Global Leadership Training Programme in Africa 2014

RESEARCH REPORT

Challenges on Mass Somali Refugee Influx after the Border Closure between Kenya and Somalia in 2007 -Example of Dadaab Refugee Camp-

Chiaki Tsuchida¹

English Summery

In Kenya, "Convention relating to the Status of Refugees (adopted in 1951)" was ratified in 1966, "Protocol Relating to the Status of Refugees (adopted in 1967)" was ratified in 1981 (these are so called Refugee Convention), "Convention governing the specific aspects of Refugee Problems in Africa (so called OAU Convention, adopted in 1969) was ratified in 1992. These treatments have become the basis of Kenya's refugee protection [Parliamentary Debates Question No.162]. However, Kenyan domestic refugee law was established in 2006, domestic refugee legislation was absent for more than 15 years although mass Somali refugee influx began around 1990. While absence of it, United Nations High Commissioner for Refugees (UNHCR) set World's biggest refugee camps and carried out refugee registration in Dadaab, near the border between Kenya and Somalia, instead of Government of Kenya (GoK) [Hyndman & Nylund 1998].

Refugee Act was adopted in 2006 and was enforced in 2007. At the same time, authority of accepting Somali refugees has been handed over from UNHCR to Department of Refugee Affairs (DRA) from UNHCR, which was established with the enactment of Refugee Act. The installation of Refugee Act and DRA had Kenya step forward on advancing refugee protection, however, GoK has decided officially closed its border between Kenya and Somalia. GoK tried to prevent the inflow of an Islamic terrorist group, Al-Shabaab and ensure the safety of residents and refugees in Dadaab. In general, border closure can make it difficult for refugees who try to flee from Somalia to enter Kenya across the border. However, actually, amount of refugee influx became larger than before the border closure and in 2011, the number reached the peak in the past 20 years. Moreover, contrary to the original aim, the criminal acts and attacks by the terrorist group was increased and protecting Somali refugees fell into difficult situation.

In previous research on protecting Somali refugees in Dadaab refugee camp, it has been discussed in mainly three viewpoints, (1) *prima refugee* protection on mass refugee influx [e.g. Albert 2010, Hyndman & Nylund 1998], (2) National security [e.g. Long 2010] (3) protracted refugee situation [e.g. Crisp 2003, Lindley 2011]. Since these have often been discussed as a separated theme despite of focusing on the same case, it was hard to see how they link each other and questions had been scattered. Therefore, it is necessary to clarify complex dynamism of protecting Somali refugees and analyze relationship those three points of view within a certain period.

Thus, research question is set as follows. First, regarding to the protection of Somali refugees in Dadaab refugee camp, why were two contrary changes, which were establishment of Refugee Act and beginning of border closure between Kenya and Somalia run in 2006-2007? In addition, how did the humanitarian organizations which are DRA, United Nations Agencies, NGOs, and individual refugees challenge such a difficult situation?

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In this research, first, it organizes frameworks of protecting refugees which have been applied to the Somali refugees in Kenya. Then it follows the evolution of the roles of main actors on protecting Somali refugees and makes sure the geopolitical significance of accepting the Somali refugees in Dadaab. Third, it analyzes why the border closure has decided and the dilemma of between protecting refugees and national security and the background leading to the border blockade, were international organizations in such a difficult situation. Last, it clarifies the challenges by DRA, UN agencies, NGOs, and individual refugees in such a difficult situation. There were mainly three challenges. First, DRA and UNHCR cooperated for refugee registration and giving a protection after Refugee Act established and DRA was set and addressed the mass influx. Second, humanitarian aid agencies had to withdraw international staff because of fear of kidnapping by Al-Shabaab but it increased national staffs and refugees more with similar cultural background. Furthermore, in Dadaab where tension increases, a round table meeting is constantly held by all actors engaged in protecting Somali refugees in Dadaab including refugee leaders and they effectively exchange information each other.

Japanese Summery

ケニアでは 1966 年に「難民の地位に関する条約(1951 年採択)」を、「難民の地位に関する議定 書(1967 年採択)」を 1981 年に批准しており、「アフリカにおける難民問題の特殊な側面を規定す るアフリカ統一機構条約(1969 年採択)、以下 OAU 条約」を 1992 年に批准した。これらがケニアの 難民保護の根拠となっている[Parliamentary Debates Question No.162]。しかし、国内の難民法が成立し たのは 2006 年であり、1990 年代初頭に近国のソマリアから難民が大量に流入してきたときから 15 年以上もの間、難民を受け入れる国内の法制度は整っていなかった。国内の難民保護に関する法制度 が不在の間は、難民保護を専門とする国連難民高等弁務官事務所(UNHCR)がケニア政府に代わって、 ダダーブ地域に世界最大の難民キャンプを構え、ソマリア出身者をはじめとする難民の受け入れに従 事してきた[Hyndman & Nylund 1998]。

2006年に採択された難民法は2007年に執行され、難民の受け入れはUNHCRから難民法の制定とともに発足した難民局に権限が移行された。難民法制定と難民局の設置を受け、ケニアは難民保護において前進する一方で同年、ケニア政府は公式にケニアーソマリア間の国境を封鎖することを決定した。国境封鎖によって、難民と同時に流れ込むアルシャバーブ(Al-Shabaab)の流入を予防し、域内の住民や難民の安全を確保しようとしたのである。一般的に、この政策は国境管理のうえで国境を越えて避難しようとする難民の流入を困難にさせるものとなり得る。ただし、ケニアの場合は実際には国境封鎖後の方がそれ以前よりも難民の流入量は増大し、2011年には過去20年間でピークを迎える。また本来の目的に反して、テロ集団による犯罪行為や攻撃が増大し、ソマリア難民保護は困難な状態に陥った。

ケニアのダダーブ難民キャンプでの難民保護に関する先行研究では、(1) prima facie による大量 難民流入における難民保護[e.g. Albert 2010, Hyndman & Nylund 1998](2)安全保障[e.g. Long 2010](3) 難民状態の長期化[e.g. Crisp 2003, Lindley 2011]の主に3つの観点で検討されてきた。これらはしばしば 別々のテーマとして議論が重ねられてきたため、同じ事例に着目しているにもかかわらず、互いにど のように結びついているのかが見えにくくなり、問題の所在が点在していた。それゆえ、ある一定の 時間軸を設定し、その期間内での難民保護の複雑なダイナミズムを整理し関連性を明確にして分析す る必要がある。

そこで、本研究で掲げる問いは次のとおりである。ケニアのダダーブ難民キャンプでのソマリア難民 の保護に関して、なぜ同時期に難民保護の国内の枠組みが形成され前進がみられる一方で、国境封鎖 を実行し保護が困難になる要因を生むというお互いに反する二つの動きがあったのか。また、そのと きに政府や国連、NGO、難民当事者といった難民保護に携わる各アクターがどのような挑戦を行った のか。

本研究では、ケニアでソマリア難民に適用されている保護の枠組みを整理し、その中での主要アク ターの役割の変遷を押さえたうえで、ダダーブでソマリア難民を受け入れることの地政学的意義を確 認し、国境封鎖に至る背景とその後における難民保護と安全保障とのジレンマを分析し、そうした困 難な状況での国際機関、政府機関、NGO、難民当事者といった各アクターによる挑戦を明らかにした。 主な挑戦として、国境封鎖後も急増した難民の流入には、難民法制定によって設置された難民局と UNHCR が共同で難民登録と保護の提供を行うことで対処した。また、人道支援機関ではインターナシ ョナル・スタッフの撤退とともにナショナル・スタッフの増員を図ることで人員不足を補い、結果的 に難民と文化的背景を共有できる環境を整えた。さらに、緊張状態が増すダダーブにおいて、難民リ ーダーを含む全てのアクターが円卓会議を開催することによって効果的に情報交換がなされた。

1. Introduction

International Refugee regime is constructed by "Convention relating to the Status of Refugees (adopted in 1951)" and "Protocol Relating to the Status of Refugees (adopted in 1967)". Especially in Africa, there is a regional refugee regime based on "Convention governing the specific aspects of Refugee Problems in Africa (adopted in 1969). State parties would establish domestic refugee act in order to implement of protecting refugees within these regimes. Therefore, implementation of it is relied on the capacity and ability of state parties [Betts 2013].

In 1991, when Somalia was collapsed, hundreds of thousands of Somali people fled from political violence. In 1992 when it was 1990s' peak of refugee displacement, there were some 420,000 refugees in Kenya [US Committee for Refugees 1997]. In 2006, the conflict in Somalia entered a new phase. In pursuing control of the state, both the internationally sponsored Transitional Federal Government in Somalia and the extremist group Al Shabaab who is regarded as a terrorist group have employed a strategy that it resulted in gross human rights abuses and mass civilian suffering [Lindley 2011-b]. However, Refugee Act was adopted in 2006 and was enforced in 2007. While absence of it, for over 15 years, United Nations High Commissioner for Refugees (UNHCR) set World's biggest refugee camps so called Dadaab refugee camp which locates hundred km from the border between Kenya and Somalia [see Map 1 and Map 2], also carried out refugee registration there, instead of Government of Kenya (GoK). Moreover, at the same time, authority of accepting Somali refugees has been handed over from UNHCR to Department of Refugee Affairs (DRA) from UNHCR. DRA was also established with the enactment of Refugee Act.

The installation of Refugee Act and DRA had Kenya step forward on advancing refugee protection, however, GoK has decided officially closed its border between Kenya and Somalia. GoK tried to prevent the inflow of an Islamic terrorist group, Al-Shabaab and ensure the safety of residents and refugees in Dadaab. In general, border closure can make it difficult for refugees who try to flee from Somalia to enter Kenya across the border. NGOs have reported the limbo for refugees who are fled to neighboring countries after border closure [e.g. Refugee Consortium Kenya 2012]. Moreover, as a result of border closure, partnership between UNHCR and the government of host country becomes difficult. In academia, the collision of the border closure and national interests has been discussed as a dilemma of hosting great number of refugees. However, actually, amount of refugee influx became larger than before the border closure and in 2011, the number reached the peak in the past 20 years. Moreover, contrary to the original aim, the criminal acts and attacks by the terrorist group was increased and protecting Somali refugees fell into difficult situation.

2. Study Area

In previous research on protecting Somali refugees in Dadaab refugee camp, it has been discussed in mainly there points of view, (1) *prima refugee* protection on mass refugee influx [e.g. Albert 2010, Hyndman & Nylund 1998], (2) National security [e.g. Long 2010] (3) protracted refugee situation [e.g. Crisp 2003, Lindley 2011]. Since these have often been discussed as a separated theme despite of focusing on the same case, it was hard to see how they link each other and questions had been scattered. Therefore, it is necessary to clarify complex dynamism of protecting Somali refugees and analyze relationship those three points of view within a certain period.

Research question is set as follows. First, regarding to the protection of Somali refugees in Dadaab refugee camp, why were two contrary changes, which were establishment of Refugee Act and beginning of border closure between Kenya and Somalia run in 2006-2007? In addition, how did the humanitarian organizations which are DRA, United Nations Agencies, NGOs, and individual refugees challenge such a difficult situation?

In this research, first, it organizes frameworks of protecting refugees which have been applied to the Somali refugees in Kenya. Then it follows the evolution of the roles of main actors on protecting Somali refugees and makes sure the geopolitical significance of accepting the Somali refugees in Dadaab. Third, it

analyzes why the border closure has decided and the dilemma of between protecting refugees and national security and the background leading to the border blockade, were international organizations in such a difficult situation. Last, it clarifies the challenges by DRA, UN agencies, NGOs, and individual refugees in such a difficult situation.

Then this research contributes to refugee study especially focused on the example of Dadaab refugee camp.

3. Methodology

This research applies both top-down approach and bottom-up approach. This research also does interview and questionnaire survey. Interview was taken to the relevant humanitarian organizations in Nairobi and questionnaire survey was done those regard in humanitarian assistance in Dadaab, Geneva and Somalia via E-mail. Most of Interview and questionnaire survey in Kenya were done on period January to March 2015 when the author went to Kenya for field study.

First, interview was implemented to these humanitarian organizations and individuals as follows.

- Department of Refugee Affairs (DRA) in Nairobi
- United Nations High Commissioner for Refugees (UNHCR) in Nairobi
- Refugee Consortium Kenya (RCK) in Nairobi
- Individual refugees
- Second, questionnaire survey was taken to these organizations and individuals as follows.
- Department of Refugee Affairs (DRA) in Dadaab
- United Nations High Commissioner for Refugees (UNHCR) in Dadaab
- UNHCR in Geneva
- UNHCR in Somalia
- United Nations Office for Coordination of Humanitarian Affairs (UNOCHA) in Dadaab
- World Food Programme (WFP) in Dadaab
- Refugee Consortium Kenya (RCK) in Dadaab
- Individual refugees

Regarding to Anonymity and Confidentiality, the author ensures that I hold all confidential or proprietary information or secrets in trust. I agree that it shall be used only for the contemplated purpose, and shall not be used for any other purpose or disclosed to any third party. Therefore, some information such as the name of organizations, interview taken date and place will properly be hidden.

4. Research Finding

Through interview and questionnaire survey, mainly three things are come out as follows.

First, there is cooperation between UNHCR and DRA towards mass Somali refugee influx in Dadaab. In fact, most of refugees answered, "Refugee registration did not take for a long time, at least for one or two days after my family crossed the border. [Interview]" or "As soon as I reached in Dadaab, I became a refugee. [Questionnaire]" Thus, the implementation of protecting refugees went smoothly. UNHCR and DRA have been fully cooperated on protecting refugees. If something happened, they call a phone or send E-mail immediately and shared the information [Interview].

Second, humanitarian aid agencies increased National staff after fear of terrorism increased."We had to withdrawal international staff whose skin color, religion, etc. are completely different from Somalis. Instead of that, the number of national staff was increased. As a result, since national staff can understand the local language, it became easier to promote the mutual understanding of the refugees, and the procedure was progressed smoothly. [Interview]" In other words, it led easier conduction since both national staff and Somali refugees can share similar cultural background comparing international staff from all over the world.

Last, a round table meeting in Dadaab refugee camp is held. The meeting is held at least once a week. The participants are all actors who engage in Somali refugee issues there [Interview]. They are included not only humanitarian organizations but also refugee leaders both male and female. Humanitarian organizations are expected Dadaab branch office of UNHCR, DRA and NGOs such as RCK, Windle Trust and so on. The meeting provides opportunity for all actors to share information. It is also an opportunity to reflect refugee voices on policy [Interview].

5. Discussion

(1) Legal framework on refugee protection in Kenya

Kenya has enough legal frameworks on refugee protection. It adopted 1951 Refugee Convention in 1966, 1969 Refugee Protocol in 1981 and OAU refugee convention 1992. According to these treaties, Kenya has protected refugees including Somali refugees. Moreover, Kenya accepted Somali refugees on *prima facie* refugee status [Turton 2005]. *Prima facie* is a group based refugee determination, for example, a person from State B enters State A during the period C [Albert 2010-b]. Thus, *prima facie* makes refugee determination process easier when mass refugee influx occurs and it becomes difficult to determine refugees one by one [e.g. Moret, Baglioni & Efionayi-Mader 2006].

(2) Geo-political significance of Dadaab

Dadaab locates in northeast Kenya, it is away about hundred km from the border between Kenya and Somalia (see map 1). Also it is a remote area away from urban areas in Kenya and it has originally poor resources such as water and firewood [Kirui & Mwaruvie 2012]. Graphically, it is close to Somalia, it have been a residence of Kenyan Somalis who are nomadic of camels and goats in Kenya. Therefore, it has been a place which traditionally has diplomatic problems between those two countries.

In Dadaab refugee camp, Somali refugees are majority. The camp had been set up for initial 90,000 refugees, resulting in 460,000 refugees at most and it became the third largest city in Kenya [e.g. CARE International 2011, UNHCR]. In addition, accepting refugees in Dadaab is a matter for not only for Kenya but also East African countries because Kenya plays an important role in the East Africa's stability [Thompson 2015].

Moreover, the border between Kenya and Somalia has been regarded as a strategic region that becomes the key by Al-Shabaab [Floyd 2010]. Thus, Dadaab has been used for military cooperation with Al- Qaeda, training of soldiers also attacks against neighboring countries. Therefore, since refugee influx matter connects influx of terrorists at the same time, it can also cause deterioration of public order in the region and security problems extend neighboring countries.

(3) Challenges after 2007

There are mainly three challenges. First, there is cooperation between UNHCR and DRA towards mass Somali refugee influx in Dadaab. From March 2011, the work which UNHCR had played so far was taken over by DRA. DRA has taken reception and registration for Somali refugees who have fled to Kenya beyond the border. UNHCR has issued ration card to the individuals after DRA registered the refugees [Interview]. A refugee who has a ration card is considered as a target to be given the support from various international organizations and NGOs and can enjoy the many kinds of support such as food, medical care, education and so on [Interview]. Therefore, the operation of protecting Somali refugees was smoothly performed. In fact, most of refugees answered it did not take for a long time to be registered as refugees.

Second, UN agencies increased National staff after fear of terrorism increased. As a result, since national staff can understand the local language, it became easier to promote the mutual understanding of refugees, and the procedure was progressed smoothly. [Interview]" In other words, it led easier conduction since both national staff and Somali refugees can share similar cultural background comparing international staff from all over the world.

Last, a round table meeting in Dadaab refugee camp is held. The meeting is held at least once a week. The participants are all actors who engage in Somali refugee issues there. They are included not only humanitarian organizations but also refugee leaders both male and female [Interview]. The meeting provides opportunity for all actors to share information. It is also an opportunity to reflect refugee voices on policy.

6. Conclusion

Kenya is state party of both Refugee Convention and the OAU Convention therefore framework of refugee protection was adopted. However, domestic Refugee Act was absent for more than 15 years after mass Refugee influx. Meanwhile, UNHCR had authority of management to register refugees.

However, Dadaab have faced fear of terrorism because Al-Shabaab flowed in there mingling refugees. First of all, Dadaab is a region where there had been diplomatic problems between Kenya and Somalia. Moreover, it has been important position where Al-Shabaab has actively trained its soldiers or recruited new members. In addition, Dadaab is also a region which has a geopolitical significance on the stability of East Africa as well as Kenya. Therefore, GoK have decided to close the border since 2007 in order to prevent flow of terrorists.

The border closure had mainly two problems. First, after the border closure, number of Somali refugees became the highest especially in 2011. Moreover, contrary to the aim of the closure, fear of Al-Shabaab increased. Unfortunately, it also led humanitarian aid organizations to reduce international staffs. Therefore, humanitarian aid organizations had to face highly difficult humanitarian crisis.

However, there are mainly three challenges which can be evaluated. First, by installation of DRA with Refugee Act established, cooperation between DRA and UNHCR has contributed for smoothly refugee registration and protection. In addition, while the withdrawal of international staff in Dadaab had been advanced, humanitarian organizations have increased national staff on the field. It became easier for both staffs and refugees to understand and rely on each other. Third, implementation of the round table meeting has provided opportunity for those engaged in refugee protection in Dadaab to share information. Also participants are included refugee leaders. Therefore, it became useful to reflect refugees' voices on policy.

This research contributes for refugee study especially focused on Dadaab refugee camp by analyzing the dynamism before and after the border closure in 2007 as well as clarifying the challenges by those who engaged in Dadaab refugee camp.

For further study, it is necessary to look at the challenges from military or polices more at on the matter of border security. Then this study can become more comprehensively.

7. Reflection on the GLTP in Africa (What you learned through this programme and how to make use of this experience to your future career development)

GLTP finally brought me to Kenya. It took almost 2 years to visit there. Since I research in protecting Somali refugees in Dadaab, I really wanted to do field work regarding to my survey. However, there was a big concern about security. In GLTP, students can be protected because they are sent to relevant university. For example, I stayed a students' dormitory where it is within the university. When I go out university, my supervisors introduced some Kenyan students to me in order to keep in safety. Moreover, when I planned to visit Dadaab where there is world's biggest refugee camp and security concern is much higher for foreigners, the director of refugee studies canter coordinated my trip plan with humanitarian organizations there. I found it very difficult to be safely if I went there by myself without their support. Therefore thanks to GLTP, I had a great opportunity to visit Kenya and did field work safely.

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[20] Interview

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- United Nations High Commissioner for Refugees (UNHCR) in Nairobi
- Refugee Consortium Kenya (RCK) in Nairobi
- Individual refugees

[21] Questionnaire survey

- Department of Refugee Affairs (DRA) in Dadaab
- United Nations High Commissioner for Refugees (UNHCR) in Dadaab
- UNHCR in Geneva
- UNHCR in Somalia
- United Nations Office for Coordination of Humanitarian Affairs (UNOCHA) in Dadaab
- World Food Programme (WFP) in Dadaab
- Refugee Consortium Kenya (RCK) in Dadaab
- Individual refugees

Appendix

1. Map 1. Dadaab

Kilale Dadaab Kisumu Kist Kericho angi Tchika NAIROBI Machakos INDIAN Mombasa OCEAN Maior roads N T **Camp facilities** DAGAHALEY Refugee Camp Camp blocks Urban area 4 km 2 mi IFO 2 Refugee Camp IFO Refugee Camp Airstrip Dadaab Town BHER Learning Centre to Garissa (105 km) HAGADERA Refugee Camp KAMBIOOS Refugee Camp

2. Map 2. Dadaab Refugee Camp

Reference: Humanitarian International Services Group