby it does not undermine the social stability of the region, nor does it upset the economic balance that has been created over three decades.

The clear divergence of priorities at both levels of governance in the face of this issue provides strong support for the argument that separate political opportunity structures have emerged, specifically between the central and county governments that has created the *de facto* policy of inaction in this context. Any desire to maintain a refugee presence and preserve the economic hub that the Dadaab complex has become is beholden to the decisions and actions of the central government that have limited the options available to sub-national political actors. Despite the limited scope of actions available, the Garissa County government is invested in maintaining a refugee presence in the area and preserving the *de facto* social and economic integration of the communities that has emerged after three decades of cohabitation. The unique conditions and structural arrangements at the sub-national level can significantly change the way in which national asylum policies are interpreted and the narratives through which the presence of refugees are viewed (Steeves 2015). The interconnectedness of these communities is difficult to overstate and unpacking the policy implications requires a very nuanced perspective that can distinguish between the local community-based needs and the political positions that the sub-national government has assumed in response to such issues.

Key community-based priorities include maintaining employment opportunities for the host community that result from the presence of international development agencies and maintaining cohesive family ties that have developed through the frequent intermarriage between Kenyan nationals and refugees (D'orsi 2019). While both issues provide the impetus for the Garissa County government to advocate for the continued presence of refugees in Dadaab, the immense logistical challenge in determining how to determine the status of such mixed-status families in addition to those that are double

registered is a significant contributing factor in the maintenance of the status-quo, as the resources are unavailable – at any level of governance – to provide an adequate solution within the confines of Kenya’s established refugee policy.

A significant gap remains between the positions held by many refugee leaders, human rights advocates, and humanitarian actors, and the Garissa County government. While there is tremendous overlap in the desire to maintain a refugee presence and strengthen economic integration efforts to achieve mutually beneficial results, a wedge appears when the topic of political integration is discussed. One informant from the UNHCR head office in Nairobi noted that political integration would fundamentally change local politics (Interview with Senior Development Advisor, UNHCR 2019). This change would be partially driven by shifts in the demographic composition of the electorate. Recalling the centrality of ethnic politics to the Kenyan political landscape (Abdelaaty 2021), this holds true in the intra-ethnic political dimensions of northeastern Kenya’s Somali communities.

Dadaab brings together many different Somali clans and sub-clans in a concentrated space outside of their traditional territories. Much of the scholarship in political science discussing the political implications of Somalia’s clan dynamics are focused on factionalism and a propensity for violent conflict (see: Makinda 1999; Menkhaus 2010; Lewis 2015;). Several interviewees, each having lived in Dadaab for two decades or longer, noted that such divisions had affected both the security and social conditions of the camps when they were initially developed, but such lines and divisions have softened significantly over time (Interview with Dadaab Resident A; Interview with Dadaab Resident B). Ethnic divisions are not, however, the sole cause of division between the refugee and host

communities; many of the tensions can be attributed to the perception that refugees have been better supported than the host community given the influx of international assistance directed for them.

Alleviating inter-communal tensions is at the centre of contemporary programming and international initiatives such as the Comprehensive Refugee Response Framework (CRRF) and the Global Compact on Refugees that have reinforced the importance of developing policies and programs intended to mutually benefit both the refugee and the host communities from their inception, rather than as an afterthought. Allowing services such as education and healthcare to be accessed by the host community have served as a bridge between the populations and assisted in mitigating the continuation of such tensions. Furthermore, as these divisions have been overcome the social and economic entanglement of the communities – especially within Dadaab – has increased over time (Government of Kenya 2020).

Three decades of cohabitation, intermarriage, and community building initiatives in and around Dadaab have served to construct a significantly more cohesive identity which has assisted in mitigating many of these obstacles. Yet, when contrasted with the political class of the County Government and the coalition of voters on which they rely for support, a clear division remains. Garissa County MCAs as well as the Governor, Ali Bunow Korane, have little incentive to upset the voting blocs that have successfully placed them in their respective offices. Therefore, the progressive politics of the county government as it pertains to refugees inevitably stops short of advocating for full political integration. Instead, the economic potential is often pushed to the forefront of the agenda by the county government, particularly the role that they now play in the processing of business permits

and the facilitation of entrepreneurial activities by refugees. Considering the stated priorities of the central and county governments, international organizations like the UNHCR tend to follow suit and promote refugee self-reliance – the ability for refugees to live autonomously – through economic rather than political or social means (Pincock et al. 2020).

Granting such permits is one of the new authorities delegated to the county governments, which does simplify the application process as under the former system would-be business owners would have had to travel to Nairobi or other major centres in ‘down Kenya’ rather than to Garissa Town for such purposes. Longer distance travel may have previously proven extremely difficult or prohibitive given the restrictions on travel, the financial cost of making the trip (including both formal travel fees and the requisite bribes one may be required to pay along the way), or the fear of leaving family members behind without support (Interview with Dadaab Resident C).

The Deputy Head of the RAS keenly pointed out that for those refugees that want to work, a permit is all that is required which is obtained once employment is secured (Interview with Michael Oloo 2019). Officially, this is a relatively straightforward process; however, it does not account for the many practical concerns and logistical hurdles that make navigating this bureaucratic process extremely difficult. Moving the responsibility for business permits to the counties *does* alleviate a significant portion of these obstacles and allows for better economic integration of refugees, but such businesses remain restricted to the confines of the encampments and broader work permits for refugees remain just as difficult to obtain as they were previously. Therefore, central oversight of policy

making continues to create a significant barrier to full economic integration, despite the simplification and downloading of certain responsibilities to sub-national bodies.

The softening of internal divisions and the strengthening of social cohesion within Dadaab also presents an opportunity to respond to the strong narrative of persistent insecurity in Dadaab purported by the central government. This bottom-up counter-narrative reorients the discussion to highlight the relative safety and stability Dadaab can provide to those fleeing violence and persecution relative to the surrounding area. An informant described the complex as an ‘oasis’ of safety and stability in a region known for the opposite, and the insecurities often referenced stem from outside of the camps themselves (Interview with Dadaab Resident A). In supporting this counter narrative, one key argument is that the complex’s insecurities touted by the centre are often no more severe than what one may find in any densely populated urban area. Indeed, according to Kenya’s National Crime Research Centre (2018), in 2018 the most common criminal activities in Garissa County were stealing, burglary and breakings, and theft of livestock/cattle rustling. In Nairobi County for contrast the three most common criminal activities were mugging, stealing, and burglary and breakings (National Crime Research Centre 2018). This is not to say that other forms of crime do not exist nor that concerns of insecurity can be discounted entirely, but it is important to note that there is significant overlap in the most common forms of criminal activity and are certainly not unique to areas hosting densely populated refugee camps.

The salience of this counter narrative has not percolated upwards into the national narrative as even in the Government of Kenya’s 2020 report on the implementation of the CRRF emphasizes the strain that hosting refugees has placed on the national security

apparatus. The report notes that, “[s]o far, this burden has been falling on the Government [of Kenya] with *some* support from the UNHCR in Dadaab and Kakuma” (Government of Kenya 2020, 9, emphasis added). In outlining both the challenges to safety and security as well as the requisite responses to such challenges, the central government does not make any explicit reference to working with the County governments in refugee hosting areas, despite both being members of the CRRF National Steering Committee, but predominantly emphasizes the direct relationships with the [international] humanitarian sector in addition to some community-based initiatives. Such engagements are aimed at countering criminal activities in refugee camps including terrorism, money laundering, human trafficking, and smuggling (Government of Kenya 2020). While these activities do occur and should not be minimized, it is important to note that these are not amongst the most prominent or prevalent criminal activities within the County, as described above. In emphasizing a very specific sub-set of criminal activity within refugee hosting areas, the emphasis (even within progressive initiatives like the CRRF given its focus on refugee self-reliance and livelihoods) remains rooted within the dominant narrative of security which has stymied community-based efforts to reorient the discussion.

#### **5.4 The International Humanitarian Sector in Dadaab**

The international humanitarian sector in navigating the political climate in Dadaab has assumed most of the day-to-day operational responsibilities, with the RAS appointed camp manager assuming a supervisory role (Interview with Kenya Program Coordinator, Danish Refugee Council 2019). The UNHCR has generally been responsible for the RSD process in Dadaab; nevertheless, at the end of 2021, new arrivals and files were not being reviewed or processed in Dadaab (UNHCR 2021a). Alternatively, the provision of basic

services is provided by a network of international and national humanitarian actors working in partnership with the UNHCR and this work has continued.

Since the implementation of devolution there have been few substantial shifts in how the international humanitarian sector works within Dadaab. Relationships remain mediated by the RAS and the majority of service provision ranging from RSD through to water, sanitation and hygiene projects (WASH), and some self-reliance and skills training initiatives remain the responsibility of the UNHCR and its partners. The configuration of such roles varies between refugee hosting areas as the activities are determined by a combination of specific needs and the availability of funding (Interview with Kenya Program Coordinator, Danish Refugee Council 2019). In Dadaab, the needs that have been identified by the Government of Kenya and the international humanitarian community emphasize the need for individual protection, essential services (i.e., food aid, WASH programming), education, and the facilitation of *voluntary* repatriation to Somalia. Funding is an ongoing issue due to donor fatigue; the response to refugees in Dadaab has not adequately shifted away from emergency management to more durable solutions that could further improve refugee livelihoods, and it is difficult to maintain a sense of urgency and the need for stable funding mechanisms after such a protracted period (Milner 2009; Lindley 2011). Continual comparisons between the situation in Kenya and emerging events elsewhere in Africa increases the difficulty in securing long-term funding as the situation in Kenya does not appear to be an emergency in the same vein as the situations in South Sudan, Burundi, Ethiopia, or Somalia (Interview with INGO Researcher 2019).

Growing competition for the same limited humanitarian support mechanisms results in volatile and unpredictable funding cycles and hinders any efforts at longer term

development planning. The central government's aversion to permanent infrastructure in the hopes of incentivizing voluntary return of Somali refugees acts as a compounding factor, as it is very difficult to convince the international donor community to commit funds to long term projects as opposed immediate 'survival aid' if they are barraged with official messaging stating that these sites will be closed imminently. As a result, the ontological foundation of such operations is built upon the presumption that they are inherently temporary. Such *a priori* assumptions are out of place in protracted refugee situations that have been operational for thirty years and contain multiple generations of refugees that have never known life outside camp borders.

The inability of the international humanitarian sector to break out of this holding pattern is partially due to their position vis-à-vis the central government. Cooperation between the government and the humanitarian actors is essential to the ongoing provision of assistance to refugees. Many interviewees working in this sector were quick to note that they can continue operations at the sole discretion of the central government, and it is important to work within the confines of that system. Therefore, when the central government is exerting pressure in this context and invoking the rhetoric of national security it becomes much more difficult for other actors to make changes at the margins of such a political space.

The UNHCR's decision to cooperate with the Governments of Kenya and Somalia in the 2013 tripartite agreement in facilitating the voluntary repatriation of Somali refugees and the ongoing efforts of the international community to support such initiatives were also perceived through this politicized lens. Working in tandem with both the host state and the state of origin, the UNHCR can act as both as a high-level mediator between states, as well

as at a very operational level to support individual returnees throughout the process of repatriation by providing transport as well as support packages upon their return to assist with reintegration (Government of Kenya 2020). In providing such cooperation, the UNHCR can satisfy many of the interests expressed by Kenya's governing elites. This allows them to point to ongoing repatriation efforts as evidence that the closure of the camps is an eventual reality – which has been central to their political messaging on refugee issues in recent years. Despite the high-profile nature of this effort, the number of individuals leaving Dadaab is not equal the number of those that have received resettlement assistance from the UNHCR.<sup>16</sup> While some may be returning to Somalia unassisted, it is likely that a significant portion are relocating elsewhere in Kenya either to Nairobi or into smaller urban centres where refugees have not typically settled (Interview with Lucy Kiama, Country Director HIAS 2019). This places such individuals in a much more liminal and legally amorphous position in society.

Even though the UNHCR and its partners have acquiesced to many of the Government of Kenya's demands and strive to work within established policy frameworks in both downsizing the camp's physical footprint and maintaining baseline assistance services to the refugee population; there have not been significant shifts over time in their role, despite being integral to the overall function of Kenya's asylum system. In Dadaab specifically, the central government's heavy hand in the name of national security has

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<sup>16</sup> In January 2017, Dadaab's population was approximately 270,100. Over the course of the year, 35,403 individuals were repatriated to Somalia, the largest single year for voluntary repatriations to Somalia since 2009. As of 31 January 2018, Dadaab's population was approximately 235,296. Over the course of the year, 7,559 individuals were repatriated to Somalia; however, after Dadaab's Ifo 2 Camp was closed on 31 May 2018, the overall camp population shrunk to 208,616 individuals despite at that point in the year having only registered 4,728 Somali refugees as having been repatriated. Meaning, as of 31 May 2018 approximately 14,393 individuals were unaccounted for (UNHCR 2017; UNHCR 2018b; UNHCR 2019; UNHCR 2020).

complicated external efforts to push back on the more restrictive elements of the encampment policy and the efforts to encourage voluntary repatriation to areas of Somalia that may not be safe for return.

These important conversations about the future of Dadaab are taking place within the context of wider regional discussions about durable solutions for Somali refugees and how to ensure the well-being of those choosing to return to Somalia. The Intergovernmental Authority on Development (IGAD) assembled East African Heads of State and signed the Nairobi Declaration on 25 March 2017 that specifically committed them to pursuing, “durable solutions for Somali refugees, whilst maintaining protection and promoting self-reliance in the countries of asylum with the support of the international community and consistent with international responsibility sharing as outlined in the [CRRF]” (IGAD 2017). As the Nairobi Declaration also commits states to continue to support refugee populations by ‘maintaining asylum space’ and ‘advanc[ing] alternatives to encampment,’ the Kenyan Government has been more selective in their application of international commitments.

Discrepancies between international commitments and domestic priorities can be partially explained by the fact that such agreements are signed by the Foreign Affairs Ministry, which as noted above, is not responsible for refugee management or asylum policy. Furthermore, several interviewees noted that there is a stark difference in tone in the outward facing commitments of Kenya on an international stage as opposed to the domestic messaging and policies (Interview with Senior Development Advisor, UNHCR 2019; Interview with INGO Researcher 2019). Another intervening factor in this instance is the ongoing strain in Kenya-Somalia bilateral relations, which has further politicized the

presence of Somali nationals in Kenya (as refugees) and has served to undermine the underlying principles of certain commitments made under previous geopolitical circumstances (BBC News 2021). This has created a more uncertain environment for the international humanitarian sector operating in Dadaab as one must keep track of such ‘doublespeak’ where there are significantly different messages being purported by different actors working at different levels of governance.

### **5.5 Entering the Third Phase of Asylum Policy: Understanding the Commitment to the Status-Quo in Dadaab**

As described in Chapter Three, the third phase of asylum policy in Africa is characterized by the observed variation in policy. This can occur through the development of different textual forms of the written policies that may differ between states, as well as in the implementation of such policies between jurisdictions within individual states. In contexts where governance has been sufficiently devolved to sub-nation bodies, more room for more subjectivity in the interpretation and application of policy has been created. In the context of Dadaab, variation has been expressed by an overwhelming emphasis on maintaining the status-quo of asylum policy in Kenya, whilst elsewhere within the country, differing priorities at multiple levels of governance have resulted in more deviation away from such status-quo policies. There are two central features to the commitment to the status-quo in Dadaab; the first comes from the position of the central government that the continued hosting of refugees in the regions presents an existential threat to not only the community but to Kenya as a whole. The perpetuation of this narrative has led to the ongoing securitization of refugees within the national narrative, but with a disproportionate emphasis on Somali refugees living in Dadaab.

The second feature reinforcing such a commitment to the status-quo comes from the Garissa County government. While there are desires to maintain and even improve the economic involvement of refugees in the community, there has been a very clear hesitancy on the position of the County government when the question of political involvement and integration is concerned. This is because any extension of citizenship or political rights to the decades old refugee population may upset the political coalition and the demographic base upon which the existing sub-national elites have built their respective networks of support.

It is important here to recall the discussion of ‘critical inaction’ from Chapter Two, specifically Lama Mourad’s (2019) analysis of Lebanon’s response to the arrival of Syrian refugees after 2011, and the role that government inaction can play in shaping the forms of policy responses and outcomes that can be observed at the sub-national level. When this concept is applied to Dadaab, it becomes apparent that willful inaction has played a key role in setting both the national and sub-national agendas in the Dadaab context. This is evident through the maintenance of the status-quo through the paralyzing effects of the central government’s preoccupation with national security and the county government’s fear of potentially radical demographic changes in their electorate should political integration become part of the formal discussion in Garissa County. Inaction has become a central structuring feature to the political environment in Dadaab, as the central refusal to implement legislative changes to Kenya’s domestic asylum regime out of concerns rooted primarily in security has run up against the fears of electoral defeat at the sub-national level, which has facilitated such a static and unyielding policy environment.

## 5.6 Conclusion

Within in the wider conversation of this dissertation, Dadaab has seen the least amount of change in how Kenya's refugee policy through the 2006 *Refugees Act* is implemented. Yet, the maintenance of the status-quo in this context serves an important purpose – it provides both a metric to observe how changes have occurred in other sub-national contexts as well as evidence that when priorities differ at both the national and sub-national levels, different political opportunities present themselves. In Dadaab, the over securitization of both refugees and the space(s) they occupy has resulted from historic tensions and been amplified by the looming threat of terrorism emanating from Somalia. This combination of factors has led to the central government being very involved in the encampment's operations and long-term planning.

Alternatively, the Garissa County government is keen to maintain the economic balance in the county which is sustained by the rapid urbanization of Dadaab, and the entrepreneurial opportunities created for both the host and refugee communities over the course of three decades. Furthermore, local politicians and elites are keenly aware of the deep social integration between the host and refugee communities. There is not only a very strong economic incentive form maintaining the status-quo, but also a very personal one for many residents as families and extended families have been built over such a protracted time that could prove to be severely destabilizing to the region if not handled with care when making further efforts to downsize Dadaab. While there is real concern for such social ties, there are also pragmatic political concerns at play in that pushing towards too progressive of an integrative approach by the county government may also destabilize their voter base in the newly democratized sub-national body. The maintenance of the status-

quo in Dadaab, despite a barrage of hostility from the central government, is a win for the County government and their interests.

Turning to Turkana County, the Kakuma Camps and the Kalobeyei integrated settlement in Chapter Six, I will examine how differing demographic compositions and historic relations have shaped core-periphery relationships within Kenya and explore the factors that have allowed such notable variation from Dadaab's status-quo.

## **Chapter 6: Turkana County: Pushing the Limits of Decentralization**

### **6.1 Introduction**

The Kakuma Camps (comprised of four individual camps known as Kakuma 1, Kakuma 2, Kakuma 3, and Kakuma 4) and the Kalobeyei Integrated Settlement are located in Kenya's northwestern most region, Turkana County. Turkana County's formidable semi-arid landscape has become home to one of the most diverse refugee populations in the world. This corner of Kenya has sizable borders with Ethiopia, South Sudan, and Uganda and is a logical transit point for those fleeing persecution and violence in the region. As of 30 September 2021, the Kakuma Camps and the Kalobeyei Settlement had a combined population of 220,913 refugees and asylum seekers from more than seven different countries of origin (UNHCR 2021c).<sup>17</sup> While there are similarities in the positioning and structure of Kakuma when compared to Dadaab, the distinctions begin with the social and demographic composition of both the refugee and the host communities which have contributed to the development of different social, political, and economic outcomes.

This Chapter addresses the stretching of Kenya's national asylum policy through an increasingly liberal interpretation and implementation by political actors at the sub-national level in Turkana County. Section 6.2 begins this analysis through an examination of the historic relationship between the political core and the region that would become Turkana County. By tracing the roots of contemporary policymaking at the margins to a longstanding history of central aloofness and underdevelopment, this section highlights

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<sup>17</sup> Population Breakdown by Country of Origin: South Sudan 57%, Somalia 17%, Democratic Republic of the Congo 7.7%, Burundi 6.6%, Ethiopia 5%, Sudan 4.6%, Other 1.4% (UNHCR 2021c).

that the absence and inaction of the political core has long been a defining feature of the region. However, the influx of resources and capital facilitated by the implementation of devolution has created the conditions necessary for sub-national actors in Turkana County to interpret and pursue policies and programs through a local lens. Localization of asylum policy in this context has occurred with an eye towards mobilizing human and material resources to ensure the long-term development of the county.

Section 6.3 expands on Turkana County's innovative approach to asylum policy and refugee protection by addressing how it has mitigated tensions and conflict to facilitate meaningful inter-communal cooperation between refugees and their host community. Only by first tackling such social complexities can the political focus be reoriented to focus on economic integration and long-term development planning that is mutually beneficial to both the refugee and host community. In so doing, this analysis provides insights into how new areas of political contestation have emerged at the sub-national level and contributed to the stretching of national asylum policy in this context.

Section 6.4 discusses the unique role that the international humanitarian sector has played in this region, particularly given the *carte blanche* it received from the central government for many decades in making decisions about refugee governance. The international community's significant role in developing a local professional class in Turkana through decades of humanitarian assistance has fostered deep connections to the emergent local political elite. Individuals occupying positions in the sub-national government, including the sitting governor, have strong connections to the sector and an awareness of the economic potential it represents for a community that has been relegated to Kenya's political margins.

Section 6.5 applies these developments to the argument that a third phase of asylum politics has begun and notes how policy variation in Turkana County is explained by the presence of new political opportunities available to sub-national bodies through the modified governance structures put in place by the 2010 Constitution. While not without ingrained structural limitations favouring the role of the central government, substantial progression away from the previous status-quo has been a hallmark of the refugee experience in Turkana County. Unprecedented investment by both sub-national actors as well as the international community in the development of the Kalobeyei Integrated Settlement's Economic Development Plan (KISEDP) exemplifies how central inaction can be overcome by strong political will at the local level and can yield innovative policy responses that would not have been viable under previous structural arrangements.

## **6.2 The View from the Centre: Stretching National Policy Priorities at the Margins**

Distance has historically defined the relationship between the central government and the Turkana people in Kenya's northwest.<sup>18</sup> This distance is both physical and metaphorical, as it is of the most remote and sparsely populated regions in Kenya and has often faced severe issues with underdevelopment, poverty, and political marginalization. When contrasted with the discussion of Garissa County in Chapter Five, the marginalization of the Turkana has not been fuelled by the same undercurrents of ethnonationalism, irredentism, and animosity that has defined relations between the central government and Garissa County's majority Somali population. Yet, the roots of the

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<sup>18</sup> Prior to the implementation of the 2010 Constitution, 'Turkana District' was the northwestern most point of the former Rift Valley Province.

underdevelopment of Kenya's northwest, like that of the northeast, can be found in the legacy of the British Colonial Administration in what was then part of the NFD prior to the transition to independence.

The drawing of colonial boundaries in East Africa and the southern expansion of the Ethiopian Empire at the turn of the 20<sup>th</sup> Century significantly hampered the ability of nomadic communities such as the Turkana to migrate in search of the 'ecological comfort' required to sustain the local pastoralist economy (Shanguhyia 2021). Limiting the available options for nomadic peoples in the NFD and in bordering territories escalated tensions in times of drought where resources became scarce. The resulting movement of livestock across borders intermittently increases tensions and violence in the region. The colonial administration invested few resources in the development of the NFD but did engage in a sustained effort to quell inter-communal and cross-border tensions caused by raiding that resulted in theft of livestock and generalized violence. A key theme that emerged was the need to invest in securing the border from such incursions.

Early experiences that resulted in British casualties in cross-border raids from Ethiopia<sup>19</sup> created an understanding of the challenges associated with allocating sufficient resources in such a vast and unforgiving terrain (Simpson 1996). Subsequent failures in preventing intercommunal violence between groups within their borders led to the colonial government relying on armed policing as a means of preventing violence at the expense of any other substantial investments in community development or infrastructure

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<sup>19</sup> Other prominent threats to the colonial administration came from cross-border raids from southern Ethiopia intended to both forcibly return Oromo fleeing the expansion of the Ethiopian Empire under Emperor Menalik, and to engage in activities such as poaching and gunrunning in the NFD which, for its size, was under-equipped to mitigate such threats. (See: Simpson 1996 for a detailed account of this period from the perspective of the colonial administration).

(Shanguhyia 2021). The provision of border policing by the colonial administration, despite its shortcomings, was one of the few functions provided in the region as evidenced by the deployment of monitoring, military, and police units and the establishment of ‘fortified administration centres’ (Shanguhyia 2021).

Given the lack of other forms of interaction, the Turkana population associated this approach to the securing of the borderlands with the core ethos the state. Underinvestment in this area by the post-colonial government led to the ‘absence of the state’ becoming a common refrain amongst many Turkana (Simpson 1996; Shanguhyia 2021). Comparing the perceived failures of the postcolonial government in Nairobi with the ‘successes’ of the colonial administration occurs against a backdrop of other hostilities between Kenya’s core and the periphery, that often framed the Turkana as perpetrators of inter-communal violence and possessing an “unfriendly and aggressive attitude towards the government” (Simpson 1996, 286). Other policies that followed suit during this time included, “the forced resettlement of the Turkana into small villages, transhumance, and the supervision policies, which continued after the British [administration] and included mandatory police registration from those who traveled” (World Bank 2016). While such strict policies have dissipated over time for the Turkana, their experience with the postcolonial central government has been characterized by two key features: absenteeism and underdevelopment.

Following independence, both absenteeism and underdevelopment persisted in defining the relationship between what was then the Turkana District and the central government throughout each of the phases of Kenya’s political development (as discussed in Chapter Four). Appeals were made to President Jomo Kenyatta’s government in Nairobi

for increased investment and development in Turkana, even going so far as to refer to Kenyatta's own experience being imprisoned in the remote district during the colonial administration to reference the harsh conditions in which the local population live (World Bank 2016; Shanguhyia 2021). As early as 1964 Turkana representatives in Parliament made appeals asking to improve infrastructure, healthcare, and security in the region, but were not met with any serious response by the government of the day (Shanguhyia 2021).

The arrival of refugees in the district in the early 1990s sparked by the onset of the Sudanese Civil War was followed by prompt international investment that resulted in substantial infrastructural development that included boreholes for water, schools, hospitals and medical facilities, a police station and the provision of food aid and other livelihood supports exclusively for refugees (Aukot 2003; Brankamp 2019). Such an arrangement resulted in the camp existing territorially within Kenya but being administratively excluded from the state as such duties were, albeit imperfectly, delegated to the international humanitarian sector (Brankamp 2019).

The ensuing rapid humanitarian investment in the area created services for the exclusive use by the growing refugee population. The segregation of services between refugee and host communities brought the marginalization and underdevelopment that the Turkana had been living with for decades into the spotlight and drove a wedge of discontent between the communities. This confluence of factors stems from the central government's efforts to, "situate the refugee 'problem' as far away from the political core of the state and to insulate the regime from the presence of refugees" (Milner 2009, 90). This herculean effort to push refugees as far from the core as possible created the situation whereby already marginalized communities in Kenya's periphery were required to provide accommodation

for such mass arrivals in one way or another. To mitigate the tensions this caused, the international humanitarian sector became increasingly receptive to the demands of the local community, which resulted in much of the growing refugee-specific infrastructure to be repurposed to serve both communities over time (Aukot 2003). While access to shared infrastructure improved, the underlying features noted above remained. Local investment predominantly relies on the direct interaction between local and international actors, with only intermittent involvement with the central government in Nairobi.

The reality of Turkana County's economic and political marginalization has been reiterated in a 2020 study jointly published by the University of Nairobi and the Kenya National Bureau of Statistics, which found that from 1994 through to 2015 (spanning both the second and third phases of Kenya's postcolonial political development), Turkana County has had highest level of economic inequality of all counties in Kenya (University of Nairobi & Kenya National Bureau of Statistics 2020). This has fuelled some local discontent with local elites as devolution was supposed to bridge this gap through the unconditional allotment of transfer payments to the County Government. As Turkana is the largest – and poorest – of the 47 Counties, they receive the second largest allotment of funds, second only to Nairobi City County. The investments that have materialized over time, including those after the implementation of devolution, have not alone been to counter growing inequities. The relatively hands-off approach in determining how such funds are dispersed once allocated remains the purview of county-level officials. While this allows for more locally informed decision-making on one hand, it can also perpetuate the ambivalence of the central government when it comes to the development of Turkana County.

One need only visit the region to see the clear signs of growing infrastructure investment. In 2019, the long stretch of the Lodwar-Lokichogio Road (connecting Lodwar, the capital of Turkana County, to the border-crossing with South Sudan), which runs directly through the centre of Kakuma Town was in the process of large-scale improvement.<sup>20</sup> The modernization of the highway to a tarmac (bitumen) road is a result of international investment from China and cooperation from all levels of government. As noted in Chapter Five, plans for the construction of a similar road through Dadaab were scuttled based on the premise that permanent infrastructure could be construed as an incentive for refugees to remain in the region. Such concerns have not limited such construction in Turkana it is evident that intervention from the core has not been consistent between these two contexts. While these projects are located on land provided by the County Government, primarily staffed by international workers (including refugee incentive staff),<sup>21</sup> and supported through foreign investment, the central government could apply similar pressures – yet, it has not (Interview with Turkana West sub-County Administrator 2019).

UNHCR's Senior Operations Manager in the Kakuma sub-Office illustrated the importance of understanding how these changed over time, when he explained that:

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<sup>20</sup> Based on Author's firsthand observations in August 2019.

<sup>21</sup> Refugee incentive staff are refugees that are employed through the UNHCR and its implementing partners within the refugee camp. These staff members often possess similar (or greater) qualifications to the national (Kenyan) and international staff members that they work alongside, but are generally paid significantly less than the non-refugee staff (Morris and Voon 2014; Interview with Kakuma Resident A 2019).

[t]he overall management of refugee matters, especially documentation (which is managed by RAS) ...the ultimate management of the refugee policy remains with the national government. However, the decentralization allowed for a greater focus [and] sense of cooperation between counties of various sectors, such as water, education, etc. the county government has been very important in the inclusion of refugees to receive services (Interview with Mohamed Shoman, UNHCR Kakuma Sub-Office 2019).

While it was made clear by many interviewees from various sectors and positions that the handoff of responsibilities for RSD from UNHCR to RAS is an ongoing process that has gone well beyond the initially allotted 3.5-year transition window, those living and working in Kakuma were keenly aware that official decision-making authority remains with the central government (Interview with Kakuma Resident A 2019). The awareness of this has also made it evident that the central government is responsible for many of the logistical issues that have emerged as RAS has assumed a larger share of the work. There are strong criticisms of the handling of the RSD process in Kakuma, as since the assumption of responsibility by RAS, backlogs and wait times have increased in tandem with confusion about the status of files that were partially processed prior to the handover (Interview with Kakuma Resident B 2019).

The associated backlog of case files also has down-stream effects for other organizations that provide services to and opportunities for refugees, as their ability to provide such services is contingent on such processes being completed (Interview with Kakuma Resident B 2019). Registration as an asylum seeker with camp authorities is required prior to the formal completion of the RSD process that enables access to the rights and supports guaranteed to refugees in both Kakuma and Dadaab. From January through

to July 2021,<sup>22</sup> 13,741 individuals<sup>23</sup> were registered in Kakuma while there were 3,936 new RSD applicants, 419 successful applications, and an outstanding backlog of 26,795 pending cases. Given that the overall population of refugees and asylum seekers in Kakuma (excluding Kalobeyei) is 170,267, the existing backlog represents approximately 15% of all camp residents (UNHCR 2021a). Insofar as the central government asserts their authority in determining who may be granted asylum in Kenya, the reality remains that there is limited capacity within the existing bureaucratic structure to turn such rhetoric or legislated authority into practice.

To understand the limits of central authority in this area, one does not need to look beyond the development of KISEDP and the burgeoning role of Kalobeyei in the local economy. As discussed in Chapter Four, Kakuma and Dadaab were not officially designated as ‘refugee hosting areas’ in the *Kenya Gazette* until 2014 (Brankamp 2019) and there have been no revisions or additions to this designation through to the end of 2021 (Interview with Representatives of the Refugee Consortium of Kenya 2019). Yet, the Kalobeyei integrated settlement has not received the same official status. The allocation of land in this instance was completed through direct negotiations between international partners, investors, the local community, and the Turkana County government. Even though the KISEDP project has been touted as a major success story and provided Kenya with positive accolades from international partners, the settlement itself remains in a legally amorphous position and politically vulnerable should sentiments shift, or external

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<sup>22</sup> Operations during this time resumed after the implementation of COVID-19 prevention measures to ensure the health and safety of asylum seekers as well as staff (UNHCR 2021a).

<sup>23</sup> The UNHCR (2021a) notes that this number was comprised primarily of new birth registrants from camp residents.

praise diminish (Interview with Kenya Program Coordinator, Danish Refugee Council 2019). The uncertainty created by this legal ambiguity is further compounded by the central government's repeated efforts to close both the Kakuma and Dadaab Camps, the most recent plans have set 2022 as the goal.

Refugees have had to, at several distinct points in time, grapple with such ambitions to close Kenya's refugee camps. While the most hostile rhetoric is generally reserved for the Dadaab complex (see Chapter Five), as Kenya's only other gazetted refugee hosting area, Kakuma also finds itself targeted by such ambitions – much to the disdain of the local government and those that rely on the economic boom created by Kakuma's urbanization. Refugees face severe anxiety and mental health issues stemming from the uncertainty about their futures when repatriation is not an option, and resettlement seems unlikely (Interview with Kakuma Resident A 2019).

The absence of integration as a serious option, especially within the context of Kakuma and Kalobeyei, creates a deafening silence from Nairobi that has persisted despite ongoing advocacy from many stakeholders at the local level. As recently as July 2021, the Turkana Chapter of the Kenya National Chamber of Commerce and Industry calculated that the closure of Kakuma may result in the loss of over 6,000 employment opportunities for the local community (Etyang 2021). Such politicized commitments aimed at securing support elsewhere at the expense of the economic wellbeing of Kenya's poorest county only serves to reinforce sentiments of marginalization and the notion that the central government is both aloof and uncommitted to furthering development in Kenya's remote regions.

### **6.3 Turkana County and the Opportunity of Sub-National Governance**

While the central government maintains control over the main levers of asylum policy in Kenya, their inaction (whether intentional or not) on several fronts has created the political space required for sub-national governments to step in and fill the resulting policy and a service gap. One key situation arising in this space is the propensity for tensions to arise between the refugee and the host communities – the physical and cultural proximity of the sub-national government to these issues places them in a position where action is required. With the central government's history of absenteeism in resolving local conflict in the northwest, it is understandable the local solutions would emerge as more resources became available after the implementation of devolution.

Contemporary responses to local tensions and conflict in Turkana have been informed by the political and physical distance between the region and the central government. The assumption that the central state will remain inactive has resulted in more locally rooted solutions that have empowered local elites to stretch the limits of existing central policy frameworks when implemented at the margins of the state. Such changes at the margins have only been made a plausible reality by the larger structural changes brought about by the 2010 Constitution and the reallocation of state resources to facilitate more local autonomy and control over key resources. In this sense, the traditional absenteeism of the central government discussed above has played a central role in providing local elites with the confidence that such innovation would be institutionalized rather than penalized.

The emphasis placed on economic integration between the refugee and host communities in Kakuma and Kalobeyei is evidence that there is significant buy-in by local

political and business elites to the idea that economic integration is the most beneficial durable solution for the host community. The positive effects that it has on refugees may be an incidental outcome, but it is one that has facilitated the additional investments in the project by the international humanitarian sector. This direct link between the international humanitarian sector and the Turkana County government was underscored by the UNHCR's Senior Operations Manager in the Kakuma sub-office. It was noted that, "the positive relationship with the governor has positively impacted my ability to communicate with ministers" (Interview with Mohamed Shoman, UNHCR Kakuma Sub-Office 2019). Such connections and direct lines of communication have become critical in achieving mutually beneficial outcomes for both host and refugee communities.

The story of Kakuma prior to the implementation of KISEDP and the refocusing of priorities that it has facilitated, has been characterized by the tensions created by the mass arrival and long-term presence of refugees. Prominent narratives focused on the propensity for conflict to emerge between refugees and their host community. Conflict has generally been characterized as resulting from unequal access to development resources or complaints that refugee involvement in the local livestock trade upsets the traditional pastoralist economy (Crisp 2000; Jansen 2018). This section discusses the shift in the relationship between Kakuma's refugees and the host community over time, culminating in the development of KISEDP and the emergent role of the county government in institutionalizing these changes.

Kakuma's experience with violent interactions between the refugee and host community at various intervals over the course of its existence can be associated with the broad incongruity between the national encampment policy and local land use practices.

Refugee encampment led to territory being parceled off and governance delegated to external actors like the UNHCR because of the central government's hands-off approach during the second phase. The land on which Kakuma is situated was allocated by the central government in consultation with local elites operating within Kenya's pre-devolution political structure, which was characterized by centralization and patronage. Meanwhile, most of the Turkana host community had been (and continues to be) engaged in a pastoralist economy with a heavy emphasis on communal land use and collective ownership. The initial conception of the refugee camp structure which explicitly excluded the host community from receiving any of the potential benefits of the sudden influx of international investment on their territory escalated tensions between these communities.

International organizations and the presence of some national security forces in the region are positioned to intervene when violence occurs; however, their reach is limited, and resources are often overstretched (Onoma 2013). The absenteeism of the central state over the course of Kakuma's operational history has served as an additional compounding factor as responsibility for quelling violence and relieving social tensions often fell to non-state actors operating in the area. This reality prompted such organizations to gradually expand their initiatives and operations in innovative ways that would allow for the inclusion of the host community. Mitigating conflict and bridging social divides between the two communities while simultaneously implementing programs that were better able to create a more secure environment for refugees were prioritized in Kakuma. For example, the establishment of a firewood project aimed at preventing gender and sexual based violence often experienced by those searching for firewood outside of camp boundaries served to address the insecurity experienced by refugees while also providing an

opportunity to provide economic opportunities to the local community by allowing them to sell firewood to refugees (Jansen 2018).

Inclusion became a primary strategy to alleviate pressures on both sides of the equation. An additional factor to consider here is that of time; like the experience in Dadaab discussed in the previous chapter, the protracted nature of encampment in Kakuma has led to sustained interactions and the development of complex and enduring relationships between these communities over a span of several decades (World Bank 2016). Over time relationships, boundaries, and specific ordering principles emerge to regulate social, political, and economic behaviour.<sup>24</sup> The realization of the KISEDP and the integration of refugees into the CIDP for Turkana County represent two of the more novel approaches to integration within this context.

There are two major ways in which an emphasis on local integration creates new points for political contestation and a tacit renegotiation of authority between the county and central governments where refugee governance is concerned. First, the emphasis on the economic potential of Kakuma has been a dominant narrative in forward planning and policy development. Second, the integration of refugees into official data collection measures such as the National Census in 2019 and the CIDP for Turkana County actively incorporates refugees into capital expenditures and forward planning for public works and

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<sup>24</sup> There are however limitations to such integrative ambitions and violence against refugees persists in many instances. This includes violence perpetrated by other refugees, security actors, and from external parties - either from the host community or from criminal activity that takes advantage of the region's porous borders. Targeted violence from other refugees directed at Kakuma's Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) community has been particularly notable due to its persistence and the UNHCR's limited ability to counteract it. This has partially been due to the absence of legal rights for LGBTI individuals in Kenya, where homosexuality remains criminalized (Pincock 2021). LGBTI refugees in Kenya have occupied an additionally precarious position as many experienced secondary incidents of displacement by being relocated from Kakuma to safehouses in Nairobi. Such circumstances relating to the urban refugee experience will be addressed in Chapter Seven.

infrastructure. Even as the power to create refugee and asylum policy remains explicitly with the central government, county governments with notable refugee populations can implement development-oriented policies that account for the presence of refugees and the implications that they have for the social, political, economic, and physical development of their jurisdictions (Interview with Senior Development Advisor, UNHCR 2019). The substantive qualities of devolution in Kenya that provide county governments with autonomous control over social services and development planning have facilitated the creation of an environment where policy innovation is possible and can contribute to the expansion of economic opportunities for refugees.

As discussed above, the Ministry responsible for signing international commitments is not the same as that tasked with the implementation of asylum policy and refugee management in Kenya (Interview with Development Consultant 2019). This has affected how international commitments such as Kenya's piloting of the CRRF are reflected in practice. An interview with a Senior Development Advisor at the UNHCR headquarters in Nairobi noted that there was little optimism that the Kenyan government would endorse the roadmap developed by the UNHCR that laid out the process of operationalizing these goals and commitments into the Kenyan policy context (Interview with Senior Development Advisor, UNHCR 2019). Yet, this has not stopped key actors at the sub-national level, from taking advantage of such commitments to work directly with the international community towards common goals. In doing so they can secure investment in development initiatives that have often eluded Kenya's most marginalized areas and with such rhetorical – if not practical – commitments by the central government's signing on to such progressive commitments at the international level, the donor

community has been more willing to invest in permanent infrastructure aimed at longer term development rather than the continuation of purely short-term emergency aid.

As noted in Chapter Five, the economic potential of Dadaab is often used at the sub-national level to argue for the status-quo. In Kakuma, these arguments have been accelerated and mobilized to reshape the ways in which refugees and the host community co-exist, most notably through long term investment in the KISEDP. While there are indeed critiques of the increasingly dominant neoliberal and market-based approaches to development and refugee governance, this line of argumentation has been particularly salient amongst the key decision-makers in this region: the Turkana County Government and the international humanitarian sector.

As I sat in the office of the sub-County Administrator for Turkana West, just outside of Kakuma Town, I was directed by the Administrator to look to the wall behind the desk to where the vision for Turkana County was hung. She emphasized that I should take note of this, as it informs the decisions and activities of the Turkana County government. The vision is to create: “A Prosperous, Peaceful, and Just County with Empowered Communities Enjoying Equal Opportunities” (Interview with Turkana West sub-County Administrator 2019). As the conversation quickly turned to discussing Turkana County’s second County Integrated Development Plan (CIDP II) for 2018-2022, it was clear that it was through this strategic vision that the Governor has framed his plans and priorities for the County. CIDP II is both technical and political in nature in that it reflects county and sub-county level statistics and demographics noting the trends in poverty, education, health care, and livelihoods, but it also operationalizes a specific set of priorities to improve access to resources and secure development in Turkana County (Turkana County 2018).

CIDP II prioritizes the advancing the diversification of the county's economy beyond nomadic pastoralism by encouraging investment in fishing, agriculture, industrial production, as well as in the cultural and tourism sectors (Turkana County 2018). Traditional pastoralist activity is seen to be increasingly untenable given the growing population, given the scarcity of resources and ongoing land degradation, which all are expected to cause increased ecological and economic stress as climate change increases incidents of drought and makes rainfall more difficult to predict. The discovery of oil in the region and an influx of international investment (most notably from China) has expedited some of the improvements for critical transportation infrastructure in the county, but these alone are not expected to improve life and livelihoods for the general population.

Maintaining the inflow of development assistance from major international NGOs and donor states is imperative for the county to be able to reach its goals. The CIDP explicitly notes that the county's planned expenses outpace expected revenues over the full course of 2018-2022 by an estimated 60,964,000,000 KSH (USD \$551 960 161.16).<sup>25</sup> The ability to secure additional private investment and public-private partnerships to address this resource gap is a pivotal assumption of the CIDP's implementation framework (Turkana County 2018). Segments that emphasize refugees being a net resource for the local economy are peppered throughout the CIDP II.

It can be discerned, both from reading the text of the CIDP II and from the numerous references made to it by informants, that advocating for more fulsome economic integration and forward planning is done as the benefits of these initiatives are assumed to extend beyond individual business owners and entrepreneurs from both refugee and host

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<sup>25</sup> As of 27 September 2021, \$1USD=110.45 KSH.

communities. These initiatives are as political as they are humanitarian, as they have also become a persuasive marketing tool for Turkana County. The intent, at least partially, is to draw in additional investment through the humanitarian sector by showcasing innovative approaches combining an economic development agenda with more progressive models of refugee governance. The resulting policies and practices in Kakuma and Kalobeyei are not easily reconciled through a strictly textual interpretation of central policy via the 2006 *Refugees Act* and therefore must be explained through other intervening variables.

Governor Nanok, possessing a background in both national politics as a former MP for Turkana South and within the international humanitarian sector having been a representative with the World Food Programme (WFP), has leveraged these experiences to mobilize such resources to benefit both refugees and the host community (Interview with Turkana West sub-County Administrator 2019). This diverges from previous integrationist efforts as it extends beyond the expansion of service provision to the host community. New investments in permanent infrastructure will, in the immediate term, be used to the benefit of both communities with the long-term intent to transfer assets to the county government should the refugee population diminish or the camps close. Furthermore, the fact that all upfront investment and financing is provided by the international humanitarian sector rather than the county itself denotes a monumental shift away from the status-quo (Interview with Senior Development Advisor, UNHCR 2019). As noted in Chapter Five, the 2021 Refugees Act has provided some legislative baking of such a transfer of infrastructure; however, the practical application of such provisions has yet to be observed in practice (Government of Kenya 2021d).

KISEDP embodies the culmination of such efforts to institutionalize the economic integration of refugees while simultaneously shifting much of the international attention from Kakuma to Kalobeyei. This is not to say that KISEDP has diminished the international commitment to, or involvement in Kakuma, but it has become a focal point of discussion and billed as a model for successful transition from ‘emergency aid’ to long-term development planning in protracted refugee situations. This is most clearly displayed in the willingness to construct permanent infrastructure on the 15 acres of land allotted<sup>26</sup> to the settlement as opposed to the temporary structures that have characterized both Kakuma and Dadaab for their entire existence.

From the perspective of the Turkana County Government, KISEDP presents an opportunity to convince donors to up the ante in terms of the services and assistance provided to the host community. While the UNHCR is not mandated to engage in such activities, it has proven to assist in reducing conflict and intercommunal tensions when local engagement increased. Governor Nanok requested that the UNHCR guide the process and encourage engagement with both the local community and international partners and remained engaged in maintaining the drive for KISEDP’s ongoing development in several ways (Interview with Turkana West sub-County Administrator 2019).

First, by simultaneously engaging with multiple levels of governance and navigating the unique network of international humanitarian organizations with expert precision. In his role as the chair of the Council of Governors beginning in 2017, Governor

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<sup>26</sup> Land in Turkana County is predominantly owned in trust by the county government as it is traditionally communally owned. A process to develop legal titles to land is underway as a part of the County’s long-term planning through the CIDP (Turkana County 2018).

Nanok built relationships with other governors as well as with President Kenyatta himself, despite being a member of the ODM opposition and a strong supporter of the President's former rival, Raila Odinga. While there is some speculation that Nanok's political ambitions for his post-gubernatorial life have played a role in his decision-making, there is little doubt that his personal relationships and interventions were key in delaying central opposition to the KISEDP during its early development. Prior to KISEDP gaining international acclaim as a leap forward for securing more durable solutions for refugees in protracted situations, the governor's support remained steadfast (Betts 2021).

In a seminar organized by the Rift Valley Institute and Amnesty International-Kenya in August 2019, Alexander Betts noted that his recent fieldwork conducted in Kalobeyei highlighted KISEDP's innovative approach to market-based planning presents a novel way for the international humanitarian sector to work cooperatively with sub-national governments. This approach allowed the County government to claim a degree of ownership over large-scale projects within their territories (Betts 2019). As noted previously in this Chapter, this is a clear divergence from historic trends whereby gatekeeping at both the national and international levels left little room for local elites to influence such outcomes.

There is an additional strategic reason for centering KISEDP in the discussion and heralding its successes to a global audience, as this notoriety serves as a means of insulating it from political shocks whether they come from above or below. KISEDP's ambiguous position from a legal perspective and the substantial amount of political goodwill and capital required to maintain it creates a significant risk to its longevity. And as one

informant highlighted, “announcing it [KISEDP] to the world makes it difficult to backtrack” (Interview with Kenya Program Coordinator, Danish Refugee Council 2019).

‘Market-based’ is both literal and figurative in the context of KISEDP. Those living in Kalobeyei have access to cash-based interventions through an exclusive digital currency called *Bamba Chakula* which is accepted at specific retailers (generally refugee business owners) within the settlement. This is presented as an alternative to ‘in-kind’ food aid and is intended to improve individual agency over how aid dollars are spent. Betts (2019) also stressed the importance of the physical market space in Kalobeyei as a meeting point between the refugee and host communities, a claim that has been echoed through several additional analyses, including the oft referenced 2016 World Bank Report “*Yes! In My Backyard? The Economics of Refugees and Their Social Dynamics in Kakuma, Kenya.*” This report argues that close proximity to refugees is a major factor influencing positive perceptions of refugees in the host community, as the closer one lives to Kakuma and Kalobeyei and the more frequent the interactions with refugees, the more likely it is that one’s perception of refugees will be positive. Emphasizing the physical market in Kalobeyei is critical from this perspective because it forms one of the only regular and routine points of contact between refugees and the local Turkana community within the new settlement. The refugee and host communities are neither socially nor physically integrated within the settlement, as fewer than 2% of Kalobeyei’s population is comprised of the local Turkana population.<sup>27</sup>

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<sup>27</sup> It was reiterated that there remains some mistrust amongst the local community about settling in Kalobeyei as it marks a stark divergence from more traditional economic activities in the pastoralist community and more outreach and consultation is required to facilitate any eventual physical integration of the space (Interview with Senior Development Advisor, UNHCR 2019).

While it is often emphasized that the KISEDP project is aligned with the priorities outlined in Kenya's *Vision 2030* national development plan, the central government is notably absent from many of these discussions and that most of the innovation in this space is developed *around* rather than *with* their direct involvement. Multiple pieces of legislation have been introduced over the course of the KISEDP's planning, development, and implementation phases (dating back to 2014). Initial legislation tabled in the National Assembly in 2016 included relatively progressive clauses on freedom of movement and employment. This legislation failed to ascend into law despite passing through successive readings in Parliament as President Kenyatta claimed that it did not meet the criteria for public participation as laid out in the 2010 Constitution, as consultations were not undertaken in either Turkana or Garissa Counties. A subsequent refugee bill was gazetted in June 2019 but made little progress until the end of 2021.<sup>28</sup>

The 2019 legislation (that ultimately became law on 17 November 2021) was predominantly focused on 'securing Kenya for Kenyans' and set on reinforcing the status quo of Dadaab's institutional structure within national policy and paid little attention to refugees living in other areas (Interview with Representatives of the Refugee Consortium of Kenya 2019; Betts 2021). Nor did these legislative processes seek to formalize KISEDP within a clear legal framework. With the repeated delays in achieving this legislative milestone, the dearth of policy innovation at the centre allowed political actors at the margins to take advantage of a unique set of political, historic, social, and economic conditions and stretch the existing refugee regime in Kenya as far as possible. Therefore,

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<sup>28</sup> A version of this legislation underwent parliamentary review and revision on 5 October 2021 and was signed into law by President Kenyatta on 17 November 2021 (Government of Kenya 2021b).

the inaction of the central government in enforcing its own asylum policy in Kalobeyei, which was partially built on the goodwill between Governor Nanok and President Kenyatta may not prove sustainable in the long-term as the conspicuous 2022 deadline to shutter operations in both Kakuma and Dadaab looms heavy for all involved.

#### **6.4 The International Humanitarian Sector in Kakuma and Kalobeyei**

As the previous sections have noted, the international humanitarian sector has long played a role in the development of Turkana. It has left a legacy of both positive outcomes, but also cautionary tales. The support provided to refugees and asylum seekers during the Sudanese civil war created an influx of international organizations into the region and developed ‘Operation Lifeline Sudan’ in response to the growing humanitarian situation. In response a reception centre was constructed along the then Kenyan-Sudanese (now South Sudan) border at Lokichoggio. This resulted in the construction of additional infrastructure and resources by international organizations to manage the response. As noted above, the central government had essentially left refugee management in the northwest to the international humanitarian sector with minimal direct involvement.

The centre at Lokichoggio processed new arrivals and assisted in their transport to Kakuma, this provided significant employment opportunities for local professionals and drew many to the border region. However, as the Comprehensive Peace Agreement in Sudan was signed in 2005, many (south) Sudanese refugees returned and the refugee population in Kakuma diminished significantly to as few as 45,000 individuals by 2008 until Somali refugees began to be transferred from Dadaab (Jansen 2018). As operations wound down the centre at Lokichoggio was abandoned and by 2011 was entirely closed; effectively turning the centre into a ghost town leading to mass unemployment that

devastated the local economy (Betts 2021). Lokichoggio was not revived even as the situation in South Sudan became increasingly volatile and many refugees returned to Kakuma. This influx led to many of the Somali refugees that had been transferred to Kakuma to be sent back to Dadaab (Interview with Representative of Amnesty International-Kenya 2019).

The underlying logic in fortifying the direct relationship between Turkana County and the international humanitarian sector has been to ensure that such circumstances, where resources are left abandoned and unused and the local population suffers from the sudden absence of employment, are not repeated in Kakuma and Kalobeyei. The implementation of devolution in Kenya in 2012-13 permitted the amplification of local agency to an unprecedented degree which, when left unhindered by the central government in Nairobi, was able to take advantage of international events to secure buy-in for the ambitious KISEDP program. According to Betts (2021), the perfect combination of events occurred with the onset of the Syrian civil war and what would come to be called a ‘global refugee crisis’<sup>29</sup> as nearly half of the Syrian population were displaced in neighbouring countries, and many made their way into Europe.

The European Union and many individual European states were keen to find ways for refugees to remain in their regions of origin and directed international humanitarian funding towards projects working towards that goal (Betts 2021). While this attempt to keep refugees from reaching Europe’s borders does contravene the spirit if not the direct text of the 1951 Convention, the Turkana County government was able to leverage such

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<sup>29</sup> This term is met with some skepticism in the fact that it was only deemed to be ‘global’ in nature because it directly implicated European states.

funding mechanisms to secure funds for KISEDP both in its early phases and in longer term planning. In doing so, the international humanitarian sector that traditionally provided supports for refugees became directly invested in the development of the immediate local community *and* the entirety of the Turkana West sub-County through the implementation of KISEDP as a regional development plan.

As mentioned previously, much of the rationale and justification for the KISEDP came through external research conducted by the World Bank, the International Finance Corporation, and the UNHCR. This research culminated in two reports: '*Yes' In my Backyard? The Economics of Refugees and Their Social Dynamics in Kakuma, Kenya*' (World Bank 2016) and *Kakuma as a Marketplace: A Consumer and Markey Study of a Refugee Camp and Town in Northwest Kenya* (International Finance Corporation 2018). The main contributions from these reports were the findings that the closer one lives to and the more interactions one has with refugees, the more likely one is to have a favourable perspective on their presence and their overall contribution to the community. Second, that there is a sizable economy that has developed in and around the Kakuma refugee camps that equates to an economic impact of roughly a \$56.2 million (USD) annually. These two findings, when taken together assist in making a stronger business case for long-term investment in the region and for assuming a wider perspective inclusive of the local community in Turkana West.

In a conversation with a senior official working on CRRF implementation at the UNHCR headquarters in Nairobi, it was noted that there are two major shortfalls of these reports. Both presuppose the maintenance of the humanitarian sector's presence in the region to sustain its economic engine, and therefore it does not control for the absence of

humanitarian aid. The resulting \$56.2 million (USD) valuation of the Kakuma economy noted in '*Kakuma as a Marketplace*' (International Finance Corporation 2018) is inflated by the presence of development dollars (Interview with Senior Development Advisor, UNHCR 2019). Also, neither report adequately accounts for the challenge presented by the scarcity of water in the region. The discovery of a substantial deep-underground aquifer in the region provided some optimism; however, exploiting it requires a sizable investment due to its depth and that the water contains too much salt for human consumption, requiring it to undergo desalinization prior to use (Turkana County Government 2018). Agricultural development is likely to remain limited due to the small-scale subsistence farming programs that have seen some success by refugees living in Kalobeyei.

The international humanitarian sector's emphasis on improving refugee livelihoods through improved self-reliance is limited by such factors as the underlying economic reality remains dependent on the influx of resources from international donors. International donors are, by their very nature as external organizations, several steps removed from the local contexts in which they operate. Such donors remain primarily driven by the priorities, mandates, and visions dictated by their headquarters, which may obstruct their ability to ask critical questions about the long-term viability or sustainability of such projects. Even questions as unassuming as, '*if given the choice to leave Kakuma or Kalobeyei for other opportunities in Kenya, would refugees choose to stay?*' are not adequately explored here as some refugees may choose to remain, but many would not (Interview with Senior Development Advisor, UNHCR 2019). The limitations on movement implemented by the central government and reinforced in one way or another by the county government and the international actors has created the perception amongst

some refugees that Kakuma, despite its relatively liberal interpretation of Kenya's refugee and asylum law, remains akin to a prison for many that reside there (Interview with Kakuma Resident A 2019). This is not to argue that international support for the KISEDP initiative is ill placed but that it is imperative that further engagement is done through a critical lens.

Analysis should not over-emphasize the *market-based* potential of a vulnerable and often rights-deprived refugee population tasked with navigating a layered bureaucracy that intersects with community norms, local governance, national legal structures, and international humanitarian priorities. This may assist in creating an argument that refugees are a net positive for the communities in which they reside, but such arguments have limits. The fact that Turkana County remains the poorest and one of the most historically marginalized counties in Kenya, suggests that progress in liberalizing the implementation of asylum policy will likely only have, at best, marginal effects on national policy. Without a complimentary shift in legislation at the national level, the future of such international investments and development projects remains uncertain as stability is not guaranteed.

## **6.5 Entering the Third Phase of Asylum Policy in Kakuma and Kalobeyei**

In arguing that the third phase of asylum policy in Africa is characterized by policy variation both *between and within* states is linked to the politics of decentralization, the case of Kakuma and Kalobeyei since the implementation of KISEDP has become an oft highlighted and showcased example of how to implement durable solutions in protracted refugee situations and exists in stark contrast to Kenya's written legal framework governing the politics of asylum (Betts 2021; Interview with Turkana West Sub-County Administrator 2019). As discussed in earlier Chapters, the central government's

longstanding hands-off approach to refugee governance played a significant role in the development, day-to-day function, and forward planning of Kenya's refugee camps. In Dadaab, this mainly materialized as an off-loading of the RSD process to the UNHCR with the central government remaining keyed into the process out of national security concerns, meanwhile in Kakuma such power dynamics manifested very differently.

Bram Jansen (2018), in his ethnographic study of Kakuma's urbanization and the influence of the humanitarian economy on its overall development prior to the installation of devolution, contrasts the role of the Kenyan state vis-à-vis the UNHCR. The situation was described as:

[t]he power of the UNHCR, as opposed to the Kenyan state, to reign over the camp was almost supreme. As one program officer of an NGO in Kakuma explained, in the meetings with all the agencies the Head of Sub-Office (HSO) of UNHCR would be the chairman, and the District Officer of the Government, the highest Kenyan authority around, would 'sit between the members of the committee', on equal footing with the refugee representatives. For the program officer, this was the world turned upside down. Also, on the streets of Kakuma town, Turkanas referred to the UNHCR HSO as 'the president of Kakuma' (Jansen 2018, 44-45).

This shows that decision-making capacity in and around the camps were almost entirely vested within the UNHCR at that point in time.<sup>30</sup> And that such power dynamics were not the norm in other refugee-hosting contexts based on the prior experience of the UNHCR program officer cited above. In contrasting this example with the District Officer in Dadaab, Jansen (2018) was able to observe that the individual occupying this position was able to assume a more active role in similar meetings and wielded much more influence over decision-making processes in Dadaab. This supports the notion that the unique

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<sup>30</sup> This was prior to the creation of RAS, when the administration of the 2006 *Refugees Act* was the responsibility of the Department for Refugee Affairs (DRA) housed within the Ministry of Immigration and Naturalization of Persons (Jansen 2018).

relationships between the political core and the peripheral refugee hosting regions in Kenya have played a significant role in shaping the day-to-day politics of protracted refugee situations even before the introduction of devolved governance.

While even before shifting into the third phase of asylum policy, there were different governance priorities between Kenya's major refugee camps and areas of overlap. In one sense a shared commitment to security by the central government existed in both circumstances, as they have provided federal policing resources to these remote and under-resourced regions. However, in Kakuma this was not done without some prompting from the international community, as there was no police outpost in the community prior to the UNHCR's construction of one for use by the Kenyan government (Aukot 2003). In addition to responding to common criminal activities such as cattle-rustling and banditry, this policing presence also served to enforce Kenya's encampment policies and harden the relatively soft borders of Kenya's refugee camps (Crisp 2000; Betts 2013a; Jansen 2018). In an interview with RCK, it was noted that early on in Kakuma's development in the 1990s during the Sudanese Civil War, local MPs in the then Turkana District complained that the Sudanese People's Liberation Army (SPLA) were operating out of Kakuma. While this resembles the contemporary claims about Al-Shabaab's presence in Dadaab, the association between refugees and terrorism has not been sustained over the long-term in Kakuma (Interview with Representatives of the Refugee Consortium of Kenya 2019). As a result of this difference, the outcomes of such policing and security-oriented approaches have been extremely uneven and can be a key marker of the variation that defines the third phase of asylum politics.

Devolution superimposed a new governance structure on top of these existing conditions and relationships between the central government and the international humanitarian sector. The differing dynamics of these relationships and the disparate levels of scrutiny the central government applied to Turkana County as opposed to Garissa County permitted the development of very different political environments and opportunity structures. In Turkana, the absence of overt securitization allowed the sub-national government more latitude to forge dynamic working level relationships with the humanitarian sector in a way that could potentially bypass the central government. The variation in the implementation of asylum policy observed within Kenya during the third phase has not emerged from a vacuum but has been incrementally constructed on top of pre-existing structural relationships that have conditioned the actions of both political and humanitarian actors in this space since early 1990s. The relative absence of central involvement in the development and management of Kakuma, aside from the assertion that refugees should remain within the camps' borders, has allowed a nascent sub-national government to step into the void and engage directly with the international humanitarian sector as well as refugees themselves.

An additional element to this is that the county government is uniquely positioned to lend legitimacy to the entire process as they are also the democratically elected representatives of the Turkana host community. This also positions the county government to mediate potential conflicts between the refugee and host communities from a position of relatively good faith. The Turkana County government is also invested in the mutually beneficial outcomes stemming from burgeoning economy in Kakuma and Kalobeyei and

are better equipped than international or national actors to understand local concerns as they share a common lived experience and ethnocultural background.

The Turkana County government has been able to create a role for itself within this context due in part to the *willful inaction* (see: McConnel and ‘t Hart 2019; Mourad 2019) of the central government. Inaction and off-loading responsibility to the UNHCR and its partners over a prolonged period of time significantly diminished their capacity to exert administrative and bureaucratic authority over refugees in Kakuma. The diverse population of the Kakuma Camps as well as the Kalobeyei Settlement have prevented the same associations with terrorism that have occurred in Garissa County from taking hold and hijacking the narrative (Interview with Representatives of the Refugee Consortium of Kenya 2019). Even in light of the increasing securitization in Dadaab, these concerns were not directly translated to Kakuma. Nor has a similar increase in the central government’s involvement in camp governance and refugee management been observed.

## 6.6 Conclusion

The unprecedented cooperation and coordination between the Turkana County Government and the international humanitarian sector in the absence of central government intervention has resulted in a marked divergence from the status-quo in the implementation of Kenya’s asylum policy. Such circumstances would not have been possible without the structural changes brought about by the 2010 Constitution and the implementation of devolved governance. The creation of decision-making authorities at the sub-national level over a wide swath of bureaucratic and administrative functions in combination with the vested interest of key local elites such as Governor Nanok combined to create a parallel political opportunity structure in Turkana that substantially altered the *de facto* function of

Kenya's asylum policy at the sub-national level, without any corresponding shifts occurring at the centre.

Changes in both the implementation and experience of asylum policy in Turkana have taken place without similar or corresponding shifts occurring in either Dadaab or for urban refugees Nairobi. This suggests that there are a variety of variables to consider, including, Kenya's highly competitive ethnopolitics, the historic relationships between peripheral regions and the political core in Nairobi, as well as the competing interests and personalities of political elites at both the national and county levels. Of course, the demographic composition of the refugee population itself plays a significant role in the level of attention the central government invests, as the diverse population in Kakuma and Kalobeyei has been more difficult to frame as an existential threat to Kenyan security and sovereignty when compared to the way that Somali refugees have unfairly been linked with terrorism and insecurity in Dadaab and been the target of crackdowns by police and security forces in Nairobi.

## **Chapter 7: Nairobi's Urban Refugees: Ignorance is Bliss**

### **7.1 Introduction**

Treatment of urban refugees in Kenya presents a significant contrast to the example of those living in either Dadaab or Kakuma. This chapter addresses how Kenya's asylum policy is applied to urban refugees residing within Nairobi, which serves as both the national political capital and economic engine for the country. One of the major hurdles in conducting research on urban refugee populations in Kenya is that accurate figures and statistics are difficult to ascertain. Data obtained from the UNHCR from 2019 onward is aggregated by combining population information from three distinct urban centres: Nairobi, Nakuru, and Mombasa.<sup>31</sup> The distance between the urban centres that are lumped together within a single data point makes it difficult to make informed assumptions about such populations. This is further compounded by the fact that even this aggregated number significantly underestimates the number of asylum seekers and refugees living in Nairobi alone. Therefore, the population total of all three urban centres is likely much higher than the July 2021 count of 82,432 (Interview with Lucy Kiama 2019; UNHCR 2021a).<sup>32</sup>

The fact that urban refugees are poorly accounted for is an open secret with no clear solution. This is especially notable in the context of Nairobi not only due to it being the centre of both political and economic power, but also because all the major international humanitarian organizations with operations in both Dadaab and Kakuma maintain national and regional headquarters in Nairobi. The inability for such organizations to ascertain an accurate understanding of what is occurring blocks away their respective office towers and

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<sup>31</sup> Nakuru is located 170.7km northwest of Nairobi, and Mombasa is located 483.6km southeast of Nairobi.

<sup>32</sup> Beginning in 2021, a separate data point was made available to account for urban refugees living in Eldoret, 319km northwest of Nairobi.

compounds yet maintain complex humanitarian operations in two of Kenya's most marginalized and peripheral counties underpins much of the following analysis.

From a legal perspective, urban refugees find themselves residing in an un gazetted space with limited protection under Kenya's existing legal framework, much like their counterparts living in Kalobeyei (see: Chapter Six). From an official vantage point, the presence of refugees in urban spaces is, with few exceptions, considered to be in violation of Kenya's strict encampment policy. Therefore, Kenya's 'Urban Asylum Policy,' insofar as one exists in practice rather than on paper, assumes that urban refugees are effectively self-reliant and self-sustaining.<sup>33</sup> Alternatively those individuals that are not able to achieve self-reliance should return or be redirected to either Dadaab or Kakuma (Regional Durable Solutions Secretariat 2018). The very limited scope presented within the established legal and political framework in the city affects how programming is developed, services are offered, and how organizations can interact with urban refugees.

Section 7.2 below, begins with an examination of the interactions between refugees, asylum seekers, and the central government through the most visible aspects of national policy affecting the lives of urban refugees, their direct interactions with RAS and Kenya's national security apparatus. This section unpacks the complex permitting regime that refugees and asylum seekers must navigate to obtain the required documentation legitimizing their existence outside of the camps. The difficulty of obtaining proper documentation because of unclear processes and bureaucratic backlogs when combined with the lack of education about the validity of these documents amongst local police and

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<sup>33</sup> Apart from those possessing proper documentation denoting educational or medical reasons for being outside of a designated refugee hosting area.

security forces, increases the likelihood that they will interact negatively with the formal state apparatuses governing asylum. Section 7.3 assesses how the implementation of devolved governance in Kenya has affected the contemporary political environment in which urban refugees exist by examining if and how the central and county governments have addressed the issue. Specifically, this section unpacks the notion of contested jurisdictions given the presence of both the central government and county government within the city. Finally, section 7.4 expands on the role of the international humanitarian sector in Nairobi.

## **7.2 The View from the Centre: Applying National Asylum Policy in the Capital City**

Urban refugees are in a particularly precarious position when compared to their counterparts in Kalobeyei, as urban refugees do not receive the same political coverage at the county level nor are they eligible to receive the emergency supports (e.g., food aid, shelter, medical aid) that are made available to refugees and asylum seekers in UNHCR administered camps. Instead, refugees that have relocated by choice to Nairobi generally participate in the capital city's substantial informal economy or seek out other entrepreneurial activities in partnership with Kenyan nationals. Meanwhile, those refugees that have relocated to Nairobi out of necessity have often done so to seek emergency assistance from other NGOs due to pressing security or safety concerns that warrant access to a safe house, and/or a reprioritization of their resettlement (Interview with Lucy Kiama, Country Director HIAS 2019; Abdelaaty 2021). However, the experience of all urban refugees has been significantly complicated by the removal of all UNHCR registration and

RSD services from Nairobi after the central government through the RAS reassumed responsibility for the RSD process.

After registering with RAS at their Nairobi headquarters, claimants will then receive a movement pass, and then be required to relocate to either the Kakuma or Dadaab camps to await further status determination (Refugees Consortium of Kenya 2021). While the contemporary process hinges on the registration and subsequent relocation of refugees to either Dadaab or Kakuma, complaints of long wait times and growing backlogs have persisted even in these initial stages (Pincock et al. 2020). The process is further complicated by the fact that, as discussed in Chapter Five, RSD processes are no longer occurring in Dadaab, which leaves Kakuma as the only practical option for claims to be heard.

As of 31 July 2021, the UNHCR notes that there are approximately 82,434 refugees and asylum seekers living in urban centres across Kenya and of those registered in between 01 January and 31 July 2021 urban refugees accounted for 11% of Kenya's total registrants (specifically in Nairobi, Mombasa, and Nakuru) (UNHCR 2021a).<sup>34</sup> In contrast to the Garissa County's commitment to the status-quo and Turkana County's more liberal interpretation of asylum policy, the approach in urban settings like Nairobi combines certain aspects of each.

There have been periodic incidents of overt securitization of Somali refugees in Nairobi's Eastleigh neighbourhood that have culminated in violent interactions between

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<sup>34</sup> It is important to note here that these statistics record that 0% of registrations are occurring in Dadaab, despite clear evidence that new arrivals continue to make their way into the country. It is likely that these numbers are artificially low due to inconsistencies in the registration process and the overburdened RSD system in Kenya (UNHCR 2021a).

refugees and security forces. From a policy perspective, there is a reluctance to officially recognize the legitimacy of the refugee population in urban settings, as it is assumed by both the UNHCR and the central government that this may attract further migration into urban centres (Campbell et al. 2011). Given such concerns, the preference to keep such populations contained in peripheral areas of the state has remained the focal point of official policy development and service provision. Elements of the ‘hands-off’ approach that has characterized much of Kenya’s interaction with refugees is maintained in Nairobi, resulting in a network of both national and international NGOs stepping in to fill a very significant protection gap.

An interview with the Deputy Head of RAS repeatedly focused on Kenya’s traditional receptiveness and openness towards refugees; a key piece of evidence he used was that those refugees that live in urban settings are extremely entrepreneurial and are able to run businesses that are more successful than their Kenyan counterparts. The Deputy Head explicitly singled out Nairobi’s Eastleigh neighbourhood as a marker of such success, given that many businesses are owned (at least in part) by refugees (Interview with Michael Oloo 2019). This line of argumentation is consistent with what was echoed elsewhere by RAS<sup>35</sup> that access to business permits, work permits, travel permits, and health insurance is relatively barrier-free for refugees (Refugee Affairs Secretariat 2019).

To work in Kenya, under the 2006 *Refugees Act*, refugees are subject to the same conditions as all other ‘non-citizens’ as dictated in the *2011 Kenya Citizenship and Immigration Act*. The latter requires all non-citizens wishing to work in Kenya to acquire

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<sup>35</sup> RAS Presentation at the *Annual Regional Forced Migration Training: The Meaning of Asylum in Transient Contexts of East and Horn of Africa*. Kenya School of Government, Nairobi, Kenya. 27 August 2019.

a ‘Class M’ work permit; however, refugees rarely have the required legal documentation or paperwork to apply for such permits (Regional Durable Solutions Secretariat 2018). Rhetoric and reality again clash in this context as there may not be explicit barriers in legislation that prevent refugees as a group from accessing such programs, while in practice they are unable to overcome the many bureaucratic hurdles and administrative barriers that have been placed in their way. Betts (2021) highlights in his analysis that many Somali refugee entrepreneurs create partnerships with Kenyan Somalis to obtain more equitable treatment in the process of registering their businesses and are less likely to be subject to bribery or other corrupt treatment from officials because of such partnerships. When taken in tandem with the challenges in procuring travel permits outside of the camps (as discussed in Chapters Five and Six), there is a clear divergence between RAS’ claims and the everyday experience of the refugees navigating this system.

The decision to leave the camps to pursue other, often more profitable, opportunities in Nairobi has been described as paramount to stating that one no longer requires the assistance provided and is willing to fend for oneself in the capital city. However, this assumed declaration of ‘self-reliance’ is only true insofar as the individual is extremely unlikely to acquire services akin to those available in the camps as the infrastructure does not exist to provide services to every refugee that makes the journey to Nairobi. Perceptions such as this create a narrative that refugees choosing to relocate are self-sufficient, but they often remain in vulnerable positions. This reality leaves urban refugees vulnerable to various forms of exploitation by those in positions of power such as security personnel, landlords, or employers (Betts 2013a; Betts 2021).

Personal networks have become an essential commodity for all refugees navigating life in the capital city; however, the types of connections required may differ for those on either end of the economic spectrum. Individual needs differ based on a variety of factors, including their respective economic position within the refugee community in combination with their vulnerability profile (Pincock et al. 2020). Given that, even within such marginalized communities, socioeconomic inequalities persist. As the protections and services available to urban refugees in Nairobi have diminished over time, the informal social networks have become indispensable in connecting refugees with the resources that remain. Furthermore, transnational networks become critical for those wishing to start businesses in Nairobi, as accessing international remittances from family or friends abroad decreases the barriers to acquiring the up-front capital needed to engage in such entrepreneurial activity.

Coupled with the potential for exploitation and the challenges faced by urban refugees as those unable to leverage their existing networks navigate the intense competition for employment opportunities in Nairobi, policing activities primarily targeting Somalis have escalated since Kenya's military engagement within Somalia began in October 2011 with '*Operation Linda Nchi*.' This operation had the strategic goal of diminishing Al-Shabaab's control over key areas and ports in southern Somalia, while also securing a buffer zone within Somalia south of the Juba River in an attempt to protect Kenyan territory (Lindlay 2011; Lind et al. 2017; Chau 2018). Kenya's involvement in countering Al-Shabaab in Somalia resulted in the ongoing threat of terrorist attacks by the group within Kenya (BBC News 2013; Barkley 2015). Lindlay, drawing on information collected in July 2011, notes that “[o]nce in Nairobi, in practice, the presence of Somali

refugees is tolerated by the authorities: they are not at risk of compulsory relocation to the camps” (2011, 38). Such an observation, coming only three months prior to the start of *Operation Linda Nchi* and just a year prior to the central government’s announcement of a ‘relocation plan’ for urban refugees in December 2012 illustrates the speed with which the central government’s informal policy of *détente* with Nairobi’s urban refugees was subject to change when the opportunity to apply a national security lens to the issue arose (Human Rights Watch 2013).

In announcing the intent of this relocation policy on 13 December 2012, it was noted that “all asylum seekers and refugees from Somalia in Kenya’s urban areas should move to Dadaab refugee camps and that those from other countries should move to the Kakuma refugee camp” (Human Rights Watch 2013, 45). The government’s intent to sort the urban refugee population into the existing refugee camps by country of origin reinforces the arguments made in Chapters Five and Six, that the demographic composition of the camps played a significant role in determining the level of attention each received from the central government. In the urban context, the historic animosity between the central government and Kenya’s Somali population has similarly influenced the likelihood that, as a group, refugees of Somali origin would face more difficult confrontations with the state as represented by its security apparatus. This is especially true as these strategies were not implemented prior to the increased tensions between Kenya and Somalia and the perceived increase in insecurity that came with it.

After gazetting Dadaab and Kakuma as official refugee hosting sites in 2014, the central government escalated efforts to remove refugees from urban settings through

*‘Operation Usalama<sup>36</sup> Watch’* (Interview with Representatives of the Refugee Consortium of Kenya 2019). Amnesty International noted that the operation was a response to terrorist attacks in Mombasa and Nairobi’s Eastleigh neighbourhood and used as “a pretext for the blanket punishment of the Somali community in Kenya” (2014). The periodic implementation of such violent means saw over 4000 individuals arrested within its first week, and within the first month over 1000 Somali refugees were returned to Dadaab and a further 359 Somali nationals expelled from Kenya (Amnesty International 2014). The risks associated with being a refugee or undocumented migrant in Nairobi are further heightened during interactions with individuals in positions of power as being labeled as non-compliant, uncooperative, or a threat could result in detainment, violence, or expulsion. This state of inaction, punctuated by intense incidents of overtly securitized policing diverges from what can best be described as a longstanding tacit acceptance that despite Kenya’s encampment policy, refugees would continue to live and make their way to the capital city as well as other major urban centres (Lindlay 2011).

Despite the periodic rounds of forced relocations and deportations that have occurred in Nairobi since 2011, the number of urban refugees in the city continues to grow. This is fuelled in part by the government’s threats to close both Dadaab and Kakuma, as it breeds uncertainty over the future for those living there and that it may now be in their best interests to seek opportunities elsewhere in Kenya. As noted in Chapter Five, observed shifts in the population count in Dadaab over time have not matched the rate of voluntary repatriations to Somalia, which leaves several thousand individuals unaccounted for and likely living in urban centres throughout Kenya (Interview with Lucy Kiama, Country

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<sup>36</sup> ‘Usalama’ translates to ‘Security’ in Kiswahili.

Director HIAS 2019). Urban centres like Nairobi remain an attractive destination as it is well documented that, despite the potential increase in vulnerability that many may experience, the average incomes for those that find employment in the city are much higher than what their counterparts working as incentive staff in either Dadaab or Kakuma may make (Betts 2021). For many, the hope that comes with such opportunities continues to outweigh the risks and dwarf the deterrence measures implemented by the central government.

### **7.3 Nairobi City County: The Fraying of Sub-National Governance in the Capital City**

The county government in Nairobi City is in a unique position when compared to other counties in that it is also home to the central government, its institutions, and its strongest personalities. Deciphering the roles and responsibilities within the city has proven to be a complex and often tense process since the implementation of the 2010 Constitution. Nairobi's former Governor Mike Sonko, a tumultuous and often scandal plagued political figure, had prior to his gubernatorial term served in both the National Assembly and the Senate and boasted connections to President Kenyatta's inner circle (Kiruga 2020; Mutahi 2021). This connection caused a stir amongst the County's MCAs in February 2020, when he faced his first impeachment motion after authorizing a transfer of county government functions to the central government including: health, transport, planning and management, as well as public works and ancillary services (Omulo 2020).

The Nairobi Metropolitan Services (NMS) was created to manage these transferred services as an official body under the Executive Office of the President (Kiruga 2020). While Governor Sonko survived the initial impeachment motion stemming from

transferring authorities back to the central government, he was subsequently impeached by the County Assembly in December 2020 after a two-thirds majority vote was achieved. In this instance the charges against the governor included gross incompetence and the failure to effectively run the city (Mutahi 2021). Despite the governor's removal, and President Kenyatta's insistence that the creation of the NMS was to assist the governor in managing the city, as he seemed to be struggling – the NMS remains in place and the central government has regained some of the key authorities that had initially been devolved to the sub-national level (Mutahi 2021).

The Nairobi City County Government's relative absence from the discussion of urban refugees is notable given the large number of registered refugees and asylum seekers in the city, compounded by the knowledge that this number is likely much larger when the unregistered population is accounted for (Human Rights Watch 2013; Betts 2021). The absence of the county government in this manner should not be discussed without recognizing that, in moving forward, the central government has the authority to guide much of the developments in health, planning, and infrastructure for the capital city. Therefore, it is increasingly unlikely that deviation from the government's key priorities will emerge in such a space. The dedication with which that the central government has, since 2011, recommitted to enforcing Kenya's encampment policy will likely inhibit any integration of Nairobi's urban refugee population into official planning and policy documents.

Whether it is recognized or not, Nairobi City County hosts the refugees residing within its borders. Urban refugees, while in a legally ambiguous position, continue to access public services, contribute to the local economy, and have largely integrated into

the social fabric of their communities. Even without explicit integration or involvement in long-term development planning, Nairobi's urban refugees are directly implicated by such endeavours. Nairobi City County's CIDP<sup>37</sup> does not explicitly reference refugees or their role in shaping social and economic development in the city. However, in its assessment on some of the social issues facing the city, such as high poverty levels and cases of HIV/AIDS, the CIDP does acknowledge 'displaced persons' as a population of concern (Nairobi City County 2018). In discussing the city's poverty levels, the CIDP notes that:

Poverty is a multi-sectoral phenomena cutting across all sectors of development in the County. The people who live below poverty line in the County are estimated to be 22 per cent of the total population. The most affected categories include vulnerable groups like the unemployed youth, women, persons with disabilities, female and child headed households, slum dwellers and the aged, street families/children, displaced people and HIV/AIDS orphans. These categories of people face various challenges thus they remain poor (Nairobi City County Government 2018, 110).

In highlighting the intersectional nature of poverty in the city, the CIDP can address some of the broader social issues that affect urban refugees and contribute to their heightened vulnerability profile. Improved access to basic sanitation amenities and 'other economic facilities' are highlighted in Nairobi's 2020 County Budget Review and Outlook Paper as forming a key component in the overall strategy aimed at improving livelihoods in Nairobi's informal settlements – where many of the city's urban refugees reside (Nairobi City County Government 2020). Investing in expanded essential services in a broad manner allows for benefits to be felt both by the host and refugee communities. In doing so, barriers to social integration are diminished and the perceptions of favourable treatment can be challenged directly (Regional Durable Solutions Secretariat 2018).

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<sup>37</sup> The current version of the CIDP was written in 2018, prior to the transfer of authorities back to the central government through the creation of the NMS.

It remains unclear whether the county would be as willing as their counterparts in Garissa and Turkana to fully incorporate refugees into their development planning processes if the legal ambiguity affecting urban refugees in the city were resolved. Yet, by acknowledging the challenge that ‘displacement’ in all its forms poses to social advancement and economic development, the city’s officially endorsed plans are poised to address some of the broad factors affecting the population in lieu of the more targeted approaches seen elsewhere. Such broad investments in community infrastructure, health, and sanitation services made by the city will create positive, albeit indirect, effects for refugees in Nairobi. The relative absence of both the central and county governments in the direct provision of services and protection to the urban refugee population in Nairobi has created an environment whereby external actors and grassroots community organizing have become essential to survival.

#### **7.4 The International Humanitarian Sector in Nairobi**

The international humanitarian sector in Nairobi is in an awkward position when faced with the question of how to approach and assist the city’s urban refugee population given that their country headquarters and a significant portion of their staff reside in the city; yet for most of the larger organizations, their resources are either entirely or disproportionately allocated to the Dadaab and Kakuma camps. The presence of a large urban refugee population that is drastically under-serviced in such close proximity to these headquarters initially appears to be counterintuitive and in contravention of many of the stated goals of organizations such as (but not limited to) the UNHCR, the DRC, and the NRC. Central to this contradiction is the fact that international organizations are present only at the invitation of the central government and Kenya has taken a much stronger role

in recent years to regulate and oversee the operations of NGOs operating in the country (Interview with INGO Researcher 2019). Operating within the strict legal confines that the central government has placed on refugees also affects how such organizations can mobilize to provide protections and other services to refugees. Therefore, directing resources to the highest concentration of refugees within the appropriate designated refugee hosting areas becomes the most viable way for large organizations to continue to direct their efforts to where their operations will be most effective.

In response to such an environment, NGOs began “seeking ways to engage with community-based, bottom-up systems of social protection” (Pincock et al. 2020, 73). The international humanitarian sector does have a significant amount of influence and lobbying power with the Kenyan government and has worked with them to restart some registration and RSD procedures in Nairobi (Interview with Development Consultant 2019). This is not however sufficient to address the gaps in other services and protections for these populations. Some organizations have found ways of working around the government in a manner that can by-pass some legal or bureaucratic obstacles to provide services to refugees and work towards the goals of the CRRF. While self-reliance is still far from realized in each of these contexts, the central difference between the approaches taken to urban refugees in Nairobi from those living in Kalobeyei is at which level such unconventional partnerships are made.

The international humanitarian sector in Kakuma and Kalobeyei has found a generally reliable partner in the current County government in Turkana, whereas in Nairobi the international humanitarian sector has found fruitful partnerships with smaller Community Based Organizations (CBOs) created by refugees themselves. Many of these

smaller organizations operating in Nairobi aim to bypass larger organizations such as the UNHCR, that they view as corrupt and not always operating in good faith. This has emphasized the need to build alternative connections based off prior experience as well as personal connections and relationships (Pincock et al. 2020). The individual agency of refugees and the social networks that they have been able to construct within this urban setting have proven invaluable in allowing larger organizations to connect with and provide services to a population that may be dispersed throughout the city living in its many outskirts and informal settlements.

Mobilizing informal networks at the community level, while effective in connecting individuals to the necessary resources to a wider network of other refugees that may be able to provide other forms of peer and social supports, remains a strategy that is limited in its ability to facilitate tangible assistance. Such connections are best suited to respond to emergency or immediate assistance but, due to their small size or the informality, tend to lack the ability to provide long-term stability or planning (Pincock et al. 2020). To provide longer term planning, CBOs would require consistent funding streams as opposed to the project- or initiative-based funding agreements provided to them by larger organizations. This is unlikely to materialize given that the focus of much of the international humanitarian sector is diverted to Dadaab and Kakuma. Furthermore, the underlying assumption of Kenya's 'policy in practice' for urban refugees is that most are already self-reliant and such investments are unnecessary. Therefore, it is unlikely that political buy-in for any expansion of official assistance would gain much traction at either the national or county levels.

As discussed above, the immense size of the urban caseload in Nairobi has caused organizations such as HIAS – which has become one of the lead implementing partners responding to the needs of refugees in Nairobi – to prioritize service to the most vulnerable individuals. Vulnerable populations tend to be invisible and difficult to identify as in need of assistance but whenever possible, the UNHCR refers them to HIAS, which is better equipped to direct them to the services they require. HIAS focuses on those with higher risk profiles that place them in a more vulnerable position when compared to other refugees and asylum seekers. Priority groups include unaccompanied minors, persons with disabilities, single female-led heads of households, those with chronic illnesses, victims of gender-based violence, survivors of torture, the elderly, and LGBTI refugees (Interview with Lucy Kiama, Country Director HIAS 2019). Each of these categories must be examined from an intersectional perspective, as such factors are not mutually exclusive, and individuals may have a variety of experiences and identifying factors that increase their vulnerability profile relative to another individual.

For example, LGBTI refugees in Nairobi face unique risks in that many have come to Nairobi from Kakuma or Dadaab citing legitimate risks of violence and retaliation for their sexual orientation or gender identity. In Kakuma, there have been multiple incidents of violence including arson targeting ‘Block 13’ which houses the highest concentration LGBTI refugees in Kakuma. Such incidents have resulted in both severe injuries and death for LGBTI refugees (Ogao 2021). Those that make the journey to Nairobi are placed in additional jeopardy as not only are they not permitted to travel outside of the designated refugee hosting areas, but homosexuality remains criminalized in Kenya which compounds the risks associated with their presence in Nairobi.

While Organizations such as HIAS are able to offer positions in safe houses for members of the vulnerable populations mentioned above, including LGBTI refugees, these spaces are limited. In a conversation with the country director for HIAS Kenya, it was noted that in August 2019 there were only approximately 65 individuals in such safe houses. Relative to the total refugee population the number of spots for such protection mechanisms are very limited. The individuals in such safe houses are generally fast-tracked for resettlement given the imminent danger that they are perceived to be in if they were to remain in Kenya or return to one of the major camps (Interview with Lucy Kiama, Country Director HIAS 2019). It must be noted here that although such individuals are fast-tracked for resettlement, resettlement in general is only an option for fewer than 1% of registered refugees in Kenya (UNHCR 2021a).

## **7.5 Entering the Third Phase of Asylum Policy: Implications for Urban Refugees in Nairobi**

Prior to the mass influx of refugees from Somalia, Ethiopia, and Sudan in the early 1990s, the relatively low numbers of refugees in Kenya writ large made it possible for refugees to self-settle in key urban centres including Nairobi and the coastal city of Mombasa without causing significant security concerns for the central government (Campbell et al. 2011). However, as these numbers increased, the introduction of the encampment policy instigated the relocation of many refugees and asylum seekers to Dadaab and Kakuma, proving to be the hallmark of Kenya's second phase of asylum policy (as described in Chapter Four). Relocating refugees to the designated areas, despite neither camp complex being officially gazetted until 2014, meant that the presence of refugees in urban centres became the exception to the norm and any residual presence in Kenya's urban

areas were promptly deprioritized with resources redirected to Kenya's border regions in order to access basic protection and assistance services primarily through the UNHCR and its partners.

For those that remained in Nairobi during this period for reasons considered legitimate (medical, educational, and/or enhanced insecurity or vulnerability factors), official procedures required the procurement of 'protection letters' from the UNHCR, which outlined their reasons for residing outside of the camps. Guglielmo Veridrame describes the letters as:

[an] A4 size sheet of photocopy paper with a passport-size photo of the 'asylum-seeker' with his/her name and those of other members of the family. It normally states that its holder is a refugee in Kenya recognized by the Office of the UNHCR. It also instructs the holder to report to one of the camps by a given date. However, a number of people have letters which state that they can reside in Nairobi on medical or educational grounds (1999, 59).

While such documents were made available to refugees under specific circumstances, the utility of the protection letters relative to the challenges many individuals faced in obtaining them left much to be desired. As with the registration and RSD processes noted above, the acquisition of this additional piece of documentation to reside in Nairobi was also subject to lengthy wait times and bureaucratic backlogs that further complicated an already difficult process. In addition to the challenge of navigating the application process, refugees faced challenges after obtaining such documentation. Veridrame (1999) provides corroborating testimony from several refugees outlining the harassment, exploitation, as well as arbitrary arrest and detention, that many protection letter holders experienced in navigating daily life in Nairobi. Police and security forces often would not recognize the documents as legitimate which would generally result in either arbitrary arrest and detention or the payment of a bribe to avoid such unpleasantness. Indeed, many questioned

the need to go through the process to procure such documentation given the likelihood that it would be disregarded by authorities.

Further to the many difficulties in procuring official documentation, the adoption of encampment policies meant that the attention of the international humanitarian sector also shifted to prioritize the encampments due to the higher concentration of individuals in need of protection and basic services, while the central government handed off most of the responsibility for the governance and management of the country's refugee camps to the UNHCR. In doing so, the already stretched humanitarian resources became even more thinly spread as the UNHCR assumed responsibility for managing the city-sized encampments located in Kenya's border regions which created additional logistical challenges and security related concerns. This combination of events enabled the circumstances in Nairobi that have generally remained consistent across the second and third phases of asylum policy, in that protection and basic assistance services are not easily accessed and that smaller humanitarian organizations (local, national, and international in origin) have stepped in either to provide services or to connect refugees with such services (Pincock et al. 2020).

As Kenya entered the third phase of asylum policy, whereby approaches to the implementation of national policies became more varied at the sub-national level, the expression and experience of this policy in Nairobi has been marked by two key trends. These trends can generally be described as an *intensification* of existing positions that stem from the early application of the encampment policy. To begin, the increase in security concerns relating to terrorist attacks in Nairobi (most notably those committed by the

Somali Islamist group Al-Shabaab)<sup>38</sup> have escalated the use of Somali refugees and undocumented migrants as scapegoats resulting in their forcible relocation or deportation, despite the absence of any evidence that refugees themselves participated in any of the attacks (Human Rights Watch 2013; Amnesty International 2014). The next trend emerges from the divestment of the central government from both the overarching governance and the day-to-day operation of the refugee regime domestically in the early 1990s. As noted throughout Chapters Five and Six, ethnicity is an immutable aspect of Kenyan politics (see: Abdelaaty 2020) and plays a significant role in determining when and how the Kenyan government decides to act.

Generally, where Somali refugees are involved, the rhetoric of security is invoked to justify a more heavy-handed approach, which has led some Somali refugees to feel as though the government is actively trying to deter them from seeking asylum in Kenya (Regional Durable Solutions Secretariat 2018; Pincock et al. 2020). In contrast, Nairobi's sizable population of over 30,000 Congolese refugees are less likely to experience such direct points of conflict with Kenyan authorities. Congolese refugees tend to have an easier experience in blending into the communities in which they settle. This is due to several general characteristics of this population; Congolese refugees tend to be Christian, speak Kiswahili, are less physically distinguishable from the host community, and tend to settle in Nairobi's outskirts. However, this does not alleviate the pressures they face in a saturated job market and the reality that their precarious legal status as 'urban refugees' increases their vulnerability to exploitation (Betts 2021).

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<sup>38</sup> Notable Al-Shabaab attacks in Nairobi include the Westgate Mall attack in September 2013 and the Dusit D2 attack in January 2019, which resulted in 71 and 22 deaths respectively.

The second trend emerged as the UNHCR and more recently, county governments, have stepped in to fill this gap in other areas. In Nairobi, this has proven to be difficult given the incomplete picture that most parties have of the actual situation. In an interview with HIAS Kenya's Country Director, it was noted that in Nairobi alone there are over 76,000 *registered* refugees, and the organization is only able to reach 6,000 (fewer than 1%) of them which requires assistance to be provided only to the most vulnerable (Interview with Lucy Kiama, Country Director HIAS 2019). In 2013, Human Rights Watch estimated that there were likely well over 100,000 unregistered Somali nationals living in Nairobi (Human Rights Watch 2013). As HIAS, one of the main implementing partners for the UNHCR in Nairobi, is only able to reach a fraction of the known urban refugee population, a significant blind spot in both the policy and protection regimes remain, as it is nearly impossible to account for the significant unregistered population given current resources and priorities.

HIAS has adopted a community-based model for protection and service provision, which has operationalized refugee-to-refugee networks and CBOs to connect those in need to the appropriate services (i.e., mental health supports) (Interview with Lucy Kiama, Country Director HIAS 2019). In this context then, devolution takes on a new meaning as responsibility for Nairobi's partially visible urban refugee population has fallen to community-level organizations and smaller (non-UNHCR) actors in the international humanitarian sector. This has occurred despite RAS' efforts to assume responsibility for the RSD process, the official backlog created by the sizable urban<sup>39</sup> caseload remains at

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<sup>39</sup> Inclusive of Nairobi, Mombasa, and Nakuru.

27,816 individuals as of 31 July 2021 – higher than the official backlog at either Dadaab or Kakuma (UNHCR 2021a).

Both trends relate directly to the role of ‘critical inaction’ in determining how alternative responses to governance can and do emerge at the sub-national level (Mourad 2019). In the first, the central government elects to act primarily through security and policing. This action disproportionately affects Somali refugees as well as Kenyan Somalis albeit to a different extent given the legal distinctions between the two groups. Action in this instance is generally punctuated and reactive in nature and directly tied to Kenya’s national security priorities. Any increases in such activities become somewhat predictable and are likely to follow incidents of violence or terrorism. The state’s selective action in this context does not nullify the inaction in other areas, most notable in the absence of meaningful recognition of urban refugee populations, and the corresponding absence of social and protection services for refugees.

The nature of the gap left behind by central inaction in assisting urban refugee populations, when coupled with the UNHCR’s ongoing challenge in maintaining sufficient resources country-wide (UNHCR 2021a) has made it more likely that this gap will be addressed by the efforts of smaller organizations and grassroots coordination by refugees themselves (Pincock et al. 2020). Unlike in Turkana County, there has not been a meaningful intervention in this space by the Nairobi City County government. The omission of ‘urban refugees’ from most legal frameworks has made it difficult to incorporate such populations into long-term planning at the County level to the extent seen in either Garissa or Turkana Counties. Insofar as there are no direct references to refugees in Nairobi City County’s County Integrated Development Plan (CIDP) for 2018-2022,

there is a marked divergence in the role of the County government in this context. Therefore, the extension of such inaction to the county level has further contributed to shifting responsibilities to the humanitarian sector as well as to the refugee community itself.

## **7.6 Conclusion**

The Nairobi City County government's absence from discussions of the city's sizable refugee population is stark when compared to the unprecedented cooperation and coordination between the Turkana County government and the international humanitarian sector discussed in Chapter Six or the advocacy of the Garissa County government in maintaining the status-quo in Dadaab in Chapter Five. The reabsorption of key county responsibilities by the central government has tied the functions of the county government in the capital city more intimately to the central government. While there is still legal autonomy over the remaining functions that were not rolled into the NMA, the incorporation of health services and planning directly into the executive Office of the President implies a degree of re-centralization that had not been observed since the implementation of the 2010 Constitution.

As refugees in Kenya continue to be the subject of intense securitization that is continually reinforced by the political rhetoric of the core, it is unlikely that there will be a significant shift in the way that urban refugees are treated in Nairobi. The default assumption for those that have made the decision to relocate is that they are no longer in need of the supports or assistance offered in the camps and are effectively self-sufficient. However, such an assumption does not provide any protections from or recourse for their

legally ambiguous position or from further exploitation by security forces or others in positions of authority.

By taking a ‘Don’t Worry About It’ approach to urban refugees, the central and county governments have created the space necessary for a wider array of humanitarian actors to fill the gaps left behind by the state. The UNHCR, with its longstanding organizing role in Nairobi, has been able to direct those that do require additional assistance to organizations such as HIAS where they are then directed to smaller CBOs that can facilitate the acquisition of emergency food or shelter. The importance of personal networks and community organizing has created an emergent bottom-up protection regime in Nairobi to address the centrally manufactured short-falls of the international refugee regime in Kenya’s urban areas.

In Nairobi, as in other major refugee hosting areas – the demographic composition of the refugee population has a significant effect on how the state responds to their presence. The arbitrary arrests and forced relocations explicitly targeting Somali refugees and undocumented migrants primarily in Eastleigh reinforces the notion that ethnic identity remains a key factor in determining how one may experience the implementation of Kenyan asylum policy, regardless of where one resides.

## **Chapter 8: Comparisons and Conclusions**

### **8.1 Introduction**

The central purpose of this Chapter is to provide a clear response to the question presented at the beginning of this dissertation, which asked ‘what explains sub-national variation in the politics of asylum in Africa’s major refugee hosting states?’ The preceding analysis of sub-national variation in Kenya has provided an in-depth examination of major refugee hosting area in the country. In doing so it has provided an analytical framework for assessing internal variation in African states and argues that for discernable sub-national policy variation to emerge, several key structural factors must be in place.

First, a state must possess some form of devolved governance that permits sub-national governments to assert their own jurisdiction over key areas such as health, social policy, and development planning. Second, there must be a refugee population present in sufficient numbers and concentration to warrant a political response. The threshold for what may be deemed to be sufficient is fungible, as the unique relationship between refugee and host communities rely on a variety of circumstances (e.g., comparative economic wellbeing, availability of arable land, resource distribution etc.). Lastly, the presence of uneven or asymmetrical historical relationships between regions/sub-national bodies and the political core of the state are needed. These different experiences inform the relative starting positions and trajectories of each party and thereby enables an accounting of the different priorities, motivations, and prejudices affecting the decisions at both the national and sub-national levels. Kenya’s rapid development after independence was heavily influenced by patronage and ethnic politics, which created the uneven socioeconomic development that exacerbated inequalities in the post-colonial state.

With the conditions above satisfied, I contend that sub-national variation *may* occur, but these conditions alone cannot dictate the form that such variation takes. There are several intervening variables responsible for such determinants in the Kenyan context. These variables are responsible for many of the specificities observed in the preceding chapters. The first is the use of ‘critical inaction’ by the central government, which in this context is when and where the central government decides to either intervene or remain inactive, and how this affects the freedom with which sub-national governments can develop and execute their own policy priorities. Where the central government intervenes frequently or with punctuated intensity, the potential for sub-national policy variation tends to be more modest. Alternatively, where inaction is the norm and the central government is relatively absent or aloof, the potential for such variation increases.

Next is the demographic composition of the refugee population. In Kenya, this has been shown to be strongly related to the previous point. This correlation emerges as, where the majority refugee population is of Somali origin, the central government tends to respond with a heavier hand and often employs the state’s security apparatus to impose its preferred positions. The third intervening variable affecting the nature of sub-national variation in Kenya is the political opportunity structure affecting the decision-making capacity of the county government itself. Sub-national governance capacity and efficacy may be influenced by individual personalities, ambitions, priorities, and elite networks. Where such capacities are limited, the central government is more likely to exert more influence over outcomes.

## **8.2 Structural Conditions Enabling Sub-National Variation in Kenya**

This section discusses the structural factors that this analysis has found to be the necessary, but not sufficient conditions that allow for sub-national variation to occur across a single policy space – particularly that of asylum policy. In order for this phenomenon to emerge three conditions must be met. First is the presence of a devolved political structure whereby legitimate and democratically elected governments existing at the sub-national level retain autonomy over key areas of local governance and service provision. Second, is the sustained presence of large refugee populations in a relatively concentrated area. The presence of these populations is required to create the incentives necessary to stimulate policy innovation and advocacy regarding asylum policy and refugee management.

Third, there must be a history of differential relationships between the state's political core and the sub-national entities hosting refugee populations. These relationships have often resulted in the asymmetrical development of the state and has tempered the forms of cooperation and contestation that have occurred between the political core and the periphery of a given state in the global South. While these conditions are necessary for variation to emerge, they are unable to dictate the form that such variation will take; section 8.3 below, will further explain the relevant intervening variables that have led to the observed policy outcomes in Kenya.

### **8.2.1 Political Devolution**

At a structural level, the implementation of the 2010 Constitution and the devolution of key authorities to the 47 County governments was a necessary precipitating factor to permit the emergence of sub-national variation to the degree observed with the implementation of asylum policy and refugee management in Kenya. Recalling Chapter

Four's discussion of Kenya's political development, the 2010 Constitution defines the core objectives of devolution and in doing so provides a solid legal foundation for the counties' roles in reordering the authorities behind many of the most public facing functions of the state. Section 174 of the 2010 Constitution directly connects devolution to the promotion of democracy, national unity inclusive of Kenya's diverse population, self-governance, public participation, and local management over local affairs and development priorities – all whilst recognizing and compensating for the unique interests of minority and marginalized communities (Government of Kenya 2010).

Political devolution in Kenya is best understood as being neither an entirely top-down nor bottom-up approach, but rather a series of meso-level arrangements that are continually (re)negotiated by political elites across the spectrum. When compared to the Kenya's first and second phases of political development as discussed in Chapter Four, political devolution presents a clear divergence from the top-down approaches to economic development that were driven exclusively by the central government. This had previously been directly tied to the ambitions of the executive, or through wider patronage networks incorporating a larger number of elected representatives, party officials, and bureaucrats. Neither is it indicative of the types of bottom-up grassroots movements that are often associated with broader social movements in other contexts (see Tarrow 1994). The core functions of devolution in Kenya (e.g., unconditional cash transfers, local autonomy, distinct local bureaucracies, and local democratic representation) have generally held firm against pressures from above and below. The establishment of formal governance bodies at the sub-national level responsible for key sectors affecting the daily lives of citizens, even in the areas of the state that have been historically cut off from the resources of the

core, have fundamentally reshaped the relationships between these communities and the state. County governments' ability to both govern and advocate on behalf of their constituents from a position of legislated authority in relation to the central government has created a meso-level counterbalance to what was previously an extremely centralized state structure.

In bringing some of the levers of state decision-making 'closer' to the people with devolved services and mandates for public consultation, the most drastic effects were felt in Kenya's marginalized and far-flung regions far from Nairobi (Interview with Turkana West sub-County Administrator 2019). Unconditional cash transfers from the centre and democratic elections at the sub-national level provided unprecedented resources, capital, and authority to local elites on an unprecedented scale. In separating key functions, authorities, and powers between different levels of democratically elected government, space was created within the state structure for the co-existence of distinct political elites at both levels of government, as defined in section 2.4.2 above. The scope of the political activities available to the county government and the publics to which they are accountable has created new networks and relationships at the local level that have conditioned the sub-national implementation of central asylum policies. In the process, new political opportunity structures have been created at the sub-national level that are distinct from those at the national level which have redrawn the parameters of what is politically possible for such local elites.

In Turkana County, this has most clearly played out through the direct ties that have formed between County officials, political leaders, and the international humanitarian sector. Governor Nanok's ability to leverage his previous experience working with major

international aid agencies to achieve outcomes in Turkana that have stretched the limits of Kenya's official asylum policy whilst securing long-term development investment for Turkana West, the sub-county where Kakuma and Kalobeyei are located, is a direct result of the space made for action at the sub-national level. The ability for the county government – as an official arm of the Kenyan State – to fill the void that was left in the region by decades of neglect and marginalization by the political core and become an indispensable partner for the international humanitarian sector would not have been feasible under the previous structural limitations of a highly centralized Kenyan state. Furthermore, it lessens the burden placed on international actors operating in the region as they are no longer required to exclusively provide governance to the regions in which they operate in Kenya's northwest.

When compared to the experience in Garissa County, devolution has not been effective at building independent relationships between the County Government and the international humanitarian sector. This is due to the central government's tying of asylum with security in this context has led to more direct involvement of the central government in local affairs. However, the Garissa County government has sought to learn from the experience of Turkana County and have engaged in fact-finding missions to see what could be learned from the KISEDP project. While there has not been the same level of stretching in the application of asylum policy in Garissa, refugees have been included in development planning that will permit a more comprehensive assessment of issues facing both the refugee and host communities in Dadaab and the use of newly available resources to address many of the issues affecting the livelihoods of both communities.

A commitment to the status-quo in Dadaab, while partially due to the political concerns of the incumbent government, are also a key feature of a unique sub-national political opportunity structure stemming from the implementation of devolution. Even though the latitude for such a liberal interpretation of Kenya's asylum policy does not exist in this context, the ability of the Garissa County government to continue advocating for Dadaab's existence despite the position of the central government is notable. This ability suggests that political relationships at the sub-national level are distinct from those at the centre, and that county officials are equipped with the political legitimacy, resources, and freedom to push back against decisions made at the centre that would adversely affect their interests and long-term economic development.

### **8.2.2 Protracted Refugee Situations**

The sustained presence of refugees in Kenya over three decades created localized social, economic, and political connections between the refugee and host communities. Protracted refugee situations must be understood qualitatively rather than quantitatively, as there is no specific number or population size that can be generally determined to be a 'tipping point' for when they become politicized. Instead, it is crucial to understand their presence relative to their host community and the overarching political atmosphere of the host state. A key factor in determining this threshold is the relative visibility of the refugee population in question; the more visible the protracted refugee situation, the more likely it is to become politicized or securitized. Therefore, it is the unique configuration of the relationships between refugee and host community that have affected how political priorities pertaining to asylum have developed over time. The expansion of the authorities provided to sub-national governments in Kenya's 2010 Constitution understandably

created a new point of interaction between the institutions governing asylum and the host community; thereby providing a new level at which these relationships could be formally mediated.

Furthermore, as the presence of refugees has been a relatively consistent variable throughout Kenya's political development after the implementation of multi-party elections, it provides a unique window into the evolving relationships between local, national, and international actors in Kenya. The preservation of Kenya's encampment policy throughout the wider restructuring of the Kenyan state provided new opportunities for its (re)interpretation within new political contexts at the sub-national level.

By comparing the instances of sustained encampment was sustained with urban centres where formal encampments have not materialized, it is possible to isolate the effects that the presence of refugees in both significant numbers and concentration have had on sub-national politics, economic development, and the host community. In both Dadaab and Kakuma, local politicians have taken up an advocacy role in response to the central government's rhetoric and efforts to close the encampments. In both instances local leaders have been vocal in their support for sustaining the presence of refugees and asylum seekers in their localities. In addition to the vocal support of local governments, refugees have been incorporated into long-term development planning and their presence has been incorporated as a key variable affecting issues such environmental sustainability, infrastructure planning, economic prosperity, and healthcare. In Nairobi, by contrast, neither local politics nor development planning focuses on or incorporates refugees and asylum seekers as a distinct community. Instead, the development resources available at

the sub-national level take on wider efforts at poverty alleviation and improving the livelihoods of vulnerable populations within the city's many informal settlements.

As the presence of refugees in concentrated numbers over a long period of time increases the likelihood of both stronger social ties to the host community (as in Dadaab) and a tightly integrated local economy (as in Kakuma/Kalobeyei) it becomes more difficult to treat their presence as external to either the mandates or priorities of local government. As refugee encampments become *de facto* urban centres in otherwise peripheral regions, their influence over local priorities and politics should not be discounted.

### **8.2.3 Relationship between the Political Core and the Periphery**

The highly centralized state structure that was constructed after independence in Kenya paved the way for the prioritization of rapid state development through an 'authoritarian developmentalist' approach that in its zeal to expedite the state's postcolonial development, fostered a system that fundamentally relied on patronage and clientelism. This led to the asymmetrical allocation of resources and investment based on elite relationships to Kenya's political centre, which often operationalized ethnicity to function as shorthand for political in and out groupings. The persistence of this political structure through the first two phases of Kenya's political development yielded the specific histories of marginalization, violence, and underdevelopment that have been explored throughout this dissertation.

Neither the Turkana in Turkana County, nor the Somali in Garissa County have historically been integrated into the political patronage networks of Kenya's political core, as Kenya's presidents have either hailed from the Kikuyu or Kalenjin ethnic groups. The patronage networks that expanded outwards from the office of the President did not

typically extend beyond ‘down Kenya.’ Furthermore, the rapid development projects that came about after independence generally omitted communities outside of these networks.

Turkana County, prior to devolution, formed the northern most district of Rift Valley Province. But it was not generally included in many of the political machinations that occurred with their counterparts in the southern part of the province that included many of the communities from which the Kikuyu and Kalenjin elites in the central government drew their political support. The treatment of the Turkana District as a ‘special administrative zone’ that was prone to inter-communal violence and cross-border skirmishes pre-dated independence and was carried over into the central government’s administrative approach to the region throughout Kenya’s first two phases of political development.

The relatively hands-off approach to the predominantly nomadic pastoralist Turkana community led to the central state remaining a particularly abstract and disparate construct for many in the region for much of Kenya’s history. This relationship did not change through the hosting of refugees in Kakuma, as the state delegated authority and responsibility for the refugee population to the international humanitarian sector. In so doing, resolving local tensions between the host community and the refugee population fell to the international actors and to local elites. The establishment of this direct line of communication and the provision of opportunities for the Turkana host community was crucial in laying the foundation for the political relationships that would develop between the County government and the international community after the implementation of devolution.

In the part of the NEP that became Garissa County, the exclusion of ethnic Somalis from the political core can also be explained by the hostile relationship between the central government and the Somali population in Kenya, which is traced back to the irredentist movements intended to incorporate the region into ‘greater Somalia.’ The ensuing *shifta wars* further escalated the situation and embedded the narrative that the Somali population in the northeast could not integrate into the Kenyan polity, nor be expected to be a productive partner for the central government. The militarized lens through which these issues were addressed at the time have cast a long shadow over the region. Milner (2009) rightly points out that these experiences have shaped contemporary policy approaches to hosting Somali refugees in Kenya. The perspective that focuses in on potential security threats has only escalated since Kenya’s initial invasion of Somalia in 2011 and the ensuing insurgency campaign led by Al-Shabaab (Lind et al. 2017).

By framing the issue of refugees in Dadaab as an existential security threat to the Kenyan state, the central government has been able to retain much more control and influence over the situation. Comparatively, less space has been created for sub-national actors to pursue their own agendas or to stretch existing policies beyond the traditional status-quo. Yet, in advocating *for* the status-quo against central efforts to pursue even more restrictive policies, it is clear that political actors at the county level have been afforded the space necessary to articulate clear opposition to central ambitions. The County government, as a legitimate and elected arm of the Kenyan state at the local level, thereby provides an unprecedented platform where the concerns of both the host and refugee communities can be voiced.

In Nairobi, the lines between county and central governance have been blurred from the start. In sharing physical space with the central government, the potential for heavy handed influence remained high. While, this was by no means a guaranteed outcome, the election of a close ally of President Kenyatta to the Governorship in Nairobi City County that happened to be the centre for controversy, corruption allegations, and accusations of inept governance had the effect of providing the central government with the opportunity to seize some of the functions of the County government. When it became clear that the governor was overwhelmed, the central government offered assistance; however, this resulted in the dilution of sub-national authority in the capital city. The central government's assumption of responsibility over key services such as healthcare and development planning, increases the challenge of incorporating urban refugees into county development planning. This difficulty stems from the fact that Nairobi is not a gazetted refugee hosting area and refugees residing there have no clear legal status in the city. Further to this is the presumption that any refugees that do live in the city are self-reliant and are not in need of significant assistance. However, as was discussed in Chapter Seven, there are many instances where refugees residing in the Capital are some of the most vulnerable that are unable to find the protections or the assistance, they require in either Dadaab or Kakuma.

### **8.3 Factors Shaping the Character of Sub-National Variation in Kenya**

This section discusses the intervening variables that create the variation we have observed within the three sub-national analyses included in this dissertation. The roles of 'critical inaction,' the demographic composition and concentration of the refugee population, as well as the respective political opportunity structures that have developed in

each context are all key to fully understanding *why* we have observed the specific forms of policy variation at the sub-national level within Kenya's major refugee hosting regions. The following discussion provides a summary and comparison of how the differences in such variables across contexts have yielded differential outcomes in the interpretation and implementation of asylum policy in Kenya.

### **8.3.1 Decisions at the Core: Evaluating the effects of The Central Government's 'Critical Inaction'**

When and where the Kenyan government decides to intervene or to remain inactive greatly influences the specific outcomes in this context. Inaction and ambivalence – rather than inability – on the part of the central government can facilitate the entrance of key actors at the sub-national level into the governance vacuum. The implementation of devolution, as noted above, created legitimate sub-national governments that had both the political and economic capital to fill this gap effectively. Prior to this development, such efforts to step into this space were less cohesive and generally facilitated by external actors, like the UNHCR.

The international refugee regime, when left responsible for the entirety of Kenya's asylum system in remote regions of the state, had to respond to both the needs of the displaced persons within their care as well as manage the relationship with the respective host communities. In this context, international actors took on a much larger role in the mitigation of local conflict and in the provision of services to communities where the state had little influence. The direct connections between key international and local actors that emerged meant that much of the local professional class that emerged in Kenya's refugee hosting regions were trained and employed directly by such international agencies. When

county governments were established in the 2010 Constitution, many of the professionals that filled their nascent bureaucracies had significant experience working with the international humanitarian sector.

In Turkana County, the region's longstanding experience with marginalization carried over into how the central government dealt with the refugee population, essentially providing autonomy for the UNHCR to govern as needed. The main focus of central policy-making since independence has been focused on securing the many borders in the northwest and to prevent incidents of inter-communal conflict and related criminal activity (i.e. banditry and cattle rustling). Aside from such efforts, the state continually underinvested in governance, capacity-building, and development in the region. With the development of the county government, there were fewer trepidations about bypassing the central government and working directly with the international humanitarian sector to integrate the host community into the core initiatives of the international refugee regime in the region.

While Garissa County has had a similar legacy of underdevelopment, the central government has maintained a stronger presence in the region through the national security apparatus. The emphasis on military security, policing, counter-terrorism, the ongoing fear of terrorism and insecurity has made it so that the security narrative dominates discussions about Somali refugees. Discussions about ongoing humanitarian concerns, or the strong social and economic integration that have occurred between the host and refugee communities over 30 years of cohabitation are often viewed as secondary. Also, the rhetoric advocating for closing the camps focuses on the 'existential threat' refugees pose

to Kenyan security without acknowledging the immense logistical challenge in following through with such plans or the fact that insecurity in Somalia remains high.

Meanwhile in Nairobi, the general aloofness of the central government towards the urban refugee population has (since 2011) been punctuated by periods of intense state sanctioned violence and policing of primarily Somali refugees in the capital city. The result has been the forcible return of refugees to the camps and those without documentation risk deportation to Somalia – this has been the area where the most heavy-handed enforcement of Kenya's encampment policy has been seen.

Consequently, the relatively high degree of central state involvement in Garissa County has left less latitude for sub-national actors to deviate from the status-quo. In Turkana County where the state has a long tradition of absenteeism and delegating authority to external actors, sub-national actors have been able to stretch the interpretation and implementation of Kenya's national asylum laws in ways that have not been mimicked elsewhere in the country. And, finally, in Nairobi City County, the assumption that any refugees residing outside of designated refugee hosting areas are self-reliant has prevented their incorporation into local policy and planning in any significant way and has generally resulted in continued inaction. The exception to this is that in response to incidents of terrorism in the capital the central government generally responds through force directed at Somali refugees, asylum seekers, and undocumented migrants living in the city.

### **8.3.2 Refugee Demographics and Ethnic Politics**

Government decisions on whether to act in a given circumstance appear to be intrinsically tied to the demographic composition of the refugee population of a given area. The ethnic composition of the refugee population is connected to the form of response

utilized by the central government and has often resulted in the most ‘securitized’ rhetoric and strictest enforcement of Kenyan law being reserved for Somali Refugees. The same level of scrutiny has not been placed on refugees from South Sudan or the Great Lakes Region. Kakuma and Kalobeyei, with a much more diverse refugee population, is where the most liberal interpretation of Kenyan asylum policy has been observed. This is not to say that incidents of over-policing do not occur in other contexts with other marginalized or vulnerable populations, but the degree to which the state employs the use of its security apparatus disproportionately affects ethnic Somali populations in Kenya, wherever they reside in concentrated numbers.

Therefore, where the population of refugees and asylum seekers in Kenya are more diverse, as is the case in both Kakuma/Kalobeyei and Nairobi City, the central government is less likely to view the situation from a predominantly security-oriented perspective and is therefore *more likely* to choose inaction. Meaning that sub-national political actors and elites will have more latitude to stretch and reinterpret the implementation of national asylum policies. Alternatively, the historic relationship between the Kenyan government and the ethnic Somali population, the contemporary the bilateral relationship with Somalia, and the ongoing threat of terrorism from Al-Shabaab has led the central government’s default assumption is that Somali refugees are a threat. This comes into focus in Dadaab where the demographic composition is nearly homogenously Somali, and the central government has had an easier time exploiting this perspective and maintaining tighter control over its administration.

### **8.3.3 County-Level Decision-Making and the Localization of Political Opportunity Structures**

As parallel political opportunity structures have developed at the sub-national level in Kenya, the county governments have grown to play an increasingly significant role in determining how national policies are translated into local contexts. Individual personalities, elite networks, ambitions, and political priorities can all interact to affect sub-national governance. Where such capacities are limited, the central government is more likely to exert disproportionate influence over outcomes. In contexts where County government leaders have a clearly defined vision and robust networks of local elites and external support, there is a greater likelihood that agendas are driven with more autonomy at the sub-national level. For example, the past work of Turkana County's Governor Nanok provided him with a comprehensive personal network that spanned various areas of the international humanitarian sector that allowed his government access to resources and support to involve the county government in the local politics of asylum.

The personality and ambition of Governor Nanok was emphasized by many key-informants as well as within recent academic literature (Pincock et al. 2020; Betts 2021) as one of the key contributing factors to the relative success of the KISEDP project. His ability to secure investment and development commitments from the sector for the whole of the Turkana West sub-County has served to increase his profile. Also, as the chair of the Council of Governors, the influence he wielded in Nairobi also likely affected the central governments continued ‘inaction’ in Turkana.

In Garissa County, after seeing the progress made in Turkana with the implementation of KISEDP, the county launched a fact-finding mission to see if elements

of this project could be implemented or adapted for use in Dadaab (Interview with International Organization Representative 2019). Despite the desire to bolster the economic integration of the refugee and host communities in a more officially sanctioned manner, there has been no significant materialization of this at the time of writing. Progress on this front seems to be increasingly unlikely given the rhetoric around closing the camps, and the hesitancy this creates amongst international donors in providing the long-term development assistance that would be required to create a similar system. Furthermore, the inability of the county government to meaningfully procure the resources from the central government to sort out the logistical conundrum of double registration also highlights the limited nature of autonomous action in this space at the sub-national level in this context.

The Garissa County government, despite its many challenges, has retained the full range of devolved authorities granted to it in the 2010 Constitution and has used these resources to integrate refugees into development planning – however, the county government has also given weight to their own political concerns and determined that the maintenance of the status-quo may be the best option for the political future of the existing government and that pushing for too radical change in either direction may upset the precarious political balance that has been constructed in Garissa County.

Nairobi City County's first governor directly contributed to further limiting the independent governance of the county by signing over of many of the most important county-level functions to the central government. This compounded the challenges that already existed in the context of a county that was required to share so much physical space with the central government and its institutions. The direct absorption of county functions into the central government limits autonomy of decision-making at the sub-national level

in Nairobi in a manner that has not yet been observed in other counties. With the sub-national government unable to exercise the same level of autonomous decision making as other counties, it operates under a significantly more restrictive political opportunity structure than either Turkana or Garissa counties.

#### **8.4 Discussion**

Recalling the research question at the core of this dissertation, the observed variation is enabled by Kenya's devolved political structure, motivated by the sustained presence of refugees for three decades, and shaped by the legacy of Kenya's rapid but asymmetrical development after independence. The resulting asymmetry between the political core and the peripheral areas of the Kenyan state has created lasting effects for the politics of asylum in Kenya. The intricacies of asylum policy and refugee management across all three major refugee hosting areas are affected by the level of inaction or intervention by the central government, which is generally contingent upon the demographic composition of the refugee population in a particular area. Additionally, such policies and approaches are further informed by the efficacy of the parallel political opportunity structures that have developed at the sub-national level since the onset of Kenya's most recent phase of political development through the implementation of devolved governance.

The increasingly liberal interpretation of Kenya's asylum laws and policy in Turkana County emerge from a historically absent central state, a very diverse refugee population in Kakuma and Kalobeyei, along with the personalities and experiences of key political elites – which are inseparable from the presence of the international humanitarian sector in Turkana County. The emphasis on the status-quo in Garissa County emerges out

of economic necessity and political self-preservation. The sustained involvement of the central government in the region through Kenya's security apparatus and the framing of Dadaab through its relatively homogenously Somali population as insecure and a potential 'hot-bed' of terrorist activity (Burns 2010), has limited the ability of policies to deviate at the sub-national level. However, the vocal advocacy on behalf of the Garissa County government in preserving the refugee presence in the region highlights the willingness of local political elites to push back against the dominant political positions of the centre which have called for the dismantling of the status-quo through camp closures and refugee repatriation. The *de facto* social and economic integration that has occurred naturally in Dadaab over its lifetime has resulted in it being tied to the economic integrity of the county itself and has prioritized such advocacy at the sub-national level.

The notable absence of urban refugee from county planning documents in Nairobi has been affected by the deep connections and shared jurisdiction with the central government in the capital city as well as the core assumption that any refugees living outside the designated encampments must be self-reliant. Therefore, despite the presence of many international organizations' national and regional headquarters in the city, they are required to focus their resources disproportionately on the camps rather than on the refugee population in Nairobi. When the central government chooses to act in Nairobi, it is often through heavy-handed policing measures targeting Somali refugees living in concentrated settings, such as the Eastleigh neighbourhood. This further strengthens the argument that state action, refugee concentration, and ethnicity are inherently tied together in the Kenyan context.

## **8.5 Implications**

In assembling the puzzle at the heart of this dissertation, I have presented several novel contributions to the literature on the politics of asylum in Africa. The analysis above provides insights into how both the substance and character of asylum policy can vary at the sub-national level. By employing Kenya as a critical case, I have been able to use one of the most cited cases in the literature to illustrate that the existing work has generally not kept pace with the changes that are empirically observable. And in doing so, I have problematized dominant approaches in the existing literature that treat the politics of asylum in Africa as a single monolithic subject.

In addition to reconceptualizing how one may approach the politics of asylum in Africa, the way in which this dissertation widens the scope of what falls within the frame of analysis when addressing ‘asylum policy’ also presents a valuable contribution to the literature. By reframing our understanding of ‘asylum policy’ beyond the confines of centrally determined legislation or policy and viewing it as a complex institution in its own right, this analysis accounts for the dynamic cross-jurisdictional relationships that have influenced variation at the sub-national level. Such innovation and decision making would not be easily nor clearly accounted for if one remained reliant on strict textual interpretations of a host state’s ‘asylum policy.’

Furthermore, this work contributes to a growing body of literature addressing the emergence of sub-national policy variation, in the asylum policies of the Middle East and North Africa (Betts et al. 2017; Mourad 2019). Adapting such an approach to the sub-Saharan context exemplifies that this phenomenon is not exclusive to any single region. By disaggregating the state and opening the analysis to account for political agency and elite

interests at the sub-national level, this dissertation has been able to provide an explanation for the substantial variation observed between Kenya's major refugee hosting regions that has emerged over the last decade. On a broader scale, this analysis has documented how the trajectory of Kenya's shift into the 'third phase' of asylum policy could be used to evaluate similar processes in other African contexts. In doing so, this also creates opportunities to incorporate previously disparate bodies of literature and broaden the conversation between African comparative politics and forced migration and refugee studies. In acknowledging the potential influence of sub-national actors on the politics of asylum, additional lines of inquiry can be opened that seek to unpack the connection between indigenous or non-state sources of power and authority and the implementation of national policies at the local level (for a detailed explanation of non-state sources power and authority in Africa see: Mamdani 2012; Mamdani 2018).

As noted in the previous sections of this Chapter, Kenya's transition into the third phase of asylum policy was enabled by the conditions created by meaningful decentralization, the distinct relationships between the political core and peripheral regions of the state, and the protracted presence of refugees. Furthermore, the character of such variation is driven by the degree to which the central state decides to intervene in local affairs, the demographic composition of the refugee population, and the capacity of local political elites and institutions to pursue their own agendas. Revisiting the foundational assumptions made about state behaviour in Africa as being driven by vulnerability, highly centralized decision-making, and the outsized influence of external donors played a central role in identifying such core explanatory variables. Without such a re-thinking, the importance of local politics and the direct relationships that have developed between sub-

national elites and the international humanitarian sector would have remained obfuscated by an analytical framework explicitly focused on national level politics and traditional ties between the central government and the international community.

These findings have the potential to influence both policy and practice at the local, national, and international levels. Where robust devolution exists, local political actors can use their jurisdiction over development planning and social services to create more integrated communities that can mutually benefit both the host and refugee communities. Observations from both Dadaab and Kakuma have highlighted the immense economic potential created by the presence of refugees, which can be leveraged to create long-term benefits for those experiencing protracted displacement and the complex communities that have built up around them over time. Nationally, this work can directly inform the potential implications arising from central policies, specifically those stemming from the decision whether to intervene or not in each sub-national context.

The absence of central action in Kakuma, the security-oriented presence of the central government in Dadaab, and the absorption of sub-national responsibilities into the central government in Nairobi highlight the potential downstream effects of each course of action from a national perspective. Further to this, it can also illuminate the types of sub-national responsibilities (e.g., healthcare, infrastructure planning, land use, business permitting) that are most likely to interact with both the domestic and international refugee regimes. Investing in bolstering sub-national capacity in these areas could alleviate a significant amount of strain placed on an over-burdened central bureaucracy and assist in maintaining the long-term stability and viability of refugee protection programs in refugee hosting

states. Finally, at the international level this work can contribute to ongoing discussions regarding the localization of humanitarian action.

In recognizing the unique roles and responsibilities of sub-national governments in host states, the international humanitarian sector can engage in more meaningful and targeted engagement with the political actors that are closest and more attuned to the needs of both the local host communities as well as the refugees that reside there. Furthermore, the international humanitarian sector must acknowledge the role that their presence plays in stimulating local economies and the devastating effects that their rapid departure may have, as evidenced by the experience of the reception centre at Lokichoggio after the departure of international actors and investment. International humanitarian actors would be well advised to direct their investments wherever possible into building up the communities in which they work. This could assume a myriad of forms, first and foremost international actors should engage in meaningful consultation with sub-national governments and the local community to ensure that their operations will not, in the pursuit of providing protection to refugees and asylum seekers, disadvantage or cause harm to the communities that host them. Such consultative processes are limited by the fact that the location of refugee camps is often determined at the centre; therefore, this is at best a mitigation strategy to ensure that local knowledge and concerns are operationalized in order to limit the potential for negative externalities (e.g., land degradation, resource strain, the potential for inter-communal violence) at the earliest opportunity.

International humanitarian actors must also be cautious about where and when they choose to formally interact with sub-national governments or actors. Even in circumstances where, the central state has retreated and yielded authority over many functions to external

actors like the UNHCR, Miller (2018a) notes that this may also diminish the degree of influence such actors have over decisions made at the political core. In regions of the state that possess a history of marginalization, the willingness of external actors to shoulder the burden of development in pursuit of a larger mission or objective (e.g., refugee protection) may be enticing for central authorities seeking to maintain a hands-off approach. Yet, the potential for diminished influence, involvement, or consultation in the central decision-making process may complicate operations should they become politically contentious. In such instances, where relationships are tense or hostile between sub-national governments and the central government the alignment of external actors with sub-national governments may be perceived as a slight or taking sides in a burgeoning conflict. Therefore, in order to preserve operations at a national-level and avoid expulsion from the state, a delicate balance must be struck to preserve partnerships across levels of government.

## **8.6 Unanswered Questions and Potential for Future Research**

The preceding analysis has provided a clear response to the question of what can account for the sub-national variation in the implementation and practice of asylum policy observed in Kenya. However, there remain several related questions that have not and cannot be adequately explored within the context of a single doctoral dissertation. The remainder of this section will highlight some of these key questions and briefly discuss their potential for future research.

First and foremost, *does this model apply in other African states?* This analysis builds on the work completed by Betts et al. (2017) and Mourad (2019) in assessing the roots of sub-national variation of asylum policy in the global South, and generally focuses on the responses of states in the Middle East to the Syrian refugee crisis after 2015. This

dissertation has shown that such explanations are able to explain much of the variation observed in Kenya, but it does not address whether this can be expanded to other African contexts. While it is likely that additional intervening variables will be unveiled in different national context with different histories of decolonization and development, it will be these specificities that will further strengthen the argument that a third phase of asylum policy in Africa has emerged. Therefore, the framework and application developed over Chapters Two and Three of this dissertation can be translated to other contexts to test the explanatory power and further strengthen the argument that the last decade has indeed been a departure from Rutinwa's (2002) second phase of asylum policy in Africa.

Second, *how might the style or form of state organization and sub-national governance affect such policy outcomes?* Further comparative analysis may seek to examine whether the causes of sub-national variation in policy implementation differ significantly between different types of federalist systems. The character of devolution outside of the Kenyan context could not be thoroughly unpacked in this dissertation; a comparative study between governance structures and superstructures in a larger-N analysis will likely be able to provide further insights into the broader trends in asylum governance in the global South.

Third, *does the demographic composition of refugee population affect policy making and sub-national variation in other contexts?* The relationship between Kenya and its neighbours, specifically Somalia, has played a significant role in shaping how the state approaches the refugee populations that it hosts within its borders. Conducting an analysis to determine whether these trends have similar effects in other states will further unpack

how strong the positive relationship is between the demographic heterogeneity of refugee population and the prevalence of ‘policy stretching’ at the sub-national level.

And, finally, *how might acknowledging the existence of within state variation affect the provision of international assistance and the long-term planning of the international humanitarian sector?* This question is crucial to assess from the perspective of practitioners within the international humanitarian sector. Understanding and being able to plan for the potential of variation within the borders of a single state could assist international actors in developing more targeted assistance mechanisms. Furthermore, it may reveal a much wider array of potential partners for such agencies and improve access to assistance and protection programs for some the most vulnerable displaced populations in the global South.

## **8.7 Conclusion**

The third phase of asylum policy, as discussed in Chapters Three and Four of this dissertation is marked by the variation of asylum policy and refugee management both *within* and *between* individual states. Chapters Five through Seven sought to clearly unpack how this variation has played out and to provide an explanation for the observed nuances of policy interpretation and implementation within Kenya’s major refugee hosting regions. In doing so, this dissertation has directly contributed to the growing literature on the prevalence of sub-national variation in the realm of asylum and has confirmed the assessment of Alexander Betts that “it is now increasingly understood that Kenya no longer has just one refugee policy, but three: one for Dadaab, one for Nairobi, and another for Kakuma” (2021, 254-255). While the findings and explanations provided here are valuable in filling a gap in understanding how the politics of asylum can shape the internal political

machinations of host states in the global South – significant challenges for the future remain.

Kenya's controversial rhetoric towards refugees has been a recurring theme throughout this analysis. Despite passing a new refugee law on 17 November 2021, the central government has maintained its goal of closing both the Dadaab and Kakuma refugee camps by 2022 (Yusuf 2021). While the new legislation provides increased opportunities for refugees to seek gainful employment and education, significant questions remain about how its implementation will affect operations in Kenya's major refugee hosting regions. Furthermore, the amendments to the 2019 Refugee Bill that passed through Kenya's Parliament in October 2021 and ultimately added to the final legislation stipulated that asylum seekers may be held in 'transit centres' that may include: prisons, detention centres, police stations, remand homes, or other similar places for an indeterminate period of time while awaiting security screening (Government of Kenya 2021c; Government of Kenya 2021d). The inclusion of such a clause presents some cause for concern, especially if alternative arrangements such as the refugee camps are not available, as it may further restrict access to asylum and other rights guaranteed under the 1951 Convention.

There are two additional points of concern within this legislation that may have major implications for the future of refugee protection in Kenya. First, is the inclusion of section 19(2), which notes that "a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or *contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not*, may be expelled from Kenya by an order of the Cabinet Secretary" (Government of Kenya 2021d, emphasis added). Including the ill-defined concept of 'public morality' directly

after the clause permitting expulsion on national security grounds appears to exist in contravention of Article 32(1) of the 1951 Convention as it assumes an equivalency between these rationales for expulsion – when such a connection does not exist in international law. Furthermore, this will have specific negative consequences for LGBTI refugees, as in many instances their asylum claims are directly related to persecution based on their sexual orientation or gender identity. Codifying the means for their subsequent expulsion from Kenya within this legislation may prevent those entering Kenya from making themselves known to the UNHCR or RAS for fear of further penalization and limit their ability to access the protections and rights guaranteed under international law. The international humanitarian sector should develop specific responses and mitigation plans to prevent the emergence of such worst-case scenarios wherever possible.

The second concern stems from section 28(8) of the new legislation that carves out a special provision for refugees from states within the East African Community (EAC) to, “voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the [EAC], the Protocol for the Establishment of the [EAC] Common Market, and any other relevant written law” (Government of Kenya 2021d). While this may expand economic opportunities and the ability to move freely within Kenya, it raises specific questions about the potential for *refoulement* as the individuals in question are required to forfeit their claims made under the 1951 Convention and the 1969 OAU Convention. Therefore, even those with legitimate concerns regarding their safety may be left without the necessary assurances to prevent forced return.

Although such concerns should not be discounted, there are also some points of optimism within this new legislative framework. First and foremost, the updated legislation fully accounts for Kenya's new political structure and provides specific carve-outs for the roles and responsibilities of county governments in the administration of the legislation and in the provision of refugee protection. It requires the central government to consult with the county governments responsible for hosting refugee populations prior to their designation as refugee hosting region; and it provides the potential to designate entire counties as such. This potential may assist in alleviating many of the pressures created by housing refugees in such densely populated areas where resources are already strained. This may also assist in improving the ability of refugees to move more freely within Kenya – although only within designated areas.

Additionally, the legislation makes use of 'local integration' as a potential durable solution. While this is indeed a positive development, the definition of 'local integration' stops short of any pathways to citizenship or long-term solutions. Instead, it focuses on broader access to rights, improved standard of living, and the ability for refugees to contribute to local communities and economies (Government of Kenya 2021d). The extent to which such positive developments will be born out in policy implementation remains to yet to be seen but as this legislation enters into force in February 2022, it will be important to assess whether its application will remain as uneven as its predecessor.

Despite an updated legal framework from which to operate, the central government's continued commitment to closing the Dadaab and Kakuma camps without significant long-term planning is likely to disproportionately harm the already marginalized and underdeveloped communities in Kenya's periphery. Doing so would

disrupt the urban economies that have developed over decades and are built on a foundation of international development assistance. Rapidly destabilizing these regions would only exacerbate other prevailing social, political, and economic cleavages. Devolution has also been presented here as a key strategy in ensuring more evenly distributed investment and development, but the unconditional cash transfers from Nairobi and the delegation of service provision to the county level will only go so far if the state undermines what have accidentally become the largest economic engines in their respective counties – Dadaab and Kakuma. This remains the single largest challenge to the ongoing integrity of the refugee protection regime in Kenya.

## **Appendix A - Sample Interview Questions**

1. Do you have any questions regarding consent?
2. Can you tell me who you are, where you work, and what your role is?
  - a. How long have you been in this position?
  - b. Is there any additional background information about yourself which may be helpful in understanding your perspective, that you would like to provide? (optional)
3. From your perspective, how would you characterize/describe Kenya's refugee policy?
4. What role do the County Governments, specifically that of Garissa/Turkana/Nairobi County, play in implementing Kenya's refugee policies?
5. From your perspective how would you characterize the relationship between the Central Government, the County Government, and the UNHCR (and its partners) in Dadaab/Kakuma/Nairobi?
  - a. Who would you describe as the most important player in making decisions relating to the governance of the camps? Why?
6. How would you describe the security situation in the Dadaab/Kakuma/Nairobi?
7. How have the most recent announcement from the Central Government about their intent to close the Kenya's Refugee Camps affected everyday life?
  - a. Does this differ from similar announcements made in the past?
  - b. Have you seen any response from the County-level government to this announcement?
8. Has the incorporation of refugees into county-level development plans as well as the most recent 2019 Census resulted in any significant changes to the implementation or experience of Kenya's refugee policy?
9. Are you familiar with the 'double registration' of refugees and Kenyan citizens in Garissa County? If so, does this present any challenges to creating such development plans?

10. The Comprehensive Refugee Response Framework (CRRF), of which Kenya is a pilot country, focuses on improving refugee self-reliance. What steps towards this goal, if any, have taken place in Dadaab since the adoption of the CRRF?
11. What do you think Kenya's refugee policy will look like in the future?

## **List of Interviews**

Interview with Amnesty International (Kenya) Representative. Personal Interview.  
Nairobi, Kenya. 10 September 2019.

Interview with Dadaab Resident A. Remote Interview via Zoom. 20 June 2021.

Interview with Dadaab Resident B. Remote Interview via Zoom. 22 June 2021.

Interview with Dadaab Resident C. Remote Interview via Zoom. 04 July 2021.

Interview with Dadaab Resident D. Remote Interview via Zoom. 07 July 2021.

Interview with Development Consultant. Personal Interview. Nairobi, Kenya. 29 August 2019.

Interview with International Organization Representative in Dadaab. Remote Interview via WhatsApp. 02 November 2019.

Interview with Kakuma Resident A 2019. Personal Interview. Kakuma, Kenya. 21 August 2019.

Interview with Kakuma Resident B 2019. Personal Interview. Kakuma, Kenya. 22 August 2019.

Interview with Kakuma Resident C 2019. Personal Interview. Kakuma, Kenya 22 August 2019.

Interview with Linda Oicho. Head, African Migration Policy and Development Policy Centre. Personal Interview. Nairobi, Kenya. 07 August 2019.

Interview with Lucy Kiama. Country Director, HIAS. Personal Interview. 03 September 2019.

Interview with Michael Oloo. Deputy Director, Refugee Affairs Secretariat (RAS). Personal Interview. Nairobi, Kenya. 05 September 2019.

Interview with Mohamed Shoman. Acting Head, Kakuma Sub-Office, UNHCR. Personal Interview. Kakuma, Kenya. 2019

Interview with Representative of the Danish Refugee Council. Personal Interview. Nairobi, Kenya. 02 August 2019.

Interview with Representatives of the Refugee Consortium of Kenya (RCK). Personal Interview. Nairobi, Kenya. 04 September 2019.

INGO Researcher. Personal Interview. Nairobi, Kenya. 16 August 2019.

Interview with Senior Development Advisor, UNHCR. Personal Interview. Nairobi, Kenya. 27 August 2019.

Interview with Turkana West sub-County Administrator. Personal Interview. Kakuma Town, Kenya. 23 August 2019.

Interview with Program Officer, Refugee Affairs Secretariat (RAS). Personal Interview. Nairobi, Kenya. 05 September 2019.

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