

**DISPLACEMENT AND THE STATE:**  
A PROCESS TRACING ANALYSIS OF SHIFTS IN REFUGEE AND  
ASYLUM POLICY IN FRANCE AND KENYA

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## **Abstract**

UNHCR estimates that nearly 60 million people are currently displaced worldwide. Although over half of are internally displaced, this unprecedented degree of displacement has levied a significant strain on the international asylum and refugee system. State policy trends since adoption of the 1951 Convention on the Status of Refugees suggest a disconcerting shift from largely open asylum and refugee policies to those characterized by increased restrictions. Although scholars have widely considered the impacts of this shift on asylum seekers and refugees, state motivations for these changes in policy have received less attention. The intent of this investigation is to identify the most salient factors that influence state asylum and refugee policy in order to gain insight into future policy trends. Although states tend to assert security as the most significant driver of state policy, state behavior suggests that security may not be the primary factor influencing policy shifts in many situations.

This investigation considers state motivations impacting asylum and refugee policy in France and Kenya through a process tracing analysis of shifts in policy over time. The analysis suggests that security concerns alone provide an insufficient explanation for the policies implemented by these states. Although security plays a role in policy decisions, political concerns rooted in international relations, domestic obligations, and bureaucratic capacity play a decisive role in overall policy outcomes. Ultimately, these political factors are likely to significantly influence how states address the growing challenging of balancing the needs of asylum-seekers and refugees with domestic obligations and state security issues. Following the analysis, recommendations for future policy policy considerations are offered.

## **Chapter 1: Introduction**

Since the 1951 Convention on the Status of Refugees was drafted in response to the mass migration that occurred during and in the aftermath of World War II, conflict and natural disasters have displaced millions of people. According to UNCHR, the world is currently home to 14.3 million refugees, nearly 1.8 million asylum seekers, and over 32.2 million internally displaced persons (IDPs). These estimates indicate that 59.5 million people are forcibly displaced worldwide.<sup>1</sup> As conflicts in Syria, the Central African Republic, South Sudan, and elsewhere continue to intensify and as climate change and natural disasters remain a persistent threat, the number of people displaced by these events is likely to increase. At the same time,

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<sup>1</sup> "UNHCR: The UN Refugee Agency - United Kingdom." UNHCR: Facts and Figures on Refugees. <http://www.unhcr.org/about-us/key-facts-and-figures.html>.

worrisome state displacement policy trends reflect increased restrictions in asylum and refugee policy and waning support for refugee integration into host communities.

Among these trends is the growing movement toward urbanization among refugee populations. The protracted nature of displacement crises means that the length of time refugees spend in camps or other displacement settings has increased. Some groups, such as Congolese refugees in Rwanda and Palestinian refugees facing multiple displacements from one country to another, have spent generations in refugee camp scenarios. Because camps were designed to provide a temporary solution to displacement, most refugees live in substandard conditions, do not have access to sustainable livelihoods, and face limited educational opportunities for their children. The large numbers of refugees migrating to urban centers in search of better lives suggests that refugees are no longer willing to wait for the international community to reach a more robust and accessible set of durable solutions. Despite their capacity as capable and innovative individuals, refugees are not always welcomed in host communities. From developed Western cities in the US and Australia to rural villages in Ethiopia and Kenya to countries severely overburdened by mass arrivals such as Turkey and Jordan, few communities view the addition of refugees as a positive development. Many European countries, especially Germany and Sweden, which initially maintained very open positions on the acceptance of Syrian refugees, responded with compassion for the millions of people displaced from their homes because of the conflict. Despite this early welcome, pushback from citizens and government officials has already increased as the number of people arriving continues to grow. Concerns about economic migrants and potential terrorists taking advantage of this mass migration of conflict-affected people have fueled opposition to acceptance of refugees. As the conflict in Syria and other conflicts in the Middle East and Africa continue to displace large numbers of people, and the trend toward urbanization continues, the increasingly negative attitudes of government officials and members of civil society toward refugees and asylum-seekers are likely to significantly impact refugee outcomes.

Although displacement has been widely studied from the perspective of refugees and through analysis of the political factors that cause forced migration, less research has been conducted on the factors that contribute to state responses to displacement from the perspective of the state. Milner highlights the importance of focusing on the state asserting that understanding state motivations “can reinforce the protection of refugees by ensuring that the quality and quantity of asylum is increased.”<sup>2</sup> The goal of this investigation is to consider the

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<sup>2</sup> Milner, J. (2000) Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security. Refugee Studies Center, RSC Working Paper No. 4: 1-36, p. 3.

most salient factors that impact state asylum and refugee policy. Because these factors are complex, not all possible factors are considered in this investigation. France and Kenya, two countries with a robust history of hosting refugees that are comparable to other states in Europe and Africa, have been selected as case studies for examination of state responses to asylum seekers and refugees. Based on a review of contemporary literature and analysis of state policy assertions, states often tend to assert security factors as the most important determinant of state policy. However, despite persistent and legitimate security concerns, state behavior suggests that other factors are at play.

If security were the primary factor in state policy decisions, the expected outcomes in both France and Kenya would differ from current state policy. At present, both countries accept more asylum seekers and refugees than a security driven policy would suggest. Despite persistent security threats in Calais and significant security concerns resulting from the 2015 Paris attacks, France continues to support acceptance of thousands of refugees and has recently passed legislation to improve the state's asylum processing system. Although Kenya has attempted to move refugees out of Nairobi to camps and has threatened to close the Dadaab and Kakuma camps in an effort to combat Al-Shabaab militants, the country remains the largest host to refugee populations in Africa. I investigate the assertion of the primacy of security in contrast with policy outcomes through a process tracing analysis of asylum and refugee policy in France and Kenya to demonstrate the degree to which various dynamics have influenced each state's policy over time. I conclude that security concerns provide an insufficient explanation for the policies implemented by these states. Rather, security is always an underlying factor driving policy outcomes but it is mediated by political concerns rooted in international relations and bureaucratic capacity. Although the subordination of security to other factors cannot be established in the scope of this paper, I argue that political factors are likely to trump security factors in addressing the growing challenging of balancing the needs of asylum seekers and refugees with state security issues.

The following analysis considers several factors, including threats to security, potential economic burden and benefit, international development aid, bureaucratic capacity, domestic civil society attitudes, and international relations. International norms and obligations are considered throughout the review as the foundation upon which the current refugee regime was constructed. The first section includes an overview of the methods used to conduct the literature review and provides an explanation of the process tracing methodology used to analyze changes in asylum and refugee policy over time in France and Kenya. The second section offers a detailed literature review focused on factors that other scholars have posited as factors

in creation of state policy. The third section presents a detailed analysis of displacement policy in France since 1954 and in Kenya since 1966 when these states signed the Convention. The review concludes with recommendations for diplomats and policymakers interested in influencing asylum and refugee policy and practice, resolving persistent issues associated with the global refugee regime, and influencing the policies and practices of foreign countries in terms of impacts to host communities and refugee populations.

### 1.1. The State

Before discussing the factors that influence states to adopt various asylum and refugee policies and practices, a general understanding of the genesis of states and the current responsibilities states have to their citizens and to the asylum seekers and refugees who seek their protection is necessary. The 1933 Montevideo Convention on the Rights and Duties of States established the theory of statehood as part of customary international law. The convention defines the state as a person of international law with the following qualifications: “a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states.”<sup>3</sup> In the immediate aftermath of World War II, the concept of the Weberian state was created to further refine the definition in traditional security terms. According to Weber, a state is a territory that successfully claims the monopoly of the legitimate use of physical force.<sup>4</sup> Although the potential use of force encompasses both offensive and defensive applications, the underlying purpose remains the same: to provide for the security and defense of citizens and/or to overtake more territory to increase the power of a sovereign state.

Understanding the concept of state sovereignty is essential to any discussion about refugees and IDPs because it is this framework that provides the foundation for the international politics surrounding forced migration. Betts explains that these terms “only make sense insofar as they describe a relationship between the concepts of citizen, state, and territory that comprise the nation-state.”<sup>5</sup> Depending on the type and quality of state governance, this relationship can range from one characterized as open and democratic with a robust civil society that is encouraged to participate in civic duties to a closed and authoritarian state with an oppressed civil society whose opinions and attempts to participate are ignored by dictatorial regimes. Trends in global displacement policy since the drafting of the 1951 Convention

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<sup>3</sup> "Montevideo Convention on the Rights and Duties of States." Council on Foreign Relations. <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>.

<sup>4</sup> "State Monopoly on Violence | Political Science and Sociology." Encyclopedia Britannica Online. <http://www.britannica.com/topic/state-monopoly-on-violence>.

<sup>5</sup> Betts, A. (2009) *Forced Migration and Global Politics*. West Sussex: Blackwell Publishing, p. 44.

underscore the important role of the state in determining the policies that impact outcomes among refugee populations.

It is necessary to underscore state responsibility for refugees and asylum seekers under international law. Whereas international norms and obligations under the 1951 Convention, the 1967 Protocol, and the 1969 Organization of African Unity (OAU) Convention grant individuals the right to seek asylum, states are not obligated to grant asylum to any asylum seeker who does not meet the established criteria. The increasing number of refugees worldwide and the international obligations of sovereign states demands a more nuanced understanding of the factors that influence state asylum and refugee policy. Ensuring the international community is positioned to adequately address the needs of refugees while also maintaining the integrity of the state and the capacity to fulfill obligations to its citizens is essential. Conceptualizing potential factors that can illuminate how states develop asylum and refugee policy and how these factors illuminate shifts in current policy can provide important insight into the complicated relationship between the state and displaced populations.

## **1.2. Defining Displacement**

Refugee and asylum policy is rooted in the 1951 Convention on the Status of Refugees. Article I of the Convention defines “refugee” as any person with a well-founded fear of persecution based on race, religion, nationality, membership of a particular social groups, or political opinion who is unable or unwilling to secure protection of his or her home country.<sup>6</sup> Refugees have many rights under the 1951 Convention including a significant set of positive rights including the right to work, to housing, to education, to public assistance, to freedom of religion, to access courts, to freedom of movement, to be issued identity and travel documents, and negative rights including the right not to be punished for illegal entry into a potential host state the right not to be expelled under conditions that will be explained later.<sup>7</sup> The 1967 Protocol Relating to the Status of Refugees updates the 1951 Convention to apply the term “refugee” to any person who meets the definition described regardless of time or location, which was originally constrained by the 1951 Convention. The 1969 OAU Convention further modifies the definition of “refugee” to include individuals who are forced to flee as a result of conflict and violence whether by foreign or domestic forces. The majority of states have adopted either the 1951 Convention, the 1967 Protocol, or both. Nearly all countries in Africa have ratified the 1969 OAU Convention. These international instruments form the basis for international refugee law,

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<sup>6</sup> “The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol.” UNHCR. 2011. <http://www.unhcr.org/4ec262df9.html>.

<sup>7</sup> Ibid.

which also includes customary law and peremptory norms. Other regional instruments that provide a framework for domestic adaptation of refugee law include the 1976 Council of Europe's Recommendation 773 on the Situation of de facto Refugees and the 2004 European Union's Council Directive. Based on these guiding documents, ratifying states then domesticate these international norms and obligations into law.

It is essential to distinguish between refugees, asylum seekers, IDPs, and returnees. UNHCR defines asylum seekers as those individuals who have presented themselves to officials of potential host countries as refugees but who have not yet been granted asylum and official refugee status by the receiving country.<sup>8</sup> Conversely, IDPs are individuals who have been displaced but have not crossed an international border into a potential host country.<sup>9</sup> Returnees are those individuals who have been granted status as refugees or who were accepted as prima facie refugees and have chosen to return to their home countries or have been repatriated to their home countries following invocation of the 1951 Convention's cessation clause by the host country.<sup>10</sup> Understanding the differences between each of these groups is essential to examining asylum and refugee policy trends.

### **1.3. Refugee and Asylum Policy Trends**

Trends in refugee and asylum policy can be generally understood through four broad historical periods, the first beginning in 1951 with the signing of the Convention. This post-World War II era was characterized by a need to formalize protection mechanisms for those individuals who had been persecuted by the state. Following closely behind the codification of the Universal Declaration of Human Rights in 1948, signatory states were keen to accept many of the rights provisions afforded to refugees and asylum seekers in the Convention. Despite an increase in conflicts across sub-Saharan Africa, a general spirit of openness toward displaced populations persisted throughout the next several decades until the height of the Cold War. The second historical period is marked by the end of the Cold War in 1991. A shift toward more restrictive asylum and refugee policies began during this time as displacement prompted by the fall of the Soviet Union and a surge in conflict in the Horn of Africa increased. The third historical period is characterized by increased mass displacement from Afghanistan and Iraq following the terrorist attacks on the World Trade Center and the Pentagon in 2001. During this period, securitization of borders increased travel restrictions and began to fuel fears about potential links between

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<sup>8</sup> "Asylum-Seekers." *UNHCR*. <http://www.unhcr.org/pages/49c3646c137.html>

<sup>9</sup> "Internally Displaced People." *UNHCR*. <http://www.unhcr.org/pages/49c3646c146.html>

<sup>10</sup> "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol." UNHCR. 2011. <http://www.unhcr.org/4ec262df9.html>.



terrorism and migration. The current historical period began in 2011 in conjunction with the Syrian conflict, which has resulted in one of the largest population migrations in history. A more in-depth understanding of refugee and asylum trends in Africa and Europe provides further insight into the shifts between each of these historical periods.

Analyzing how African states have responded to the arrival of refugees and the protracted nature of their presence in host countries, Milner investigates burden sharing and state security as two factors that contribute to how states respond to refugee crises and how these response patterns change over time.<sup>11</sup> He explains that state asylum policies are not simply products of external factors such as involvement by the donor community or the number of refugee arrivals, but also stem from political dynamics apart from the existence of refugees.<sup>12</sup> Further, Milner argues that these impacts are rooted in the larger changes in African politics since post-colonial independence. He explains that African states have been internally limited by the effects of democratization and economic liberalization, while they have faced external limitations resulting from the neo-liberal influence, an imbalance of power between state governments and international donor states, and a shortage of policy options.<sup>13</sup> As evidenced by the shift in displacement policy since the 1960's, African states have historically been adversely affected by these and other internal and external exerted pressures on African states.

The majority of African states previously under colonial rule gained their independence in the 1950's and 1960's. Many Western supporters of democratization viewed African independence as a positive development; however, the transition presented governance challenges for many African states. Among the most significant changes to the African landscape at this time was the landmark modification to the definition of refugee in the 1969 OAU Convention, which amended the definition to include "individuals feeling both persecution and generalized violence" and enabled states to recognize groups of individuals under *prima facie* status.<sup>14</sup> Despite this expansion of the refugee definition, open asylum policy began to shift. States' perspectives on displacement changed as the number of refugees increased and conflicts became more protracted. As a result, local integration and zonal development approaches became significantly less appealing to host governments throughout the 1980's.

Although less uniformly pronounced than changes in asylum and refugee policy in post-colonial sub-Saharan Africa, post-Cold War policy shifts have been observed in other regions of

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<sup>11</sup> Milner, J. (2009) *Refugees, the State and the Politics of Asylum in Africa*. New York: Palgrave Macmillan.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 13-14

<sup>14</sup> "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted by the Assembly of Heads of State and Government at Its Sixth Ordinary Session, Addis-Ababa, 10 September 1969." UNHCR News. 1969. <http://www.unhcr.org/45dc1a682.html>.

the world that have directly impacted Europe. Aras and Mencutek argue that from the end of the Cold War through 2000, the refugee regime remained focused primarily on ‘non-arrival policies’ that were intended to keep asylum seeker and refugee populations in place through extraterritorial processing.<sup>15</sup> The burden-sharing and securitization discourse increased in the 2000’s following an increase in the number of refugees resulting from the US-led invasions of Iraq and Afghanistan. Focusing specifically on Turkey in the wake of the Syrian conflict, Aras and Mencutek highlight Turkey’s initial reaction citing that the government “adopted [an] ‘open door’ policy, avoided using securitization of refugee movement and did not ask for burden sharing for a long time.”<sup>16</sup> Turkey finally shifted to a more restrictive policy in September 2015 when the number of Syrian refugees reached almost 2 million. Although this shift occurred much more rapidly than the changes observed in sub-Saharan Africa, the trend toward more restrictive policies as the number of asylum seekers and refugees increased appears to overlap. This significant and rapid influx of refugees to Turkey, as well as to Lebanon and Jordan, has created a strain that has also resulted in an increase in asylum seekers and refugees in Europe.

The arrival of large numbers of refugees from Afghanistan, Iraq, Syria, and several African countries to Europe has intensified challenges to European Union (EU) asylum and refugee policies. In December 2015, UNHCR estimated that over one million people had arrived by sea that year.<sup>17</sup> Hatton and Williamson describe the shift in European policy noting that asylum and refugee policies shifted in the late 1990’s away from a responsibility of individual countries to that of the EU as a coordinating body. In an effort to increase cooperation among EU Member States, the organization decided to create a Common European Asylum System (CEAS) designed to streamline the asylum processing system.<sup>18</sup> Among the asylum seekers who arrive in OECD countries, about two-thirds file their claims in the EU.<sup>19</sup> Because of the Dublin II Convention, an asylum claim filed in the EU must be processed only by the state of first entry within the Schengen region and cannot be sought in another state within the region if rejected.<sup>20</sup> Although states along the border regions of the Schengen zone were previously able to manage the numbers of asylum applications received, the recent increase in asylum seekers has caused significant challenges for countries such as Greece and Hungary. As the number of refugees and asylum seekers continues to increase, state policy toward displaced populations

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<sup>15</sup> Aras, N.E.G & Mencutek, Z.S. (2015) The international migration and foreign policy nexus: the case of Syrian Refugee crisis and Turkey. *Migration Letters*, 12(3): 193-208.

<sup>16</sup> Aras, N.E.G & Mencutek, Z.S. (2015) The international migration and foreign policy nexus: the case of Syrian Refugee crisis and Turkey. *Migration Letters*, 12(3): 193-208.

<sup>17</sup> “Over one million sea arrivals reach Europe in 2015.” *UNHCR*. <http://www.unhcr.org/5683d0b56.html>

<sup>18</sup> *Ibid*, p. 1.

<sup>19</sup> Hatton, T. & Williamson, J. (2004) Refugees, Asylum Seekers and Policy in Europe. Institute for the Study of Labor, IZA DP Np. 1230.

<sup>20</sup> *Ibid*.

will significantly impact outcomes. The likelihood of further urbanization has created additional demands on the state and the international refugee regime. Analyzing state refugee and asylum policy is, therefore, essential for understanding expected future trends in policy and the potential impacts of state decisions making.

#### **1.4. Summary of Findings**

Although the results are not generalizable across states, this investigation of shifts in state asylum and refugee policy in France and Kenya suggests that security factors are not the primary consideration in the creation and execution of state policy. Analysis of multiple shifts in state policy within the associated historical context suggests that explanations rooted in political factors, including international relations and bureaucratic capacity, provide better insight into reasons for shifts in asylum and refugee policy over time. Security concerns factor into French asylum and refugee policy, however, the primary motivating factors include a desire to balance international obligations as a human rights respecting country and as a leader in the European Union with adherence to traditional French social and cultural values. Although national security concerns in Kenya are arguably more salient because of the increased threat of Al-Shaabab, the lack of bureaucratic capacity chronically characteristic of the Kenyan government is the primary driver of asylum and refugee policy shifts. Because the government is not capable of effectively combating Al-Shabaab, Kenya has used the refugee population as a convenient scapegoat. Blaming the refugee population for the rise in terrorist threats in the country enables the government to focus more on expelling the refugees than on combating terrorism, which it is not capable of accomplishing successfully. Further analysis of shifts in state asylum and refugee is needed to draw more robust conclusions about motivating factors that drive policy shifts.

#### **Chapter 2: Methodology**

This paper investigates the social, political, and economic factors that impact state refugee and asylum policy focusing on France and Kenya as case studies. Databases employed during the desk review include WorldCat, Eldis, ReliefWeb, ProQuest, JSTOR, CountryData, Europa World Plus, Google Scholar, HeinOnline, Oxford Bibliographies Online, Policy File, Sage Journals Online, United Nations Treaty Collection, Web of Science, Dissertations and Theses, and Tufts Jumbo Search. Journals searched include the Forced Migration Review, Journal of Refugee Studies, International Journal of Refugee Law, International Migration Review, and Refugee Survey Quarterly. Information gathered during the desk review was synthesized and used as the foundation for the case studies presented.

The process tracing methodology is employed as a linear method designed to analyze shifts in state asylum and refugee policies. This method is applied through case studies of France and Kenya since the 1951 Convention was signed and ratified by each country in 1954 and 1966, respectively. Although the following analysis does not definitively demonstrate that policy factors are likely to outweigh security factors in managing asylum seeker and refugee populations and the results are not generalizable, this method of analysis enables an increased understanding of the likely factors that influenced each change within the respective historical context. Understanding the circumstances surrounding shifts in policy allows for full analysis of each case study and lends insight into expectations for future asylum and refugee policy shifts.

### **Chapter 3: Literature Review**

Betts underscores the importance of examining displacement from the perspective of forced migrants, but emphasizes the need for analysis at the state level to increase understanding of the macro-level structures that impact state asylum and refugee policy decisions.<sup>21</sup> Milner and Betts agree that understanding the factors that contribute to asylum and refugee policy is essential because the decisions made by states directly impact displaced populations. Specifically, the authors highlight the lack of scholarly investigation of the plight of refugees and internally displaced persons from the state perspective. They assert that analyzing the factors that impact state asylum and refugee policy, examining whether state policy translates to practice, and investigating the political decisions associated with discrepancies between policy and practice is essential. Betts stresses that such analyses are crucial to a more comprehensive understanding of the conditions driving variations in states responses to forced migration in order to reduce the potentially adverse consequences of displacement.<sup>22</sup>

Focusing on less developed countries in Africa, Asia, and Central America, Jacobsen observes that host governments sometimes respond with relative generosity to the arrival of refugees but at other times react with hostility to new arrivals.<sup>23</sup> While some governments provide material assistance and take steps to ensure safety, others have placed significant restrictions on refugees or tried to prevent them from entering altogether. Under the assumption that the government has the capacity to choose a course of action contrary to recommendations of donors or international organizations, that it can implement these policy decisions, and that it maintains control of its borders, she examines the policy responses of asylum governments

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<sup>21</sup> Betts, A. (2009) *Forced Migration and Global Politics*. West Sussex: Blackwell Publishing.

<sup>22</sup> *Ibid*, p. 14

<sup>23</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678

based on four factors: “1) bureaucratic choices made by the government; 2) international relations; 3) the absorption capacity of the local host community; and 4) national security considerations.”<sup>24</sup> Although these factors are reviewed individually, the effects of each factor manifest in overlapping and complex ways. Jacobsen underscores the complicated nature of the policy-making process at both the domestic and international levels. She asserts that the resulting policies tend to be disjointed and often fail to produce a logically advanced solution. Moreover, these policies inevitably create friction as interests of different parties within governments and policy positions between governments becoming increasingly at odds with one another. Like Betts, Jacobsen encourages additional scholarship in an effort to better understand the responses of host countries to refugees and asylum seekers.<sup>25</sup> The following exploration of contemporary literature on state refugee and asylum policy includes a review of the current literature focused on factors associated with security, economic burden and benefit, and domestic and international political factors. The subsequent analysis of the potential factors that impact state policy allows for increased understanding of state objectives and creates opportunities for diplomacy. The factors chosen for analysis encompass the social, political, and economic factors that impact state refugee and asylum policy.

### 3.1. Security Factors

Understanding security concepts as they relate to refugees and asylum seekers provides insight into how these factors impact state policy. Security concepts can be classified according to three broad categories: Traditional Security Studies, Human Security, and Critical Security Studies.<sup>26</sup> Traditional security studies emphasize the principle of state sovereignty and the centrality of the nation-state in policy-making. National security is considered paramount in ensuring the welfare of citizens. The field of traditional security studies asserts the importance of national security and is typically viewed from a defense perspective focused on potential military threats posed by other sovereign states. Because refugees and asylum seekers must, by definition, cross a recognized sovereign state border, the intersection between state security and asylum and refugee policy must be examined. Human security initially emerged as a policy change in the post-Cold War era when threats posed by non-state actors and guerilla groups catalyzed a paradigm shift away from organized foreign military threats. The two main elements in human security are the primacy of individual rather than the state, and a broad scope of

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<sup>24</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678.

<sup>25</sup> Ibid.

<sup>26</sup> Betts, A. (2009) *Forced Migration and Global Politics*. West Sussex: Blackwell Publishing, p. 60.

security that includes non-military threats such as internal conflicts, disease, climate change, and poverty. From the perspective of asylum seekers and refugees, increased focus on the individual conceptualized through human security can provide potential positive benefits as states evaluate their policies. Critical security studies developed from a model similar to human security but from the academic context, which criticizes the state-centric security perspective. Although analogous to human security in terms of the focus on the individual, critical security studies places a more nuanced emphasis on certain groups of individuals, especially the poor and marginalized.<sup>27</sup> Each of these security concepts has the potential to impact refugee and asylum policy in significant ways. A more in-depth understanding of security is necessary to fully examine these potential impacts.

### 3.1.1. Framing the Security Analysis

Key to analyzing the similarities and differences among these three frameworks is understanding the roles various actors play in the security context. In discussing the security factors that impact refugee and asylum policy, Betts explains that “any notion of security has two main elements: firstly, a threat; secondly, a referent object.”<sup>28</sup> Applying the traditional security framework to the relationship between the state and displaced populations, the state is characterized as the referent object, and asylum seekers and refugees as the potential threat to the state. Conversely, human security and critical security studies approaches identify the displaced population as the referent group and the state as the threat.<sup>29</sup> Both approaches provide valuable insight into the relationship between displaced populations and the state, however, the traditional application of security is most often employed by the state when evaluating whether a displaced population presents a threat. Therefore, when the state perceives a security threat from displaced populations exists, state asylum and refugee policy are often modified to address the perceived threat.

Framing the security analysis as tension between a referent object and a threat aligns with the intent of International Refugee Law. Crisp explains that the intent of the international agreements that govern asylum seeker and refugee protection were created as safeguards people those persecuted by the state.<sup>30</sup> However, these Conventions were signed and ratified by states “with the specific intention of protecting their national interests and addressing their

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<sup>27</sup> Betts, A. (2009) *Forced Migration and Global Politics*. West Sussex: Blackwell Publishing, p. 60.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27, p. 9.

own security concerns”<sup>31</sup> when engaging in activities including accepting asylum seekers and refugees across their borders. Milner underscores the legal right of a sovereign state to derogate from its obligation to *non-refoulement*, the principle codified in Article 33 of the 1951 Convention preventing individuals from forcible return to their home country while still under threat of persecution.<sup>32</sup> In the event that the state deems an asylum seeker or refugee a threat to host state security, the state has a legal right to expel those who present the threat.<sup>33</sup> Although the 1951 Convention affords individuals the right to seek asylum, the Convention does not automatically guarantee the right to asylum. Under agreed treaty obligations, states are required to consider asylum claims before returning an asylum seeker back to his or her country of origin. Designed to aid states in determining whether individual or groups of asylum seekers qualify for refugee status, asylum-processing systems provide states the opportunity to evaluate the security burden associated with granting refugee status.

### 3.1.2. Direct and Indirect Security Threats

Milner defines the security burden as “the threats perceived by a host state related to the granting of asylum and the resources required to effectively address those threats”<sup>34</sup> and divides these threats into categories of direct security concerns and indirect security concerns.<sup>35</sup> Direct security concerns stem from the existence of armed groups or “refugee warriors” in refugee populations, the potential spillover of violence from neighboring countries, and the increase in small arms in the host country. These concerns represent the strongest link between refugee movements and insecurity because they often pull host states into conflict. Indirect security concerns are the result of increased crime in refugee camps or host areas, tension between refugees and local populations, and changes in political structures resulting from refugee arrivals.<sup>36</sup> Social services and other resources tend to be scarce in many regions that refugees typically flee. The influx of large numbers of new arrivals often creates tension with local populations and receipt of any aid from the international community can be perceived as a favored group receiving special assistance. If refugees are afforded freedom of movement or the right to work outside the confines of refugee camps, tensions can be further exacerbated by competition for jobs. This in turn affects the overall security situation as conflict between local

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<sup>31</sup> Ibid, p. 9.

<sup>32</sup> Milner explains that this principle restricts states from forcibly returning displaced populations back to a state in which they maintain a well-founded fear of persecution based race, religion, national origin, membership in a particular social group, or political opinion.

<sup>33</sup> Milner, J. (2009) *Refugees, the State and the Politics of Asylum in Africa*. New York: Palgrave Macmillan, p. 63.

<sup>34</sup> Milner, J. (2000) *Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security*. Refugee Studies Center, RSC Working Paper No. 4: 1-36, p. 9.

<sup>35</sup> Ibid, p. 62.

<sup>36</sup> Ibid, p. 62.

and refugee populations may arise. Moreover, in more democratic states, xenophobia and the need for states to respond to citizens' concerns can create complex situations for decision-makers who may see "securitization" as a way to address these concerns. As with other migrant populations, states often attempt to scapegoat asylum seekers and refugees in an effort to make a case for increased border security and less tolerance for migrants. Analyzing why states view displaced populations as potential threats to the state is essential to understanding adverse impacts on asylum seekers and IDPs.

States cite national security as justification for policies that require increased securitization of borders with regular frequency. As the prevalence of conflict in the Middle East and Africa continues to rise, the role of security as a primary factor influencing state displacement policy is likely to increase. Under Article 3 of the Universal Declaration of Human Rights, "Everyone has the right to life, liberty, and security of person."<sup>37</sup> Viewed from the state perspective, this Article requires states to ensure protection of their citizens. The state could confront anything deemed a threat by the state through appropriate action addressing the identified threat. Although Article 3 was written to further states' international legal obligations to act responsibly to respect life, ensure freedom, and guarantee the safety and security of citizens specifically, the tendency to deem certain non-citizen groups as threats often impacts these otherwise non-threatening groups in deleterious ways. Domestic and international politics and civil society actors will continue to play a complicating role as states attempt to balance responsibilities to their citizens and fulfill international obligations to asylum seekers and refugees while maintaining power relationships at home and diplomatic relationships abroad.

### **3.1.3. Refugees as a National Security Threat**

The trend toward conflation of refugees as potential terrorists in the wake of terrorist attacks in Western countries provides a recent and especially worrisome example of Western attitudes toward refugees. Since the attacks on the World Trade Center and the Pentagon on September 11, 2001, the threat of terrorism has featured even more prominently as a national security issue. Exacerbating this trend, the November 2015 attacks in Beirut and Paris resulted in the demonization of asylum seekers and refugees who were collectively deemed potential terrorists by some government officials and outspoken citizens in many countries. Despite significant security vetting, fears that potential terrorists are among the small numbers of Syrian refugees resettled to the United States gripped the headlines. This kind of rhetoric may be

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<sup>37</sup> "The Universal Declaration of Human Rights | United Nations." UN News Center. <http://www.un.org/en/universal-declaration-human-rights/>.



capable of catalyzing a political movement that effectively reduces states' willingness to accept refugees and subsequently increase border controls in response to citizens' fears. Milner underscores that "it is important to differentiate between security concerns arising from individuals or elements within the refugee population as distinct from those arising from refugees themselves."<sup>38</sup> Asylum seekers and refugees are often fleeing the same threat to their personal security that states are citing as threats to their national security. Although the possibility does exist, as it always has, that potential terrorists are taking advantage of refugee population movements, increasing border security, decreasing the number of refugees accepted across borders, and further securitizing support mechanisms for refugees in host countries is unlikely to result higher levels of national security. Rather, a state response that looks first to refugee and asylum-seeker populations in the wake of a security threat enables the scapegoating of largely vulnerable populations in need of assistance. Conflation of these groups, whether by government officials or by host-country citizens, can lead to potentially deleterious relationships between the state and asylum-seekers and refugees.

States bordering or situated more closely to the primary sending states face security concerns in a different way. The situation in these states is much more difficult as large numbers refugees and asylum seekers arrive each day, many with prima facie status. This status grants blanket refugee status to any asylum seeker from certain conflicts and is granted on a state-by-state basis. Although many states, including Turkey, Lebanon, and Jordan in the Middle East and Rwanda, Tanzania, and the Democratic Republic of Congo in Africa will accept very large numbers of prima facie refugees, simultaneous security concerns increase state tendency to "securitize" refugees by keeping them in camps, restricting freedom of movement, and denying the right to work. These increased restrictions on refugees in camps, which are increasingly protracted arrangements with the average displacement estimated by UNHCR of 17 years, leaves individuals idle, hopeless, and more susceptible to radicalization. Despite states' attempts to increase security by restricting refugees to camps, the conditions in the camps often motivate refugees to move to urban centers to access some kind of livelihood. The trend toward urbanization often forces refugees to depend on informal mechanisms, which actually undermines, rather than reinforces, the goal of state security.

Informal activities have the potential to weaken state security by fueling the informal economy and encouraging maladaptive coping mechanisms. One increasingly common and well-known example with multiple gendered implications is the marked increase in human smuggling as a means of migration. Although human smuggling is a crime under international

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<sup>38</sup> Milner, J. (2009) *Refugees, the State and the Politics of Asylum in Africa*. New York: Palgrave Macmillan, p. 75.

law, asylum seekers and refugees often turn to smugglers to enable migration to potential host countries. Those who employ smugglers often expend all their available resources to pay smuggling fees. In many cases, attempts to be smuggled into a desired country can unexpectedly turn into human trafficking. This can have significantly gendered implications as men tend to be trafficked into forced labor and women and children into sexual slavery. Even if an individual or family does successfully arrive in the desired country, they often do so with depleted resources and under illegal pretenses. In addition to the legal implications, smuggling presents a significant security threat to states because it strengthens the informal economy, disregards established borders, and undermines the state's ability to protect its citizens.

The urbanization trend has become increasingly worrisome for receiving states because states perceive that refugees living in urban are much more difficult to track and control. Crisp explains, "the OAU Refugee Convention was introduced by African Governments in order to ensure that cross-border population displacements were managed in a predictable manner and in a way that safeguarded national security and inter-State relations."<sup>39</sup> The ability to manage cross-border flows across Africa has been an important aspect of African state policy because the nature of conflict has historically tended to produce mass movements of refugee populations often given prima facie status. Unlike Western states that generally have the ability to vet refugees before allowing them across their borders, African states and increasingly Middle Eastern and European states on the edges of the Schengen zone must have systems that are more responsive in place to address potential national security threats.

#### **3.1.4. National Security as Justification for Expulsion**

Sovereign states are ultimately responsible for the safety and security of their citizens, therefore, the right to prioritize citizens over non-citizens arriving as asylum seekers, refugees, or under other legal frameworks must be afforded to states. At the same time, international legal frameworks require certain safeguards to prevent states from using national security rationale as a reason to reject non-citizens in need when national security is not legitimately under threat. Article 33 of the 1951 Convention outlines circumstances under which the expulsion of asylum seekers or refugees is prohibited. However, the Article is tempered by a clause that enables states to withhold protection against *nonrefoulement* from individuals who have been convicted of serious crimes or have been deemed a danger to the security of the country. In other words, when considered essential to national security, individuals or groups of asylum seekers and

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<sup>39</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27, p. 7.

refugees can legally be denied the right to seek asylum. With respect to Africa, Milner asserts that many of these “states have argued that the arrival of refugees is associated with sources of insecurity ranging from armed elements in refugee camps, the spillover of conflict, and even the spread of disease.”<sup>40</sup> One of the most well-known examples of a state that has cited national security concerns as justification to expel large groups of refugees is Tanzania.

Tanzania was one of the East African states that accepted a large number of Rwandan refugees under *prima facie* status in the wake of the genocide in 1994. Large inflows of refugees occurred during and after the genocide resulting in “approximately 700,000 Rwandans living in camps in the Kigoma and Karagwe regions of Tanzania.”<sup>41</sup> Although Tanzania was initially hospitable to the Rwandan refugees, support waned significantly when the government realized that individuals responsible for the genocide, known as *génocidaires*, were living among the legitimate refugees. The *génocidaires* were soon identified as refugee warriors by the government of Tanzania because they were using the camps as makeshift military bases where they could regroup and benefit from the services provided to refugees. Following an investigation of these and other security concerns, the government issued a report concluding that the security situation was untenable. Citing these security concerns, the government decided to close the border with Burundi in March 1995 to prevent Rwandans who had fled to Burundi from relocating to Tanzania due to heightened levels of conflict there. Then, in December 1996, Tanzania made the landmark decision to close the Rwandan camps on its territory and send the refugees back to Rwanda. Milner notes that among the primary factors driving the state’s decision to dismiss all refugees from the camps was the lack of political will to separate the refugee warriors from the civilian population of legitimate refugees as a means of guaranteeing protection. Efforts by the Tanzanian government to ensure refugee protection were significantly impacted by the failure of burden sharing efforts in the region. The inability to pursue alternative means of balancing hosting refugee with assuring state security increased the perceived security burden on the state. Ultimately the risk of providing protection and assistance to this mixed population was deemed a threat to Tanzanian national security.<sup>42</sup>

### **3.1.5. Impacts of Urbanization on Security**

The increasingly protracted nature of conflict has contributed to changes in the strategies that refugees employ to seek safety and security for themselves and their families.

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<sup>40</sup> Milner, J. (2009) *Refugees, the State and the Politics of Asylum in Africa*. New York: Palgrave Macmillan, p. 61.

<sup>41</sup> Milner, J. (2000) *Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security*. Refugee Studies Center, RSC Working Paper No. 4: 1-36, p. 4.

<sup>42</sup> *Ibid.*

Spending years in refugee camps with little access to livelihood opportunities and substandard education for their children, the trend toward urbanization has grown rapidly. According to UNHCR, more than one half of refugees worldwide are currently living in urban centers.<sup>43</sup> Although most of the refugees in Europe and many refugees in the Middle East can be found in urban centers, 60 percent of refugees in African states are still found in traditional camps.<sup>44</sup> This figure is down from 70 percent in 2012, further supporting the increased trend of urbanization among refugee populations.<sup>45</sup>

One significant factor that determines whether refugees are in camps or urban centers is state policy. Lebanon maintains a no-camp policy whereas Jordan is home to the Za'atari and Azraq refugee camps, two of the largest camps in the world. The number of asylum seekers and refugees in Europe is growing and the number of makeshift camps across urban areas in Europe, especially in Greece, Hungary, and Calais, France is growing as well. The largest refugee camp worldwide is Dadaab in Kenya and new camps, such as the Mahama camp built in April 2015 for Burundian refugees in Rwandan, are common across Africa. Although some states have chosen not to support encampment policies, other states, such as Kenya, prefer camp infrastructure because they perceive that camps provide a more efficient framework for the provision of services, better enables refugee protection, and are essential to the national security of the state.

States that maintain encampment policies are often unable to enforce these policies or lack the resource capacity to support all the refugees living in their camps. UNHCR explains that although urban centers provide opportunities for livelihoods and education that are often insufficient camp settings, the dangers of living in cities often without legal documents means that "they may be vulnerable to exploitation, arrest and detention, and they can be in competition with the poorest local workers for the worst jobs."<sup>46</sup> As more and more refugees make their way to urban centers, host countries will be required to respond in more innovative and effective ways to ensure safety and security. Security factors have featured prominently in the displacement literature and these factors are likely to remain central to many of the arguments surrounding state displacement policy in the future. Often intertwined with traditional and human security, understanding the economic component of displacement policy is also essential.

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<sup>43</sup> "Urban Refugees." UNHCR News. <http://www.unhcr.org/pages/4b0e4cba6.html>.

<sup>44</sup> "UNHCR Statistical Yearbook." UNHCR. <http://www.unhcr.org/56655f4d8.html>

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

### 3.2. Economic Factors

The impact of economic factors as determinants of state displacement policy can be understood through analysis of the potential for economic burden, economic benefit, and development aid to shape policy. Although economic factors are presented here separately from security factors, the primary concern underscoring economic aspects from the state perspective is ultimately economic security. Given the responsibilities of the state, such concerns for the economic welfare of its citizens are expected. Whether in camps near rural populations or in urban centers, the arrival of massive numbers of refugees will almost always impact livelihoods, markets, and infrastructure of host communities. The belief that refugees will take jobs from local populations, that they will cause an increase in food and housing prices, and that they will require significant amounts of taxpayer dollars for resettlement support are among the concerns expressed about the potential economic impacts. Although classic economic theory supports the notion that the arrival of migrants would create an economic surplus that would be ultimately be redistributed to the entirety of a state's population,<sup>47</sup> the arrival of immigrants and refugees has been a source of economic tension. The political policy debate has often been waged citing economic reasons expressed through rhetoric that is often more closely aligned with attitudes than with substantiated economic data. The cultural and social aspects of attitudes toward refugee will be further examined, however, the theories asserting economic burden, economic benefit, and development aid as factors that influence state displacement policy are first analyzed to provide a framework for further discussion.

#### 3.2.1. Economic Burden

States have often claimed that acceptance of significant numbers of refugees will have a deleterious effect on the economy. Frost cites an example from South Africa that is often echoed by those who oppose acceptance of refugees. She explains that migrants are seen as “a threat to the economic well-being of South African citizens in that they are seeking to ‘steal’ the jobs that properly belong to South African citizens.”<sup>48</sup> Assertions that the arrival of refugees will negatively impact the price of food and housing have also been expressed by members of local host communities and state governments alike.<sup>49</sup> In many cases, this concern has been cited as rationale for limiting refugees' freedom of movement and the right to work.

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<sup>47</sup> Bahcekapili, C. & Cetin, B. (2015) The Impacts of Forced Migration on Regional Economies: The Case of Syrian Refugees in Turkey. *International Business Research*, 8.9: 1-15, p. 1

<sup>48</sup> Frost, M. (2003) *Thinking ethically about refugees: A case for the transformation of global governance*. In *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*. New York: United Nations University Press, p. 110.

<sup>49</sup> Ardey Codjoe, S.N. et al. (2013) Perceptions of the Impact on Refugees in Host Communities: The Case of Liberian Refugees in Ghana. *International Migration & Integration*, 14:439-456.

The validity of these concerns varies depending on the social and economic situation of the host-country. A 2004 UNHCR report on the economic and social impact of large refugee populations on host developing countries states that “more than 35 per cent of the 20.6 million asylum seekers, refugees, and other persons on concern to UNHCR were hosted by the 41 Least Developed Countries (LDCs).”<sup>50</sup> Although the report acknowledges that refugees could make a positive impact on local economies, a study conducted in Guinea demonstrated a direct negative economic impact on the price of food, decreased purchasing power, and overcrowded markets.<sup>51</sup> Indirect negative economic impacts included competition for land and adverse environmental impacts due to deforestation and loss of biodiversity.<sup>52</sup> A recent study focused on Liberian Refugees in Ghana highlights a slight departure from the significant numbers of studies conducted in the 1990’s and 2000’s that largely concluded that refugees present an overall negative impact on host communities through dependence on passive receipt of aid, increased strain on natural resources, disruptions of social services provision, and overstressed infrastructure.<sup>53</sup> The example of Tanzania following the massive influx of refugees fleeing the 1994 Rwandan genocide highlights the economic burden levied on host-countries. The many studies investigating the impacts of Rwandan refugees on the Tanzanian government suggest that the financial and structural costs borne by the government significantly impacted its ability to provide long-term assistance. Although support during and immediately following the genocide was sufficient, “the dual mandate burdens of protection and assistance, including the pressures of environmental and infrastructure damage”<sup>54</sup> have been identified as reasons for the decline in support over time.

Examining the question from a Western perspective, Zimmerman explains that “there is a feeling, often expressed subliminally, that a treasured way of life will be upset by a large influx of people who speak a different language and have different habits,” but that this fear is expressed as concern that refugees and migrants “will move to highly populated areas, the tax base will erode, and services will become more difficult to provide.”<sup>55</sup> Although data to support the potential economic benefit of refugees in developed countries is relatively easy to find, economic data supporting concerns that refugees will negatively impact housing or job markets

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<sup>50</sup> “Economic and Social Impact of Massive Refugee Populations on Host Developing Countries, as well as Other Countries,” Executive Committee of the High Commissioner’s Programme. <http://www.unhcr.org/403dcdc64.pdf>.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ardey Codjoe, S.N. et al. (2013) Perceptions of the Impact on Refugees in Host Communities: The Case of Liberian Refugees in Ghana. *International Migration & Integration*, 14:439-456.

<sup>54</sup> Milner, J. (2000) Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security. Refugee Studies Center, RSC Working Paper No. 4: 1-36, p. 5.

<sup>55</sup> Zimmerman, W. (1995) Migrants and Refugees: A Threat to Security? In *Threatened Peoples, Threatened Borders: World Migration & U.S. Policy*. New York: W.W. Norton & Company, Inc.

is more difficult to locate. In the absence of accessible academic literature that focuses on the economic burden of refugees and asylum seekers in developed countries from this perspective, the fiscal impact can be understood by examining budget data of select countries. The US and Germany provide examples of developed Western countries with a history of robust refugee resettlement programs.

The current US Refugee Resettlement Program facilitates the resettlement of up to 70,000 refugees per year with an anticipated increase to 85,000 in 2016 and as many as 100,000 in 2017.<sup>56</sup> In order to support this level of resettlement, the US government allocated \$1.56 billion in 2015,<sup>57</sup> which represents approximately 0.04 percent of the total US budget. In 2013 Germany welcomed about 134,000 refugees and spent approximately the same amount at 1.5 billion euros or \$1.67 billion,<sup>58</sup> which represents approximately 0.5 percent of the total German budget. Although the US intends to incrementally increase the number of refugees it accepts over the next few years, the increase is relatively small and unlikely to create a significant economic impact. On the other hand, Germany intends nearly triple the number of refugees that will be accepted in 2016. Although this could potentially result in an economic burden, Germany sees the influx of refugees as a net benefit.<sup>59</sup>

Although the specific concerns often cited in LDCs and in more developed countries are different from concerns in more developed countries, apprehension about the perceived economic impacts of an increase in population and a decrease in resources can share some similarities. Despite concerns highlighted in the literature associated with the economic burden of refugee populations on host communities, the data suggests that these impacts are actually mixed and that refugee arrivals could possibly offer positive economic impact depending on the context.<sup>60</sup> Understanding the possibility of economic benefit of refugee arrivals could serve to shape refugee policy with a focus on potential development outcomes.

### **3.2.2. Economic Benefit**

Although concerns about economic security are valid, research suggests that these assumptions are often incorrect. Recent studies have confirmed that potential economic benefits associated with the arrival of refugees do exist. One such study supporting the notion

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<sup>56</sup> Mayorga, Jennifer, and Ann Morse. "The US Refugee Resettlement Program: A Primer for Policymakers" November 18, 2015. <http://www.ncsl.org/research/immigration/the-u-s-refugee-resettlement-program-a-primer-for-policymakers.aspx#5>.

<sup>57</sup> Ibid.

<sup>58</sup> Klaus, Ulrich. "What Helping Refugees Costs Germany," Business, DW.COM. April 9, 2015. <http://www.dw.com/en/what-helping-refugees-costs-germany/a-18693996>.

<sup>59</sup> Ibid.

<sup>60</sup> Ardey Codjoe, S.N. et al. (2013) Perceptions of the Impact on Refugees in Host Communities: The Case of Liberian Refugees in Ghana. *International Migration & Integration*, 14:439-456.

that refugees can create economic benefit for host communities was conducted by Maystadt and Verwimp.<sup>61</sup> The researchers combined primary field research on refugee flows from Burundi and Rwandan to Tanzania with data from the Kagera and Health Development Survey to better understand the impacts of refugees on the host community. Using an econometric regression analysis of the data, Maystadt and Verwimp calculated the degree of positive or negative impact of refugee arrivals on local village household consumption. Despite identified limitations that may have affected the results, the researchers concluded, on average, that the presence of refugees in the host community had a net positive impact on host community welfare.<sup>62</sup>

Jacobsen provides broader insight on the potential benefit of refugees on host communities noting that the issue is largely rooted in how states perceive refugees.<sup>63</sup> She explains that many states prefer to keep refugees in camps because they believe that refugees are an economic burden and ignore the potential benefits of hosting refugee populations. Jacobsen suggests that refugees can benefit the state in two ways. First, through increased international assistance intended for refugees that inevitably also benefits the local host communities, and second, the contributions to economic activity made by refugees in raising a local host community's standard of living.<sup>64</sup> Although regularly depicted as weak and vulnerable victims of conflict or persecution with no means by which to affect their own situations, the individual capacities of refugees must be recognized.

Refugees often arrive in host communities or nearby refugee camps with assets and resources, including professional and vocational competencies, which can benefit host populations. Jacobsen explains that refugees often bring whatever material goods they can carry and over time can become recipients of remittances from abroad that can be used to purchase goods and services in local markets. This influx of cash often "creates all kinds of spin-offs in the form of telephone companies, banks and courier services."<sup>65</sup> These infrastructure improvements augment the quality of life of local populations as well as serve the refugee community. Another and perhaps even more important is the contribution refugees can make is through entrepreneurship. These effects can be especially impactful among self-settled refugee populations in urban center because the potential for them to contribute to the economy through the addition of new technological or other skills and desired labor. Often able to identify

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<sup>61</sup> Maystadt, J. & Verwimp, P. (2014) Winners and Losers among a Refugee-Hosting Population. *Economic Development and Cultural Change*, 62(4): 769-809.

<sup>62</sup> Ibid.

<sup>63</sup> Jacobsen, K. (2002) Can refugees benefit the state? Refugee resources and African statebuilding. *Journal of Modern African Studies*, 40(4): 577-596.

<sup>64</sup> Ibid.

<sup>65</sup> Jacobsen, K. (2002) Can refugees benefit the state? Refugee resources and African statebuilding. *Journal of Modern African Studies*, 40(4): 577-596.



gaps in services or access to material resources in a community, enterprising refugees sometimes start small businesses that benefit the local population as well as other refugees.<sup>66</sup> Although refugees are rarely recognized as the impetus for improvements, equal access to resources and improved market systems available to both local and refugee populations can aid in streamlining the integration of refugees into host communities.

The potential economic benefits of refugee arrivals are not contained only to villages near refugee camps or growing urban centers in developing countries. The potential benefit to more developed countries such as Germany and Great Britain has also recently begun to be underscored in the research. The majority of studies have centered on migration more broadly, but the surge in refugees from Syria has focused increased attention on refugees. Largely the educated middle-class, the majority of Syrian refugees arrive in other Middle Eastern or European countries with significant professional and vocational capacity that is often needed in some countries. A recent report in the *New Scientist*, which notes that one of the reasons many countries cite for denying access to migrants is economic burden, explains the economic logic of accepting more refugees in Europe. Based on a study at University College London, this support is rooted in the assets and resources migrants bring with them. Specifically, migrants “living in the UK since 1995 brought £35 billion worth of education with them” and “they contributed a net £5 billion in taxes during that period.”<sup>67</sup> These claims are supported by the Brookings Institution which asserts that the mass arrival of Syrian refugees “have been an important source of demand for locally produced services in Lebanon, funded from own savings and labor income, from remittances of relatives abroad and from international aid.”<sup>68</sup> Accompanying concerns about refugees taking jobs from local workers have also been addressed in the research.

Among the typical arguments against welcoming refugees and other migrants into host communities and affording them the right to work is that they will take jobs away from local workers. However, a recent report sponsored by the World Bank on Syrian refugees in Turkey suggests the recent influx has actually benefitted the Turkish economy.<sup>69</sup> Del Carpio and Wagner conducted an econometric regression analysis to understand how the arrival of refugees impacts local population participation in the labor market. Aggregate data as well as

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<sup>66</sup> Jacobsen, K. (2002) Can refugees benefit the state? Refugee resources and African statebuilding. *Journal of Modern African Studies*, 40(4): 577-596.

<sup>67</sup> "Why Welcoming More Refugees Makes Economic Sense for Europe." *New Scientist*. September 9, 2015. <https://www.newscientist.com/article/mg22730383-800-why-welcoming-more-refugees-makes-economic-sense-for-europe/>.

<sup>68</sup> "Much Ado about Nothing? The Economic Impact of Refugee 'invasions'" The Brookings Institution. September 16, 2015. <http://www.brookings.edu/blogs/future-development/posts/2015/09/16-economic-impact-refugees-cali>.

<sup>69</sup> Del Carpio, X.V. & Wagner, M. (2015) The Impact of Syrians Refugees on the Turkish Labor Market. Policy Research Working Paper 7402, World Bank Group.

results disaggregated by sex, age, and level of education are presented. The researchers found that the arrival of refugees resulted in creation of better paying formal positions that enabled the average Turkish worker to accept an occupational upgrade. Although the study did find significant job displacement of mostly female Turkish workers with minimal education in the agricultural sector, the results also indicated an increase in school attendance among women. This suggests that many women displaced from low wage positions may have chosen to go back to school, which would also be considered a benefit to the Turkish economy in the long term. Del Carpio and Wagner ultimately concluded that Turkish workers benefitted from the arrival of refugees despite net displacement and that the addition of refugees to the formal economy changed the overall composition of the labor market in an economically advantageous way for Turkish workers. Although comparative variations would certainly be observed under different sets of circumstances, this case provides compelling evidence for the potential economic benefit of refugee arrivals.

### **3.2.3. International Development Aid**

Returning to the analysis presented by Jacobsen highlighting the ways in which refugee arrivals can benefit the state, the key mechanism of international refugee assistance offers interesting insight into the role of development aid in providing economic benefit.<sup>70</sup> Assistance, whether through governments, NGO's, or international organizations such as the United Nations, is generally intended to benefit refugees. However, positive impacts often result for host populations as well. Although some organizations will rightly structure delivery of international emergency food and non-food assistance such that local populations also benefit from aid as a means of increasing community receptiveness to refugee arrivals, some efforts to provide for the longer term care of refugees functions more like development aid projects. Jacobsen explains that such an approach "is embodied in UNHCR's Refugee Affected Areas programmes, which provide new or improved transport infrastructure (roads, bridges), health clinics and schools, both as an inducement to locals to assist refugees, and to improve the delivery of humanitarian assistance."<sup>71</sup> Crisp provides further contextual insight into the practice of asylum in Africa noting that this practice "was further buttressed by international aid. Across much of the continent, an implicit deal was struck whereby African States admitted refugees to their territory and provided the land required to accommodate them. And, as a reciprocal gesture (often referred to in the humanitarian community as "burden sharing"), donor States

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<sup>70</sup> Jacobsen, K. (2002) Can refugees benefit the state? Refugee resources and African statebuilding. *Journal of Modern African Studies*, 40(4): 577-596.

<sup>71</sup> Ibid.

provided the funding – much of it channeled through UNHCR – required to feed, shelter, education, and provide health care to the refugees.”<sup>72</sup> A UNHCR report provides illustrative examples of the potential for development to assuage the negative economic impact on host communities in developing countries.<sup>73</sup> Studies conducted in Ethiopia on water management techniques designed to benefit local and refugee populations and in Uganda on the resource burden associated with insufficient education systems both demonstrated effective development aid strategies. These projects strengthened economic security while simultaneously preventing potential conflict and subsequent secondary migration through infrastructure development.

Given the increasingly protracted nature of conflict, organizations like UNHCR understand the importance of incentivizing state governments and local host communities to accept refugee populations. Even if refugees are able to repatriate to their homes of origin, these infrastructural improvements will remain and continue to provide benefit to local hosts. Jacobsen also notes that the influx of international refugee assistance agencies may generate longer term benefits for locals through an increase in employment opportunities.<sup>74</sup> However, she cautions that these potential benefits are neither immediately realized nor guaranteed over time. Highlighting the persistent tension between emergency assistance and development aid, these challenges have become of increasing interest to the development community.

This growing interest in refugee and IDP assistance among development actors has resulted in a development-led approach to displacement crises. Although Zetter acknowledges that assistance to refugees and IDPs are traditionally considered issues under the humanitarian and human rights umbrellas, he asserts that displacement crises provide opportunities for humanitarian and development actors to work together to achieve maximum results.<sup>75</sup> Employing an evidence-based approach that relies on a systematic analytical framework and context specific metrics, Zetter presents a public-private partnership methodology that aims to work more directly with host governments to manage economies impacted by large-scale displacement. The goal is to ensure development programs benefit both the refugees and IDPs as well as the host governments and specific host communities by minimizing the economic cost of displacement.<sup>76</sup> Given the perceived fears associated with large numbers of refugees arriving at the borders of primarily Western countries, some donor states may also attempt to

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<sup>72</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27, p. 4-5.

<sup>73</sup> "Economic and Social Impact of Massive Refugee Populations on Host Developing Countries, as well as Other Countries," Executive Committee of the High Commissioner's Programme. <http://www.unhcr.org/403dcdc64.pdf>.

<sup>74</sup> Jacobsen, K. (2002) Can refugees benefit the state? Refugee resources and African statebuilding. *Journal of Modern African Studies*, 40(4): 577-596.

<sup>75</sup> Zetter, R. (2014) Reframing Displacement Crises as Development Opportunities. Global Initiative on Solutions, Copenhagen Roundtable, 1-12.

<sup>76</sup> Ibid.

use development aid as a kind of containment or deterrence policy. If states can provide support to sending countries to manage refugee and IDP populations locally through development projects, the need for refugees to seek secondary or tertiary movements will theoretically decrease. Depending on the location and goals of specific development projects, this approach may also impact aspects of both economic and physical security associated with urbanization.

Despite the increasingly strong case for the potential economic benefit of refugee populations on host communities, whether through their capacities and contributions or through the expansion of development aid programs, many host countries maintain a hard stance against accepting more refugees across their borders. The international political economy factors associated with how refugees are perceived by host-communities, the capacity for the international community to influence attitudes, and the ability of states to manage refugee arrivals must be understood. The next section will focus on understanding these factors with respect to state displacement policy.

### **3.3. Political Factors**

Although security and economic factors play a central role in state displacement policy, theories rooted in international political economy theory are increasingly critical. Providing a mechanism to understand how sociology, economics, political science, and international relations intersect, international political economy theories illuminate the complexities of state displacement policy often obscured by focusing solely on security or economic factors. As Crisp notes, “the current pressures on asylum in Africa are deeply rooted in the political economy of the continent.”<sup>77</sup> The rapid increase in the number of refugees fleeing Syria to the Middle East and Europe over the last five years has created a similarly intense political pressure in many countries in these regions. As illustrated by the political history of displacement policy since World War II, impacts caused by international political economy factors have been characteristic of displacement policy for many years.

Global shifts in displacement policy can be organized into three distinct geopolitical periods. The first spans forty years from the birth of the refugee regime at the end of World War II with the adoption of the 1951 Convention on the Status of Refugees through the end of the Cold War. The second period spans the post-Cold War decade ending with the September 2001 attacks on the World Trade Center and the Pentagon. The third post-September 11<sup>th</sup> period, which has been significantly intensified by the Syrian refugee crisis, continues through today.

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<sup>77</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27, p. 7.

Although varying trends can be observed regionally, the general trend is an incrementally tighter restriction of displacement policy with each period since the 1951 Convention. Political economy theories associated with bureaucratic capacity, civil society attitudes, and international relations illuminate these changes over time.

### 3.3.1. Bureaucratic Capacity

Understanding bureaucratic capacity is essential to understanding state displacement policy because it determines the degree to which a state is able to draft, implement, and enforce policy. Bureaucratic capacity also encompasses the state's ability to effectively respond to adverse events and to address concerns expressed by its citizens and the international community. Although the impact of bureaucratic capacity on refugee policy has not been widely considered, understanding whether a state has the capacity to make bureaucratic choices is important because this capacity will ultimately determine how well the state responds to shocks and whether the response will cause shifts in refugee policy. Jacobsen underscores the importance of examining the state capacity to respond to real-world events such as large-scale refugee arrivals or internal displacements highlighting that "in refugee policymaking, prior legal-bureaucratic decisions affect subsequent refugee policy decisions, that is, earlier policy outputs become subsequent inputs."<sup>78</sup> The capacity for states to make and enforce bureaucratic choices in the policy context impacts and is impacted by the degree to which civil society influences government decision making and the capacity of states as actors on the international stage.

In order investigate states' bureaucratic capacity to make and enforce policy decisions, the sources of state power must first be understood. Mann explains the two basic types of state power: despotic power and infrastructural power.<sup>79</sup> Despotic power is defined as "the range of actions which the elite is empowered to undertake without routine, institutionalized negotiation with civil society groups."<sup>80</sup> This type of power is often also known as autonomy of power and can be seen throughout history across Europe and Asia as unlimited powers of state rulers such as the Emperor of China, Soviet elites, and several monarchs in early modern Europe. More recent examples can be found in Africa with rulers such as Mobutu Sese Seko of the Democratic Republic of the Congo and Paul Biya of Cameroon. On the other hand, infrastructural power is defined as "the capacity of the state to actually penetrate civil society,

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<sup>78</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678, p. 660.

<sup>79</sup> Mann, M. (1984) The autonomous power of the state: its origins, mechanisms, and results. *European Journal of Sociology*, 25(2): 185-213.

<sup>80</sup> Ibid.

and to implement logistically political decision throughout the realm.”<sup>81</sup> Mann explains that whereas despotic power is basically complete power over a civil society that has no recourse against those who rule, infrastructural power limits the reach of government to a degree that enables civil society actors increased freedom but enhances the government’s capacity to impose legal structures that govern civil society function. The stronger a state’s infrastructural power, the greater the state capacity to draft, implement, and enforce rules and laws. However, with stronger capitalistic democracy comes an increased level of responsibility to dominant civil society groups.<sup>82</sup> As states move toward more capitalist democratic structures, Mann’s theory of power factors directly into the debate over the capacity of states to address concerns regarding refugee and IDP movements in terms of democratization.

Understanding the process of democratization and conceptualizing the degree to which a state is characterized by democratic ideals first requires a definition of democracy. According to Lipset, a democracy is “a political system which supplies regular constitutional opportunities for changing the governing officials.”<sup>83</sup> In other words, a democracy is a system that empowers citizens through an electoral process to elect new representation if enough members of civil society vote for change. Acknowledging the challenges of rank ordering states based on level of democratization, Lipset divides states into categories of more or less democratic noting that the majority of states devoid of a standing tradition of political democracy are located in the less developed parts of the world. He explains that “democracy is *not* a quality of a social system which either does or does not exist, but is rather a complex of characteristics which may be ranked in many different ways.”<sup>84</sup> Among the increasingly common means of classifying democratic capacity is through the notion of state fragility.

The OECD characterizes a fragile state as one with “a weak capacity to carry out basic governance functions, and lacks the ability to develop mutually constructive relations with society. Fragile states are also more vulnerable to internal or external shocks such as economic crises or natural disasters. More resilient states exhibit the capacity and legitimacy of governing a population and its territory.”<sup>85</sup> Based on this definition, it is arguable that a large-scale influx of refugees or a significant movement of IDPs would constitute an internal or external shock and that the estimated strength or fragility of a state could serve as an indicator of success under

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<sup>81</sup> Mann, M. (1984) The autonomous power of the state: its origins, mechanisms, and results. *European Journal of Sociology*, 25(2): 185-213.

<sup>82</sup> Ibid.

<sup>83</sup> Lipset, S.M. (1959) Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *The American Political Science Review*, 53(1): 69-105, p. 71.

<sup>84</sup> Lipset, S.M. (1959) Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *The American Political Science Review*, 53(1): 69-105, p. 71.

<sup>85</sup> OECD (2012). *Fragile States 2013: Resource Flows and Trends in a Shifting World*. Paris: OECD/DAC International Committee on Conflict and Fragility, p. 15.

such conditions. Several indices have been developed to measure the degree of fragility characteristic of each sovereign state. These include the Fragile States Index (of which, one component is presence of refugee/IDP populations), the Index of State Weakness, the Political Instability Index, and the Index of African Governance. Grävingholt et al. underscore current agreement in the literature that not all fragile states are the same.<sup>86</sup> Whereas some are unable to provide for citizens' basic needs and offer important services such as education or clean water and sanitation, others are characterized by violent conflict, while others are unable to govern all parts of the territory within official boundaries leaving some citizens without contact with the central authority of the state. In some cases, multiple factors impact the bureaucratic capacity of the state rendering it very fragile.<sup>87</sup> Crisp provides an example of the potential impact of state fragility by highlighting the intersection between Milner's indirect security threats and domestic political economy noting that some "host countries simply do not have the capacity or willingness to maintain law and order in the remote and underdeveloped areas where the largest number of refugees are often to be found."<sup>88</sup> Strong states where civil society enjoys more civil rights through voting and the ability to influence the electorate through freedom of speech plays a more active role in shaping state policy by using rhetoric associated with indirect physical security and economic security concerns. Fragile states with less effective governance characterized by more authoritarianism and a reduction of civil liberties tend to be more impacted by direct security concerns, such as "refugee warriors", and development aid.

Analyzing the importance of bureaucratic capacity with respect to strong versus fragile states in the context of state displacement provides unique insight into the role of democratization in state policy. In strong states where civil society plays a more significant role in bureaucratic governance, political positions on displacement policy may be more directly influenced by civil society than in fragile states. If populations perceive asylum seekers and refugees to present a physical or economic security threat, including concerns about terrorism or the fear that refugees will take jobs from local workers, lower the market value of property or other goods, or increase housing prices, policymakers are more likely to respond with policies against refugee populations. The backlash against US policy toward Syrian refugees by individual state governments protesting federal US refugee resettlement law based on fears of terrorism provides an interesting example. On the other hand, political positions on asylum seekers and refugees in fragile states may be more closely associated with the desire to remain

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<sup>86</sup> Grävingholt J. et al. (2012) *State fragility: towards a multi-dimensional empirical typology*. German Development Institute, 1-40.

<sup>87</sup> Ibid.

<sup>88</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27, p. 6.

in power or reduce the likelihood of conflict over resources. Although the opinions of the population are either oppressed, disregarded, or absent due to a lack of means by which to be expressed, regimes that recognize the potential direct physical threat of refugee populations are more likely to resist acceptance of refugee or make efforts to contain these populations.

As previously discussed, increases in international emergency assistance and development aid may be more likely to sway displacement policy in fragile states if aid is directly linked to areas where refugee populations may create competition with local populations for scarce resources. Adverse impacts on displacement policy may also be more likely when donors are willing to provide funds, either through direct budget support or through agencies like UNHCR, to provide for the needs of asylum seekers and refugees. In both strong and fragile states, the potential for refugee scapegoating is very high. Similar to the rhetoric used against migrants more broadly, politicians in strong states often rely on the notion that refugees are a threat to physical and economic security as a platform for generating political support. In host communities where citizens believe refugees are a threat, politicians can appear to be acting in the “best interests” of the community by creating policies against this group. Again, the example of US state governors attempting to reject the resettlement of Syrian refugees in their states allows them to be seen by some constituents as protecting their physical and economic security. The same tactics can be seen in fragile states where regimes scapegoat the refugee population as justification for enacting certain security policies or accepting various forms of development aid. Further, fragile states may strategically blame other problems on the arrival of large numbers of refugees.

Although the delineation between various responses can be attributed in part to the differences in strong versus fragile states, the divide may be exacerbated by location and proximity of the home and host countries to the most significant refugee producing conflicts. The large majority of the world’s refugees tend to move to the nearest safe locations they can find. This trend has been observed many times over across Africa and has become quite clear in the wake of the Syrian conflict. Kenya is host to the largest refugee population in the world with most of its residents from Somalia, the conflict in South Sudan has resulted in thousands of refugees fleeing to Ethiopia, and most Syrian refugees have fled to neighboring Turkey, Lebanon, and Jordan. These states must contend with very large numbers of refugees that have the potential to overwhelm the host population. Refugee movements of this size will certainly impact state displacement by requiring a response that adequately balances the needs of the refugee population with the needs of the host community.



In terms of displacement policy, the manner in which a fragile state that receives a large number of refugee arrivals responds will likely differ from how a strong state responds. Although the numbers of refugees arriving in Europe are relatively smaller than the numbers elsewhere, the significant influx of refugees into European states provides additional insight into state response and subsequent shifts in displacement policy. With rare exception, most developed countries are not home to refugee camps. Rather the majority of refugees are living in urban centers as asylum seekers. States like Greece, Italy, and Hungary have struggled significantly with managing the relatively large numbers of refugees. Because local populations enjoy more civil liberties and greater representation, the governments of these countries must consider different factors in dealing with the arrival of refugees than states with weaker or more fragile governance or less concern with civil society response. States that are stronger and more democratic, and thus have greater bureaucratic capacity, must pay greater attention to majority and minority civil society groups who have the ability to make a more significant impact on policy. Understanding the extent to which a government is concerned about civil society is essential to understanding the policy choices made. Moreover, understanding the attitudes of civil society members is key to understanding how policy is shaped differently in strong versus fragile states.

### **3.3.2. Civil Society Attitudes**

In conjunction with understanding bureaucratic capacity and the degree to which state policymakers consider civil society attitudes and opinions, understanding the role of civil society in state displacement policy provides deeper insight into the motivating factors behind policy creation. Jacobsen provides interesting academic insights into civil society attitudes about refugees. She asserts that beliefs about refugees stem from perceptions about the reasons refugees left the countries of origin, whether host-communities believe the reason for leaving was valid, psychological fears, and changes in circumstances in the sending countries.<sup>89</sup> Underscoring that community and government responses may not necessarily align, Jacobsen highlights the potential resulting political tension that can be created in host-countries over displacement policy decisions. An recent example of issues that can arise from such negative attitudes is the misperceptions among Australian homeless populations that needs of refugees and asylum seekers were being prioritized over the needs of local Australians.<sup>90</sup> The authors

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<sup>89</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678, p. 662.

<sup>90</sup> Spinney, A. & Nethery, A. (2012) 'Taking our Houses': Perceptions of the Impact of Asylum Seekers, Refugees and New Migrants on Housing Assistance in Melbourne. *Social Policy & Society*, 12(2): 179-189.

assert that these attitudes reflect the current social and political discussions in Australia with regards to refugees, asylum seekers, and immigration generally.

Although the literature has paid less attention to specific attitudes about refugees and asylum seekers, public attitudes toward immigration more broadly have been widely studied. Similarities between refugees and asylum seekers and the general migrant population in terms of potential impacts on culture and economy enable application of these broader theories to attitudes about forced displacement specifically. Hainmueller and Hopkins provide an overview of the main theories that have resulted from Western research within the disciplines of political economy and political psychology.<sup>91</sup> The researchers highlight general disagreement on the primary factors that influence attitudes toward migration, however, the authors assert that “hypotheses grounded in self-interest have fared poorly, meaning that there is little accumulated evidence that citizens form attitudes about immigration based on its effects on their personal economic situation.”<sup>92</sup> An analysis of the labor market competition hypothesis rooted in the political economy approach concludes that although most people tend to favor high-skilled migration versus low-skilled migration, overall attitudes toward immigration are independent of an individual’s position in the labor market. Another economic component that may impact attitudes toward migration is fiscal burden. Hainmueller and Hopkins analyzed several studies that considered concerns about fiscal consequences resulting from immigration and found evidence to support that the majority of people are specifically opposed to the addition to low-skilled workers to the economy.<sup>93</sup> These findings are of particular interest in the context of asylum seekers and refugees who are often of middle-class origin or are highly-skilled yet portrayed politically as weak, vulnerable people who lack agency. Although the research does not robustly explain why individuals tend to harbor bias against low-skilled labor, socio-psychological approaches provide further insight into this complicated phenomenon.

The socio-psychological approaches to public attitudes toward immigration provides interesting insights about the role of ethnocentrism, stereotypes, and the media. The research shows a strong connection between negative attitudes toward immigration and symbolic concerns, including social constructs such as the national economy or national identity, which are thought to be largely cultural.<sup>94</sup> Hainmueller and Hopkins conclude that ethnocentrism is a strong predictor of negative attitudes toward immigration and that country of origin is often quite meaningful in the development of these attitudes. Similarly, stereotypes and the ways in which

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<sup>91</sup> Hainmueller, J. & Hopkins, D. (2013) Public Attitudes toward Immigration. *Annual Review of Political Science*, 17:1-30.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

these stereotypes are manipulated by the media plays a very important role in attitude formation. Whether immigrants are perceived to pose a threat to potential host-populations in terms of impact to national identity and the willingness of immigrants to conform to host-country norms and language are essential determinants of attitudes towards migrant populations. These attitudes are also likely to be significantly impacted by political party membership, race, and ethnicity.<sup>95</sup> Corroborating these conclusions, Zimmerman explains that “many experts believe that the perceived threat derives more from cultural than from economic factors. There is a feeling, often expressed subliminally, that a treasured way of life will be upset by a large influx of people who speak a different language and have different habits.”<sup>96</sup> Although Hainmueller and Hopkins acknowledge limitations in the research and assert that further investigation is needed to strengthen these theories, the research they reviewed suggests that attitudes are more significantly influenced by concerns central to culture than concerns about economic factors.

Card, Dustman, and Preston provide an interesting analysis of civil society attitudes toward immigration broadly that focuses on culture. The authors term these factors compositional amenities, or the culture, religion, and ethnic makeup of a country or community.<sup>97</sup> Using data from 21 European countries included in the 2002 European Social Survey, the researchers conducted an econometric regression analysis to determine the impact of compositional amenities on respondents attitudes about immigration policies. The researchers concluded that conventional economic concerns specific to taxes and employment wages were less significant than concerns about compositional amenities. One of the reasons subsequently theorized that most immigration policies are viewed unfavorably by respondents is due in part to the failure of policymakers to consider the value people place on compositional amenities. They explain, “a large body of economic research has shown that concerns over the characteristics of neighbors, schoolmates, and co-workers play an important role in decision-making over what neighborhood to live in; what schools to attend; which city to live in; and which employees to hire.”<sup>98</sup> Their research findings confirm the importance of this consideration and suggest that concerns regarding compositional amenities are much more important in attitudes toward immigration policy.<sup>99</sup> These finding have significant implications for refugee

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<sup>95</sup> Hainmueller, J. & Hopkins, D. (2013) Public Attitudes toward Immigration. *Annual Review of Political Science*, 17:1-30.

<sup>96</sup> Zimmerman, W. (1995) Migrants and Refugees: A Threat to Security? In *Threatened Peoples, Threatened Borders: World Migration & U.S. Policy*. New York: W.W. Norton & Company, Inc.

<sup>97</sup> Card, D., Dustmann, C., & Preston, I. (2012) Immigration, Wages, and Compositional Amenities. *Journal of the European Economic Association*, 10(1): 78-119.

<sup>98</sup> Card, D., Dustmann, C., & Preston, I. (2012) Immigration, Wages, and Compositional Amenities. *Journal of the European Economic Association*, 10(1): 78-119.

<sup>99</sup> Ibid.

policy, especially given the political tendency to confound refugee and asylum-seeking populations with immigrant populations more broadly.

Rutinwa further discusses the potential impacts of the underlying theme of xenophobia present in these theories. He highlights the example of Tanzania to illustrate the intersection between democratization and civil society attitudes.<sup>100</sup> He explains that shifts toward democratic governance in Africa have increased in parallel with the deepening of xenophobia across the continent.<sup>101</sup> Democratic forms of government are generally regarded as the most advantageous political system because government is held more accountable to civil society through democratic mechanisms such as voting. In functioning democracies, elected officials who do not acknowledge public opinion in decision making run the political risk of losing their position to other candidates or to competing political parties. Rutinwa illustrates the power of civil society through the example of Tanzania in 1995, which was about to hold a general election when the government decided to restrict its refugee policy. The large-scale arrival of refugees fleeing the 1994 Rwandan genocide significantly impacted local populations in Tanzania, which left many people decidedly against refugees. Rutinwa explains that the government officials and politicians from all of the various political parties were aware of civil society's attitudes toward refugees. They deliberately decided to leverage the negative sentiment by making promises to return all refugees to Rwanda if elected to office. The strategy backfired when the ruling party decided to take advantage of the situation and assert their power by ordering return of all refugees immediately.<sup>102</sup> Although the government publicly cited national security concerns associated with the presence of refugee warriors inside the camps as the reason for the decision, the civil society factor was a clear motivator, as well as enabler, of this decision.

Civil society attitudes about refugees also have the potential to impact displacement policy in distinctly gendered ways. Although refugee populations in general are temporarily vulnerable groups, civil society attitudes about these groups often discounts refugees' agency and capacity to act as productive members of society. Women, children, and elderly populations tend to be especially undervalued and seen as more of an economic burden than an economic benefit to society. Although sometimes considered more of a potential drain on economic resources, especially in terms of taxpayer dollars, on host resettlement countries, civil society attitudes towards vulnerable groups are often characterized as more compassionate in comparison to attitudes about men, who are commonly considered a potential threat to security.

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<sup>100</sup> Rutinwa, B. (2002) *The End of Asylum? The Changing Nature of Refugee Policies in Africa*. *Refugee Survey Quarterly*, 21 (1 & 2): 12-39.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

Given that young men comprise the preponderance of those who are responsible for massacres such as the 9/11 attacks in the US and the recent attacks in Beirut and Paris, this generalization is not without some merit. However, these stereotypes discount the more common situations faced and choices made by refugees, and often immigrant populations more broadly. As violent conflict continues to impact family composition, women are increasingly becoming heads of households and in some cases are fleeing as refugees or IDPs alone with their children. Furthermore, families will often choose to split in an attempt to send the most capable member, whether female or male, of the family first to make it possible for others to join later. Although women are increasingly filling this role, the family member sent is usually a young male who can often earn better wages and is typically not responsible for caring for children, sick, or elderly family members.

The potential policy impacts caused by the relationship between the state and its citizens must not be understated. Perceptions of refugees and asylum seekers held by civil society can dramatically influence policy, however, governments also have the ability to sway civil society attitudes toward this population through the use of scapegoating, othering, and emphasizing the primacy of national identity. Although local communities are essential in the reception process and in some cases have the capacity to influence state asylum policy, the state ultimately grants asylum and refugee status to asylum seekers. Therefore, it is important to focus on the state, in both domestic and international contexts, as the main actor.

### **3.3.3. International Relations and Foreign Policy**

By definition, refugee affairs are international issues that require states to interact with other nations. Jacobsen explains, “few other domestic policy issues are as transnational in their subject matter as refugee policies. Refugees are manifestations of the problems of another country which suddenly become the problems of one's own.”<sup>103</sup> She asserts that the two primary sources of international influence on state displacement policy are the international refugee regime and the refugee sending countries. Much of the practical influences on states through international financial aid and the increasing overlap of humanitarian assistance and development aid have already been discussed, Jacobsen also notes that the international community can use the assurance of third country resettlement of refugees as advantage over recipient countries.<sup>104</sup> Although this was a significant factor in the 1990's with the upsurge in refugees resulting from conflicts across sub-Saharan Africa and the Balkan Wars, the significant

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<sup>103</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678, p. 662.

<sup>104</sup> Ibid.

increase in the number of refugees worldwide, the protracted nature of conflicts, and the relatively small percentage of the world's refugees that are third country resettled, renders this influence significantly less powerful today. On the other hand, the normative component of power held by the international refugee regime may be more influential today than ever. Jacobsen explains that "most governments desire to be in good international standing and do not wish to appear inhumane, so the publicity given to refugee abuses is a political consideration shaping their responses."<sup>105</sup> As humanitarian emergencies have become more complex, as conflicts more protracted and increasingly characterized by violent conflict between non-state armed groups or between non-state armed groups and the state, and as details about these events are more readily available to more people through technology and social media, the ability for states to balance international human rights norms with national security interests has become significantly more challenging. Jacobsen cautions that the influence of the international community should not be assumed to dominate state policy choices because sovereign countries also maintain power over allowing the international community to operate within their borders and states can use their bureaucratic capacity as leverage over the number of refugees they can accept.<sup>106</sup>

Sending countries also play a significant role in international refugee relations. Once a state recognizes asylum seekers from a sending country as refugees, that state has identified the sending country as one that is persecuting a segment of its population or is unable to protect its citizens from violent conflict within its borders. This can impact the relationship between the two states and can also be used to intentionally manipulate state relations.<sup>107</sup> In addition to concerns between states, the relationships between sending countries and international organizations such as UNHCR and IOM, and international NGOs must also be considered. As geopolitical situations change over time, what were once sending countries can sometimes become receiving countries under a different set of circumstances. These organizations are often responsible for conducting refugee status determinations and for providing housing and other services to refugees in receiving countries, therefore, relationships among states and these organizations are also important.

Like other international law, state parties to the 1951 Convention are expected to domesticate laws governing refugee affairs. Although the intent of these laws is to provide a system of asylum, and refugee protection and potentially integration, states may also use these

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<sup>105</sup> Jacobsen, K. (1996) Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes. *The International Migration Review*, 30(3): 655-678, p. 662.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

laws to signal their commitment to refugee issues to the international community. In his review of asylum policy in the UK, Mulvey contrasts the numbers of refugees accepted in the UK through the Gateway Programme, which granted 500 refugees designated as desirable pre-arrival status, with the 49,405 individuals who presented at the border as asylum seekers in 2003.<sup>108</sup> He explains that this process served as a means for the government to claim compliance with international obligations while balancing liberal assertions that refugees should be welcomed with conservative calls for increased border controls.<sup>109</sup> Other countries have also manipulated their domestic policy in order to generate compliance with international norms and obligations while minimizing the domestic impact of their commitment. Crisp underscores this worrying trend suggesting that it is the world's industrialized states that are responsible for restricting the right of asylum and for the deterioration of the principles of refugee protection.<sup>110</sup> He states that this trend enables developing countries to point to the precedent set by the developed world when they choose to increase restrictions in displacement policy. The reluctance of donor states to support long-term refugee assistance efforts further reduces standards of protection by limiting opportunities for integration in favor of repatriation policies, which are often hastened.

Collectively, the security, economy, and political economy theories outlined above provide a broad framework for understanding the factors that impact state displacement policy. In most cases, the motivators behind shifts in policy represent a complex combination of one or more of the components that comprise these theories. Achieving a comprehensive understanding of all the social, political, and economic factors that impact policy is difficult, however, much can be learned about state motivations by examining specific historical events through these lenses. The following section will examine chronological shifts in displacement policy in France and Kenya in an effort to generate a more nuanced understanding of past policy to forecast potential changes in displacement policy in these two countries.

#### **Chapter 4: Case Studies – France and Kenya**

Although states tend to cite security as among the primary factors underpinning state asylum and refugee policy, the tendency for states to act in ways that appear misaligned with security concerns requires that other possible factors are considered. The role of security

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<sup>108</sup> Mulvey, G. (2010) When Policy Creates Politics: the Problematizing of Immigration and the Consequences for Refugee Integration in the UK. *Journal of Refugee Studies*, 23(4): 437-462.

<sup>109</sup> Ibid.

<sup>110</sup> Crisp, J. (2010) Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions. *Refugee Survey Quarterly*, 29(3): 1-27.

should not be understated; however, the literature review suggests that political concerns rooted in international relations and domestic obligations to citizens may play an increasingly significant role. Using the process tracing method, the following analysis will examine whether these political factors are more likely to influence shifts in state asylum and refugee policy than security factors.

The process tracing method enables an in-depth analysis of the potential factors that may explain state decisions to enact policy change or maintain the status quo. Significant shifts in asylum and refugee policy in France and Kenya since 1954 and 1966 respectively were chosen for analysis. The degree to which security and political factors provide insight and possible explanation for the policy shifts is analyzed and presented. Each case begins with a brief history of refugee and asylum policy in the specified country to establish a baseline for investigation. Policy shifts specific to each state are then presented in historical context and analyzed in temporal sequence. Each case concludes with an overview of current displacement policy. The assertions made in this analysis are based on aforementioned theory, practical examples, the history of refugee policy, and established scholarship.

France and Kenya were chosen for analysis because both states have a robust history of hosting refugees and are comparable to other states within their respective regions. Host to the largest refugee camp in the world, Kenya also has many refugee communities in Nairobi despite maintaining a domestic refugee law that prohibits refugees from living outside of camps. With more refugees and IDPs in camps than any other region of the world, Kenya is representative of countries in Africa that maintain encampment policies. Similarly, as the first European nation to openly welcome refugees even before the 1951 Convention, France has long been host to refugees through robust asylum and resettlement processes. Like other European countries, France is among the states currently facing significant political challenges in managing refugee arrivals fleeing conflicts in the Middle East and Africa. Furthermore, France has grappled with the perception of refugees as a security threat in the wake of the recent attacks in Paris. Kenya has experienced similar challenges following the 2013 Westgate shopping mall attack and the 2015 Garissa University College. As the numbers of refugees in Africa and Europe continue to increase, evaluating the likely trajectory of state displacement policy and the motivating factors behind potential policy shifts is essential for refugee protection.

#### **4.1. France**

The first modern nation-state to recognize the right to seek asylum, France initially documented this right in the wake of the 1789 Revolution under article 120 of the Constitution of



1793.<sup>111</sup> This precedent was maintained in the Constitution of 1946 and motivated other European countries such as Germany and Italy to adopt similar clauses in their respective constitutions following World War II.<sup>112</sup> The foundation of modern state displacement policy in France was created by the 1950 Act on the Right of Asylum, which served to reinforce the country's commitment to refugees. Given the nation's history of welcoming asylum seekers, it is not surprising that France was among the first states to sign and ratify the 1951 Convention in 1954.<sup>113</sup> The chart below depicts long-term trends in France from UNHCR's Population Statistics Database highlighting this relatively stable period.<sup>114</sup> Overall numbers increased from the mid-1980's through the mid-1990's then began to increase again in the early 2000's with a marked steady increase since 2008. At the end of 2014, UNHCR reported 309,519 persons of concern were registered in France.<sup>115</sup> This figure does not account for those who have arrived and are living in France but have not registered with UNHCR.

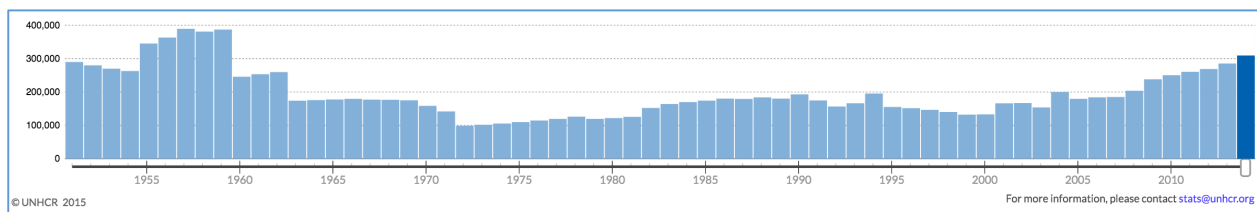


Chart 1: *UNHCR Persons of Concern in France, 1951-2014*

France maintained its open asylum and refugee policy from the 1960's through most of the 1980's earning the country a reputation for being a welcoming place for asylum seekers.<sup>116</sup> Refugees from the Middle East, Africa, and even Latin America with no traditional ties to France began to arrive during that period. Although the influx of asylum seekers placed a strain on the system, which resulted in a near tenfold increase in processing time, French displacement policy remained relatively stable until post-Cold War population movements increased concerns that Eastern Europeans were coming to France under the false pretense of political persecution. Following an upsurge in asylum applications in the late 1980's, France adopted a policy in 1991 that disallowed political refugee status for asylum seekers from Poland, Czechoslovakia, and

<sup>111</sup> Lambert, H., Messineo, F., & Tiedmann, P. (2008) Comparative Perspectives of Constitutional Asylum in France, Italy, and Germany: Requiescat in Pace? *Refugee Survey Quarterly*, 27(3), 16-26.

<sup>112</sup> Ibid.

<sup>113</sup> "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol." UNHCR News. 2011.

<http://www.unhcr.org/4ec262df9.html>.

<sup>114</sup> "Population Statistics." UNHCR. <http://popstats.unhcr.org/en/overview>

<sup>115</sup> Ibid.

<sup>116</sup> Riding, Alan. "France Imposes a Tighter Political Refugee Policy." *The New York Times*. February 13, 1991.

<http://www.nytimes.com/1991/02/14/world/france-imposes-a-tighter-political-refugee-policy.html>.

Hungary. The restrictiveness of this policy was somewhat eased in 1998 when the Constitutional Court effectively merged conventional with constitutional asylum ensuring anyone who sought asylum in France would be allowed temporary entry and application consideration under due process.<sup>117</sup>

Meanwhile, the post-Cold War 1990's marked an era of increasingly restrictive asylum policy across Europe. The relaxation of internal borders under the 1990 Schengen Convention, which was designed to increase freedom of movement within what eventually became the European Union (EU) under the 1993 Maastricht Treaty, significantly strengthened external borders and increased regulation of asylum-seeking across Europe.<sup>118</sup> These developments, along with the 1990 Dublin Convention and the 1993 Dublin II Convention impacted displacement policy in France as it became increasingly necessary to consider international, as well as regional, norms in the domestication of displacement policy.<sup>119</sup> Further mainstreaming the desire for a regional system, the goal of the 1997 Treaty of Amsterdam was to create a common asylum system that would shape policies and processes across the EU.<sup>120</sup> The challenges associated with asylum in the EU rendered such a system necessary in order to streamline processing and to ensure the enforcement of a unified standard across Member States.<sup>121</sup>

The desire to limit the number and origin of asylum seekers and refugees observed in the early 1990's resurfaced in 2004 when the French Constitutional Court passed a law reforming the 1950 Act on the Right of Asylum.<sup>122</sup> The French Office for the Protection of Refugees and Stateless Persons (OFPRA) drafted a list of "safe countries," which they deemed countries of origin that maintained an acceptable level of respect for citizens' political rights. The reform required that applications from any one of these countries be expedited and directed that the asylum seekers from "safe countries" should not receive social assistance nor full legal rights to seek employment.<sup>123</sup> The "safe countries" method of processing asylum claims remains in effect today.

France involved UNHCR in its refugee and asylum affairs for the first time 2002 when UNHCR assisted the French Red Cross in managing the locally established refugee camp in

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<sup>117</sup> Riding, Alan. "France Imposes a Tighter Political Refugee Policy." The New York Times. February 13, 1991. <http://www.nytimes.com/1991/02/14/world/france-imposes-a-tighter-political-refugee-policy.html>.

<sup>118</sup> Hatton, T. & Williamson, J. (2004) Refugees, Asylum Seekers and Policy in Europe. Institute for the Study of Labor, IZA DP No. 1230.

<sup>119</sup> Ibid.

<sup>120</sup> OFPRA." Histoire De L'asile. <https://www.ofpra.gouv.fr/fr/histoire-archives/histoire-de-l-asile>.

<sup>121</sup> Although it did not immediately impact the French asylum system, the goal of the Treaty of Amsterdam was realized in 2013 with the establishment of the Common European Asylum System (CEAS), which effectively streamlined the reception process for all asylum seekers across Europe.

<sup>122</sup> "Institute of Global Law." French Legal News. [http://www.ucl.ac.uk/laws/global\\_law/legal-news/french/index.shtml?immigration](http://www.ucl.ac.uk/laws/global_law/legal-news/french/index.shtml?immigration).

<sup>123</sup> UNHCR Resettlement Handbook. France 2014 Country Chapter. <http://www.unhcr.org/5322ca479.pdf>

Sangatte and again in 2008 when the government signed an agreement with UNHCR to consider resettlement of refugees under the UNHCR mandate. External to the agreement, France pledged to resettle 1200 religious minorities from Iraq, most of whom were resettled between 2008-2012. France renewed its commitment to resettle refugees in 2013 with a pledge to accept only 500 Syrian refugees.<sup>124</sup>

The most recent changes in French policy occurred in July 2015 when the Parliament adopted the Asylum Reform Bill and shortly after in November 2015 when President François Hollande announced that France would accept 30,000 Syrian refugees. The Asylum Reform Bill was a product of three years of analysis by the French government designed to improve what has been recognized as a cumbersome asylum claims process. The bill was designed to “ensure that all those eligible for asylum receive a more dignified welcome in France”<sup>125</sup> by reducing application processing time by one third and instituting a new housing system that would disperse asylum seekers across the country in order to enable higher quality reception, while also making the removal of rejected asylum seekers a higher priority.<sup>126</sup> The bill also makes additional resources available to the OFPRA and the National Court for Right of Asylum (CNDA) to welcome an additional 15,000 refugees.

The following analysis examines shifts and stagnations in French displacement policy since 1954 outlined in Table 1 below. These policy shifts were chosen because of their saliency and overall impact on French refugee and asylum policy. An exploration of France’s current policies and synthesis of the intersection of policy trends and current events is then presented. Finally, the potential impacts on future policy outcomes are considered.

<b>Year</b>	<b>Policy Shift</b>	<b>Historical Context</b>	<b>Security as Primary Factor?</b>
1962 – 1967	Assisted evacuation and integration of the <i>pieds noirs</i> ; citizenship granted to the <i>harkis</i> who fled to France	Algerian War: <i>Pieds Noirs</i> and <i>Harkis</i>	No. Actions taken by the government to accept <i>pieds noirs</i> and <i>harkis</i> were based on international and domestic legal obligations and human rights considerations.
1970’s – early 1980’s	Period of stability	Minor increase in numbers of asylum seekers and refugees	No. France remained open to asylum seekers and refugees during this period.
1991	Political refugee status policy changed	End of the Cold War combined with increased anti-	No. France was concerned about accepting asylum seekers who were falsely

<sup>124</sup> UNHCR Resettlement Handbook. France 2014 Country Chapter. <http://www.unhcr.org/5322ca479.pdf>

<sup>125</sup> “Asylum Reform Definitively Adopted by Parliament.” [Gouvernement.fr. http://www.gouvernement.fr/en/asylum-reform-definitively-adopted-by-parliament.](http://www.gouvernement.fr/en/asylum-reform-definitively-adopted-by-parliament)

<sup>126</sup> *Ibid.*

		immigrant sentiment across France	claiming persecution in an already over-burdened system.
1999 – 2002	Sangatte Refugee Camp established and subsequently closed	Increased migration to Calais following the crisis in Kosovo	No. Initial inaction and subsequent agreement with the UK was driven by the political context
2003 – 2004	French Constitutional Court reformed the 1950 Act on the Right of Asylum	Dublin II regulation adopted by the EU	Unlikely. Motivation to create the “safe country” list was more likely based on desire to streamline processing than increase security.
2014	Asylum center intended to replace “the Jungle” opened by the French government	Rapid increase in asylum applications in France between 2007-2013	Unlikely. Although security may have been lower level factor, primary factors includes economic stability, civil society attitudes, and international perceptions on human rights.

Table 1: *Policy Shifts in France, 1954-2014*

**1962: Pieds Noirs and Harkis.** The *pieds noirs* were largely a group of European immigrants from France, Italy, and Spain who lived in Algeria as French citizens.<sup>127</sup> The *harkis* were ethnic Algerians who fought beside the French or worked for the Government of France during the Algerian war of independence between 1954 and 1962.<sup>128</sup> The Algerian war was a complex conflict fought primarily between France and those Algerians who supported independence. However, the conflict was also a civil war between Algerians who sought independence and those who wanted the Algeria to remain a French territory, primarily the *pieds noirs*. The war ended when Algeria won independence in 1962. Algerians who supported independence saw the *pieds noirs* and the *harkis* as traitors. As a result, they faced severe persecution by their fellow Algerians for supporting France during the conflict. In the immediate aftermath of the conflict, 800,000 *pieds noirs* of French nationality were evacuated to France and an additional 160,000 *harkis* were relocated to France between 1962-1967. External to the official relocation, only about 90,000 of the 250,00 Muslim *harkis* who attempted to escape to France arrived successfully. After the war, over 100,000 *harkis* who were viewed as traitors were killed in Algeria.<sup>129</sup> The French government made a substantial effort to evacuate the *pieds noirs*, however significantly less was done for the *harkis*. Although France decided to grant

<sup>127</sup> UNHCR. The State of the World's Refugees 2000. Chapter 2. <http://www.unhcr.org/3ebf9baa0.htm>

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

French citizenship to the *harkis*, the lack of expediency in providing evacuation assistance led to over 100,00 deaths immediately following the end of the war.<sup>130</sup>

Evacuation of the *pieds noirs* was viewed as essential given the threat of persecution and death they faced in Algeria. Under French asylum law at that time, all *pieds noirs* qualified for legal asylum in France. The *harkis* certainly qualified as well but the French government provided significantly less support to this primarily Algerian Muslim group.<sup>131</sup> Although both groups were welcomed by the government of France, they faced serious discrimination and challenges to integration with French society. Although the *pieds noirs* were technically French citizens, most of them had moved to Algeria from other European countries. Rather than return to a home that was familiar and welcoming, the *pieds noirs* arrived in France as newcomers and, in many cases, were treated poorly. The French government decided to treat different asylum seekers differently during this period. Given the integration challenges faced by both groups, understanding why the government chose not to respond more robustly to certain refugee concerns lends insight into policy motivations.

The lack of a policy response to an event as significant as evacuation and relocation of the *pieds noirs* and the *harkis* can often present a larger analytical challenge than that presented by a robust response. Despite the country's long history of welcoming large numbers of refugees, this event marked the first time France had been faced with such a significant number of newcomers under circumstances not supported by a large portion of the population.<sup>132</sup> France, still emerging from WWII, was not particularly concerned about security in the 1960s. Moreover, the country was benefitting from a growing economy under the leadership of the President Charles de Gaulle. Although the Algerian War presented significant challenges for de Gaulle, the country prospered economically and politically throughout most of the remainder of the decade. During this period of relative stability, the country regained its status among other great powers in the international community. Evacuating the *pieds noirs* was a necessary decision given their French citizenship and support of the French colony. Although de Gaulle did not support the *harkis*, he may have believed that welcoming those *harkis* who chose to flee to France was, at minimum, an obligation given the conditions at the time.<sup>133</sup> Although they largely did so because they were impoverished and had very few alternatives in Algeria, the *harkis* had been fighting for France. Had the government not provided citizenship and some financial and materials assistance, the French may have risked a violent backlash from this

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<sup>130</sup> UNHCR. The State of the World's Refugees 2000. Chapter 2. <http://www.unhcr.org/3ebf9baa0.htm>

<sup>131</sup> Ibid.

<sup>132</sup> "France" Focus-Migration: Background information. <http://focus-migration.hwwi.de/France.1231.0.html?&L=1>.

<sup>133</sup> "France-Algeria: 50 Years After Independence, What Happened To The Harkis?" International Business Times. April 2, 2012. <http://www.ibtimes.com/france-algeria-50-years-after-independence-what-happened-harkis-214408>.

otherwise foreign group of people who fought for them. Housed in former military camps, many of which became low-income communities due to lack of opportunity and discrimination, the *harkis* fared worse than their *pieds noirs* counterparts. These groups received the assistance required by French law, which allowed the government to assert that its obligations to both the *pieds noirs* and the *harkis* had been fulfilled.

Given France's reestablishment on the international stage and the country's long tradition of upholding human rights principles, doing any less for the *pieds noirs* and the *harkis* would have been akin to a betrayal of foundational values. On the other hand, doing any more than the minimum required could have upset significant portions of the population who viewed these groups rather unfavorably. Despite the growth of the French economy at the time, many people were still living in poverty and saw the assistance provided to the *pieds noirs* and the *harkis*, as unjust given their circumstances. Providing the minimum assistance required by the 1950 Act on the Right of Asylum and the 1951 Convention delivered the balance between meeting international obligations and maintaining peace among civil society that France needed. Although staying the political course was the most logical policy for many years, geopolitics would eventually force France to reassess its laissez-faire stance.

**1991: Political Refugee Status Policy.** The period following the Algerian War through the late 1980's was characterized by a relative period of stability in France. Despite the growing economic challenges associated with low wages and high unemployment, the numbers were manageable and the system in place was sufficient to manage the influx. France maintained an open asylum policy throughout this period, however, indications that the relative stability of the system could change increased as number of asylum applications rose sharply in the late 1980's. Asylum application rose steadily from only a few thousand per year during the 1970's to over 27,000 in 1985 and more than 60,000 by 1989.<sup>134</sup> Many of the asylum seekers arriving in France during the mid to late 1980's originated from Eastern Europe and the majority of applications processed resulted in denial. In 1991, the French government announced a policy restricting asylum applications from Poland, Czechoslovakia, and Hungary asserting that democracy had been reestablished in those countries following the end of the Cold War.<sup>135</sup> Understanding why the government chose to restrict asylum applications associated with specific sending countries following a significant increase in the overall number of asylum applications lend insight into the motivations that drove the shift in policy.

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<sup>134</sup> Guedendelsberger, J. (1994) New Limits on Asylum in France: Expediency Versus Principle. *American University International Law Review*, 9(4): 129-158.

<sup>135</sup> Riding, Alan. "France Imposes a Tighter Political Refugee Policy." *The New York Times*. February 13, 1991. <http://www.nytimes.com/1991/02/14/world/france-imposes-a-tighter-political-refugee-policy.html>.

Although the French government undertook efforts to reduce the asylum system processing backlog that had grown unwieldy by the mid-1980's, strategies to reduce processing time in order to dissuade individuals without valid claims from filing asylum applications in order to take advantage of the right to work and receive social benefits during processing time were largely unsuccessful.<sup>136</sup> Although the percentage of successful applications decreased during this period, the incentives to file applications continued to attract more claims. The social climate in France at the time drew attention to the asylum process resulting in opposition within the government and among civil society. France was facing difficult economic times characterized by high unemployment and increasingly anti-immigrant rhetoric among elected officials. A general lack of willingness in civil society to integrate new foreign arrivals into French culture and society intensified these sentiments. The government's decision to disallow asylum seekers from Poland, Czechoslovakia, and Hungary was enacted among other reforms, including the decision to begin fingerprinting applicants in 1989 and the retraction of the automatic right to work and cessation of social benefits in 1991.<sup>137</sup> However, the decision to restrict asylum based on country of origin was extraordinary because it created a basis for the "safe country" system later developed in 2004 as an integral part of France's asylum system.

The strength of the bureaucratic capacity of the French government coupled with the increasingly anti-immigrant sentiment across France enabled changes in the asylum system that directly discriminated against asylum seekers from specific countries. France seemingly made this decision based on the assumption that citizens of Poland, Czechoslovakia, and Hungary would not be susceptible to the persecution of the state because of the supposed guarantees provided by a democratic system of government. However, the decision to exclude applications based only on country of origin risks excluding individuals with valid asylum claims. Given the overburdened system and the increased anti-immigrant attitudes among civil society, the government likely took this step in an effort address both the economic and social concerns raised by the increase in asylum applications.

**1999-2002: Sangatte Refugee Camp.** Sangatte is a small town located in northern France just outside of Calais, a port city that hosts the entrance to the Channel Tunnel connecting France the Great Britain. After several families, many with children, began to arrive in Calais in the wake of the crisis in Kosovo in the late 1990's, several local NGOs and community volunteers opened a shelter for the families.<sup>138</sup> Recognizing the need for better

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<sup>136</sup> Guedendelsberger, J. (1994) New Limits on Asylum in France: Expediency Versus Principle. *American University International Law Review*, 9(4): 129-158.

<sup>137</sup> Ibid.

<sup>138</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

conditions for the growing numbers of refugees arriving there, these local groups lobbied Eurotunnel requesting use of part of an old hangar in Sangatte that was previously used to store equipment needed to dig the tunnel. Following successful acquisition, camp management responsibilities were given to the French Red Cross and by early 2002 the camps grew to as many as 1,600 people. Well beyond capacity of the facility, the surge in numbers prompted the organization to register everyone living in the camp with the goal of restricting new residents.<sup>139</sup> UNHCR established a permanent presence in the camp in October 2002 with the intent “to compile a profile of the Sangatte residents and provide them with one-to-one legal counseling and advice.”<sup>140</sup> According to UNHCR, more than 80 percent of the people living in the camp were from Iraq, Afghanistan and Sudan and including unaccompanied minors, single women, and disabled persons.<sup>141</sup>

Despite riots staged by camp residents, and failed attempts by Eurotunnel and local French and British authorities in 2001 to close the camp, the national French government, media, and civil society initially took relatively very little interest in Sangatte.<sup>142</sup> Movement of the people living in the camp was not restricted and the population and migration division of the French Labour and Solidarity Ministry staff supported camp operations.<sup>143</sup> The French Red Cross estimated that the camp population was about 1,700 people, but the constant movement in and out of the camp as people repeatedly tried and failed to make the crossing to Britain indicated that the number was probably closer to 3,000 people.<sup>144</sup> With the increase in numbers of Sangatte residents came an increase in security measures. A double fence was built around the camp and closed-circuit cameras were installed along with a constant police patrol presence.<sup>145</sup> The camp was finally closed at the end of 2002 when the British and French governments reached a burden-sharing agreement under which the U.K. would accept the majority of asylum seekers.<sup>146</sup> Examining the causes behind the relatively large influx of asylum seekers to Calais and the rationale for the French government to accept the burden-sharing agreement with the UK provides insight into the French response.

As with the case of the *pieds noirs* and the *harkis*, political factors again provide the best insights into the factors that motivated France to engage in the Sangatte refugee camp crisis. Schuster provides an in-depth look at many of the potential reasons that asylum seekers in

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<sup>139</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

<sup>140</sup> "Sangatte: UNHCR Establishes Permanent Presence." UNHCR News. <http://www.unhcr.org/3dafa36e5.html>.

<sup>141</sup> Ibid.

<sup>142</sup> Reinisch, J. (2015) 'Forever Temporary': Migrants in Calais, Then and Now. *The Political Quarterly*, 86(4): 515-522.

<sup>143</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

<sup>144</sup> "Sangatte: UNHCR Establishes Permanent Presence." UNHCR News. <http://www.unhcr.org/3dafa36e5.html>.

<sup>145</sup> Reinisch, J. (2015) 'Forever Temporary': Migrants in Calais, Then and Now. *The Political Quarterly*, 86(4): 515-522.

<sup>146</sup> Ibid.



Sangatte wanted to claim asylum in the UK rather than France.<sup>147</sup> Among the most important of these are a particular set of pull factors including social networks, the possibility of finding work, the opportunity to rely on English as the primary language, and “the persistent belief that Britain is a place where human rights are respected.”<sup>148</sup> In addition, the asylum process in France was more difficult to navigate than the process in Britain and asylum seekers could obtain, although not always easily, a work permit six months after applying for asylum in Britain.<sup>149</sup> These motivations meant that the people living in the Sangatte refugee camp were very transitory, often making multiple attempts to make it to Britain using Sangatte as a place to return each time they failed. Initially the camp did not present a security or economic threat to the government because its residents were generally peaceful and the French Red Cross, local NGOs, and other local volunteers made significant efforts to help the people living first in Calais, then Sangatte.

Although attention to the situation increased when riots broke out in 2001, the primary motivation for France’s eventual shift in policy was ultimately driven by international relations. The lack of national government responsiveness to the asylum seekers in Sangatte may have been a strategic political calculation. The government may have been aware that they preferred to seek asylum in Britain and therefore, had no intention of staying in France. Despite relatively consistent numbers in the camp, the population was small and was being handled by local organizations. The issue gained attention from Britain during the 2001 elections. Although the Dublin convention required the asylum seekers to claim asylum in their first country of entry in the EU, France did not seem concerned about this regulation. In short, there was a lack of political interest over the issue until the British began to pay more attention to immigration and asylum during election season.<sup>150</sup> Once the issue took center stage in Britain, the British government was motivated to engage France on the issue. The French media became more substantially involved after the September 11, 2001 attacks in the US. Despite calls by several local mayors requesting the government close the camp, France remained relatively unresponsive. Britain and France each made calculated political moves that eventually concluded with a burden sharing deal that resulted in closure of the camp with the majority of asylum seekers relocated to Britain. Both France and Britain hoped that closing the camp would resolve the issue of asylum seekers making efforts to travel to Britain through the Channel

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<sup>147</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

Tunnel, however, refugees continued to arrive in France with hopes of going to Britain.<sup>151</sup> Perhaps somewhat motivated by the unexpected events at Sangatte, France reformed its domestic asylum and refugee legislation for the first time since the 1950 Act on the Right of Asylum over 50 years later in 2004.

**2004: 2004 Act on the Right of Asylum.** The French Constitutional Court reformed the 1950 Act on the Right of Asylum in December 2004.<sup>152</sup> Although policy in the early 1990s first suggested a potential shift away from France's traditionally open asylum policy, 2004 marked the first legislation that effectively limited the likelihood of individuals from certain sending countries to receive asylum. Under the updated law, the French government began expediting all asylum claims from individuals who listed one of the "safe countries" as their home of origin.<sup>153</sup> The safe country concept defines a country as safe "if it ensures respect for the principles of freedom, democracy and the rule of law, as well as human rights and fundamental freedoms."<sup>154</sup> Although asylum seekers benefitted from a more expedient claims process, the legislation dictated that no social assistance would be provided to individuals from these countries, making the waiting period more difficult overall. Analyzing the impetus for changing the asylum act after more than 50 years, understanding why the government developed the safe country concept, and examining why social assistance associated with claims under the accelerated system was limited is necessary for understanding this policy shift.

The decision to reform the 1950 Act on the Right of Asylum was likely influenced by the changes to European Refugee and Asylum law in the late 1990's and early 2000's. The first Schengen Convention adopted in 1995 required that European signatory states establish trust and cooperation on asylum policy and refugee protection, as these new arrivals would also be allowed to move freely through the Schengen zone.<sup>155</sup> Although states retained the right to resume border checks or close borders completely when circumstances dictated a higher level of security, the Schengen agreement made travel within the European Union significantly easier. The regulations governing asylum-policy associated with the Schengen Convention were replaced in 1997 by the Dublin Convention and again in 2003 when the Dublin II Regulation was adopted by the EU. This agreement, partially motivated by concerns expressed by Britain during the Sangatte dispute, dictated that asylum seekers remain in their first country of asylum until the claims process was complete regardless of the freedom on movement afforded by

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<sup>151</sup> Schuster, L. (2002) Sangatte: A False Crisis? *Global Dialogue*, 4(4): 57-68.

<sup>152</sup> "Institute of Global Law." French Legal News. [http://www.ucl.ac.uk/laws/global\\_law/legal-news/french/index.shtml?immigration](http://www.ucl.ac.uk/laws/global_law/legal-news/french/index.shtml?immigration).

<sup>153</sup> "The Safe Country Concepts." - France. <http://www.asylumineurope.org/reports/country/france/asylum-procedure/safe-country-concepts>.

<sup>154</sup> Ibid.

<sup>155</sup> "Schengen and the Free Movement of People Across Europe." Migrationpolicy.org. October 1, 2005. <http://www.migrationpolicy.org/article/schengen-and-free-movement-people-across-europe>.

Schengen.<sup>156</sup> Updating the 1950 Act on the Right of Asylum during this period also enabled the French government to ensure state law conformed with regional norms set by the EU. Given the recent challenges facing the country as a result of the Sangatte experience and the growing numbers of asylum applications being received, EU legislation limiting the number of asylum seekers who could travel freely to France unless it was their first country of asylum was seen as a welcome change for EU member states.

The two primary outcomes of the decision to pass updated asylum legislation included systematic claims processing by OFPRA under an accelerated procedure based on the safe country list and the release of state obligation to provide social services to those asylum seekers from these designated safe countries. As the numbers of asylum seekers continued to increase, concerns over economic factors played an increasingly significant role. Streamlining processing claims and refusing social assistance to these asylum seekers may have reduced the cost associated with these claims, providing an economic incentive for the government to enact the reform. This decision would have necessitated balancing economic benefits with national security concerns, therefore the decision to maintain a list of safe countries may have provided France with a mechanism by which to determine which asylum seekers were less likely to pose a lesser security risk based on country of origin. However, motivations based on compositional amenities may have also factored in to the decision to create a list of safe countries. The definition of a safe country outlined above echoed the traditional French values of liberty and equality and, with few exceptions, included countries rooted primarily in the Christian tradition. Although France continued to welcome asylum seekers and refugees, civil society attitudes and national values dictated that the government strike a balance between upholding its international obligations and remaining true to human rights ideals with citizens' demands to maintain French cultural traditions. The subsequent increase in asylum applications would create an even greater political challenge for the French government.

**2007-2013: Asylum Center in Calais Opened.** The number of asylum applications France received between 2007 and 2013 more than doubled<sup>157</sup> with 60,200 new asylum applications in 2013 alone.<sup>158</sup> Although the total number of applications decreased by 2% in 2014 as fewer asylum seekers from Serbia and Kosovo were arriving, the numbers of asylum seekers in Calais and Sangatte resurged. The Sangatte camp was officially closed in 2002,

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<sup>156</sup> "Schengen and the Free Movement of People Across Europe." Migrationpolicy.org. October 1, 2005. <http://www.migrationpolicy.org/article/schengen-and-free-movement-people-across-europe>.

<sup>157</sup> "Asylum Reform Definitively Adopted by Parliament." Gouvernement.fr. <http://www.gouvernement.fr/en/asylum-reform-definitively-adopted-by-parliament>.

<sup>158</sup> "Asylum Trends 2014: Levels and Trends in Industrialized Countries." UNHCR. March 26, 2015. <http://www.unhcr.org/551128679.pdf>.

however, the number of people arriving in Calais and Sangatte continued virtually unabated.<sup>159</sup> By 2009 the attention paid to the issue had increased significantly compared to the laissez-faire attitude that characterized the late 1990's and early 2000's. Analyzing the government's response to this rapid increase in asylum applications illuminates the government's motivation behind the decision.

Involvement by the French immigration minister in 2009 signaled that the French government was taking the protracted and increasingly complex issue of asylum seekers and refugees in this region more seriously. The construction of new camps in response to the continued arrivals, with both the French and British governments strongly against, initially dominated the debate. British government officials asserted that any formalization of a camp system would only encourage more people to come to France with the intent of seeking asylum in the U.K. Those closer to the situation, including the Mayor of Calais, disagreed asserting that many people were already there and would continue coming regardless. UNHCR returned in 2009 and remains in place today, save a two-year period between 2012 and 2014 when a local French NGO assumed responsibility for providing counseling and legal aid to asylum seekers. UNHCR has expressed concerns about the lengthy asylum claim processing time and the lack of assistance provided to those seeking asylum.<sup>160</sup> Although much of the international attention on asylum seekers from Afghanistan, Iraq, Syria has shifted to Greece, Italy, and Hungary, the continued presence of asylum seekers in Calais and regional pressure to address the situation has remained.

In 2014, as the numbers of asylum seekers continued to increase, the government finally decided to reopen a center for asylum seekers in Calais. The goal of the center was to replace the migrant shantytown on the outskirts of Calais known as the Jungle.<sup>161</sup> Security concerns became a factor when reports from Calais indicated emerging patterns of unrest. With the memory of the Sangatte camp fresh in the minds of policymakers, there was a strong desire to avoid any potential security issues. Economic concerns also resurfaced. The French interior minister Bernard Cazeneuve estimated that the center would cost the French government approximately 3 million euros each year.<sup>162</sup> Moreover, Reinisch observed that "it is no coincidence that situations in both Sangatte and the Jungle escalated during periods when British and French unemployment and levels of economic activity diverged, which fuelled

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<sup>159</sup> Reinisch, J. (2015) 'Forever Temporary': Migrants in Calais, Then and Now. *The Political Quarterly*, 86(4): 515-522.

<sup>160</sup> Ibid.

<sup>161</sup> Reinisch, J. (2015) 'Forever Temporary': Migrants in Calais, Then and Now. *The Political Quarterly*, 86(4): 515-522.

<sup>162</sup> Bouchaud, Melodie. "Remembering Sangatte, France's Notorious Refugee Camp | VICE News." VICE News RSS. November 4, 2014. <https://news.vice.com/article/remembering-sangatte-frances-notorious-refugee-camp>.

perceived and actual differences in the prospects of newcomers.”<sup>163</sup> This observation highlights the intersection of economic considerations with the need to balance international relationships and civil society attitudes.

The importance of maintaining a reputation as human rights respecting countries in the eyes of the international community can also play a significant role in decision-making. Reports by several human rights agencies indicate that conditions in Calais are substandard, with many people sleeping out in the cold despite asylum law provisions that require the government to provide housing for asylum seekers.<sup>164</sup> The same reports suggest lack of sanitation, access to clean water, and routine police brutality are significant causes for concern.<sup>165</sup> Although the government is doing more for asylum seekers now than during the situation in Sangatte, France may need to make a greater effort to ensure it is providing for asylum seekers within the full scope of the law in order to avoid accusations of human rights violations. Further, the government may be required to provide a stronger guarantee to the international community and to French citizens that France is doing everything possible to address the issue, not only with respect to human rights, but also to traditional French societal values.

Recognizing the need for additional reform, the government conducted a full analysis of the state’s asylum policy from 2012-2015.<sup>166</sup> The government concluded that the process, which often required 24 months or more, was too lengthy and noted concern that most asylum seekers were living in just three regions of the country. As a result, the Asylum Reform Bill adopted by Parliament in July 2015 sought to reduce processing time to 9 months and introduced a housing system designed to improve reception conditions and reduce concentrations of asylum seekers in certain areas. Similar to the 2004 Act on the Right of Asylum, this legislation was designed to expedite processing of asylum claims, perhaps to reduce the economic and social burden on the state. Unlike the 2004 legislation, the claims processing built into the 2015 Asylum Reform Bill Security is not limited to asylum seekers on the safe countries list. All asylum seekers are now required to enter into the national relocation system, rather than retain the ability to choose where to receive housing and other social assistance. The government asserts that the directed housing system will improve the quality of reception centers by reducing the number of people processed in one center and increasing the time and attention available to each individual asylum seeker or family unit. However, security concerns and civil society attitudes are potential

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<sup>163</sup> Reinisch, J. (2015) 'Forever Temporary': Migrants in Calais, Then and Now. *The Political Quarterly*, 86(4): 515-22, p. 518.

<sup>164</sup> "France: Migrants, Asylum Seekers Abused and Destitute." Human Rights Watch. January 20, 2015.

<https://www.hrw.org/news/2015/01/20/france-migrants-asylum-seekers-abused-and-destitute>.

<sup>165</sup> *Ibid.*

<sup>166</sup> "Asylum Reform Definitively Adopted by Parliament." Gouvernement.fr. <http://www.gouvernement.fr/en/asylum-reform-definitively-adopted-by-parliament>.

other factors that likely affected the legislation. Reducing the numbers of asylum seekers and refugees living in the same communities could advantage the government in two ways. First, given national security concerns with potential terrorists attempting to enter Europe as asylum seekers, housing individuals in dislocated areas may reduce opportunities for networking. Second, given French attitudes about the importance of secularism in public life and the prioritization of integration over cultural integrity, civil society may be more amenable to refugee arrivals if the claims processing system is more efficient. Although this decision appears to reflect increasing concerns about the welfare of asylum seekers and refugees in France, it also seems to favor maintenance of traditional French cultural ideals and appears to favor security concerns over the self-determination of those seeking assistance in France.

## 4.2. Kenya

Kenya achieved independence following decades of British colonial rule under the Kenya Independence Act of 1963. The country officially became the Republic of Kenya in 1964 with Jomo Kenyatta as the first president. Since independence, Kenya has hosted refugees from most of its neighboring countries, especially Somalia and Sudan. Kenya became a state party to the 1951 Convention in 1966, marking official participation in the international refugee regime. Like most of Africa during this period, asylum and refugee policy was rather open. The government allowed asylum seekers to self-settle, and afforded them freedom of movement and the right to work.<sup>167</sup> The number of refugees arriving during this period was relatively small and comprised people fleeing national wars of liberation across the continent.<sup>168</sup> Kenya's policy toward asylum seekers and refugees remained relatively open throughout the 1970's and 80's. During the 1970's and 1980's, Kenya hosted about self-settled 15,000 refugees and maintained responsibility over refugee states determination (RSD) affairs.<sup>169</sup> The first significant influx of refugees into Kenya began in the 1970's when large numbers of primarily self-settled Ugandan refugees arrived.<sup>170</sup> The chart below depicts long-term trends in Kenya from UNHCR's Population Statistics Database.<sup>171</sup> UNHCR did not track persons of concern prior to the surge in arrivals in the early 1990's when the conflicts in Somalia and Sudan prompted thousands of refugee arrivals. Another significant surge occurred in 2008 caused by a large influx in refugees from Somalia and a significant degree of internal displacement caused by the election violence

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<sup>167</sup> Kumssa, A. et al. (2014) Conflict and Migration: The Case of Somali Refugees in Northeastern Kenya. *Global Social Welfare*, 1:145-156.

<sup>168</sup> Loescher, G., & Milner, J. (2005) The long road home: protracted refugee situations in Africa. *Survival*, 47, 153–174.

<sup>169</sup> Crisp, J. (2000) A State of Insecurity: The Political Economy of Violence in Kenya's Refugee Camps. *African Affairs*, 99(397): 601-632.

<sup>170</sup> Loescher, G., & Milner, J. (2005) The long road home: protracted refugee situations in Africa. *Survival*, 47, 153–174.

<sup>171</sup> "Population Statistics." UNHCR. <http://popstats.unhcr.org/en/overview>

that occurred that year. At the end of 2014, UNHCR reported 606,163 persons of concern were registered in Kenya.<sup>172</sup> This figure does not account for those who have arrived and are living in Kenya but have not registered with UNHCR.

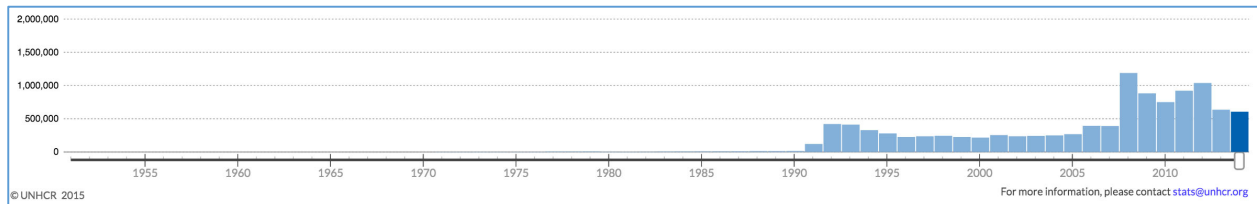


Chart 2: UNHCR Persons of Concern in Kenya, 1951-2014

Although Kenya maintained an open policy throughout the 1970's and early 1980's, an increase in refugee flows resulting from the changing geopolitical landscape in the mid-1908's eventually led to a shift in policy. The politicization of refugee issues in Africa through Western roles in African conflicts in Angola, Mozambique, and across the Horn of Africa combined with the disinterest of superpowers like the United States and Russia to play a meaningful role in durable solutions for refugees complicated the growing refugee crisis. Following the end of the Cold War, regimes collapsed across Africa as conflict intensified. This instability drove a mass movement of refugees from the region into Kenya.<sup>173</sup>

The conflicts in Somalia and Sudan in the early 1990s resulted in a massive influx that nearly quadrupled the refugee population of Kenya. Along with the thousands of new arrivals, Kenya moved many of the self-settled refugees to Dadaab, Kakuma, and Mombasa camps, which were opened in 1991 and 1992. Kenya eventually closed Mombasa and again enacted a forced relocation program to move the refugees there to Dadaab and Kakuma. At the same time, Kenya handed responsibility for refugees, including RSD activities, over to UNHCR.<sup>174</sup> Many refugees preferred to remain in Nairobi where opportunities for livelihoods were greater, however, the government insisted that all refugees must remain in camps.

Despite little evidence to support the claims, Dadaab and Kakuma soon became known as the most violent refugee camps worldwide. Violence spilled over into surrounding host community areas thus increasing security concerns. In 1997, despite the distance between the nearly 500 kilometers between Dadaab and Nairobi and over 800 kilometers between Kakuma and Nairobi, then President Daniel arap Moi alleged that spies and criminals had infiltrated

<sup>172</sup> "Population Statistics." UNHCR. <http://popstats.unhcr.org/en/overview>

<sup>173</sup> Ibid.

<sup>174</sup> Kumssa, A. et al. (2014) Conflict and Migration: The Case of Somali Refugees in Northeastern Kenya. *Global Social Welfare*, 1:145-156.

Nairobi from the camps posing as refugees.<sup>175</sup> This prompted the *refoulement* of thousands of refugees and set the stage for future government actions against refugees in Kenya.<sup>176</sup> Little substantive proof existed to support the accusations that refugees were responsible; however, negative perceptions of refugees were further reinforced following the bombing of the US Embassy in Nairobi in 1998 and the bombings in Mombasa in 2002.<sup>177</sup> Although the arap Moi government reinforced unfavorable attitudes toward refugees, the elections in 2002 appeared to create a political climate potentially more open to acceptance of refugees and the organizations interested in providing services. According to Ayiera, the democratic transformation that took place following the election of Mwai Kibaki enabled dialogue between the government and civil society. This subsequently reduced the resentment towards NGOs fostered by the arap Moi government<sup>178</sup> The potential for change came to fruition in 2006 when the Parliament passed the Kenya Refugee Act.

After years of debate and a seeming desire to ignore the severity of the refugee situation in Kenya, this legislation offered the first official body of guidance on refugee affairs. With the number of refugees increasing, Kenya allocated more land for Dadaab's Ifo camp in 2010. In 2011, two additional pieces of legislation were passed: the 2011 Refugee Bill replaced the 2006 Refugee Act, and the Citizenship and Immigration Act was passed with a provision for some refugees to integrate locally. Perhaps the most significant policy issued since 2006, the government again required all refugees in urban areas to be moved to camps in 2012. The stated reason was an increased concern that terrorist groups were sheltered among the refugee community. Somalis were to move to Dadaab while all others were to move to Kakuma. Although UNHCR had been allowed to register some refugees in Nairobi, all registration activities in urban areas were suspended following this directive. In an effort to reduce the numbers of Somali refugees in Nairobi, Kenya, Somalia, and UNHCR signed the 2013 Tripartite Agreement providing for voluntary repatriation of Somali refugees. Most recently, Kenya passed the 2014 Security Laws Act which limits the number of refugees and asylum seekers in Kenya to 150,000 and limits refugees to residence in Dadaab and Kakuma camps.

The following analysis examines shifts and stagnations in Kenya's displacement policy since 1966 outlined in Table 2 below. These policy shifts were chosen because of their saliency and overall impact on Kenyan refugee and asylum policy. An exploration of Kenya's current

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<sup>175</sup> Burns, A. (2010). Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis. *Refuge*, 27(1): 5-15.

<sup>176</sup> Ibid.

<sup>177</sup> Loescher, G., & Milner, J. (2005) The long road home: protracted refugee situations in Africa. *Survival*, 47, p. 157.

<sup>178</sup> Ayiera, E. (2007). Bold advocacy finally strengthens refugee protection in Kenya. *Forced Migration Review*, 28: p. 27.



policies and synthesis of the intersection of policy trends and current events is then presented. Finally, the potential impacts on future policy outcomes are considered.

Year	Policy Shift	Historical Context	Was Security the Factor?
1970's – 1980's	Open asylum and refugee policy	Pan-Africanism in the post-colonial period	No. Kenya remained open to asylum seekers and refugees during this period.
1990's	Dadaab and Kakuma refugee camps opened in 1991 and 1992 respectively	Conflicts in Somalia and Sudan resulted in mass influx of refugees	No. Kenya previously allowed self-settled refugees to enter the country. Primary reason for the encampment policy was limited resources and lack of bureaucratic capacity to manage the large influx.
2006	2006 Refugee Act passed (2011 Refugee Bill subsequently replaced 2006 Refugee Act)	Discussion about formalizing asylum and refugee policy underway for 15 years	No. Despite real threats to national security, the main factors included appeasement of the international community, desire to secure international development aid, and lack of bureaucratic capacity.
2011	2012 official Forced Encampment policy adopted	Kenya's Immigration Minister blamed Kenya's security problems on refugees	No. Primary factor was lack of bureaucratic capacity to address national security threats posed by Al-Shabaab. Refugees scapegoated to deflect blame on the government for failing to protect citizens.
2013	2014 Security Laws (Amendment) Act	Westgate Shopping Center attack	No. Primary factor was lack of bureaucratic capacity to address national security threats posed by Al-Shabaab. Attempted to expel refugees under the pretext of security concerns to escape responsibility for security.

Table 2: *Policy Shifts in Kenya, 1966-2013*

**1990's: Dadaab and Kakuma Refugee Camps Opened.** The conflicts in Somalia and Sudan set the stage for the next 25 years of state displacement policy in Kenya. Although Kenya had effectively remained open to refugee arrivals since independence in 1963, the geopolitical landscape changed significantly in the post-Cold War period prompting a series of shifts in Kenya. Loescher and Milner explain that the lack of western engagement together with

the withdrawal of US forces from Somalia in 1993 markedly affected the refugee crisis. These geopolitical shifts combined with more frequent intra-state conflict in Africa resulted in an increase in the number of refugees in Africa to almost 7 million by the mid-1990's.<sup>179</sup> In response to the mass influx of refugees, camps were initially considered the best means of delivering services to the increasingly large refugee population.<sup>180</sup> In order to manage the large refugee population, the government of Kenya opened Dadaab, Kakuma, and Mombasa camps. According to Burns, the refugees living along the coast in Mombasa enjoyed significantly more success than the refugees in Dadaab and Kakuma. He explains that Mombasa was later closed following pressure on the government levied by local community members who were displeased with the refugees' ability to take advantage of informal economic opportunities. The decision to open the camps was accompanied by the decision to transfer control of the government run refugee status determination process to UNHCR.<sup>181</sup> Understanding why Kenya decided to change its traditionally open refugee policy from one of largely self-settlement to camps, how the transfer of responsibility to UNHCR impacted Kenya's role in managing refugees, and the benefits the state enjoyed by allowing UNHCR to take control provides insight into the motivation behind the policy shifts.

The mass influx of refugees crossing the Kenyan border resulted in growing concern within the government about state sovereignty and territorial integrity. Furthermore, as refugees began pouring into Nairobi and the area along the border with Somalia, the government quickly recognized that it did not have the bureaucratic capacity or the financial and material resources necessary to support the large-scale influx of refugees. The primary security concerns that drove the decision to shift to an encampment policy were rooted in indirect security threats including tension between refugee and local host populations and increased crime and violence in refugee host areas. Further evaluating this decision from an economic perspective illuminates the underpinning of the indirect security concerns. This mass influx of refugees required the capacity to manage these arrivals, provide for basic human needs, and offer housing and other social services. This placed a financial strain on the government and increased the likelihood of negative economic impact on host communities in nearby towns and villages. Rather than attempt to manage the refugee influx independent of international assistance, the opportunity to accept assistance meant large sums of international emergency aid, the potential for development assistance, and the ability to transfer responsibility of the situation to an outside organization. With UNHCR in control, the government could easily shift the blame to the UN and

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<sup>179</sup> Loescher, G., & Milner, J. (2005) The long road home: protracted refugee situations in Africa. *Survival*, 47, p. 157.

<sup>180</sup> Burns, A. (2010). Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis. *Refuge*, 27(1): 5-15.

<sup>181</sup> Ibid.

its partner agencies should the camps become overburdened or fraught with crime and violence.

Although the shift to camps appeared to provide an initial solution, the conflict in Somalia continued longer than anticipated, refugee flows continued, and camps became overcrowded. In 1993, foreshadowing persistent challenges to come, the Kenya sent a request to UNHCR asking for the repatriation of all Ethiopian, Somali, and Sudanese refugees in Kenya citing security concerns caused by their presence.<sup>182</sup> The issue of national security soon became a theme throughout Kenya's refugee crisis. Despite this increasing challenge, it took the government almost 40 years since becoming a state party to the 1951 Convention to draft its first official piece of domestic legislation pertaining to refugees.

**2006: Refugee Act of 2006.** The Refugee Act of 2006 was the first piece of formal legislation that focused on refugees and asylum seekers in Kenya. Although discussions about formally domesticating international law governing the treatment of refugees and asylum seekers had been underway for more than 15 years, the government of Kenya was completely incapable of enforcing such a law because of severely limited bureaucratic capacity or a feasible plan of execution in place to implement the measures.<sup>183</sup> Despite efforts to adopt legislation designed to increase refugee protection, a policy capable of supporting implementation of the law ultimately failed to achieve the intended result. With the intent of increasing the protection of refugees, the legislation established an official Department of Refugee Affairs, a commissioner, a board, and an appeals process.<sup>184</sup> Among the most important articles were Article 16, the Rights and duties of refugees in Kenya, Article 18, the Non-return of refugees, their families or other persons, and Article 21, the Expulsion of refugees and members of their family.<sup>185</sup> Given the significant length of time needed for Kenya to pass this legislation, understanding what ultimately drove the decision to enact this law is potentially instructive. Despite the perceived progress made with the adoption of this bill, the ramifications of government failure to adequately enforce these measures further illustrates lack of bureaucratic capacity.

Kenya's decision to pass the 2006 Refugee Act was likely influenced by several contextual factors. Severe drought across the Horn of Africa in 2006 led to crop failure, widespread food shortages, and dwindling livestock herds. Unable to mount an adequate response to the crisis, Kenya depended on the international community to provide desperately

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<sup>182</sup> Rutinwa, B. (2002) *The End of Asylum? The Changing Nature of Refugee Policies in Africa*. *Refugee Survey Quarterly*, 21 (1 & 2): 12-39.

<sup>183</sup> Ayiera, E. (2007). Bold advocacy finally strengthens refugee protection in Kenya. *Forced Migration Review*, 28: p. 27

<sup>184</sup> Republic of Kenya. (2007) The Refugee Act 2006. Kenya Gazette Supplement, 97, Acts No. 13.

<sup>185</sup> Ibid.

needed assistance. Further highlighting Kenya on the international stage was the visit by then Senator Barack Obama who Kenyan citizens, and presumably the Kenyan government, perceived as a political figure who could advocate for increased international aid. A policy intended to increase refugee protection would certainly signal to the international community that Kenya was making an effort to meet its obligations toward refugees. Having an official policy in place also gave the government of Kenya marginally more legitimacy in the eyes of the international community and gave Kenya more domestic credibility in decision making about refugees and asylum seekers.

Dadaab and Kakuma quickly became the world's largest refugee camps and the government was under consistent pressure by the national NGO, the Refugee Consortium of Kenya and its national and international partners to pass the legislation.<sup>186</sup> At the same time, the government was under pressure by UNHCR and international donors to provide more land to accommodate the burgeoning refugee population. Although Kenya did not have the economic resources to enforce the new policy, ensuring balance between its humanitarian obligations and national security may have served to increase the willingness of the international community to provide emergency and development aid.

The legislation also provided the government with a platform from which to enforce desired laws designed to protect refugees while enabling actions deemed to be in the best interest of the state. In 2004, the Kenyan Vice President of Home Affairs Moody Awori requested that all refugees in Nairobi should leave the city and proceed to the camps; however, the government was consistently unable to effect this and other changes. Although the police often conducted sweeps in Nairobi, which often came after with bombings and other threats, the refugees defied the orders preferring to live in Nairobi under the threat of the police.<sup>187</sup> Although Article 16(1) ensure refugees would be entitled to the rights and obligations enumerated in all the international conventions signed by Kenyan, under the subsequent Article 16(2), the Minister was given the authority, in consultation with the host community, to designate specific areas for refugees, including transit centers for asylum seekers and their families awaiting status and refugee camps. Although the act did not specifically restrict refugees to these areas, the government continued to conduct police raids intended to push refugees out of the city and into camps.

Dealing with the constant influx of refugees, while recovering from election violence in 2008 and grappling with increased threats from Al-Shabaab, Kenya passed additional legislation

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<sup>186</sup> Ayiera, E. (2007). Bold advocacy finally strengthens refugee protection in Kenya. *Forced Migration Review*, 28: p. 27

<sup>187</sup> Burns, A. (2010). Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis. *Refugee*, 27(1): 5-15, p. 10.

with the goal of managing refugee populations. The 2011 Refugee Bill replaced the 2006 Refugee Act, however, few substantial changes were made. One notable exception was the clause specifying that the government would designate areas suitable for transit centers and refugee camps. The new bill specifically stated “no refugee shall reside outside the designated area indicated in his refugee certificate or other registration document without the authority of the Commissioner.”<sup>188</sup> Although this decision further restricted the right to freedom of movement of refugees, the Citizenship and Immigration Act actually afforded select refugees limited opportunities for full Kenyan citizenship. Despite these efforts to more effectively manage the ever-growing refugee population in Kenya, the threats to national security continued and so did the government’s tendency to scapegoat the refugees as the problem.

**2012: Forced Encampment Policy.** On December 18, 2012 the government of Kenya announced a policy which dictated that all refugees and asylum seekers who were living in urban centers would be forcibly relocated to either the Dadaab or Kakuma refugee camp complexes.<sup>189</sup> In conjunction with this directive, Badu Katelo, the Acting Commissioner for Refugee Affairs made public that registration of asylum seekers and refugees had been stopped immediately. The government also requested that UNHCR and its partner agencies cease provision of services to refugees and asylum seekers living outside camps, primarily in urban areas, against Kenyan law.<sup>190</sup> Organizations including Amnesty International reacted asserting that the government’s decision was unlawful as restrictions on freedom of movement were clearly counter to the stipulations of the 1951 Convention.<sup>191</sup> Six months later in July 2013, the High Court of Kenya responded to a petition immediately filed in 2012 concluding that the government’s directive to leave all urban centers for the two camp complexes was in fact in violation of several rights afforded to refugees, including the right to freedom of movement and the right to dignity. The High Court issued interim orders requiring the government to stop forcible relocation to camps.<sup>192</sup> The government complied but this attempt to order all refugees to camps highlighted Kenya’s growing frustration with its inability adequately address national security issues. The reasons behind the government’s unexpected announcement of this shift provide insight to policy. These reasons relate to the government’s outward desire to blame

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<sup>188</sup> Republic of Kenya. (2007) The Refugee Act 2006. Kenya Gazette Supplement, 97, Acts No. 13, p. 13.

<sup>189</sup> Opiyo, Dave. "Refugees Told to Get out of Towns." Daily Nation. September 12, 2012. <http://www.nation.co.ke/news/Refugees-told-to-get-out-of-towns/-/1056/1647300/-/view/printVersion/-/rkwf1x/-/index.html>.

<sup>190</sup> Ibid.

<sup>191</sup> "Amnesty International." Kenya's Decision to Confine Refugees and Asylum seekers in Camps Is Unlawful. September 20, 2012. <https://www.amnesty.org/en/latest/news/2012/12/outrage-kenya-confines-refugees-and-asylum-seekers-camps/>.

<sup>192</sup> "Republic of Kenya in the High Court of Kenya at Nairobi, Milimani Courts Constitutional and Human Rights Division, No. 19 or 2013 Consolidated with Petition No. 115 of 2013." [https://www.hrw.org/sites/default/files/related\\_material/PETITION%20115%20AND%2019%20OF%202013%20JUDGMENT\(FINAL\).pdf](https://www.hrw.org/sites/default/files/related_material/PETITION%20115%20AND%2019%20OF%202013%20JUDGMENT(FINAL).pdf)

refugees for the security challenges the country faced, and the government's position that moving refugees to camps would solve the problem.

The government believed it could best deal with national security threats by securitizing the urban spaces. According to the government, the impetus for the decision was based on increased security threats linked to terrorist organizations like Al-Shabaab that were suspected to have joined the refugee community in urban areas of Kenya, especially the Nairobi suburb of Eastleigh.<sup>193</sup> One week before the forced encampment policy was announced, Kenya's Immigration Minister, Mr. Otieno Kajwang' blamed all of the country's security problems on the refugees living in Kenya.<sup>194</sup> He was quoted in the Daily Nation, saying "You never know whether they were combatants. You never know whether they are the ones who have come with small arms. You never know whether they are not the ones filtering into our cities and causing chaos. The policy should be that we take them back home."<sup>195</sup> Although Kenya has the right as a sovereign state to address the security threat posed by Al-Shabaab,<sup>196</sup> Kenya is also under international obligation to provide protection for refugees and seriously evaluate the claims of asylum seekers. Allegations that Al-Shabaab has infiltrated Somali communities to lobby for support are also used as justification for the Kenyan government to try to convince refugees to return to Somalia to fight against Al-Shabaab.<sup>197</sup> These tactics illustrate the degree of complexity, and perhaps desperation, which characterizes the situation.

Although the issue of Al-Shabaab fighters infiltrating Somali refugee communities has largely been analyzed from the security perspective, Kenya's decision to advocate for the expulsion of all refugees and asylum seekers without invoking the national security exception to the *nonrefoulement* clause warrants further analysis. Unlike Tanzania's bold, decisive action to defy its international obligations to refugees in the aftermath of the 1994 Rwandan genocide citing the inability to separate *génocidaires* from legitimate refugees as national security grounds for total eviction, Kenya has made several attempts to enact restrictive policies like this one with little effect. Some of the concerns expressed by the government of Kenya specific to terrorist groups, especially Al-Shabaab, are warranted. However, moving all refugees from Nairobi to the camps would not necessarily solve the problem and could actually increase direct security threats within the camps. The attempt to move thousands of urban refugees, many of

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<sup>193</sup> Kumssa, A. et al. (2014) Conflict and Migration: The Case of Somali Refugees in Northeastern Kenya. *Global Social Welfare*, 1:145-156.

<sup>194</sup> "Insecurity Blamed on Foreigners." - News. December 12, 2012. <http://www.nation.co.ke/news/Insecurity-blamed-on-foreigners/-/1056/1642152/-/view/printVersion/-/ak70vcz/-/index.html>.

<sup>195</sup> "Insecurity Blamed on Foreigners." - News. December 12, 2012. <http://www.nation.co.ke/news/Insecurity-blamed-on-foreigners/-/1056/1642152/-/view/printVersion/-/ak70vcz/-/index.html>.

<sup>196</sup> Burns, A. (2010). Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis. *Refuge*, 27(1): 5-15.

<sup>197</sup> Ibid.

whom have been settled in Nairobi for many years and have thriving businesses in the otherwise successful community, would likely have a serious impact on the host-communities surrounding the camps. UNHCR statistics published shortly after the government attempted to enforce this policy indicated that the organization had registered 56,000 refugees in Nairobi.<sup>198</sup> Already significantly over capacity despite the additional land Kenya allocated in 2010 to increase camp size, an addition of this magnitude to the camps would certainly impact local populations.

However, moving the refugees from Nairobi to the camps ultimately makes managing and protecting them the responsibility of UNHCR. By labeling all refugees as a security threat, Kenya is able to make a stronger case for national security as it shifts away from its humanitarian obligations, potentially lessening the impact on Kenya's relationships with the international humanitarian community. As a key player in the East Africa region and the anti-terrorism movement more broadly, the need to balance international relations with state security increases the challenge Kenya faces in dealing with Al-Shabaab. Despite the likelihood that forcing all refugees into camps would only exacerbate the situation, subsequent events strengthened Kenya's resolve to push refugees out of the urban centers and further demonized refugees as the root cause of the growing security problem.

**2013: Westgate Shopping Center Attack.** The Westgate Shopping Center in Nairobi, Kenya was attacked by Al-Shabaab militants on September 21, 2013.<sup>199</sup> Known for its opposition to Kenya's military involvement in Somalia, Al-Shabaab has claimed responsibility for much of the violence in Kenya. The Westgate attacks followed a two-year pattern of strikes on smaller targets primarily along the Kenya-Somalia border by the terrorist group. The siege lasted about four days and was carried out by at least nine men between the ages of 20 and 27. Although both shoppers and staff were targeted, "the attackers were allegedly targeting mostly non-Muslims, intended to communicate to impressionable muslim minds that it is actually protecting Muslims while engaging in Jihadism."<sup>200</sup> Analysis suggests that Al-Shabaab had been planning the attack for several months, that they intentionally targeted upper class society in an effort to influence the Kenyan government, and that they had chosen the location largely for its high-profile nature.<sup>201</sup> In the aftermath of the attack, the government announced its intent to hasten the voluntary repatriation of Somali refugees as a security measure. Less than a month

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<sup>198</sup> "Nairobi, Kenya - Urban Refugees." Urbanrefugees.org. August 13, 2014. <http://urban-refugees.org/nairobi/>.

<sup>199</sup> Onuoha, Freedom. "Westgate Attack Al-Shabaab's Renewed Transnational Jihadism." Al Jazeera Center for Studies. November 11, 2013. <http://studies.aljazeera.net/en/reports/2013/11/2013111112818580417.htm>.

<sup>200</sup> Onuoha, Freedom. "Westgate Attack Al-Shabaab's Renewed Transnational Jihadism." Al Jazeera Center for Studies. November 11, 2013. <http://studies.aljazeera.net/en/reports/2013/11/2013111112818580417.htm>.

<sup>201</sup> Ibid.

after the attack, the governments of Kenya and Somalia<sup>202</sup> signed a tripartite agreement with UNHCR detailing the process intended to facilitate the voluntary repatriation of Somali refugees.<sup>203</sup> Just over a year later in the wake of two additional attacks by Al-Shabaab, Kenya adopted the 2014 Security Laws (Amendment) Act that theoretically limits the number of refugees and asylum seekers in Kenya to 150,000 and officially restricts refugees to Dadaab and Kakuma camps.<sup>204</sup> Understanding why the government continues to focus on refugees, scapegoating the entire population as the reason for security threats to Kenya, lends insight into the political objectives of the government.

Analyzing these developments reveals the shortsighted frustration with which these decisions were made. The tripartite agreement states that the return of the Somali refugees “are to be safe, carried out in dignity, and sustainable, meaning that those who return should be able to maintain livelihoods, enjoy access to basic services and integrate into communities,”<sup>205</sup> yet few agree that Somalia has the bureaucratic capacity to guarantee these conditions despite overall progress in the country. Premature repatriation could lead to disastrous consequences even more dire than present in the current situation. Moreover, it seems rather illogical that a true voluntary repatriation of refugees would actually serve to reduce Kenya’s national security concerns. Any refugee or anyone living among a refugee population that wants to harm the state would most likely not participate in a voluntary return program. This suggests that Kenya may have intended to send refugees back to Somalia on a less than voluntary basis.

The 2014 Security Laws (Amendment) Act directly supports the goal of the tripartite agreement by theoretically limiting the number of refugees and asylum seekers allowed to remain in Kenya. Article 16(A) states that, “(1) The number of refugees and asylum seekers permitted to stay in Kenya shall not exceed one hundred and fifty thousand persons. (2) The National Assembly may vary the number of refugees or asylum seekers permitted to be in Kenya. (3) Where the National Assembly varies the number of refugees or asylum seekers in Kenya, such a variation shall be applicable for a period not exceeding six months only. (4) The National Assembly may review the period of variation for a further six months.”<sup>206</sup> Given that Kenya is currently host to approximately 600,000 refugees, reducing the number of refugees to below 150,000 would require a significant repatriation program that would require resources

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<sup>202</sup> The Government of Somalia remains a fragile state with very limited bureaucratic capacity. Although the tripartite agreement was considered partially politically beneficial for Somalia given repeated pledges to repatriate refugees, the government’s very limited ability to govern combined with the lack of resources needed to resettle large numbers of returnees renders the deal more symbolic than actionable.

<sup>203</sup> “Repatriating Somali Refugees from Kenya.” Refworld. November 13, 2013. <http://www.refworld.org/docid/5285f5944.html>.

<sup>204</sup> Ibid.

<sup>205</sup> “Repatriating Somali Refugees from Kenya.” Refworld. November 13, 2013. <http://www.refworld.org/docid/5285f5944.html>.

<sup>206</sup> “The Security Laws (Amendment) Act, 2014.” Refworld. December 1, 2014. <http://www.refworld.org/docid/4df202da2.html>.



beyond the capabilities of either country. Although concerns about security provide insight into Kenya's motivation for signing the tripartite agreement and passing the subsequent Security Laws (Amendment) Act, security concerns alone do not explain the state's actions.

Kenya has routinely asserted security concerns as motivation for this and other efforts to repatriate refugees, however, the most likely explanation for Kenya's action is political. Economic factors do not provide specific insight to explain the policy shift following the Westgate attack. Kenya had been receiving significant levels of funding and material support from UNHCR to manage the refugee camps. Although large numbers of urban refugees remain impoverished, the refugee community in the Eastleigh district of Nairobi is among the most thriving economic centers in East Africa.<sup>207</sup> Again, political theories hold promise in explaining Kenya's motivation for this series of attempts to scapegoat the refugee population. Kenya does not have the bureaucratic capacity to manage the refugee population, which probably includes Al-Shabaab members, while also fighting terrorism in Kenya. The government has grown so desperate in its fight against Al-Shabaab that "Kenya is retaliating by infiltrating the Somali community itself to recruit refugees to return to Somalia to fight alongside the opponents of Al-Shabaab."<sup>208</sup> Kenya is demonstrating its inability to manage the situation by using refugee proxy fighters while consistently attempting to contain or expel refugees. Rather than allow refugee integration into cities and other urban centers, this shift in policy highlights Kenya's persistent efforts to retain the increasingly antiquated camp paradigm while blaming refugees for statewide insecurity. Kenya's lack of bureaucratic capacity underpins the rationale behind the government's attempts to scapegoat refugee populations. Meanwhile, the security situation in the country is not improving.

## **Chapter 5: Findings and Recommendations**

This analysis of refugee policy shifts in France and Kenya provides a nuanced understanding of how security, economy, and politics influence state refugee policy. Understanding policy shifts over time in changing historical contexts can provide insight into possible future policy shifts based on evolving current conditions. Focusing first on France, I have shown that the government of France maintained a relatively laissez-faire policy toward asylum seekers and refugees through the early 1990s. As France paid more attention to the situation in Sangatte, and as the European Union increasingly consolidated efforts to maintain a single asylum system across the Schengen zone, so did France's concerns about security and

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<sup>207</sup> "Diaspora, Trade and Trust: Eastleigh, Nairobi's Little Mogadishu." University of Oxford. <http://www.migration.ox.ac.uk/odp/diasporas-trade-trust.shtml>.

<sup>208</sup> Burns, A. (2010). Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis. *Refugee*, 27(1): 5-15.

civil society attitudes. As France's asylum policy evolved, the system increasingly focused on expediting claims processing with the dual purpose of integrating accepted refugees into the French cultural system and repatriating rejected asylum seekers. Strong bureaucratic capacity and civil society attitudes were important throughout this analysis and the 2015 Paris attacks, discussed more in-depth later, confirmed the significance of these factors on asylum and refugee policy. Although security and economic factors remain a significant concern, France responded with a policy designed to balance its obligations to the international community, and therefore to refugees and asylum seekers, with its responsibility to keep its citizens safe and secure. As French policy continues to evolve, a balance of securitization and adherence to traditional French social and cultural values is likely to prevail.

Turning briefly to Kenya, I have underscored that the government of Kenya has maintained a largely security centered approach to refugees and asylum seekers since the early 1990's. Although initial efforts to manage large-scale influxes of refugees during that period provided a promising framework for refugee management, the scale and protracted nature of the conflicts in Somalia, Sudan, and other countries soon rendered the camp system unwieldy. Kenya's regional involvement with Somalia triggered a response from Al-Shabaab that the government has struggled to combat. In short, the government of Kenya does not have the bureaucratic capacity to combat Al-Shabaab, nor to provide adequate security for its citizens. Kenya maintained legitimate concerns in the early 1990s about their ability to provide services and protection for the massive number of refugees arriving across their borders that affected national and economic security. However, the failure of the international community to provide adequate support during that crisis further enabled terrorist groups like Al-Shabaab to radicalize groups of impoverished refugees existing in camps without livelihoods and without hope. As the problem grew, Kenya became less and less capable of addressing the issue. Scapegoating the entire refugee population was easier than trying to root out the terrorists and provided Kenya with a convenient reason for repeated security failures. In reality, complete expulsion of refugees from Kenya could make more political trouble for the government because it would no longer have a reason for its security failures if the group it is scapegoating can no longer be blamed. Kenya consistently cites direct threats to national security for increasingly restrictive policies against refugees; however, the reality is that security is being used as justification for its own lack of capacity to govern the country.

Both France and Kenya currently face significant security concerns that influence their positions on refugees and asylum seekers, however, these concerns manifest in uniquely different ways and fail to provide adequate explanation for the motivations behind their

respective policies. Whereas Kenya historically has scapegoated refugees, recent events in France have not resulted in the same degree of demonization. One possible reason for this difference is the proximity and type of security threat. With more than 600,000 refugees in camps and increasingly in urban centers, Kenya perceives significant direct and indirect security threats from Al-Shabaab fighters operating from within refugee communities. France hosts far fewer refugees and asylum seekers, many of whom must travel long distances and are still subject to some form of government security check. However, the possibility that the Islamic State (Daesh) could infiltrate refugees and asylum seekers to reach target locations is increasing. France has yet to begin scapegoating refugees as Kenya has done for many years, however, the potential for eventual backlash from the French citizenry if the government does not satisfactorily address the current situation exists. From a bureaucratic perspective, France is much more capable of managing the current influx of refugees than Kenya given the significant contextual differences. Whereas the acceptance of refugees and asylum seekers in France will most likely result in a long-term economic gain for the country, it is highly unlikely that Kenya will benefit economically from the refugees in Dadaab and Kakuma. On the other hand, the country does benefit from the economic success of the Somali refugee community in Eastleigh. If economic motivations were Kenya's primary concern, it is unlikely that the government would make such efforts to remove the refugees from urban centers. Political factors provide the sharpest analytical tool for both France and Kenya, albeit in very different ways. The strength of the French government allowed the state's asylum and refugee policy to evolve slowly and intentionally in a way that enabled France to balance its obligations to its citizens with the need to remain an active participant in addressing the refugee crisis. Despite support from the international community to address asylum and refugee issues in Kenya, the relatively weak condition of Kenya's government since independence has resulted in a much more challenging policy evolution. As terrorist attacks perpetrated by Al-Shabaab continue to plague the country, citizens have grown less patient with the Kenyan government. Kenya's lack of capacity to respond more effectively to its security challenges has resulted in consistent scapegoating of the refugee population.

### **5.1 Future Considerations: France**

Although too soon to adequately analyze the impact of the attacks, the November 2015 terrorist attacks in Paris are likely to affect future asylum and refugee policy considerations in France and across the EU. The terrorist attacks focused on five locations in Paris and one

location in the northern suburb of Saint-Denis occurred on November 13, 2015.<sup>209</sup> The deadliest attack against France since WWII,<sup>210</sup> the violence resulted in 130 deaths and more than 200 injuries.<sup>211</sup> In the immediate aftermath of the violence, President François Hollande called the attacks an act of war against France by the Islamic State (Daesh), declared a state of emergency, and directed increased border security checks be conducted.<sup>212</sup> French police were ordered to conduct hundreds of raids as part of a nationwide search for those responsible.<sup>213</sup> The French government soon began to analyze the movements of the attackers. Those who perpetrated the attacks were all either French or Belgian EU nationals with ties to countries such as Syria, Nigeria, and Yemen, who were able to move freely across the EU without difficulty because of the Schengen agreement.<sup>214</sup> One attacker is believed to have traveled to Paris through Greece where he allegedly arrived with a group of refugees in October 2015.<sup>215</sup> Although European and international arrest warrants had been issued against many of the attackers, France was not made aware that one of the key organizers of the attacks was in the country.<sup>216</sup> The French interior minister, Bernard Cazeneuve, reasserted the need for increased securitization of the EU's outer borders calling for "a Europe-wide passenger information register, improved controls along Europe's external borders, and better coordination against arms trafficking."<sup>217</sup> The French Prime Minister, Manuel Valls, alarmingly concluded that some of the attackers had used Europe's refugee crisis to arrive undetected.<sup>218</sup>

Although many people likely expected that this tragic event would cause an immediate shift in France's policy toward refugees, President Hollande remained committed to the country's promise to remain open to resettlement. Just two months before the terrorist attacks on, France and Germany jointly "agreed to take 30,000 and 44,000 refugees respectively, out of the 160,000 who had made their way to Italy, Greece and Hungary."<sup>219</sup> Under the plan proposed by the EU and encouraged by France and Germany, EU member states would take refugees

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<sup>209</sup> "Timeline of Paris Attacks According to Public Prosecutor." Reuters. November 14, 2015. <http://www.reuters.com/article/us-france-shooting-timeline-idUSKCN0T31BS20151114#h8KRqimXftutLeR3.97>.

<sup>210</sup> "Paris Terror Attacks: Yes, Parisians Are Traumatized, but the Spirit of Resistance Still Lingers" Independent. November 15, 2015. <http://www.independent.ie/world-news/europe/paris-terror-attacks/paris-terror-attacks-yes-parisians-are-traumatized-but-the-spirit-of-resistance-still-lingers-34201891.html>.

<sup>211</sup> "Paris Attacks Death Toll Rises to 130." RTE. November 20, 2015. <http://www.rte.ie/news/2015/1120/747897-paris/>.

<sup>212</sup> "Paris Attacks: What Happened on the Night - BBC News." BBC News. December 9, 2015. <http://www.bbc.com/news/world-europe-34818994>.

<sup>213</sup> *Ibid.*

<sup>214</sup> Traynor, Ian. "EU Ministers Order Tighter Border Checks in Response to Paris Attacks." The Guardian. November 20, 2015. <http://www.theguardian.com/world/2015/nov/20/eu-ministers-order-tighter-border-checks-in-response-to-paris-attacks>.

<sup>215</sup> "Paris Attacks: BBC Names Stade De France Bomber as M Al-Mahmod." BBC News. November 22, 2015. <http://www.bbc.com/news/world-europe-34896521>.

<sup>216</sup> Henley, John, Ian Treynor, and Warren Murray. "Paris Attacks: EU in Emergency Talks on Border Crackdown." The Guardian. November 20, 2015. <http://www.theguardian.com/world/2015/nov/20/paris-attacks-france-launches-un-push-for-unified-declaration-of-war-on-isis>.

<sup>217</sup> *Ibid.*

<sup>218</sup> *Ibid.*

<sup>219</sup> Viscusi, Gregory. "Hollande Wrongfooted on Refugee Surge, Fearing Le Pen's Rise." Bloomberg.com. September 20, 2015. <http://www.bloomberg.com/news/articles/2015-09-23/hollande-wrongfooted-on-refugee-surge-fearing-le-pen-s-rise>.

based on a formula devised to ensure equitable burden sharing across the EU while decreasing processing time in countries of arrival.<sup>220</sup> Reaffirming this commitment just five days after the November terrorist attacks, Hollande announced that France remained committed to the promises made before the attacks.<sup>221</sup> In a speech to several French mayors, Holland expressed his gratitude for their support of refugees, many of whom are again living in makeshift camps in the Jungle in Calais. Acknowledging the fears of French citizens, he asserted that security would be of the utmost priority and that France would use current asylum law, which enables the government to accept or deny asylum claims based on security threat applicants pose to the country, to guarantee their safety. However, Holland also emphasized the need to remain true to France's values and underscored the nation's "duty to ensure 'humanity for refugees and protection for the French people.'"<sup>222</sup>

Although many support Hollande's response, the decision to continue to support Syrian refugees is not without opposition. Members of the far right, largely anti-immigrant party led by Marine Le Pen have condemned Hollande's actions claiming that his open policies are a detriment to the safety and security of the country. On the other hand, members of France's largest labor union assert that France is not doing enough to ameliorate the situation. Analyzing this debate from the theoretical perspectives of national security and economic benefit or burden, this debate underscores the complexity of the intersection between security, economics, and politics. From a security perspective, Hollande has made clear that he does not believe securitization of the borders to the point of isolationism will bring security to the region. This stance clearly factored into his decision to uphold the agreement made with Germany and the EU before the attacks. From an economic perspective, despite unknown short and medium-term, the addition of thousands of refugees could provide a boost to the French economy in the long term.<sup>223</sup> France and other EU states must also consider the economic impact of excessive securitization on the EU. The increased border controls some states have enacted are causing disturbances in trade within the Schengen zone.<sup>224</sup> The inherently international nature of the EU and the uniqueness of Schengen region complicates policy decisions for all member states.

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<sup>220</sup> Viscusi, Gregory. "Hollande Wrongfooted on Refugee Surge, Fearing Le Pen's Rise." Bloomberg.com. September 20, 2015. <http://www.bloomberg.com/news/articles/2015-09-23/hollande-wrongfooted-on-refugee-surge-fearing-le-pen-s-rise>.

<sup>221</sup> Frej, Willa. "France Is Still Accepting 30,000 Refugees While Some American Politicians Want to Ban Them." The World Post. November 18, 2015. [http://www.huffingtonpost.com/entry/hollande-france-plans-to-take-in-30000-refugees-over-two-years\\_564c78bae4b06037734bb934](http://www.huffingtonpost.com/entry/hollande-france-plans-to-take-in-30000-refugees-over-two-years_564c78bae4b06037734bb934).

<sup>222</sup> Frej, Willa. "France Is Still Accepting 30,000 Refugees While Some American Politicians Want to Ban Them." The World Post. November 18, 2015. [http://www.huffingtonpost.com/entry/hollande-france-plans-to-take-in-30000-refugees-over-two-years\\_564c78bae4b06037734bb934](http://www.huffingtonpost.com/entry/hollande-france-plans-to-take-in-30000-refugees-over-two-years_564c78bae4b06037734bb934).

<sup>223</sup> Nixon, Simon. "Politics Hold Sway in Economic Impact of Europe's Refugee Crisis." WSJ. September 23, 2015. <http://www.wsj.com/articles/politics-hold-sway-in-economic-impact-of-europes-refugee-crisis-1443034512>.

<sup>224</sup> Ibid.

Among the responsibilities of sovereign states, one of the foremost is to provide for the safety and security of its citizens. In states with strong bureaucratic capacity like France, the ability for civil society to impact state policy is significant. We cannot interpret the results of the December regional elections in France as a direct indication of how French citizens feel about asylum seekers and refugees, but the outcomes compared with each political parties' position does provide some insight. The Front Nationale (FN) led by Marine Le Pen and Les Républicains supported by former President Nicolas Sarkozy were expected to gain support over Hollande's Socialist party following the terrorist attacks, however election results indicated that the Socialist party remains in the lead.<sup>225</sup> This suggests that, of those who voted in the regional elections, the majority of people support Hollande's policies over the other options. Although it is not possible to conclude that voters specifically support Holland's decision to accept 30,000 Syrian refugees even in the wake of the terrorist attacks, it is reasonable to assume that the results of the election would have indicated a negative shift in attitudes toward asylum seekers and refugees.

Although support for Syrian refugees in France does not seem to be in immediate decline following the November terrorist attacks, it is unlikely that we will understand the full impact of the attacks until at least after the 2017 presidential elections. In the near term, analyzing the social and political effects of the Paris attacks as well as other developments in France and across the EU can provide insight into the France's likely policy decisions as the refugee crisis continues to unfold. Given repeated efforts to clear the makeshift camps in Calais and the most recent decision by local authorities to offer shelter for as many as 1,000 people at other locations, rising tensions are likely to trigger another policy shift. Although UNHCR has provided assistance in erecting shelter for some residents, the requirement to be registered and tracked has prompted many to opt for other arrangements.<sup>226</sup> The resurgence of this issue for the third time in the same region has drawn significant attention by both the French and UK governments as well as local citizens. Although the security concerns alone suggest that France would take action to close the Jungle and expel the inhabitants, the more likely outcome is that France will seek a political solution. France continues to assert its policy of accepting 30,000 Syrian refugees into the country; however, shifting attitudes among civil society members are already beginning to suggest that the government may be forced to reconsider this number.

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<sup>225</sup> Nardelli, Alberto, and Angelique Chrisafis. "What the French Election Results Mean for the 2017 Presidential Race." *The Guardian*. December 14, 2015. <http://www.theguardian.com/world/2015/dec/14/french-elections-what-results-mean-for-2017-presidential-race>.

<sup>226</sup> "Calais 'Jungle': France to force 1,000 migrants to move." *BBC News*. February 12, 2016. <http://www.bbc.com/news/world-europe-35561158>

## 5.2. Future Considerations: Kenya

Carried out in similar fashion to the siege at the Westgate Mall, Al-Shabaab launched yet another attack on Garissa University College on April 2, 2015. Although too recent to analyze the full impact of the Garissa attack, the trends observed through this investigation of Kenya's policy motivations suggests we can expect more of the same. Among the victims of the attack were 148 deaths, more than 79 injuries, and over 700 hostages, making this the deadliest attack against Kenya since the 1998 bombing of the US Embassy, which left 224 people dead.<sup>227</sup> Although the government had made some improvements since the Westgate Mall attack, the government was ultimately unable to direct an adequate security response when the terrorists launched the siege on Garissa. Although the government had previously issued security alerts at university campuses nationwide, the capacity to provide security at the Garissa campus was insufficient.<sup>228</sup> In the days following the attacks, the government announced its request that UNHCR immediately close Dadaab refugee camp and relocate the refugees living there, threatening that the government would forcibly remove the refugees even UNHCR did not do so.<sup>229</sup> This response marked the most significant shift in Kenya's stance on refugees having escalated from asking refugees to vacate urban centers for camps, to making camp confinement part of its official legislation, to demanding complete closure of the world's largest refugee camp. Making matters worse for the refugees, the government also decided to close many of the remittance firms in the country, thereby limiting the funds that refugees could receive from supportive members of the diaspora. Understanding why the government decided to take this position on the closure of Dadaab and the remittance centers provides interesting insight into the continued pattern of response by the government.

The government's call to close the Dadaab camp represents a further shift away from humanitarianism and international obligations to a full commitment to national security. Although the security could provide rationale for this shift, political factors again provide better insight. Kenya attributes its national security challenges to the infiltration of the refugee population by Al-Shabaab. Just as Kenya recognizes that it can recruit refugees to fight against Al-Shabaab in Somalia because conditions and opportunities in the refugee camps are abysmal, Kenya must also understand that disabling the refugees' ability to receive remittances would increase their susceptibility to recruitment by Al-Shabaab. As the party responsibility for cutting off their one of

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<sup>227</sup> Hatcher, Jessica, and Kevin Sieff. "Al-Shabab Attacks Kenyan University, Killing at Least 147." Washington Post. April 2, 2015. [https://www.washingtonpost.com/world/africa/70-killed-hundreds-rescued-after-kenya-university-attack-by-al-shabab-militants/2015/04/02/0c554516-d951-11e4-ba28-f2a685dc7f89\\_story.html](https://www.washingtonpost.com/world/africa/70-killed-hundreds-rescued-after-kenya-university-attack-by-al-shabab-militants/2015/04/02/0c554516-d951-11e4-ba28-f2a685dc7f89_story.html).

<sup>228</sup> Ibid

<sup>229</sup> "Kenya Tells UN to Close Dadaab Camp after Garissa Attack." BBC News. April 11, 2015. <http://www.bbc.com/news/world-africa-32269944>.

their only means of support to supplement the substandard level of assistance in the camps, many refugees might be more inclined to look elsewhere for aid. Closing the camp completely would have resulted in the same risk to radicalization that preventing remittances likely did to some degree.

Kenya reversed its decision to close Dadaab in the face of international pressure, largely applied by the US and the UN.<sup>230</sup> Despite guarantees from US Secretary of State John Kerry that the US would provide \$45 million to support the camp and although the European Union office of humanitarian assistance (ECHO) has already provided more than 10 million euro in aid in Kenya, financial contributions from the international community are clearly not enough to help Kenya with its security issues. Repeated efforts by Kenya to demonize refugees and draw international attention to issues related to Dadaab and Kakuma while attempting to force more refugees into these camps will not result in more positive security outcomes for the country. Despite this fact, it is likely that Kenya will continue the same pattern of scapegoating refugees and will likely make further attempts to repatriate as many refugees as possible. As more and more refugees arrive from South Sudan and camps remain too small to accommodate the growing number of refugees, the government will likely have to rely even more on UNHCR and the broader international community to manage the refugee issue. Although the government maintains an encampment policy, the government will likely be faced with stronger calls for integration in urban centers.

### **5.3 Policy Recommendations**

How France and Kenya, and European and African countries more broadly, address their security situations in the future may have deleterious consequences for refugees and asylum seekers. As the number of displaced people continues to increase worldwide, potential host-states must develop better strategies for managing the likely influx of refugee populations. These strategies will require an in-depth understanding of the social, political, and economic factors that drive policy. Future strategies must balance international obligations with concerns over state sovereignty and national security from a human rights perspective. Diplomats and policymakers must encourage states not to close their borders in the wake of terrorist attacks,

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<sup>230</sup> Caulderwood, Kathleen. "Kenya Retracts Plans To Close Dadaab, World's Largest Refugee Camp, After International Pressure." *International Business Times*. May 7, 2015. <http://www.ibtimes.com/kenya-retracts-plans-close-dadaab-worlds-largest-refugee-camp-after-international-1912768>.



but rather to reorient their conception of security to create a system that strengthens security through understanding, acceptance, and compassion for asylum seekers and refugees.

France must continue to work with other members of the EU to address the current influx of the relatively large numbers of asylum seekers and refugees in Europe. Burden sharing agreements that relieve the pressure on Schengen border states including Greece, Italy, and Hungary are necessary to the success of future policy. France must work effectively with Germany as leaders in this effort. Faced with increased security challenges following the November 2015 Paris attacks and other acts of terrorism such as the shooting at the magazine *Charlie Hebdo* office in January 2015 and the attempted mass shooting on the Thalys train in August 2015, France must guard against the conflation of terrorism with refugee migration. Although France, Germany, and other EU Member States have made assurances that refugees will remain welcome, the international community must continue to support EU efforts to lessen the burden in Turkey, Lebanon, and Jordan. Support for asylum seekers and refugees is likely to wane as the numbers of new arrivals continues to increase. Addressing state and civil society concerns and providing assistance as needed is essential to the integrity of the international refugee regime. The EU and the international community must be prepared to address the weaknesses of this system and make efforts to strengthen what works well while having the courage to overhaul what has become outdated and ineffectual.

France must also firmly address the situation in the Jungle of Calais. Despite efforts by local NGOs and UNHCR to address the situation once again, the government has done very little to effectively manage the situation. Although some shelters exist, the living conditions in the makeshift camp the worst ever seen. Experience has taught the government that simply closing the camp is unlikely to result in a reduction of the number of people settling there in an effort to seek asylum in the UK. In addition to working directly with the UK government to seek a political solution, France must also make concerted efforts to apply and enforce existing laws. The Asylum Reform Bill provides a detailed plan to reduce processing time to 9 months and offers a housing system designed to better support asylum-seekers and refugees. Those living in the Jungle of Calais should be processed in accordance with this legislation. Enforcing this law could serve to deter those who prefer to seek asylum in the UK from first arriving in France.

Kenya faces significant national security challenges that cannot be adequately addressed through the scapegoating of refugee populations. Despite the continued policy of maintaining a closed border with Somalia, refugees continue to arrive. Moreover, the conflict in South Sudan has prompted an increase in the number of South Sudanese refugees arriving in the Turkana region of the country. The constant threat of drought further intensifies the

challenges Kenya must address. Although Kenya has passed several laws designed to address security issues, these laws are largely unenforceable.

Trends suggest that Al-Shabaab will continue to launch terrorist attacks against the Kenyan government and its citizens and that the government will continue to respond by blaming refugees and attempting to further securitize the state by expelling refugees prematurely. Given the lack of bureaucratic capacity of the Kenyan government, the international community must do more to assist Kenya in strengthening their government institutions. Diplomatic efforts should be made to persuade the government to stop scapegoating refugees. Regional and international efforts to combat Al-Shabaab are needed. Although the US and ECHO have pledged substantial amounts of funding in humanitarian aid, and although UNCHR continues to provide significant support for asylum seekers and refugees, Kenya needs more assistance in dealing with the security issues that generate tension between the state and the refugee populations. Options include direct financial assistance to strengthen institutions and deployment of government and military advisors to strengthen government legitimacy. The capacity of state security mechanisms could also be increased through improved training and better equipment. Without more intentional effort to assist the Kenyan government in dealing with the Al-Shabaab security threat, negative outcomes for asylum seekers and refugee will continue.

Analyzing policy trends over time enables policymakers to gain a more nuanced understanding of the factors that impact changes in policy. Perhaps now more than any other time since the 1951 Convention was signed, the international community must be increasingly flexible and responsive to the refugee crisis. As state displacement policies become more and more restrictive, the number of refugees, IDPs, stateless persons, and other displaced populations is predicted to continue to increase. Effective advocacy for this growing population requires and understanding of state policy as a foundation for successful diplomacy.

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