

**UNIVERSITY OF NAIROBI**

**DEPARTMENT OF DIPLOMACY AND INTERNATIONAL STUDIES**

**THE NEXUS BETWEEN NATIONAL SECURITY CONCERNS AND PROTECTION  
OF REFUGEE RIGHTS: A CASE STUDY OF KENYA**

**SUPERVISOR: DR. Shazia Chaudhry (PhD)**

**NAME: QATAMUR BARAKO ELEMA**

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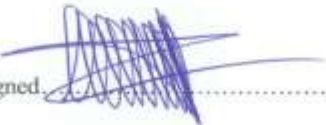
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## DECLARATION

I, **Qatamur Barako Elema**, do hereby declare that this is my original work and has not been submitted to any other University or Institution for any award.

I hereby now submit the same for the award of Master of Arts in Diplomacy Degree of University of Nairobi.

Signed,  .....

**Qatamur Barako Elema**

Candidate

Date: 25/11/2021 .....

**Qatamur Barako Elema** (Candidate) This thesis has been submitted for examination for the award of Masters of Arts in Diplomacy, for which the candidate was registered with my approval as the University of Nairobi Supervisor,

Signed,  .....

**Dr. Shazia Chaudhry**

Supervisor

Dated: 25 / 11 / 2021 .....



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Thank you so much and may you live long enough to nurture other budding academicians through their academic journey.

## **DEDICATION**

To Almighty God for protection and good health, my wife Sabdio K. Jillo and My son Sedas for supporting my obsession for this degree program and enduring my weekend disappearances and late night nuisance during the period of study.

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## **LIST OF ABBREVIATION**

GDP: Gross Domestic Product

GFD: Gross Foreign Debt

IDMC: Internal Displacement Monitoring Center

IDPs: Internally Displaced People

IGAD: Inter-Governmental Authority on Drought

ILO: International Labour Organization

NGOs: Non-Governmental Organizations

NRC: Norwegian Refugee Council

OAU: Organization of African Unity

RSD: Refugee Status Determination

SSA: Sub-Saharan Africa

UN: United Nations

UNDP: United Nations Development Programme

UNECA: United Nations Economic Commission for Africa

UNHCR: United Nations High Commission for Refugees

UNICEF: United Nations International Children's Emergency Fund

UNRWA's: United Nations Relief and Works Agency

VRF: Voluntary Repatriation Form

WFP: World Food Programme

WHO: World Health Organization

## **ABSTRACT**

Globally the increased flow of refugees has become a global challenge. More often than not the burden of accommodating the asylum seekers and migrants often falls on the host country and refugees' bodies like UNHCR. With the influx of refugees into different countries, states continue to face external threats to their security. Under the international law, states have the obligation to welcome those seeking asylum. This often leads to a dilemma of protecting refugees and national security. As states take in asylum seekers, they have to ensure their national security is not threatened. The study hence was set out to investigate the Nexus Between Kenya's National Security Concerns and Protection of Refugees' Rights. The main objective of this study is to examine the Kenya government response towards the influx of refugees against competing for national interests such as security. the specific objectives will be to understand the complex relationship between the influx of refugees and Kenya's national interest, to investigate the government's response towards the influx of refugees in Kenya, to examine how the Kenyan government can better respond to refugees' influx without overlooking refugees' rights and compromising their national interest. The study is a mixture of qualitative and quantitative research designs where both primary and secondary sources of data was relied upon. The open door policy towards refugees adopted by Kenya has left it susceptible to terror attacks. This is because terrorist pose as asylum seekers and get into the country to carry out terror attacks. The Kenyan government holds the position genuine refugees are not a threat to the national security of the county. The study established the government of Kenya has in many instance raised security concerns that are linked to refugee's camps.

## CHAPTER ONE

### INTRODUCTION AND BACKGROUND OF THE STUDY

#### 1.0 Introduction

This chapter provides the introduction of the study. The aim of this study is to assess Kenya government's response to the influx of refugees against a background of competing national interests particularly that of the dilemma of national security.

#### 1.1 Background to the study

The rapid increase of refugees continues to be a major global problem. At the end of 2019, 79.5 million people have been forcefully relocated throughout the world. UNRWA was responsible for 5.6 million Palestinian refugees, half of whom were under the age of 18. There were 26 million refugees, half of whom were under the age of 18, 20.4 million UNHCR refugees, and 20.4 million UNHCR refugees. In Article 1a of the 1951 United Nations Convention Relating to the Status of Refugees, a refugee was defined as anybody who has been forced to flee from their home "is outside his places of origin because of fear of being harassed on basis of race or ethnicity, gender, language, belonging in a particular population, or political ideology, and is unable to or unable to take advantage of that nation's military protection because of that fear".<sup>1</sup>

Kenya has become a major campsite for refugees from other Eastern African countries after independence. Refugees in Kenya had the legal right to live anywhere in the country at first. However, in the early 1990s, when practically every nation in Kenya's neighborhood was experiencing political turmoil, Kenya chose to keep the refugees in camps. This was owing to a surge in the number of refugees entering the nation.<sup>2</sup>

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<sup>1</sup> UNHCR, "Convention and Protocol Relating to the Status of Refugees," (2011)

<sup>2</sup> Jegede O, J, "Factors Influencing Vulnerability of Women in Refugee Camps: The Case of Dadaab Refugee Camp; Garissa County," (Kenya, Master of Arts Project Paper, University of Nairobi 2012) p. 2

The United Nations established a refugee convention in 1951. It was domesticated in Kenya in 2006 after pressure from international bodies such as UNHCR and other civil society organizations. The act is comprehensive in citing ways in which refugees ought to be treated. It further enlightens on the procedures for provision and withdrawal of refugees status from asylum-seeking individuals.<sup>3</sup> Following the enforcement of the refugee act, Kenya established the Refugee Affairs department which was mandated to perform administration, coordination, and the management of refugee issues in the country. These include registration, processing of refugee status requests, and even issuance of new identity status.<sup>4</sup>

Over time, Kenya has been pursuing an open-door policy with regard to the reception of refugees in the country. This implies that there have been few restrictions to the admission of people seeking asylum to the country. Further, the implication here is that little scrutiny is done to the refugees in the country.<sup>5</sup> This could have played a role in enhancing security lapse which has become an important national security interest particularly in the wake of terrorist attacks in Kenya. Refugees especially those of Somalian descent have been on the receiving end of the government's response since they have been thought to be associated with the Somalia-based terror network- Al Shabaab. When there is an influx of refugees in any refugee-hosting country, both negative and positive impacts are to be expected. With positive outcomes such as the provision of human labor,<sup>6</sup> little

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<sup>3</sup> Hope, K. R., *"The political economy of development in Kenya,"* (New York: Continuum International Pub. Group: 2012).

<sup>4</sup> Ibid

<sup>5</sup> Human Rights Watch (Organization), & Simpson, G., *"From horror to hopelessness: Kenya's forgotten Somali refugee crisis,"* (New York, NY: Human Rights Watch: 2009)

<sup>6</sup> Ayooob, M., *"The Third World Security Predicament: State Making, Regional Conflict, and the International System,"* (Lynne Reiner, London: 1995).

or no response is salient. However, with negative consequences arising from the refugees, any government is likely to cry foul. Nonetheless, it is how the host nations respond to these impacts that need to be examined to elucidate corrective actions within the microscope of international conventions.

Kenya has been a recipient of refugees from neighboring countries since the 1970s. From 2007, after incidents of trouble from refugees, the government heightened their border security. However, this only increased the rate of foreigners being smuggled into the country and the rate of detention, police harassment, and even deportation.<sup>7</sup>

Many countries across the globe have been facing the challenge of protecting refugees and at the same time fulfilling competing national interests such as enhancing national security prevention of terrorism and criminality. In recent years, refugees have been increasingly linked to terrorism, and the government's response has been negative. For example, the Yemen government enacted legislation to make it difficult for Somali refugees to enter Yemeni since 2010, citing their affiliation to Somali-based terror groups such as Al Shabaab.<sup>8</sup> To this end, examining the nexus between Kenya's national security concerns and the protection of refugees' rights is important

## **1.2 Statement of the Research Problem**

It is an international standard for governments to be welcoming to asylum seekers. The 1951 Convention urged that nations continue to accept migrants on their soil and engage in a spirit of real international cooperation so that these people might seek asylum and be resettled. The state, on the other hand, is not obligated to accept refugees. The state decides whether or not to accept

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<sup>7</sup> Deegan, H., “*Africa Today: Culture, Economics, Religion and Security*,” (online publishers, 1995)

<sup>8</sup> Human Rights Watch (Organization), & Simpson, G., “*From horror to hopelessness: Kenya's forgotten Somali refugee crisis*,” (New York, NY: Human Rights Watch: 2009)

refugees. Nonetheless, there are minimal standards set that all states must adhere to in treating refugees. The challenge comes when hosting refugees in conflict with the national interest of the state.

Kenya has offered the United Nations Relief and Works Agency, UNHCR, two weeks to come up with a plan to close two enormous camps that host hundreds of thousands of Somali refugees in 2021. Due to national security concerns, the Ministry of Interior has decided to shut the Dadaab and Kakuma camps. Refugees' rights are often overlooked when states pursue their interest. The Kenyan government is currently facing such a situation where it is torn between fulfilling the protection of refugees and competing national security interest. The underlying question that this research will seek to answer is how the government of Kenya responds to the influx of refugees in midst of its national security interests.

### **1.3 Research questions**

1. How complex is the relationship between hosting refugees and protecting national security?
2. What is the national government's response towards the influx of refugees in Kenya and the threat to her National Security?
3. How can the Kenyan government better respond to refugees' influx without infringing refugees' rights and compromising its national security interest?



## **1.4 Objectives**

### **Main objective**

The main objective of this study is to examine government response towards the influx of refugees against competing national security interest, the study focuses on the case study of Kenya.

### **Specific objectives**

1. To understand the complex empirical and theoretical relationship between hosting refugees and arising national security issues.
2. To investigate the Kenyan government's response towards the influx of refugees and threats to her National security.
3. To examine how the Kenyan government can better respond to refugees' influx without overlooking refugees' rights and compromising their national security interest.

## **1.5 Literature review**

This section of the study will analyze the relevant literatures on refugees' rights and national interests. In this section, the theoretical and empirical literature will also be tackled

### **1.5.1 Theoretical review**

#### **1.5.1.1 Realist theory**

Realism as a theory traces its roots from such early ancient traditional thinkers as, Machiavelli, Rousseau, and Thucydides.<sup>9</sup> However, realist theory gained prominence after the failure of idealist thinking in the interwar period and was advanced by realists like and Hans Morgenthau. Realist theory bases its argument that human is greedy, selfish and brutish in nature. Individuals only look after their personal interests. The major actors in the international system, according to this idea, are sovereign nations. In addition, the idea claims that the international system is anarchic because

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<sup>9</sup> Dougherty, J. et al "*Contending Theories of International relations: A Comprehensive Survey*," (New York: Longman Publishers, 2001)

it lacks a central authority. As a result, governments must use whatever methods required to safeguard their national security interests.<sup>10</sup>

Realist theory is based on three key assumptions sovereignty, survival and self-help hence states control its domestic affairs as it deems fit. Sovereign states according to realists-are rational actors pursuing their national interest in an anarchic world. In a world driven by self-help, the key national interest of the state is its security defined as survival. The refugee inflow is viewed as a direct danger to national security.

### **1.5.1.2 Theory of Third world security**

Ayoob in his analysis of third world security theory argues there are two main characters of third world countries that affect its security. First, he argues that third-world nations are still in the early phases of country formation, with the process of state and nation-building only getting started. He argues that this is a long and arduous process that requires countries to collaborate and create one identity. He believes that this is not an easy process and it takes time to complete and so third world countries find themselves under pressure to form a common identity in a few decades. Secondly, he argues that it is a fact that third world countries are new to the international system as fully sovereign nations having recently joined the system of states after gaining independence in the post-second world war period. These two factors are what defines and drives the security of states hence when faced with threats to their national security, they are willing to choose national security at the expense of refugee rights. It is worth noting that at this time the third world countries are weak and vulnerable.<sup>11</sup>

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<sup>10</sup> Diez, T., et al. *“Key Concepts in International Relations,”* (New York: Sage Publishers, 2011)

<sup>11</sup> Ayoob, M., "Inequality and Theorizing in International Relations: The Case for Subaltern Realism", (International Studies Review, 2002)

## **1.5.2 Empirical literature review**

### **1.5.2.1 The plight of Refugees in the World**

There are a number of push and pull factors that drive people from their home countries to other regions of the world. Economic migration, Social migration, political migration as well as Environmental factors are some of the factors that have driven people to leave their homes. According to Brookings, there are approximately 26 million refugees in the world. When these individuals go to other countries, they in most cases settle in places where they are not always welcome by host countries.<sup>12</sup> A good example is a negative sentiment about Syrian refugees in Europe. This is because the influx of refugees in the countries makes social-economic, political, and security concerns a bit more complicated than in their usual norm.

According to Milner, in the age of migration, security remains a national interest in many refugee recipient countries.<sup>13</sup> It is anticipated that many countries are likely to review their refugee protection approach policies particularly in the new wave of nationalism which prioritizes statehood interests with the foreigners coming second. It is in this view that examination of the national response to the protection of refugees rights need to be examined.

The United Nations High Commissioner for Refugees (UNHCR) reports that the number of refugees is slowly increasing. In mid-2018, there were 16.5 million refugees globally, up from 16.5 million in mid-2016. According to Ghariba, Syria, the world's biggest supplier of refugees, accounted for more than 30% of all refugees as of mid-2018. This burgeoning refugee population creates several concerns. According to the UNHCR, refugee children are five times more likely

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<sup>12</sup> <https://www.brookings.edu/blog/future-development/2020/01/27/sharing-the-burden-of-the-global-refugee-crisis/>

<sup>13</sup> Milner, J., "*Refugees, the state and the politics of asylum in Africa. Basingstoke,*" (England: Palgrave

Macmillan: 2009).

than non-refugee children to be absent from school due to school delays in overcrowded camps. The crowded camps attract diseases that are preventable and treatable, such as diarrhea, measles, and malaria, endanger the health of refugee children, particularly those under the age of five. Despite these diseases being treatable and preventable, the camps are often neglected hence endanger their health. In certain cases, parents are unable to find work outside of the camps to support their families. The most recent statistics from the United Nations Refugee Agency have an idea of the global situation. They also demonstrate how complex today's refugee crisis is.<sup>14</sup>

Escobar explains that the situation of refugees in the world is complex. Different conflicts and political situations in their countries of origin force them to flee and seek asylum in other countries. Most are fleeing from Syria due to the civil war ravaging the country. There are 4 million Syrian displaced people, most of which have taken refuge in neighboring countries. With 2.6 million people, Afghanistan is the second-largest country, followed by Somalia with 1.1 million. Other countries where refugees are leaving include Sudan, South Sudan, the Democratic Republic of Congo, Myanmar, the Central African Republic, Iraq, and Eritrea.<sup>15</sup>

Nikolau clarifies this. The Syrian crisis, which has compelled millions of people to flee their homes and seek asylum in Europe and neighboring countries, has been the main reason for the surge in migrants since 2011. Many refugees are still fleeing battles that have erupted or flared up throughout the world in the last five years, many of which are decades-old instability and conflicts like those in Afghanistan, Somalia, Central America, and others. Many world leaders are searching for solutions as a result of the outrage produced by what has turned into an international crisis.

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<sup>14</sup> Gharib, M, “*CHART: Where The World's Refugees Are*,” (journal, online publishers, 2017:NPR).

<sup>15</sup> Escobar, R, “*Analysis of the refugee situation in the world in 2016*,” (journal, online publishers, 2016).

Refugee services are strained as a result of millions of homeless people on the move, and governments with limited finances are sealing their borders.<sup>16</sup>

Turkey is the country that has taken in more refugees so far, with a total of 1.6 million. Pakistan with 1.5 million is the second country that has welcomed more refugees. Lebanon also has more than a million, followed by Iran, Ethiopia, and Jordan, with over 500,000 each. Kenya, Chad, Uganda, and China are countries that have taken in a larger number of asylum seekers.<sup>17</sup> According to Amnesty International, Germany has committed to taking in 39,987 Syrian refugees under its humanitarian admission program, accounting for nearly 54% of the European Union's population. Between 2011 and 2015, Germany and Sweden received 57 percent of all Syrian refugee applications in Europe. The remaining EU member states have agreed to take in 30,930 refugees. Qatar, the United Arab Emirates, Saudi Arabia, Kuwait, and Bahrain, all wealthy Gulf states, have refused to accept Syrian refugees. Other nations with strong GDPs, such as Russia, Japan, Singapore, and South Korea, have not pledged to accept migrants.<sup>18</sup>

### **1.5.2.2 The Plight of Refugees in Africa**

Africa hosts the largest number of refugees in addition to internally displaced persons (IDPs). The consequence of the influx of these people within African countries has had the effect of conflicts. According to 2006 statistics, 50% of all world conflicts were taking place in Africa.<sup>19</sup> It is these conflicts that cause famine, violence, and civil disorders than other natural causes. Rwanda, Sudan,

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<sup>16</sup> Nikolau, L, “*Current state of the world’s refugee crisis: 20 million and counting*” ( Humanosphere Group, online publishers, 2016).

<sup>17</sup> Escobar, R., op sit.

<sup>18</sup> Ibid.

<sup>19</sup> Deegan, H., “*Africa Today: Culture, Economics, Religion and Security*,” (online publishers, 2009)

Central Africa, Eritrea, Somalia, Chad, the Democratic Republic of Congo, Togo, Burundi, Angola, and Somalia are the main conflict-ridden countries in Africa which in turn create the refugee problem.<sup>20</sup> Most of these refugees are economic refugees who most often do not meet the legal migrant's requirements set forth by the United Nations conventions and the African Union. The refugees are also viewed as a threat to social stability through their new cultures which host communities are sometimes xenophobic. In addition, ethnic, cultural, and religious identity is also other causes of conflicts in the hosting countries.<sup>21</sup>

There are three main reasons why people become refugees: conflicts, poverty, and climate change. In the Middle East and Africa: the war in Syria, as well as the Palenstine-Israel war, has led to a number of people fleeing their homes for safety. In Somalia, the growing violence in the Horn of Africa has forced many people to flee. Nigeria is experiencing the violence of Boko Haram, and in the Democratic Republic of Congo domestic violence in the country continues to surge. In Eritrea, there is an autocratic Government that has been internationally isolated and is forcing many families out of the country. In South Sudan, the civil war is a conditioning factor.<sup>22</sup>

In 2015, about 16 million Africans were either displaced or forced to migrate to other nations. This figure has risen by 1.5 million since 2014. The vast majority of these people, about 10.7 million in number, were internally displaced people (IDPs). The remaining 5.2 million were refugees fleeing their home countries. The overwhelming majority of these refugees, about 4.4 million in all, found

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<sup>20</sup> Human Rights Watch, *“From horror to hopelessness: Kenya's forgotten Somali refugee crisis.”* (New York, NY: Human Rights Watch, 2009).

<sup>21</sup> United Nations High Commissioner for Refugees., *“The state of the world's refugees,”* ( 2000. Oxford: Oxford Univ. Press.

<sup>22</sup> Escobar, R, Op sit....

asylum in neighboring countries. The continued civil war in Somalia, as in previous years, remained a major factor in a large number of refugees. Many civilians were forced to flee as a result of the simmering wars in South Sudan and Sudan. Burundi plunged into anarchy after the presidential elections.<sup>23</sup> The Boko Haram crisis in Nigeria drove an increase in the number of refugees to neighboring countries. In 2015, Ethiopia and Kenya remained the primary host countries for refugees in Africa. The majority of Somali, Sudanese, and South Sudanese refugees have found asylum in these two East African countries. Uganda, where many people fleeing war in Burundi found asylum, had a significant rise in refugees. In Cameroon, the UNHCR reported a higher number of refugees in 2015 than the previous year. The large number was caused by the Boko Haram crisis on Cameroon's northwestern border with Nigeria.<sup>24</sup>

In 2015, developed nations admitted around 86 percent of the world's refugees, or 13.9 million individuals, under the UNHCR's mission. With 4.4 million refugees, Sub-Saharan Africa (SSA) is the region with the most.<sup>25</sup> Somalia, South Sudan, the Democratic Republic of the Congo, Sudan, and the Central African Republic were among the countries represented. They accounted for 3.5 million (80 percent) of the country's total refugee population by the end of 2015.<sup>26</sup> Ignoring the fact that perhaps the lack of comprehensive bilateral evidence for refugees in SSA makes it difficult to characterize migrations within the area concretely, analysis reveals that refugees in

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<sup>23</sup> Wilhelm, Jan Philipp, *“UNHCR report: Worsening refugee situation in Africa,”* (online publishers, 2016).

<sup>24</sup> Ibid

<sup>25</sup> According to the United Nations, Sub-Saharan Africa includes all African countries that are located entirely or partly south of the Sahara. <https://unstats.un.org/unsd/methodology/m49> for a complete list of nations.

<sup>26</sup> UNHCR: *“Global Trends – Forced Displacement”* (UNHCR report, Online publishers, 2015)

SSA choose to stay in Africa rather than travel to Europe or other continents. The majority of the funds remain in SSA nations.<sup>27</sup>

### **1.5.2.3 The Refugee Situation in Kenya**

Since the country's independence in 1963, refugees have been prevalent in Kenya. The country has taken in refugees from neighboring countries that have endured civil wars, political instability, and upheavals. Ethiopia, Somalia, Sudan, Uganda, the Democratic Republic of the Congo, Burundi, and Rwanda are among them. Kenya's overall number of refugees and asylum seekers had risen to approximately 630,000 by August 2012, including 55,000 in Nairobi. Kenya has ratified the 1951 UN Refugee Convention, as well as its 1967 Protocol and the 1969 OAU Refugee Convention. The country has also ratified several global and regional human rights treaties dealing to refugee security. Kenya, on the other hand, did not have a national refugee statute until 2007, when it enacted the Refugee Act.<sup>28</sup>

Despite the relatively recent introduction of national refugee legislation, Kenya and Nairobi have a long tradition of aiding refugees from adjacent and surrounding countries. In the 1970s, for example, a huge number of Ugandans left their home country's strife and sought asylum in Kenya, many of them were teachers and other educated individuals who were successful in settling in the nation owing to their talents and cultural affinities.

In the early 1990s, Kenyan border areas saw the construction of refugee camps as a result of large-scale refugee arrivals from Ethiopia, Somalia, and Sudan. Many Somalis came in Mombasa and the country's coastal districts at initially, but were eventually relocated to three large camps in

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<sup>27</sup> Goodwin-Gill, Guy *“International law and the movement of persons between states,”* (Oxford: Clarendon Press, 1978)

<sup>28</sup> Ibid



Dadaab, northeast Kenya. In the meanwhile, Ethiopian and Sudanese refugees were mostly held at the Kakuma camp in the country's northwest portion.<sup>29</sup>

It was anticipated at the time that the new refugee circumstances would be temporary, and that the bulk of those involved would be allowed to return to their home countries. The camp solution proved to be the most suitable for both the authorities and UNHCR in terms of facilitating final repatriation of the refugees, safeguarding Kenya's national security interests, and arranging the delivery of food, shelter, and other sorts of assistance to the new arrivals. Because determining refugee status on a case-by-case basis became more problematic due to the number and scope of these new influxes, *prima facie* refugee status was conferred instead.<sup>30</sup>

In Kenya, refugees are now held near two camps: one in Garissa, the Dadaab, and the other in Turkana County's Kakuma. Previously, camps at Mombasa, Malindi, Thika, Moyale, and Mandera closed. The UN High Commissioner for Refugees, other UN specialist agencies such as UNICEF, WFP, WHO, UNDP, and non-governmental organizations (NGOs) have taken on the task of providing basic necessities for refugees in these camps (food, housing, water, hygiene, sanitation, and education), while the Kenyan government provides administrative and security support and usually maintains Law and Order in the camps.<sup>31</sup>

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<sup>29</sup> Ibid

<sup>30</sup> Kagwanja et al, op sit.

<sup>31</sup> Nowrojee B, "In the name of security: Erosion of Refugee Rights in East Africa" ( Human rights watch, online publishers, 2000).

#### **1.5.2.4 Refugee Rights and National Security Interests in Kenya**

Mukira looks at the impact of refugee influx in Kenya particularly on insecurity, the proliferation of small arms, and the economy from 1991 to 2016. The work argues that the refugee crisis is linked to insecurity in the country which has led to the rise of cases of terror attacks. The terror attacks are perpetrated by the Al-Shabaab from Somalia and are planned in the refugee camps. Allegedly, it has been assumed that the Somali refugees in Kenya and especially in Nairobi Eastleigh estate play a vital role in financing and organizing these attacks. However, the recruitment by Al - Shabaab has been attributed to the protracted situations of the refugees both in the refugee camps and urban centers. This has often led to the harsh treatment of the refugees by the Kenyan authority. The above work is important to this study as it shows the conflict of interest between the Kenyan authority and the refugees.<sup>32</sup>

Abdi examines the civil war in Somalia in 1991, which had thousands of their people crossing their border to Kenya where about 130,000 Somalis made it to Dadaab camps. The host country's international obligation to give security to the refugees. The work examines the complex relationship between the influx of refugees and the issue of national security. Under international law, Kenya as a host country has the obligation to protect and oversee welfare. However, the challenge comes when refugees are viewed as security threats.<sup>33</sup> The number of refugees that went to Dadaab at the time of the Saied Bare conflict in Somalia, the host state to protect refugees on its territory as well as the failure of the host state to provide for adequate security is also questioned. Elhawary talks of urban refugees and their reason for coming to Nairobi away from the camp life they find to be very unbearable. The article enumerates the problems that made them leave their

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<sup>32</sup> Mukira, C., *“Constrains in the Repatriation of Somali Refugees: A Case Study of Urban Somali Refugees in Eastleigh, Nairobi,”* (university of Nairobi, 2016)

<sup>33</sup> Abdi, N., *Evaluating peace making process, the case of IGAD in somalia conflict, Maters thesis,* (University of Nairobi, 2012)

country, the Dadaab camp, and the problems the refugees face in Nairobi. The police in Kenya have been viewing most refugees as criminals and have been harassing them. Most Somalis are arrested and locked for a long period of time. Ordinarily, the state has the international obligation to protect the refugees. However, this becomes a problem when the refugees are seen as a source of insecurity in the country. The above literature is key to this study as it brings out the instances of the state harassing rather than protecting the refugees. This is due to the perceived insecurity brought by refugees.<sup>34</sup>

Internal stability and security have been impacted by an increase in significant criminal activities such as homicide, armed robbery, and the unlawful acquisition of guns and weapons. The impact of these crimes on local populations has been devastating, with internal displacement of people, houses, towns, and even entire villages; abandonment of farming activities by some of those displaced; and conflicts between refugee and host population.<sup>35</sup>

Cross-border militant violence, arms trafficking, insurgent organizations like Somalia's Al-Shabaab and Ethiopia's Oromo Liberation Front recruiting and training refugees, and theft of food or finances by these militias are all important national security challenges that the government must address. In recent years, weapons trafficking, terrorism, and banditry have all increased along the border, particularly in the country's north. In addition, the situation is unlikely to improve rapidly enough for these people to return home.<sup>36</sup>

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<sup>34</sup>Pavanello S., et al *"Hidden and Exposed: Urban Refugees in Nairobi, Kenya,"* (HPG Working Paper, 2010)

<sup>35</sup> Verdirame G et al *"Rights in Exile: Janus Faced Humanitarianism,"*( Oxford and New York: Berghahn Books, 2005)

<sup>36</sup> Ibid.

According to Abdirahman, many of the migrants saw the encampment as a form of imprisonment. According to the refugees, travel limitations and the conditions of their forced incarceration have exacerbated more social, physical, and health problems than sicknesses and wars. Their limited mobility has resulted in underdevelopment and degeneration, and it continues to do so. The Kenyan government is unhappy with the scattered settlement of refugees in a border region because it exposes the area to attack by parties involved in the conflict from which the refugees fled. According to the report, the Kenyan government would not allow military organizations linked to refugees to use their territory to launch assaults on Somalia, their home country. Indeed, refugee resettlement (whether in camps or not) may be in the best interests of refugee security in any of these instances. The research before it shows how refugees are treated when they are considered security concerns. As the research aims to explain security rights and national interests, this will serve as the study's foundation.<sup>37</sup>

#### **1.5.2.5 Kenyan Policies in Response to Refugee Situation**

Since the fall of Somalia's government in 1991 and the establishment of refugee camps in the same year, Kenya has seen a significant influx of refugees, mostly as a result of continuous humanitarian crises in neighboring countries. Aid to refugees in Kenya has continued, but meeting their needs has become a huge concern for government authorities and humanitarian groups. It has "ratified the [1969] OAU Convention dealing with refugees" and is a "party to the 1951 Refugee Convention" the government of Kenya is legally bound to accept refugees. While the government has complied with the aforementioned regulations, it has also constructed a number of unwritten and informal practices that deny refugees any extra benefits. Kenyan officials have also continued to encourage refugees to enter the country on the condition that they "all dwell in designated

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<sup>37</sup> Abdirahman O "Somali Refugees and State Security: Kenya as a Case Study, 2002-2012", (Master of Arts Thesis, University of Nairobi, 2010)

camps." The circumstances in the camps should undoubtedly be habitable and in compliance with international law from an ethical viewpoint. How long, on the other hand, does a refugee stay in a camp? Is it possible that providing luxurious housing makes it more probable that a refugee will not wish to return home or start a new life? The Kenyan government and the UNHCR have both explored genuine questions, but neither has found a reasonable middle position.

Despite recognition of the refugees by the government through the enactment of the Refugee Act 2006 and having ratified the 1951 refugee Convention and the 1967 Protocol respecting the rights of refugees, the management of the refugees migrating still remains a challenge.

Despite the implementation of the Kenyan government's new Refugee Act of 2006, which mandates the distribution of travel cards to refugees, the Kenyan government has maintained a strict camping policy. Somali refugees outnumber natives by a quarter million in Dadaab. The three camps – Hagardeer, Dagahley, and Ifo – were designed to hold 90,000 people, but they currently house some 440,000 refugees, with 150,000 (all Somalis) arriving in 2003.<sup>38</sup> Dadaab's refugees had a significant dearth of appropriate accommodation prior to the resettlement of at least 61,000 additional migrants in 2008, with the bulk of them sleeping in makeshift shelters made of sticks and plastic sheeting.<sup>39</sup> According to the Norwegian Refugee Council, Dadaab's 171,870 refugees have been without shelter and proper sanitation since mid-2007, and a new shelter will be required for every five new refugees coming in 2008. UNHCR reported an additional 76,356

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<sup>38</sup> Refugee Consortium of Kenya (RCK) *'Refugee Management in Kenya'*, (Forced Migration Review, online publishers, 2003)

<sup>39</sup> Refugee Act 2006, Section 17; F

new arrivals (needing 15,271 shelters) at the end of February 2009, bringing the total shelter need to 40,271 shelters.<sup>40</sup>

Omar examines how Kenya as a country has managed the refugee crisis. His findings are that refugees in Kenya are held in camps. The encampment of refugees' is a measure taken by the Kenya government to easily manage the refugees. According to the research, many opponents of camping must demonstrate that migrants do not increase stability or reduce tensions between refugees and locals. Clearly, there will be moments when the security danger posed by such refugee groups demands stringent surveillance. However, it may be claimed that regulation, particularly severe restrictions on refugees' activities inside camps, enhances rather than lowers the security danger presented by refugees under normal conditions. Many people who work with Somali refugees think of them as disagreeable and rowdy people.

Kenya has taken in a large number of refugees from the Horn of Africa and the Great Lakes area, according to Manyala. The major destinations for these individuals are the Kakuma refugee camp in the northwestern part of Kenya and the Dadaab refugee camp in the north-eastern region of Kenya. As a consequence of these security concerns and the threat of terrorism, Kenya's government decided it was prudent to safeguard its national interests and security. However, Kenya has in some cases been criticized by civil society and the international community for choosing her national interest over refugees' welfare. Kenya is in a dilemma on one side is her international obligations on refugees and defending and pursuing its national interests.<sup>41</sup>

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<sup>40</sup> Ibid

<sup>41</sup> Buusi M, "*States' Response to Refugee Crisis: The Case of Somali Refugees in Kenya*" (United states international university-Africa, 2016)

### **1.5.3 Gaps in the Literature Review**

Based on the above literature review, it is evident that countries across the globe dealing with refugees' issues in different ways. The host country is often faced with the international obligation to protect the refugees. However, the above literatures fail to give an analysis on the response of the state to the influx of refugees when their National Security is at stake.

### **1.6 Hypotheses**

- i. The refugee influx has led to national security problems in Kenya.
- ii. Refugees influx poses a direct threat to the national security in Kenya.
- iii. The Kenyan government has focused more on national security more than refugee protection.

### **1.7 Justification**

#### **1.7.1 Academic justification**

The findings of this study will be important to the field of academics in that refugee protection and national security is an ongoing debate in the field of academia. The study hence will help researchers and other academicians in the field of political science, international relations and security studies. The findings of the study will bring forth the dilemma the government faces in dealing with refugees.

#### **1.7.2 Justification to the public**

The public are the most affected by security issues. The findings of this study will hence be important to the general public. Security impacts all Kenyans alike, hosting refugees also have a direct impact on the general public. This study's finding hence will be used to inform the public on how the government has responded to the influx of refugees in the face of refugee-linked terrorism which is a direct threat to the national security and security of all citizens.

### **1.7.3 Policy justification**

The findings of the study could be useful to policymakers to understand the position of the government of Kenya on refugees' influx and their impact on Kenya's national interest. The government needs proper policies in responding to refugee protection in the presence of conflicting national security interest.

### **1.8 Theoretical Framework**

This research will be guided by the rational choice theory, realist theory, and the theory of third-world security. This is because the study deals with the complex relationship between refugees' rights and the government's response to the influx of refugees in the face of threats to its national interest. Realism as a theory traces its roots from such early ancient traditional thinkers as, Machiavelli, Rousseau, and Thucydides.<sup>42</sup> However, realist theory gained prominence after the failure of idealist thinking in the interwar period and was advanced by realists like Hans Morgenthau. Realist theory bases its argument that human is greedy, selfish and brutish in nature. Individuals only look after their personal interests. This theory argues that sovereign states are the primary actors in the international system. Further, the theory posits that the international system is anarchic as there is no central authority. As a result, states must protect their national interest by any means necessary.<sup>43</sup>

Realist theory is based on three key assumptions sovereignty, survival and self-help hence states control its domestic affairs as it deems fit. Sovereign states according to realists-are national actors pursuing their national interest in an anarchic world. In a world driven by self-help, the key national interest of the state is its security defined as survival.<sup>44</sup>

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<sup>42</sup> Dougherty, J. et al “*Contending Theories of International relations: A Comprehensive Survey*,” (New York: Longman Publishers, 2001)

<sup>43</sup> Diez, T., et al. “*Key Concepts in International Relations*,” (New York: Sage Publishers, 2011)

<sup>44</sup> Morgenthau, H., “*Politics Among Nations: The Struggle for Power and Peace*,” (5th Ed. Scientific Book agency, 1967)



The theory of third-world security reveals that third-world countries like Kenya face numerous challenges when it comes to securing their national interest from both internal and external forces. From the theory, Kenya's security systems are weak, ineffective to some extent, and vulnerable to deal with both hosting the refugees and maintaining their national Security interest.

Rational Choice Theory holds in the face of competing interests. The rational choice theory will be used to explain the actions of the government. A state will pursue its national interest at the expense of refugees' rights. This is because pursuing national interests like security is a rational choice made by the government.

Realist theory largely compliments this study as it tries to explain the state's response when their national interest is threatened. In this study, the refugees are perceived as a threat to the national interest of national security.<sup>45</sup> The response to the refugees' situation hence will be viewed from a national interest point of view and the government will make a rational choice considering the factors of Third world security. States being the primary actor in the international system, states will respond to the threat to their national interest as it deems fit. In spite of her international obligation to protect the refugees and observe refugees' rights, national interest will always override refugees' rights. A national security interest cannot be sacrificed or traded off with the international norms and obligations.

### **1.9 Research Methodology**

The methodology section will consist of the research design, data collection methods, sampling size, and procedure as well as data analysis and presentations.

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<sup>45</sup> Haddad, E. *"The Refugee in International Society: between sovereigns,"* (Cambridge: Cambridge University Press, 2008)

### **1.9.1 Research Design**

This study will be a mixture of both the qualitative and quantitative research design. The choice of mixed approach was informed by its flexibility to accommodate both primary and secondary methods of data collection and analysis. The mixed research design is preferred because it shows and gives the feeling and the perception of the respondent while at the same time providing room for numerical analysis.

### **1.9.2 Data Collection Method**

The study will rely on both the secondary and primary sources of data. Secondary data will include a review of available books, journals, and other published materials in libraries in Kenya and online resources. Apart from published written materials, the study will use primary written materials. These include graduate project papers and theses, and reports from the United Nations and other organizations dealing with refugee issues. Data from written sources will be analyzed and gaps identified. To fill in the gap identified in the secondary information, written primary data will be used. This includes reports by various United Nations agencies, reports by the Kenya government, Non-Governmental Agencies reports, and reports from the various officers dealing with refugees directly. It was on the basis of the content of such available documents and other literature that key variables will be abstracted and gaps identified.

#### **Data collection procedure**

A substantial amount of data for this study will be derived from oral interviews and questionnaires. Oral interviews will corroborate and strengthen the written documents. Interviews using an unstructured questionnaire guide will also be used.

### **1.9.3 Target population**

The target population of the study will mainly be the government officials, Officials from UNHCR, refugees both urban and those at the camps, camp officials, the general public

### **1.9.4 Sampling procedure**

Respondents will be identified using the purposive sampling method. On this basis, the study will choose a sample of people or groups of participants who are deemed acceptable or particularly useful for the research's purposes. This study will only be accurately evaluated if the sample will be purposively selected. The sample size will be arrived at using the Yamane sampling formula of

$$n = \frac{N}{1 + N(e)^2}$$

Where:

n signifies the sample size

N signifies the population under study

e signifies the margin error (it could be 0.10, 0.05, or 0.01)

$$n = \frac{N}{1 + N(e)^2}$$

$$n = \frac{500}{1 + 500(0.05)^2}$$

$$n = \frac{450}{1 + 500(0.0025)}$$

$$n = \frac{500}{1 + 1}$$

$$n = \frac{500}{2}$$

$$n = 250$$

### **1.9.5 Data analysis and presentation**

Recorded data will be transcribed and relevant information is drawn. Collected data will be analyzed qualitatively. This approach enables identifying, studying, contrasting, and

understanding relevant patterns or themes from which conclusions will be made and presented through tabulation.

### **1.9.6 Scope and Limitations of the Study**

The study is limited to the refugee's rights and national interest the Kenyan government's response to refugees' influx in the face of terrorism; the findings will not be applied universally to all countries. The study will be limited by data collection due to the global happening of Covid-19 where the restrictions in place limit free movement and free interactions. Another potential limitation will be the sensitivity of Data that will be collected since it is security-related. To overcome this, the study will utilize google forms and other online data collection techniques. Similarly, the study will ensure the respondent of the confidentiality of the data collected.

### **1.10 Chapter outline**

This chapter highlights the background of the study and provides introductory information on the study such as the objectives, problem statement, theoretical framework, the research methodology, and justification among others

The second chapter will look at the complex relationship between refugee's rights and national interest and the existing international and regional legal framework on protection of the refugees.

The third chapter will discuss the response of the government to the influx of refugees in the face of threats to Kenya's national interest.

Chapter four will give an analysis of how best the government can respond to refugees' influx without infringing on refugees' rights and still pursue its national interest.

Chapter 5 will entail the summary of the study, conclusions, and recommendations.

## CHAPTER TWO

### THE GLOBAL REFUGEE FRAMEWORK ON REFUGEE PROTECTION

#### 2.1 Introduction

The issue of refugees is a global problem and a transnational issue. Families all across the world are forced to escape their homeland every other day in search of safety and then a better life. The United Nations estimates that one percent of the world's population has been forced to escape their homes. Many individuals are forced to escape their homes owing to conflicts, slaughter, poverty, and persecution, with little more than the clothes on their backs. People seeking refuge abroad are regularly met with government actions that jeopardize their families' safety. This chapter hence will look at the complex relationship between hosting refugees and protecting national security. This will be done by analyzing International regimes for the protection of refugees, various international treaties on Refugees protection, the Regional refugees' framework, and the Key challenges and prospects of enacting these legal frameworks.

#### 2.2 Global Refugee Issues

The United Nations pact concerning migrants that were enacted in Geneva Switzerland in 1952 is by far the vital document concerning refugee issues. Article 1A of the Geneva conventions provides an elaborative definition of refugee that is universal. The convention described a refugee as a citizen who fears for his life because of being of a different race, religion or country.<sup>46</sup> The person, therefore, flees his native country to seek asylum in a safer country. The migrant cannot return to his native country since the country cannot safeguard his basic rights. The migrant seeking asylum should however provide proof of his claims before being allowed into the host nation.

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<sup>46</sup> The Geneva Convention Relative to the Protection of Civilian Persons in Time of War

The 1951 convention strives to offer refugees basic rights and protection.<sup>47</sup> The term Refugee bears a diverse meaning in global legal frameworks. Conventionally, the term refugee is used to depict a citizen who escapes from his native country because of hostility or failure to uphold human rights. In this accord, the League of Nations developed policies to guide this situation. The policies were based on arguments that a refugee was anyone outside his native country and therefore lacked protection from any government or nation. For instance, in 1926 soviet migrants only included Russian citizens who for one reason or another are not protected by the Russian government. Additionally, the migrant should not have acquired citizenship of another nation. In the case that the migrant has the citizenship of another country, presence outside the native nation was not completely defined, but it was indicated in the convention's goals, notably provision of identification documents for migration and repatriation.

Germany took the same strategy as Russia. The strategy involved how German refugees were identified and differentiated. The strategy was later incorporated into the 1938 international laws. The convention highlighted those Individuals who have or have had German identity and who do not have any other citizenship that has been proven to be unprotected by the German state legally and factually. According to Simpsons, all the definitions of a refugee were ambiguous.<sup>48</sup> He argued that refuge is any person that left his country fearing for his/her life and does not desire to return back to their country of origin. During the Second World War, refugees included Nazi militia and fascists.

The United Nation established a department The United Nations High Commission for Refugees that deals with issues concerning refugees. The UNHCR is tasked with being an independent non-governmental organization that provides relief and assistance to refugees. The department

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<sup>47</sup> ibid

<sup>48</sup> ibid

implements and enforces refugee conventions that are recognized globally. UNHCR recognizes migrants that existed even before 1951 and share the same notion of a refugee that is described in the 1951 convention. The UNHCR also recognizes other migrants that are outside their native country for one reason or another and fear to return because they may be prosecuted as refugees. The description is globally accepted since it has no time and geographical constraints. The definition is used to distinguish genuine refugees that need the support of the UN from other migrants that have ill motives.<sup>49</sup>

However, all the international humanitarian agencies strive to safeguard the basic human rights of migrants regardless of whether they are genuine or not. Basic rights include the right to life, freedom, food, and shelter. UNHCR's mandate is however contradictory. The objective of the department is to protect and uphold the rights and safety of refugees. On the other hand, the department narrows the scope of refugees. Activities of the humanitarian agency, therefore, need a thorough analysis of the involved parties before any relief is offered. The number of refugees has been rising constantly in the last 30 years. The administration and operation of the UNHCR need to be resilient to the diverse population it affects. UNHCR recognizes two types of migrants as refugees. A large group of people who flee their native country because of fear of prosecution is recognized as refugees. Secondly, individuals who fear to return to their native country because of oppression are also considered to be refugees, to this end the policy of Non refoulement was introduced to protect refugees.<sup>50</sup>

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<sup>49</sup>ibid

<sup>50</sup> Haddad, E. *"The Refugee in International Society: between sovereigns,"* (Cambridge: Cambridge University Press, 2008)

### **2.2.1 Non-refoulement policy**

The notion of non-refoulement provides crucial protection under international law, immigration, emergency and traditional law. It prohibits governments from transferring or removing individuals from their jurisdiction or effective control if there are substantial grounds to believe they would suffer irreparable harm if they returned, such as harassment, execution, harassments, or other serious human rights violations.<sup>51</sup>

Governments need to inscribe the doctrine of non-refoulment into their domestic law.<sup>52</sup> To accomplish this, rules governing the immigrant entrance and boundary control procedures must take into account the distinction between genuine refugees and people seeking to enter the nation with ill motives. The existing national immigration policies may need to be reviewed. There should be an efficient and effective procedure for evaluating and verifying genuine migrants.

### **2.2.2 Sharing the burden of contemporary refugee protection**

The history of refugees runs far back. However in modern day, the War in Syria that resulted in the largest amount of migrants. In face of this, the international and regional refugee laws state that refugees are to be protected in countries they fled to. The system is based on the idea that particular host nations will offer asylum for refugees globally. By the close of 2015, governments of southern nations hosted approximately 86% of the global migrants, implying that national commitments as host nations are inevitably uneven, if not discriminatory. Nations in the southern part of the world housed 86% of the global migrants mainly because they are close to the native countries of the refugees.<sup>53</sup> Although migration is generally a north-south problem, many countries have raised

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<sup>51</sup> <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>52</sup> *ibid*

<sup>53</sup> *ibid*



concerns about the unbalanced allocation of national obligations for migrants. The countries are concerned about the significant increase in the number of migrants between 2015 and 2016.

Global collaboration, unity, and assisting each other are among the major concerns raised by the refugee countries.<sup>54</sup>The prologue of the 1951 agreement concerning the status of migrants states in its fourth recital that granting refuge can impose undue obligations on asylum nations. If nations do not collaborate to mitigate the challenge, then comprehensive remedies cannot be achieved. The UN has evaluated the refugee problem and acknowledged that it is diverse and complex.

Because burden-sharing is essential in global refugee safety protocols, it must be closely scrutinized in terms of its structure and legal obligations, thus implying that it tends to constitute a push for joint initiatives to tackle migration issues.<sup>55</sup> The idea of sharing the refugee burden may be found in three main legal arrangements in global relations studies. The ideas can be categorized as multinational, cooperative, and socially beneficial paradigms for ease of reference. International cooperation is defined as collaboration between two or more countries. International cooperation, which gives an exclusive and discriminate type of partnership against other nations, a multinational partnership entails a more inclusive style of cooperation. The conclusion of the Cold War paved way for the resolution of many long-running international disputes, as well as renewed expectations for international cooperation in refugee affairs. George W. Bush envisioned a new world that embraced international cooperation. The international cooperation was to be guided by the United Nations.

It was during the Gulf War that the UN's multilateral functions were resurrected and implemented. However, the refugee problem has proven to be complex and diverse. Nevertheless,

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<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

the conclusion of the Cold War has put significant limitations on international refugee liability systems. James Hathaway argues that the migration crisis poses a danger to asylum nations from the coalition's standpoint. Migrants question the point of boundaries, the state's ability to regulate entrance, and the nation's independence and dignity. Due to the influence migrants have on imposing severe financial obligations on host nations, migrants pose a danger to state and social costs on host nations. As a result, sharing the burden of refugees will alleviate the host governments from the financial and social burden of solely hosting the large number of refugees. The Syrian wars, especially its influence on Europe, have sparked governmental concern in international cooperation, with the subject being debated in several conferences of 2016, resulting in the approval of the United Nation's New York Convention for asylum seekers.

### **2.3 International regimes for the protection of refugees**

Every government needs to safeguard its citizens. Sometimes governments are unable to safeguard their citizens, such citizens may be compelled to flee their country due to significant transgressions of their rights. The citizens look for shelter in neighbouring or safer countries. Because the governments of emigrants' native countries are no longer committed to safeguarding their constitutional rights, the international community intervenes to ensure human rights are protected and upheld.<sup>56</sup>

The office of the United Nations High Commissioner for Refugees (UNHCR) was established by the United Nations during World War II. The United Nations High Commissioner for Refugees (UNHCR) has the responsibility of protecting migrants and finding long-term remedies for their issues. International humanitarian laws and policies guide the activities of the office. They include the Universal Declaration of Human Rights of 1948 and the Geneva Conventions of

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<sup>56</sup> *ibid*

1949. Other treaties, both international and domestic, also strive to safeguard and uphold the rights of refugees.

### **2.3.1 Convention on the Status of Refugees of 1951**

International refugee policies are founded on the convention concerning the wellbeing of refugees. The international law highlights the definition of the word "refugee" and outlines basic treatment and requirements that the refugees are entitled to. Since international law was developed in the aftermath of World War II, the concept of a refugee concentrates only on those migrants outside of their native nation. The migrants were displaced mainly due to the war occurring in Europe and other parts of the world before 1951. As more refugee situations erupted between 1950 and 1960, it became essential to extend the refugee Convention's conceptual scope. As a result, a new procedure for the treaty was developed and implemented.

### **2.3.2 Protocol on the Status of Refugees of 1967**

The 1967 Refugee Convention is separate from the 1951 Convention, though they are closely linked to each other.<sup>57</sup> The policy removes the Convention's temporal and geographic constraints on who qualifies to be called a refugee. International Law covers three areas majorly. The law outlines the fundamental concept of a refugee, as well as terms for termination or disqualification from the refugee status. The convention also stipulates the legal constraints of refugees in their refuge countries, as well as their rights and duties. The rights include the right of not being forced to return to their native countries which have failed to safeguard and uphold their fundamental rights. The convention also outlines the responsibilities of the governments, which include assisting the United Nations to implement and enforce the policies on the refugee convention.

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<sup>57</sup> *ibid.*

By signing the contract, countries agree to implement and enforce the majority of the policies on the Refugee Convention to all people who qualify to be called refugees according to the convention. Nonetheless, many countries globally have chosen to comply with the refugee convention and all its policies.<sup>58</sup> The countries depict how refugee convention is the cornerstone of refugee protection globally.

### **2.3.3 The Cartagena Declaration**

A meeting of state officials, eminent judges, and lawyers was conducted in Cartagena, Colombia in 1984. The objective of the meeting was to explore the global refugee protection system. agendas that were discussed and agreed upon in this meeting at Cartagena were dubbed the Cartagena Declaration. The Cartagena declaration argues that Latin American countries should embrace the refugee status as defined in the 1951 refugee convention. The declaration added that people who ran away from their native nations because their lives were in danger due to violence, oppression from foreign countries, and internal wars should also be considered refugees.

Even though the Declaration isn't viable in court, the majority of Latin American nations used the concept for legal activities, and some have even integrated it into their domestic legal systems. The Declaration has received widespread support. For instance, the Organization of American States and the United Nations have supported the declaration.<sup>59</sup>

### **2.3.4 Resolutions of the United Nations General Assembly - The Declaration on Territorial Asylum of 1967**

The United Nations General Assembly approved a Declaration on Regional Refugee Sanctuary aimed at managing countries in 1967. The Declaration emphasizes that protecting refuge is a fair

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<sup>58</sup> Lorett. B (2014) Migration and refugee law, Routledge research, New York: Longman Publishers.

<sup>59</sup> Katy Long (2013) when refugees stopped being migrants: movement, labor and humanitarian protection. Migration studies.

and ethical gesture that cannot be considered hostile by another country. The nation offering sanctuary for refugees should evaluate and confirm the refugee status of the migrant before granting them refuge.<sup>60</sup>

### **2.3.5 Findings of the UNHCR Executive Committee**

The UNHCR Executive Committee gives recommendations to High Commissioners on how to carry out their duties.<sup>61</sup> The recommendations are generated yearly and are a component of the international framework for refugee protection. The recommendations are prepared and approved in consensus by the members of the UNHCR executive committee. The recommendations offer suggestions on how to respond to different refugee issues. The refugee convention guides the formation of the recommendations. The recommendations of the Executive Committee express the viewpoints of more than 50 countries that are passionate and experienced concerning refugee rights. When creating their legislations, these nations tend to refer to the recommendations of the UNHCR executive committee.

### **2.4 Regional framework for refugee protection**

Among the first continents to develop a framework for the protection of refugees is Africa. Africa has many refugees resulting from the numerous wars and conflicts occurring in the continent. The OAU drafted policies to protect refugees.<sup>62</sup> The convention drafted by OAU in 1969 was the continental humanitarian treaty globally. Convention was drafted in 1991 concerning migrants and refugees. The 1991 convention is commonly known as the Abuja treaty because it was drafted in Abuja, Nigeria. The 1991 convention gave birth to the African Economic Community. The goal

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<sup>60</sup> Jane McAdam, (2007) *Complementary protection in international refugee law*, Oxford University Press,

<sup>61</sup> Jane McAdam, (2007) *Complementary protection in international refugee law*, Oxford University Press,

<sup>62</sup> JO Moses Okello, *The 1969 OAU Convention and the continuing challenge for the African Union*, *Forced Migration Review*, 48, November 2014

of the organization was to enhance existing humanitarian institutions and enforce refugee laws. The 1991 convention strived to support growth and development initiatives in Africa. The convention pushed for free migration of citizens and capital resources between African countries. The treaty, therefore, boosted economic growth and development as well as fostered the safety of refugees and migrants.<sup>63</sup>

In 2006, the African Union implemented two regimes concerning refugees and migration. The two regimes were the refugee law regime and the African general stand on emigration and growth. The refugee law regime has been in operation for more than ten years since 2006 although it is currently being modified. The increase in the number of refugees and migrants sparked the need to develop regimes to guide the situation. Refugees have increased in Africa mainly because of industrialization wars and unfavorable political climates as well as environmental factors like drought and famine.

The laws governing migration reveal that the refugee crisis is a major concern in the modern world. The role of the African Union in dealing with refugees is clearly stated in the migration laws. Additionally, the migration regime argues that the refugee crisis is mutually beneficial to the native nation and the asylum seekers.

The African stand on the refugee crisis highlights the role of AU in the situation. The policy was drafted in light of an international meeting that was to be held in 2006 concerning the refugee crisis in Africa. The convention urged African countries to modify their domestic policies to incorporate global humanitarian laws aim at safeguarding the rights of refugees. Additionally, the convention

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<sup>63</sup> Loescher Gil and Loescher A D, *The Global Refugee Crisis: A Reference Handbook ( Contemporary World Issues)* Oxford, London, 1994.

urged African nations to draft laws that mitigated social oppressions elicited by racism, xenophobia, and religious discrimination.<sup>64</sup>

The African Union drafted laws aimed at safeguarding internally displaced people from Africa because the continent recorded the highest number of refugees in the world. The Kampala Convention was drafted in 2009 for the safety of internally displaced persons in Africa.

The number of migrants increases daily in Africa. It is important to note that among the migrants are genuine refugees as well as criminals hiding as refugees. Countries in Africa have focused on mitigating the issue of criminals camouflaging as refugees seeking asylum. In light of this challenge, the African Union in 2009 started a program aimed at pointing out traffickers and dealing with them. The program was developed to differentiate criminals from genuine refugees and deal with them appropriately.<sup>65</sup>

According to statistics about half of the entire African refugee population resides in African countries. Africa, therefore, needs to have an effective program that regulates and guides refugee activities. Some programs have been launched to exploit the benefits that come with having many refugees on the continent. For instance, the joint labor migration program was developed in 2015 to enable African countries to enjoy the benefit of having many refugees that can fuel growth and development in the continent. The program is the first global initiative that has taken a different perspective concerning the refugee crisis in Africa. Moreover, the program has received backing from other global humanitarian agencies such as UNECA and ILO.<sup>66</sup> Surprisingly the joint labor migration program is the only initiative in the world that sees the beneficial side of refugees and

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<sup>64</sup> Rotberg R, *Battling Terrorism in the Horn of Africa*, World Peace Foundation Brookings Institution Press, 2005.

<sup>65</sup> *ibid*)

<sup>66</sup> International Labour Organization (ILO), *The Joint labor migration program for Africa*, 2015, [http://www.ilo.org/addisababa/mediacentre/pr/WCMS\\_402369/lang--en/index.htm](http://www.ilo.org/addisababa/mediacentre/pr/WCMS_402369/lang--en/index.htm)

migrants who can help a country achieve economic prosperity. Various laws and policies guide migration activities in Africa. They include:

#### **2.4.1 OAU Convention concerning the Specific Aspects of Refugee Problems in Africa (1969)**

The 1969 convention is complemented by the 1951 convention.<sup>67</sup> The two conventions provide insights on the term refugee. The convention urges host nations to welcome immigrants and offer them relief food and shelter. non-refoulment is majorly emphasized in the convention. Nations that cannot offer relief to refugees for one reason or another are urged to collaborate with other countries to support refugees. The convention also urges asylum nations to grant illegal immigrants temporary housing relief as they explore other alternatives. Following the conflicts that exist between two or more countries that led to the refugee crisis in the first place, the convention uses two main principles to guide its activities. The convention highlights that granting relief and support is a humanly act and therefore does not warrant any hostile response. The convention also highlights the need for the asylum seeker to conform to the domestic legislation of the asylum countries. The treaty urges asylum nations to resettle the refugee voluntarily and with the consent of the refugees themselves. The native nations of the refugees are also urged to safeguard the rights of the citizens by not prosecuting them for fleeing their country. Additionally, asylum countries are asked to grant travel permits to the immigrants while they are in the country. Lastly, the convention encourages local authorities to work hand in hand with the OAU and UN in granting humanitarian relief.

The Convention addressing the specific elements of Refugee issues in Africa was signed by the Organization of African Unity (OAU) in 1969. Conflicts that occurred at the end of Africa's

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<sup>67</sup> M Sharpe, The 1969 African Refugee Convention: innovations, misconceptions, and omissions, McGill Law Journal, 2012



colonization resulted in a series of massive refugee migrations.<sup>68</sup> The 1967 Refugee Policy, as well as the 1969 OAU Protocol Addressing the Specific Elements of Refugee issues in Africa, was triggered by the massive migration rates. The OAU Protocol, which considers the 1951 internal refugee law to be the fundamental and globally accepted document related to the topic of refugees, is the only contractual regional protocol in existence. The OAU protocol's definition of a refugee is its most essential part. The OAU Protocol preserves the 1951 protocol's definition of a refugee but adds an objective factor. A refugee is defined as any citizen forced to flee his or her native nation because of external attacks, work, international oppression, or incidents that disrupt peace either in a section or the entire country. Those escaping civic unrest, violent acts, or war have a right to seek asylum in countries that are signatories to the above treaty irrespective of whether or not they have a legitimate fear of oppression of their basic rights.

#### **2.4.2 The Sahel Saharan treaty of 1998**

24 African countries are signatories to the treaty.<sup>69</sup> The treaty states the significance of having free movement of people and capital in Africa. The rights and freedoms of the citizens of a particular nation should also be recognized by the other member countries. The treaty fosters the free movement of people within the member countries without necessarily having a visa, especially for special persons. Special persons, in this case, include dignitaries, state officials, diplomats, and ambassadors. Other regular citizens are however needed to avail their visa, passport, health certificate, and criminal records before gaining entry to the country. The treaty provides citizens of the member countries with the right of settling down and stating business. The right however depends on the policies of the host nation.<sup>70</sup>

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<sup>68</sup> ibid

<sup>69</sup> ibid

<sup>70</sup> ibid

### **2.4.3 The Abuja Treaty of 1991**

The Abuja treaty focuses on promoting economic growth and development in Africa. All the policies of the treaty aimed at fostering economic prosperity in Africa. The treaty urges African countries to utilize the human resource endowment that is at their disposal. The human resource that can fuel economic growth is utilized appropriately. The citizens have to move freely within African countries if they are to be productive. The Abuja treaty of 1991, therefore, strives to abolish barriers to movement.<sup>71</sup>The barriers restrict people from moving from one country to another to conduct trading activities. Additionally, the barriers restrict foreigners from residing in foreign countries. The fourth chapter of the convention highlights these concerns and offers appropriate insights. The Abuja treaty fuels growth and development in Africa by abolishing restrictions to free movement within African countries for trading purposes. Additionally, other treaties are currently being drafted to improve free movement. The treaties are expected to be enacted by the African Union in 2018. The Abuja treaty aims to remove any barrier to the free flow of individuals from one state to another.

### **2.4.4 Migration Policy regime for Africa (2006)**

The migration policy highlights that migration is mutually beneficial to the native and asylum nations.<sup>72</sup>Handling migration inappropriately can however breed conflicts between the native and asylum nation. This often leads to oppression such as racism, xenophobia, and religious discrimination. According to the migration policy of 2006, political unrest, wars, environmental hazards, and poor living standard are the major causes of migration in Africa. The policy argues that the problem of migration will continue to affect Africa in the coming years forcing the

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<sup>71</sup> OAU, Treaty Establishing the African Economic Community (Abuja Treaty), 1991, [http://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt\\_aec.pdf](http://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt_aec.pdf)

<sup>72</sup> AU, The Migration Policy Framework for Africa, 2006, <http://www.unhcr.org/protection/migration/4d5258ab9/african-unionmigration-policy-framework-africa.htm>

continent to frequently adjust its policies and laws. The main topics highlighted in the policy include border control, labor refugees, and movement patterns, oppression of human rights as well as growth and development. Additionally, the policy highlights topics such as the safety of the humanitarian workers, health and gender conflicts are also included in the policy. The policy suggests appropriate suggestions on how the member nations should handle each situation.<sup>73</sup>This treaty advocates for free flow of individuals without attack or discriminations.

#### **2.4.5 AU's Kampala Convention of 2009**

The Kampala convention focuses on identifying and mitigating the causes of displacement in Africa.<sup>74</sup> Additionally, the Kampala convention provides guidelines on how to reduce the cases of internal refugees and how to support them. The convention pushes for collaboration among host nations in tackling the issue of internal displacement in Africa. The roles of the member countries are clearly outlined in the Kampala treaty. International humanitarian institutions are guided by the Kampala treaty in their effort to assist internally displaced persons in Africa. The treaty urges its member countries to conform to the universal laws and rights of internally displaced persons. The responsibility of the African Union in supporting IDPs is also highlighted in the Kampala treaty. The role of The AU includes offering relief and support to IDPs and intervening in wars and conflicts among its members. These roles are highlighted in article 4 of the AU's constitution. Other issues highlighted in the treaty include compensation for offering relief, identification protocols for the IDPs, domestic cooperation, and registration of new members. Rules that guide armed authorities are also included in the treaty.<sup>75</sup>

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<sup>73</sup> African Union Treaty.

<sup>74</sup> African Union (AU), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009, <https://au.int/sites/default/files/treaties/7796-treaty-0039>

<sup>75</sup> UNHCR, Handbook for Emergencies, Second Edition, 2000, p. 137.

#### **2.4.6 IGAD's Regional Migration Policy of 2012**

IGAD's regional migration policy was developed in 1996 and it highlights strategies that govern migration in Africa.<sup>76</sup> The organization provides policies that guide refugee activities, consolidates domestic and international conventions on refugee policies, and supports its member nations in providing relief and support to refugees. The policies drafted by IGAD focus on African problems. The problems include internal displacements triggered by war and political unrest, pastoralism, and oppression of human rights. IGAD's regional migration policy is made up of three major aspects. The policy depicts the factual number of refugees in Africa and the migration channels they use. The first aspect also examines the major causes of migration as well as migration trends. In the second aspect, the policy highlights other concerns such as labor immigration, customs management, oppression of human rights, refugee statistics, a development caused by migration, and collaborations and alliances to mitigate migration. Other major topics such as education, healthcare, agriculture, and tourism are also included in the second aspect of IGAD's policy. The third aspect of the policy explores different strategies that IGAD can use to enforce its policies.<sup>77</sup>

#### **2.4.7 Domestication of International humanitarian law**

Acceptance of domestic refugee law centered on global norms is critical for enhancing sanctuary, improving safety, and laying the groundwork for finding remedies to the refugee crisis. It is especially necessary to incorporate refugee conventions into domestic laws in regions where the refugee protocols are ambiguous, like in processes for assessing refugee status.<sup>78</sup>

The victims of violent wars, either homeless or not, are entitled to respect, protection from the effects of war, and fair support under international conventions. Since refugees are usually caught

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<sup>76</sup> IGAD, Regional Migration Policy Framework, 2012, [http:// migration.igad.int/wp-content/uploads/2017/02/RegionalMigration-Policy-Framework1.pdf](http://migration.igad.int/wp-content/uploads/2017/02/RegionalMigration-Policy-Framework1.pdf)

<sup>77</sup> IGAD, Regional Migration Policy Framework, 2012, [http:// migration.igad.int/wp-content/uploads/2017/02/RegionalMigration-Policy-Framework1.pdf](http://migration.igad.int/wp-content/uploads/2017/02/RegionalMigration-Policy-Framework1.pdf)

<sup>78</sup> G. Loescher, 'Refugees as Grounds for International Action', macmillan publishers

in the middle of domestic or international wars, their policies are intertwined with humanitarian policies. An item in the Fourth Geneva Convention about the safety of noncombatant individuals during the war of 1994 directly addresses refugees and other migrants according to Article 44. Refugees and undocumented migrants are covered in Sections I and III of the Fourth Geneva Convention according to the Additional policy I of 1977. Human rights laws, on the contrary, can only safeguard migrants when they are applicable, such as in times of international or domestic wars. Humanitarian laws cannot apply to a refugee whose native country is peaceful and is not involved in any wars.<sup>79</sup>

## **2.5 Key challenges faced by the UN in their quest to implement refugee policies**

### **2.5.1 Restrictive policies imposed by asylum nations**

Asylum nations impose barriers and policies that restrict the entry of refugees. These barriers are implemented mainly because of the citizens in their countries. Most of the citizens do not believe that some of the refugees are running from genuine threats in their native countries. This notion can be attributed to propaganda spread by media platforms and political leaders concerning the refugees and their intentions. Citizens in asylum nations tend to believe that refugees migrate to other countries for economic reasons. The refugees are believed to be in search of work opportunities or markets for products or services. This makes the citizens in the asylum nation feel insecure about their jobs and markets. The refugees, therefore, are restricted from entering the asylum nations so they are forced to return to their war-torn nations.

UNHCR strives to sustain asylum spaces for refugees globally. UNHCR will strive to support international conventions by assisting asylum nations in developing sufficient legislative frameworks and institutional capabilities to enforce compliance with refugee conventions such as

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<sup>79</sup> UNHCR, Handbook for Emergencies, Second Edition, 2000,

the 1951 and 1967 refugee conventions. The identity of people in need of refuge is critical to sustaining the refuge nations. UNHCR will work with countries to provide asylum, particularly by increasing the role of refugee law enforcement authorities, customs officers, and those responsible for detecting and deciding who qualifies as a genuine refugee. UNHCR will intensify its attempts to lobby for migrants, address propaganda, disinformation and give genuine remedies to any difficulties that may emerge to raise public understanding and promote a culture of acceptance for migrants.

### **2.5.2 Mixed population flows**

Another major problem for the UN is ensuring migrant safety in migration-focused solutions to diverse population migrations. Refugees and immigrants have become more dependent on illicit methods as a result of stringent regulations and barriers to entry into asylum nations have been implemented. The migrants use the same entry points as traffickers and other wrongdoers. Illegal migration is a major challenge in developing countries. While countries implement stringent measures to prevent migrants with ill motives from entering the country they should be able to differentiate the genuine refugees who need asylum from other migrants with ill motives.<sup>80</sup> UNHCR is concerned that a rising number of genuine refugees are being regarded as illegal immigrants. This jeopardizes their claim to international protection. UNHCR aims at creating a favorable environment for the protection of migrants. it is dedicated to strengthening asylum capacity and fostering cooperative relationships or acquire settlement programs for the refugees. UN is expanding its reach globally by increasing the number of UNHCR offices.

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<sup>80</sup> Jean.F (2008) the many forces prima facie group based evidence in refugee status determination.

### **2.5.3 Internal reforms**

UNHCR has in the past faced challenges in its quest to be efficient and effective. The organization analyzed and reviewed its activities in 2006. All the resources, employees and offices were analyzed to ensure they have optimal goal congruence. The main goal of the UNHCR is to protect refugees and preserve their basic rights. The organization's resources should therefore work towards achieving this goal and mitigating the other refugee problems. UNHCR has also improved the efficiency and effectiveness of its emergency response teams. The emergency responses provide quick aid to refugees. It can sustain approximately 500,000 migrants within three days. The current operational systems which are result-driven have proven to work efficiently.

### **2.5.4 Security of refugees and UNHCR workers**

The refugees and humanitarian workers are at risk of getting injured or even death since they work under hostile conditions. Armed militia, government enforcers and domestic citizens pose a huge threat to the refugees and humanitarian workers. Sometimes conflicts arise within the refugee camps which are very dangerous. Not all asylum nations are welcoming to humanitarian workers. The workers, therefore, need to be granted special protection in their line of duty.<sup>81</sup>

UNHCR positions refugee camps in great proximity from the violent areas or boundaries. Additionally, UN peacekeepers, army soldiers and local authorities are deployed to the refugee camps to enhance safety and peace. The refugee camps are supplied with a constant supply of basic needs such as food and clean water. Moreover, all the officers at the camp are trained occasionally on how to handle security issues. UNHCR has also reviewed its security protocols and attempted to put in place measures to improve worker wellbeing. To guarantee that protective measures for

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<sup>81</sup> United Nations, 'Recent Killings of Humanitarian Workers Demonstrate Changing Landscape for UN Operations, Security Council Told by Humanitarian Affairs Head: Briefs on Challenges Faced in Protecting Civilians in Conflict Areas', Security Council 4877<sup>th</sup> meeting, UN Doc. Press Release SC/7947, 9 December 2003.

UNHCR personnel and refugees are in place, collaboration with the UN Division of Security and Protection will be important.

Nonetheless, UNHCR institutions' efforts merely are not enough to secure the safety of people impacted by war, as well as the aid workers who assist and support refugees.<sup>82</sup> Effective solutions can only be achieved when the government is committed to securing refugees and the relevant resources to achieve this goal. Unfortunately, these interventions rarely occur.<sup>83</sup>

### **2.5.5 Increasing involvement and participation in refugee problems**

Citizens forced to flee their native country because of crimes against humanity or wars, but who, unlike migrants, reside inside their native country, have been a recurrent problem in UN relief efforts. In 2004, OCHA launched a rescue and relief analysis that suggested several steps to strengthen the collaborative emergency assistance in the refugee crisis, which UNHCR wholeheartedly supported.<sup>84</sup> The institution took over as the head for the defense, relief housing, and refugee camp organization and Control groups, and partook in all activities in which the innovative grouping management style was used.

The new style has continued to spark modifications in the way UNHCR operates. Modifications have been made on the internal structure and wide scope. It is a concern not just for international agencies to ensure that the strategy is creative and innovative to the realities of the situation, that the strategy is simple and non-bureaucratic, all social players are successfully involved as equal partners is difficult.

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<sup>82</sup> UNHCR, 'The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements', Executive Committee Doc, EC/49/SC/INF.2, 14 January 1999, pp. 2-4; UNHCR, 'The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the "Ladder of Options",' in *Refugee Survey Quarterly*, vol.19, no. 1, 2000, pp. 93-8.

<sup>83</sup> Commission on Human Security, *Human Security Now*, New York, 2003

<sup>84</sup> UNHCR, *Handbook for Emergencies*, Second Edition, 2000



## **CHAPTER THREE**

### **THE GOVERNMENT'S RESPONSE TOWARDS THE INFLUX OF REFUGEES AND THREATS TO HER NATIONAL SECURITY**

#### **3.1 Introduction**

The refugee problem is one of the human phenomena in the world. The problem has been on an upward trend as conflicts and other natural calamities increase across the world. In Africa, the refugee crisis has been on the upward trend due to the increase in domestic or internal conflicts. Such conflicts have often led to civil wars and other forms of violent conflict that have been unprecedented in the horn of Africa and within the great lake regions. Somalia, Sudan, Eritrea, Uganda, Rwanda, and Burundi are some of the countries in the two regions which have had protracted conflicts over different times. Kenya, due to its open-door policy, has been on the receiving end of the influx of refugees who are fleeing the neighboring countries in search of safety. This chapter hence will be highlighting the government's response towards the influx of refugees and threats to her National security.

#### **3.2 Kenya's trend in Hosting and protecting refugees.**

Since independence Kenya has had an open-door policy towards refugees. Kenya has been welcoming refugees in the early years. Kenya had a defined policy on refugees prior to the rise of security challenges and it had received refugees from across the various African nations. Kenya provides a safe refuge for people fleeing civil and military conflict in nations such as South Sudan, Somalia, and Burundi. Rwanda, Congo, and Ethiopia are three of the world's poorest countries. However, the dilemma emerged after refugees started posing security challenges to the country. In the face of the massive influx of refugees into the country, there has been a change in policy approach adopted in order to meet this challenge of hosting refugees in the face of insecurity and

constrained resource. Since 2006, there have been several substantial changes to the institutional framework. With the creation of the Refugees Act, the government began to take a more active role in refugee issues. After an earlier measure was hampered by the initial Somali refugee tragedy in the early 1990s, the Act was ultimately signed into law in 2006.<sup>85</sup>

In 2009, the Refugee Regulations went into effect, and the State Department/Ministry of Immigration and Registration of Persons established the Department of Refugee Affairs. The DRA was entrusted with accepting and registering refugees and was supposed to take over from the UNHCR. Two new legislation were introduced in 2010, the Citizenship and Immigration Bill and the Refugees Bill.<sup>86</sup> Following the adoption of the new Constitution in 2010, all refugee law was reviewed. There was a need to look into the existing refugees' laws to align with the new constitution. The review gave emphasis to the security concerns that came with hosting refugees. This was after the emergence of insecurity emanating from Somalia. Kenya tightened its approach to the refugees' issues right from the refugee status determination.<sup>87</sup>

The latest policy discussion between UNHCR, the Kenyan Government and civil society has been based on the changing nature at which Kenya is now handling the refugee issues. While the UNHCR and other refugee-friendly organizations are stressing the need for Kenya to protect the refugees, the Kenyan government is more focused with protecting her interest and ensuring its security.<sup>88</sup>

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<sup>85</sup> 37Loescher, G., and Milner, J. "The Long road home: protracted refugee situations, Survival," (2005) p156

<sup>86</sup> Kiama, L and Karanja, R. "Asylum space in Kenya: evolution of refugee protection over 20 years" (FMR 25th Anniversary collection, 2013)

<sup>87</sup> Hutchful, E, "Understanding the African Security Dilemma", (Pluto Press, London, 2000)

<sup>88</sup> J. Milner, "Refugees, the State and the Politics of Asylum in Africa", (Basingstoke, Palgrave Macmillan, 2009).

### 3.2.1 Local legal framework on refugee protection in Kenya

Kenya is a host to the millions of refugees who are fleeing their homes due to well-founded fear in search of safety. Hence, Kenya is a party to several treaties that touch on the issues of refugees. This is because for a long time Kenya has been welcoming refugees. Kenya has ascribed to many international laws that touch on asylum seekers and refugee protection. One of them is the 1951 United Nations Convention Relating to the Status of Refugees and its Protocol.<sup>89</sup> Together with the OAU treaty on refugees which Governs the whole problem around refugees in Africa. In 1967, the refugees' status protocol was adopted to reinforce and capture every aspect of refugees as the issue of refugees was expanding. It was also a good way to integrate the Convention into the national policies of signatory states. In addition, Kenya has also signed and ratified the Organization of African Unity Refugee Convention as well as global and regional treaties on human rights that touch on refugee protection.<sup>90</sup> Kenya is also a member to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which was established in 1984.<sup>91</sup>

On the domestic front, however, Kenya was lacking in national refugee legislation up to 2006 when the Refugee Act was enacted by parliament and came into force signifying the country's continued commitment to refugee protection. This was the national legal framework overseeing refugee affairs and it took on some of the duty for determining refugee status. The changing nature of refugees and increased inflow of refugees from neighboring countries saw a dramatic change of refugees' policies from the Kenyan authority with an aim to sustain the problem that comes with

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<sup>89</sup> F. Mukinda, "Kenya Wants Some Refugees Moved to a Third Country or Camps Opened in Somalia to Ease Congestion," (The Daily Nation , 2018)

<sup>90</sup> Mutimer, D. "Beyond Strategy: Critical Thinking and the New Security Studies", in Snyder, C.A. (ed) *Contemporary Security and Strategy*" (Palgrave Macmillan, Hampshire, London, 2008)

<sup>91</sup> Ikinda, N.F., "*Factors that influence Local Attitudes' Towards Refugees in Kenya*," (M.A Thesis, institute of African Studies, University of Nairobi, 2004)

hosting the refugees. In this view, the Kenyan authority started to monitor the refugees' movements. This led to the establishment of an encampment policy that was meant to confine the refugees within the camps. Kenya adopted the Refugee Act 2006; it was on this platform that the implantation of the 1951 UN Convention together with other Conventions was to be incorporated into the national legislation. The Refugee Act of 2006 laid out the policy stands Kenya had taken towards the issue of refugees. The policies on refugees then were not so strict hence refugees could move to urban areas like Mombasa. However, later as the number of refugees increased, they were moved to the camps.<sup>92</sup>

In 2019, a refugee bill was brought before the National Assembly of Kenya. The bill was aimed at amending the 2006 refugee act, which has been eclipsed by many events hence needed changing. The Bill was reintroduced in the National Assembly after the President failed to ascend it into law Refugee Act 2017. The need for change in the refugee laws comes due to the ever-changing complex relation between hosting the refugees and protecting national security interests.

Since independence Kenya had an open-door policy towards refugees. Kenya has been welcoming refugees in the early years. Kenya had a defined policy on refugees prior to the rise of security challenges and it had received refugees from various African nations. People fleeing political and military conflict in countries like South Sudan, Somalia, Burundi, Rwanda, Congo and Ethiopia always find refuge in Kenya. However, the problem arose when migrants began to pose a security threat to the country.

In the face of the massive influx of refugees into the country, there has been a change in policy approach adopted in order to meet this challenge of hosting refugees in the face of insecurity and

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<sup>92</sup> International Organization of Migration & United Nations High Commissioner for Refugees. "Joint return intention survey report 2014". (Nairobi, Kenya, 2014)

resource-constrained. Since 2006, there have been several substantial changes to the institutional framework. With the creation of the Refugees Act, the government began to take a more active role in refugee issues. After an earlier measure was hampered by the initial Somali refugee tragedy in the early 1990s, the Act was ultimately signed into law in 2006. The Refugee Regulations, which were passed in 2006 and came into effect in 2009, established the Department of Refugee Affairs within the state department/Ministry of Immigration and Registration of Persons. The DRA was entrusted with accepting and registering refugees, and was supposed to take over from the UNHCR. Two new legislation were introduced in 2010, the Citizenship and Immigration Bill and the Refugees Bill.<sup>93</sup> Following the adoption of the new Constitution in 2010, all refugee law was reviewed. There was a need to look into the existing refugees' laws to align with the new constitution. The review gave emphasis to the security concerns that came with hosting refugees. This was after the emergence of insecurity emanating from Somalia. Kenya tightened its approach to the refugees' issues right from the refugee status determination.<sup>94</sup>

The latest policy discussion between UNHCR, the Kenyan Government, and civil society has been based on the changing nature at which Kenya is now handling the refugee issues. While the UNHCR and other refugee-friendly organizations are stressing the need for Kenya to protect the refugees, the Kenyan government is more focused with protect her interest and ensuring its security.<sup>95</sup>

### **3.3 The nexus between refugees protection and national security in Kenya**

Kenya has had a long history with refugees as early as the 1970s welcoming people who have fled from the neighbouring countries. Kenya's neighbours are often faced with insecurity, ethnic

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<sup>93</sup> Kiama, L and Karanja, R. "Asylum space in Kenya: evolution of refugee protection over 20 years" (FMR 25th Anniversary collection, 2013)

<sup>94</sup> Hutchful, E, "Understanding the African Security Dilemma", (Pluto Press, London, 2000)

<sup>95</sup> J. Milner, "Refugees, the State and the Politics of Asylum in Africa", (Basingstoke, Palgrave Macmillan, 2009).

conflict, civil wars, and political instability. These include countries such as Rwanda, Uganda, Congo, Ethiopia, and Somalia. Originally Kenya had the capacity to sustain the small number of refugees coming into the country. However, as the number of refugees increased, Kenya was faced with the hard task of sustaining the growing number of refugees. Kenya did not have the capacity to hold such a large number of refugees.<sup>96</sup>

Because of its welcoming nature towards refugees as well as the relative peace and political stability Kenya has been a preferred destination for most refugees from the neighbouring countries. Kenya's history with refugees' can be traced from the 1970s, 80s, 90s to date. In 1971, in the face of the dictatorship rule of Idi Amin, Kenya hosted its first wave of Ugandan refugees; the onslaught of Idi Amin saw a large number of people flee their country in search of safety in Kenya. It is worth noticing that in the early years, the government of Kenya had the capacity to manage and sustain the refugees in the country, and some were even absorbed into the economy where they got employment.<sup>97</sup> During the early days, the refugees could be monitored and managed well due to their small numbers. The refugee population in Kenya then was relatively small and hence they could be easily integrated as most were Ugandans, but as refugees from other neighboring countries like Somalia and South Sudan started flowing in, the refugees' situation became unmanageable.<sup>98</sup>

The emergence of Somalis and South Sudanese refugees complicated Kenya's will and capacity to host refugees. The origin of Somali refugees was triggered by the fall of the Said Barre regime which led to an outbreak of a civil war. The country has been plunged into chaos characterized by

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<sup>96</sup> Hyndman, J. et al. "UNHCR and the Status of Prima Facie Refugees in Kenya".. (International Journal of Refugee Law, 1998).

<sup>97</sup> J. Zapater, "The Prevention of Forced Displacement: Inconsistencies of a Concept ," ( New Issues in Refugee Research, Working Paper No. 186, Geneva, UNHCR)

<sup>98</sup>Adelman, H., et al "*African Refugees, Development Aid and Repatriation,*" (Boulder, Co: Westview press, 1994).

rival clans fighting amongst themselves. Somalia is home to about ten (10) million people most of whom are of Somali origin. But with the disorder brought about by the forceful ousting of President Siad Barre in 1991, there arose a strong clan rivalry which led to conflict and chaos among these clans. Somalia is a country whose citizens have no cultural, religious, or linguistic divisions. However, the Somalis remain divided along the clans who are fighting amongst themselves. This has prompted a large number of Somalia's population to flee for safety with Kenya being the best destination.<sup>99</sup>

Until the 1990s, refugees were not restricted on where to reside in the country. Meaning that refugees were free to live anywhere and could access the opportunities like education or employment. There were no needs for camps then, apart from a reception center in Thika. But after 1990 as the number of refugees increased immensely, refugees were required to reside in the camps. The camps in Kenya have been home to a number of refugees across the East African region and beyond. Most refugees in Kenya are confined within the two main camps namely Dadaab and Kakuma while a small fraction of the refugees live in the urban areas, like Nairobi and other towns. The refugees at the camps are settled in such a way that most Somali refugees are in Dadaab, while refugees from other parts of the region are mostly settled in Kakuma.<sup>100</sup>

Dadaab camp was planned to hold only 100,000 refugees according to the 2012 UNHCR reports on refugees. As of today, the camp holds close to 463,000 refugees including those that were born in the camps. These large numbers of refugees led to overall resource constrain, as the services provided at the camp are not adequate to sustain a large number of refugees. A large number of

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<sup>99</sup> Rutinwa, Bonaventure . "Refugee Protection and Security in East Africa." (Refugee Participation Network. Vol. 22, 1996)

<sup>100</sup> Horst, C., Transnational Nomads: How Somalis cope with refugee life in the Dadaab camps of Kenya, (Bergen Books: New York, Oxford, 2006)

refugees has also led to insecurity both around the camps and in the country in general as most terrorist activities are planned in the camps.<sup>101</sup>

The initial thought of the Kenyan government was that these waves of increasing refugees would be short-lived and that after their country of origin becomes stable, the refugees would go back to their motherland. Therefore the camp seemed to be the most suitable option to hold refugees until the time for repatriation of the refugees arrived. The camps were strategic in the sense that they resonated well with the security of the state as well as in the organization and the provision of basic resources to the refugees and it was the easiest way to monitor new incoming refugees. However, with the rapid increase of refugees, there arose complications in terms of refugee status determination, sustainability of the refugees as well as monitoring and managing these refugees.<sup>102</sup>

### **3.4 Kenya's government response to refugees protection in the face of Insecurity**

Security is key to the progress of any country. Security hence remains the topmost priority of any government. The nexus between refugees and insecurity comes in different forms. First, the refugees can be a source of insecurity themselves. This is when terrorists infiltrate asylum seekers to get into the country and carry out terrorist attacks. On the other hand, refugee camp can be a source of insecurity where terrorist colludes with the refugees to plan and execute terrorist activities. This has been a concern not only from the Kenyan citizens but from the government as well.<sup>103</sup>

Refugees' impact on physical security does not only exist around the camps but even nationally and internationally. The security dynamics that emanate from the refugees are complex. This is due to the spillover effects from the home country of the refugees. Some of the refugees are militant

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<sup>101</sup> Campbell, E., "Formalizing the informal economy: Somali refugee and migrant trade networks in Nairobi". (Global Migration Perspectives, 2005)

<sup>102</sup> Milner, J. "Refugees, the state and the politics of asylum in Africa." (Basingstoke, England: Palgrave Macmillan., 2009)

<sup>103</sup> Ungoed, L, et al. "Asylum seekers form quarter of terror suspects." (Sunday Times, 2007).



and given that life at the camp is not easy, they will do anything to survive. This often leads to conflict over resources between the refugees and the local communities.<sup>104</sup>

Kenya hence is often faced with the dilemma between hosting the refugees and protecting her national interest in this case her national security. In instances where the refugees are posing a threat to national security, it becomes hard to balance international obligations on refugees and protection of the national interest. As mentioned above, the Kenya-Somalia border is hence it is not easy to monitor and control the influx of refugees into the country. This poses a major security threat to the country. The government of Kenya has taken different measures to try and counter the influx of refugees and the rising insecurity in the countries. This has led to changes in refugee laws aimed at curbing the insecurity caused by the flow of refugees into the country. Notable action by the Kenya government was a military incursion into Somalia in pursuit of Al-Shabaab. This was after numerous attacks and kidnaps by the terrorist along the Kenya-Somalia border.<sup>105</sup>

It is a fact that refugees are a menace that can affect anyone. This is why it is recognized under international laws. No one chooses to be a refugee, the circumstances that make one a refugee are in most cases beyond their control. It is also a fact that the life of being a refugee is not an easy one. The refugees flee the hardship in their country of origin only to be met by hardship within the camps. The refugees hence employ various means to survive. However, the challenge comes in when a section of refugees resort to criminal activities like stealing or engaging in terrorist activities in order to survive. Terrorist often takes advantage of the harsh situations within the camps to lure the refugees into helping them with their terrorist activities.<sup>106</sup> In such a situation, it

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<sup>104</sup> Menya. W., op cit.

<sup>105</sup> Rutinwa, B. "*Refugee protection and Security in East Africa.*" (Forced Migration Review, 2012).

<sup>106</sup> Murithi, M. "*How Terrorist Attack was Planned and Executed.*" (The East African Standard, 2015)

becomes a dilemma for the host country. As much as they would wish to comply with the international community of offering safe refuge to those seeking asylum, the host country has to also consider the safety of its citizens. Citizens' safety is a crucial mandate of any government and anything that compromises the security of the citizens is met with utmost ruthlessness.<sup>107</sup>

The government of Kenya has a legit claim to insecurity caused by refugees and insecurity emanating from the camps. These include conflict over resources with the local communities, arms trafficking by those impersonating refugees, cross-border military activities, and planning and executing terrorist activities within the camps. Kenyan citizens hence become victims of insecurity from the refugees.<sup>108</sup>

The government has a twin responsibility of ensuring national security and upholding the international obligation that touches on the rights of the refugees. However, these responsibilities often conflict and contradict each other especially in cases where refugees are a threat to national security. A state will always consider its national interest first. In this case government's reaction to refugees as security threats has not been good in some instances. In Kenya during the security crackdown, refugees' basic human rights have been abused on a number of occasions. Kenya is a sovereign independent state hence they can take whatever action they deem fit in order to protect their security. However, they are also bound to comply with the refugees' international obligations. Therefore any action taken by the government that discriminates against the refugees is judged against the existing refugees' laws. For example, if a government imposes restrictive measures that curtail the fundamental rights of the refugees. Then the state has to demonstrate that such actions were meant to solve the situation of insecurity rather than being a discriminatory attack on

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<sup>107</sup> Ibid.

<sup>108</sup> Ndung'u, W., et al *"The Problem of Small Arms and Initiatives for Combating Their Proliferation, Circulation and Trafficking"* ( Nairobi: Peace Bulletin, 2003.)

the refugees. The state must justify her action and show that that was the most viable option. This clearly points to the conflicting nature of hosting refugees while ensuring the national security of the same state.<sup>109</sup>

Security issues remain a concern to Kenya and the region in general. In Kenya, the refugee situation makes it worse. The influx of Somali refugees is becoming a major security concern to Kenya as a country. This is further complicated by the fact that Somalis are both in Kenya and Somalia. Hence the increased influx of refugees means that the security challenges that Kenya faces will not be over any time soon. The porous Kenya border is also not helping the situation since the extremist groups are likely to find their way into Kenya in the name of being civilians or refugees.<sup>110</sup>

### **3.4.1 Refugee Status Determination in Kenya**

The first response of the government of Kenya on refugee protection and ensuring national security was through refugees status determination. In the early years, the government of Kenya had an ad hoc system in place for the determination of refugee status. During that time Kenya lacked domestic laws that gave guidelines on the rights and status of asylum seekers and refugees.<sup>111</sup>

Since the 1990s, due to the conflicts that were ongoing in Uganda, Somalia, and Sudan, those seeking refugees' status in Kenya have been on the rise. These large numbers of those seeking asylum overburdened the Kenyan authority. This made the Kenya Government ask UNHCR to lend a helping hand in the management of the refugee. The role of UNHCR and other like-minded international NGOs became crucial to the management of the large numbers of asylum seekers.

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<sup>109</sup> Githigaro, K., et al . "*The Challenges of State Policing in Kenya.*" ( Peace & Conflict Review Volume 7, 2012)

<sup>110</sup> Mwangi, M "*African Regional Security in the age of Globalization,*" (Nairobi: Heinrich Böll Foundation Regional Office, East and Horn of Africa, 2004)

<sup>111</sup> 45Lindley, A. "Between A Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya" (Refugee Survey Quarterly, 2011)

The government was no longer able to ensure the well-being of the refugees, hence turned to other organizations like UNHCR for assistance.<sup>112</sup>

The responsibility to decide who is to be recognized as refugees and thus grant refugee status lies with the state and the UNHCR's role should only be an observer and to monitor the adherence of the international law in relation to the refugees and the rules in place concerning refugee status determination procedures. However, this has not been adhered to in many countries. In such instances, the UNHCR has the mandate to step in and help the state in carrying out refugee status determination.<sup>113</sup>

Kenya is one of those states where the UNHCR has had to step in to help in the whole process of determining the refugee status of asylum seekers as per the requirements of the law. The laid down procedure should be followed during the determination of the status of the refugees, only those who qualified are the ones who officially become refugees this is as per the stipulated refugee laws. Thus, in the refugee status determination both the Government and the UNHCR play a critical role where when the government is incapacitated in any way, UNHCR has to step in to help at the request of the government<sup>114</sup> or whenever the government is reluctant to. However, the government remains the key player in the determination of refugee status to asylum seekers, and in most cases, UNHCR only acts as an observer.

### **3.4.2 Settlement of refugees in Camps**

In order to ensure refugees are protected and their security is assured, the government decided to encamp the refugees. It is important to note that majority of refugees in Kenya reside within the

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<sup>112</sup> Campbell, E. "Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration", (Journal of Refugee Studies, 2006)

<sup>113</sup> Ayoob, M, "The Third World Security Predicament: State Making, Regional Conflict, and the International System," (Lynne Reiner, London , 2005)

<sup>114</sup>Jennifer H. and Viktor B "UNHCR and the Status of Prima Facie Refugees in Kenya," (International Journal of Refugee Law, Oxford university press, 2008)

camps. These camps mainly Dadaab and Kakuma are located in the border counties of Kenya. However, these camps have been accused of being a breeding ground for criminals and terrorists. Kenya's porous borders are one of the main reasons why there have been frequent terrorist attacks in Kenya and the camps are located close to the border. This began when terrorists would kidnap Kenyans and citizens of other countries living along the Kenyan Somalia borders. The frequent kidnappings prompted Kenyan government to react by sending her soldiers into Somalia under operation Linda nchi which was aimed at ending the terrorist attack from the neighbouring Somalia. By sending her troops into Somalia Kenya was applying the international norm of self-defense. This is because the terrorist activity in neighboring Somalia was a direct threat to the national security of Kenya.<sup>115</sup>

The frequent terror attacks in different Kenyan towns made the issue of hosting refugees to be an issue in Kenya both from the public and the government. Unregistered refugees and other external forces could easily infiltrate the porous Kenyan borders. The immediate response of the Kenya government was to close the borders hence in 2007 the Kenyan government closed the Liboi border as a security measure. This measure, however, did little to deter the asylum seeker from getting into the country in search of refuge. As the conflict situation in the neighboring countries of Somalia and South Sudan got worse, the porous Kenya borders continued to be exposed. The country could do little to prevent asylum seekers from flowing into the country via the porous borders. The situation was made worse in 2012 when the Al-Shabaab militants crossed the border into Kenya kidnapping humanitarian workers as well as attacking the military base in the borders.

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<sup>115</sup> Menya, W. *"Developing Countries Continue To Carry The Lion's Share of Responsibility For Hosting Refugees."* (Daily Nation 28 March 2011).

This prompted former president Mwai Kibaki to seek Kenyan troops to fight the Al-Shabaab terrorist.<sup>116</sup>

### **3.4.3 Closure of refugee camps and repatriation**

The Kenya authorities announced that the UN High Commissioner for Refugees (UNHCR) a 14-day deadline in March 2021 to prepare a plan to remove the Kakuma and Dadaab refugee camps in the country, citing escalating conflict regarding humanitarian assistance and border security.

The move by the Kenyan government to close the refugee camps has been seen as a drastic and extreme response to the refugee and security situation. The refugees have been linked to a number of insecurity issues like terrorism. Politicians all around the globe associate migrants and asylum seekers with every negative trait imaginable. Terrorists, criminals, and rapists are all terms used to describe them. This is not a novel concept, and Kenya is not the first country to employ it. These assertions, however, are false. Fleeing your nation is not a crime, because no one leaves their country voluntarily. I'm not a security specialist, and I'm not sure what the Kenyan government's explanation and reasoning are in this case, but I feel the closure of the camps is being politicized.

### **3.5 Western Countries' response to Refugee protection and national security**

Western countries just like Kenya have been faced by the complex dilemma of refugee protection and national security. Their response to this dilemma hence will be compared to that of Kenya. Refugee being a transnational issue affects all states irrespective of their economic or military power. As such the response of western countries is of interest to this study.

According to a Pew Research Center poll conducted three years after a record 1.3 million migrants asked for asylum in Europe, the majority of people in several European nations support allowing

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<sup>116</sup> Onger, A., et al . "*Criminals take advantage of the lax security along Kenya Somali border to bring in guns aided by corrupt law enforcement agents.*" (East African Standard, 2011).

refugees escaping violence and conflict to enter the country. However, the majority of people in these nations are unhappy with how the European Union is managing the refugee crisis.

Majority of western countries like Canada have strong tradition of welcoming refugees with open arms. Later in the years, it corrected the 1951 Convention and its 1967 Protocol. Major reason for the wait was Canada's unwillingness to regard itself as a nation of the first refuge and its concern of relinquishing control of the territory. The possible benefits that refugees brought to the workforce piqued people's interest. Since then, Canada has continued its legacy of immigration regardless of whatever political party is in power. The Canadian state came up in 1979 to accept sixty thousand (60,000) Vietnamese migrants - known as "boat people" - over the past two years. Canada was the very first nation to receive the Nansen Medal from the UNHCR on behalf of its whole citizens.

The European Union is discussing how to handle the inflow of refugees seeking asylum on its beaches. The vast majority of these migrants come in Europe via the Mediterranean beaches of Greece, Italy, or Spain; more than 2 million migrants have landed in Europe this way since 2009. The Middle East and North Africa account for over half of people coming, with large numbers of Syrians and Iraqis escaping war. Hundreds of thousands of people from Sub-Saharan Africa have come.<sup>117</sup>

After landing in a European nation, the majority of migrants apply for asylum in the hopes of securing refugee status. Asylum seekers may face months, if not years, of waiting for their claims to be processed. Refugees are allowed to stay in the nation for up to a year, and many are given

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<sup>117</sup> ollett, E. (2014). *Future EU policy development on immigration and asylum: Understanding the challenge* (MPI policy brief series Issue no. 4). Retrieved from <http://www.migrationpolicy.org/research/future-eu-policy-development-immigration-and-asylum-understanding-challenge>.

assistance in adapting. Refugee status is not granted to all asylum applicants. Rejected candidates who do not file an appeal must leave Europe either willingly or by deportation, but some do so without authorization.

The security of refugees has four axis: socio - economic status, underemployment, growth of informal sector, welfare system crisis, and urbanization which leads to environment depletion; taking into account the loss of a power plot that affiliates sovereign power, boundaries, and both internally and externally in terms of security; Refugee movement has the potential to change national sovereignty, the distribution of power amongst countries, and the dynamics of crisis in the global community, as well as national security. The power of states to limit admission, basing on unlawful entry and imbalances in cultural and religious demography have all been linked to the growth of migration flows. If they are not incorporated into host countries and originate from a different socio-cultural milieu, there is a greater chance of religious and cultural conflicts, necessitating fresh state initiatives to incorporate ethnic minority groups into national identities.<sup>118</sup>

### **3.6 Conclusion**

The chapter has given an analysis of the government's response towards the influx of refugees and threats to her National security. This has been discussed by looking at the historical context of Kenya and refugee issues. The refugee is discussed above as the biggest problem which emanates from armed conflicts and other natural calamities. Kenya being a neighbor to several countries that are faced with political instability and other forms of conflicts have been on the receiving end of a number of refugees fleeing their home country in search of safety.

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<sup>118</sup> Arcarazo DA, Geddes A. The development, application and implications of an EU rule of law in the area of migration policy. *Journal of Common Market Studies*. 2013;51(2):179–193. doi: 10.1111/j.1468-5965.2012.02296.x. [[CrossRef](#)] [[Google Scholar](#)]



There is a delicate balance between hosting refugees and preserving national security interests especially when the presence of refugees is a threat to national security. Kenya on a number of occasions has found itself pondering between their obligation of hosting refugees vice a vise their cardinal duty of protecting their security interest. Due to heightened security concerns associated with hosting refugees, Kenya recently issued a directive ordering the closure of two vast camps that house hundreds of thousands of migrants from neighboring Somalia.

## **CHAPTER FOUR**

### **HOW THE KENYAN GOVERNMENT BETTER RESPOND TO REFUGEES' INFLUX WITHOUT INFRINGING REFUGEES' RIGHTS AND COMPROMISING ITS NATIONAL SECURITY INTEREST**

#### **4.1 Introduction**

Kenya is threatened by migration flows, which jeopardize their tranquility, security, and sovereignty. One of these dangers is posed by the Kenya refugee crisis. Clashes and political instability in the Horn of Africa have resulted in huge migrations, adding to the region's refugee problem. According to Bariagaber (2006)<sup>119</sup>, many people have fled; whereas dozens of other people were compelled to cross borders in search of refuge in neighboring nations. People have been compelled to flee from their home countries because of a well-founded fear of victimization on the account of race, faith, ethnicity, or affiliation in a particular societal grouping or ideological position. They are unable to seek protection from their home country.

#### **4.2 Demographic characteristics of the respondents.**

This section gives the demographic characteristics of the respondents

##### **4.2.1 Response rate**

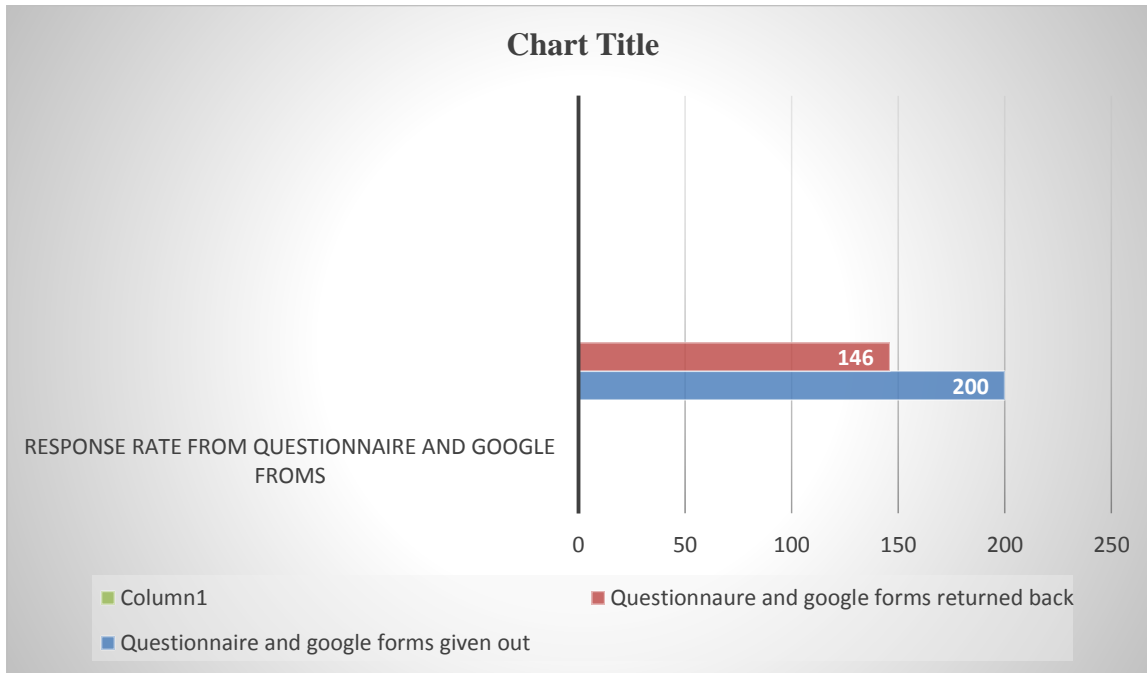
Out of the 200 questionnaires and google forms sent out, the response rate was 73% with 146 questionnaires and google forms being returned to the researcher.

Mugenda and Mugenda affirm that if the rate of response is 50% then it is considered okay for data analysis, on the other hand, a response rate of 60% is considered good for data analysis,

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<sup>119</sup>Conflict and the Refugee Experience Flight, Exile, And Repatriation in the Horn of Africa By Assefaw Bariagaber Published August 28, 2006, by Routledge.

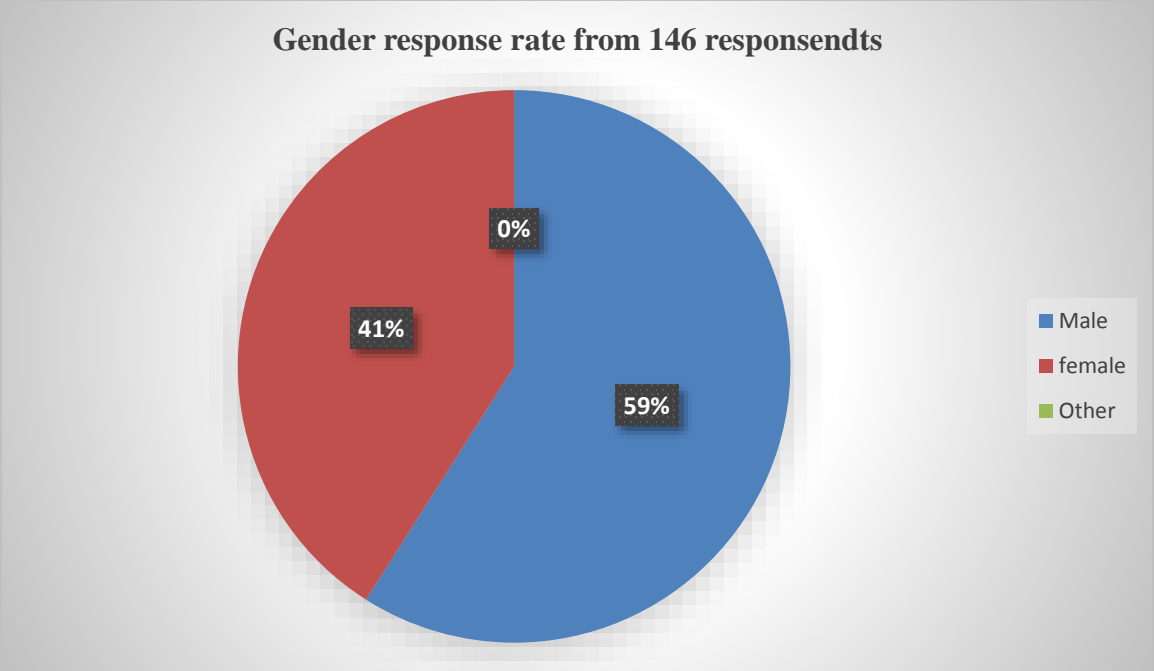
whereas over 70% response rate is excellent for data analysis. In this study, the response rate was 73% from the questionnaire, Interview guide, and google forms. This rate was good enough for data analysis as it gave a good representation of the study's respondents and hence accurate data.



*Presented in Figure 4.1, 2021*

#### **4.2.2 Gender response rate**

The majority of the respondents were male given that the Kenyan society is male-dominated where men at 59% were more willing and ready to respond to the physical questionnaire. Females at 41% were more okay with the google forms. The gender factor is important in the study in that the study ascertained how the respondents were represented based on their gender.

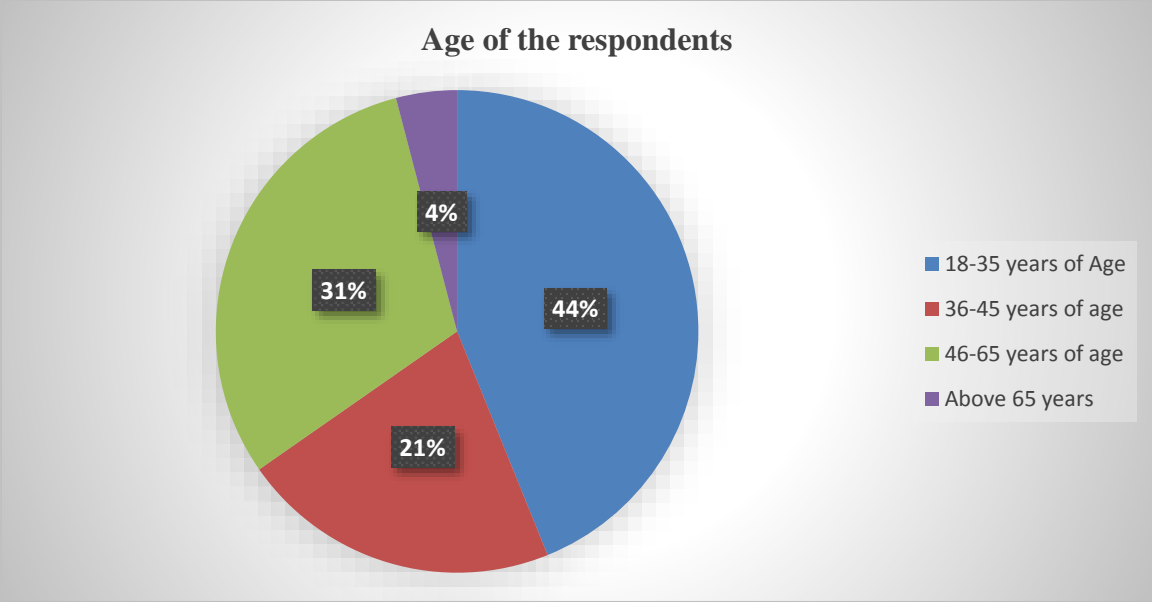


*Presented in figure 4.2, 2021*

**4.2.3 Age of the respondents**

The youths aged between 18-35 were the majority at 44% as youths were the main target of the study. This was followed by the 46-65 age bracket at 31% who were mostly social officials from the target population who were also of keen interest to this study.

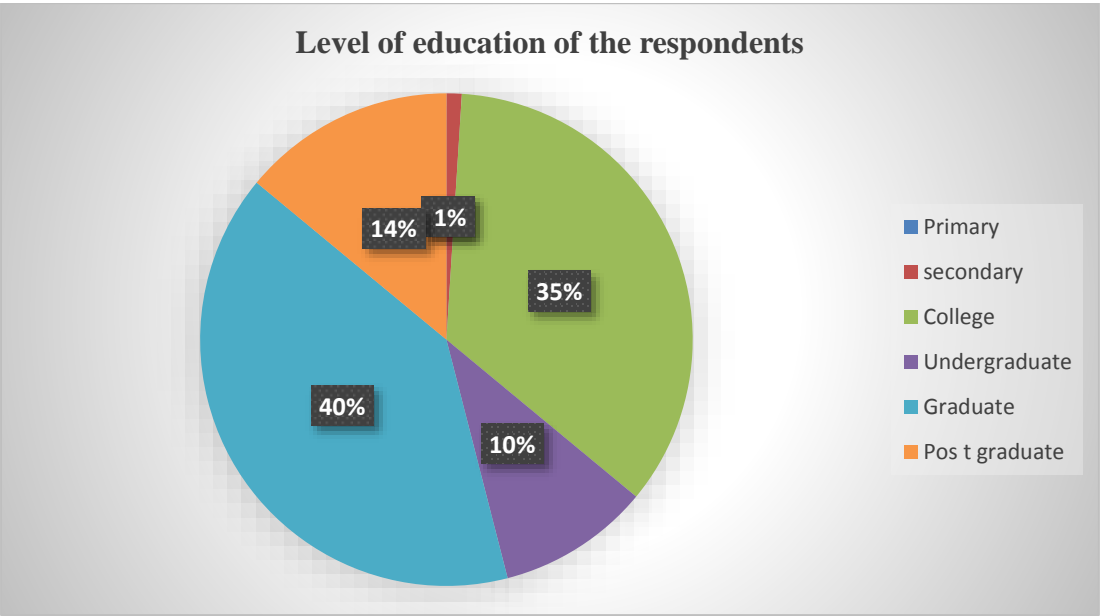
The age factor was significant to the study given the fact that this study mostly targeted the youths who are aged between 18-35%. Hence the youths formed the majority of the respondents. The age between 46-65% were mostly senior employees of various organization and institute that were targeted by the study. They gave their experienced opinion of the subject of the study.



*Presented in figure 4.3, 2021.*

**4.2.4 Level of education**

In terms of the level of education, the majority of the respondents were Graduate and college students. From the data, majority of the respondents were literate. Based on the level of education, the respondents were highly informative for the study.



*Presented in figure 4.4, 2021*

#### **4.2 Repatriation of Refugees in line with International refugee's laws**

Majority of the respondents noted that the government should repatriate the refugees in line with international refugee laws. Through Articles (1) c and 3a, the 1951 Convention provides remedies for refugee problems, including rules mostly on the revocation of legal residency, integration, and citizenship. The conventional long-term options include repatriation, local inclusion, and relocation to a foreign nation. The decision to close the Dadaab camp was first made in 2013, when a tripartite agreement binding Kenya, Somalia, and the UNHCR was signed. Kenya was responding to an upsurge in Somali refugee arrivals. These key stakeholders committed to collaborating to make sure that the repatriation procedures proceeded smoothly as per Article 33 of the 1951 UN Convention Relating to the Status of Refugees in light of displaced person rights and coercive displacement.<sup>120</sup>

However, security concerns have lately prompted Kenya's resolve to repatriate the refugees to Somalia. Sanctions have been threatened by the government. Refugees from Somalia are being taken out of the country. This is a breach of Article 33 of the United Nations Non-Proliferation Treaty. While the UNHCR allows for repatriation, it must be done promptly in a way that does not result in the refugees being persecuted. Repatriation is also supposed to be voluntary. The refugees must decide whether it is safe for them to relocate to another location back in their home country. To repatriate Somali refugees and close the border. Following the closing of the Dadaab migrant camp, the Kenyan government opted to abolish the Department of Refugee Affairs, which was in charge of refugee administration.<sup>121</sup>

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<sup>120</sup> UNHCR, “*Convention and Protocol Relating to the Status of Refugees*,” (2011)

<sup>121</sup> Verwimp, P., et al “*Forced Displacement and Refugees in Sub-Saharan Africa: An Economic Inquiry*. World Bank Group” (Online publishers, 2015).

Kenya's government says it is continuing with its repatriation policy on the idea that Somali refugees at Dadaab are traveling to Somalia out of their own free will, despite opposition from the international community. International refugee law and protection frameworks permit the return of refugees, but these frameworks impose onerous obligations on the countries of asylum and origin, as well as on the UN High Commissioner for Refugees, to ensure that return is voluntary, safe and dignified while taking place within a framework of long-term reintegration of the refugees (returning refugees to their home countries). When it comes to ensuring that the voluntary repatriation of Somali refugees takes place in a calm and orderly manner, Kenya's foreign policy has played an enormously crucial role. After international attention was drawn to the closure of Dadaab and the Kenyan government became more aware of the country's geopolitical position in the region, a shift in policy was instituted to address the situation. Over the course of this time period, officials used diplomatic approaches and adhered to international conventions. The Kenyan office of the United Nations High Commissioner for Refugees (UNHCR) has put in place the following repatriation protocols for refugees: The United Nations High Commissioner for Refugees (UNHCR) and its partners emphasize to refugees the voluntary character of a return through a counseling procedure conducted at Integrated Return Help Desks located in the Dadaab refugee camps. UNHCR, the Department of Refugee Affairs (DRA), and other organizations provide staff for these Help Desks in addition to the general public.<sup>122</sup>

The Norwegian Refugee Council (also known as the Norwegian Refugee Council) is a non-governmental organization that works to assist refugees in Norway (NRC). Refugees who contact the UNHCR Help Desk are advised that the agency will support them in returning to any area of

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<sup>122</sup> Verdirame G et al “*Rights in Exile: Janus Faced Humanitarianism*,”( Oxford and New York: Berghahn Books, 2015)

Somalia, provided that the decision to return is made freely and willingly by the refugees in the first place, as part of the exercise of a well-informed decision. The United Nations High Commissioner for Refugees confirms the information.<sup>123</sup>

All returning refugees over the age of 18 are required to complete and sign a Voluntary Repatriation Form, which indicates their readiness to return to their homeland (VRF). At the National Refugee Council's Return Help Desk, refugees can get information about their place of origin that is relevant to their situation in approved return destinations, such as the United States. assistance and services that are easily accessible In addition, the migrants are given an overview of mine danger education and awareness training. As part of its support program, the NRC supplies returning refugees with critical assistance items such as hygiene kits and high-energy biscuits while they are going through the departure procedure. Following receipt of the confirmation, the following steps are taken.<sup>124</sup>

Because the decision to return was entirely voluntary, the UN Refugee Agency (UNHCR) provided return assistance in the form of pre-paid transportation, a cash grant of USD 120 per individual (USD 150 for persons with special needs) for refugees traveling by road, and a cash grant of USD 60 per individual (USD 75 for persons with special needs) for refugees traveling by air from Dadaab and Kakuma. Those who live in metropolitan areas and go through Nairobi will receive a compensation of USD 80. (USD 100 for those with special needs). Refugees are also provided with a package of necessary relief items, as well as a hygiene kit, to use during their time in the country. They're off on a journey. By taking this approach, the UN Refugee Agency

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<sup>123</sup> Pavanello S., et al “*Hidden and Exposed: Urban Refugees in Nairobi, Kenya,*” (HPG Working Paper, 2010)

<sup>124</sup> Refugee Consortium of Kenya (RCK) ‘*Refugee Management in Kenya*’, (Forced Migration Review,online publishers, 2003)



(UNHCR) hopes to ensure that refugees who decide to return to Somalia are supported in their decision and that the associated logistical and financial burden on returning refugees is alleviated, thereby ensuring that their decision is realized and that they are not rendered destitute as a result of their decision. It is likely that if the Kenyan government had not generated the sense of urgency for repatriation, it would have taken the UNHCR considerably longer to collect the necessary money, given the fact that the world's attention was focused on the Syrian refugee crisis. Although the number of people who have returned home is still modest, there is increasing hope that a continuous stream of people will return. As peace returns to many areas of Somalia, there will be a flurry of activity.<sup>125</sup>

#### **4.3 Proper screening of refugees**

The respondents also noted that Kenya's geostrategic position in the Horn of Africa area has resulted in a significant influx of migrants and the hosting of the world's biggest Somali refugee population of more than 500,000. This Somali refugee flow in Kenya has had a major impact on both nations' international relations throughout the years. Adar emphasizes the critical importance of territorial integrity in Kenyan-Somali relations. This concept substantiates the assertion that each state has set and secure borders that are impervious to foreign transgression.<sup>126</sup> This is based on UN Charter Article 2 (4), which mentions the prohibition of the use of force. This idea is developed further in The Declaration of the Fundamental Principles of International Law, which embodies customary international law. The Declaration forbids nations from taking any action that could jeopardize another state's or country's national integration or territorial sovereignty, either

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<sup>125</sup> Buusi M, "*States' Response to Refugee Crisis: The Case of Somali Refugees in Kenya*" (United States International University-Africa, 2016)

<sup>126</sup> Haddad, E. "*The Refugee in International Society: between sovereigns,*" (Cambridge: Cambridge University Press, 2008)

partially or completely.<sup>127</sup>

Kenya has continued to receive a massive inflow of Somali refugees during the 1990s, which are regarded as a danger to Kenya's national security. Additionally, this spurred Kenya's reaction to Somali refugees, which has sparked debate both domestically and internationally. This answer includes the following: Some of its practices violate its international legal responsibilities, resulting in the issue that emerges is whether Kenya should prioritize its national interests and, if so, how should it prioritize national security interests above international obligations? Refugee rights are broad and include the right to non-refoulement, the privilege to acquire movable and immovable property, proprietary rights, and the right to association, the ability to access courts, the freedom to employment, the freedom to housing, the freedom to education, and the freedom to travel freely. Kenya is obligated to grant and respect these rights, as well as the rights outlined in the bill of rights. Kenya has been perceived to infringe on some of these rights in relation to the Somali refugees in the country especially the freedom of movement and the right to non-refoulement. Somali refugees pose various threats to Kenya as regards security, economy, environment pressure, culture, its territorial and sovereignty integrity and also the proliferation of small arms and light weapons. Having thus highlighted the various national interests, this paper shall delve into discussing the two primary national interests that are perceived to be under threat from the influx of Somali refugees and of which have elicited various responses from the Government of Kenya.<sup>128</sup>

As per Human Rights Watch, following an eligibility evaluation assessment, a refugee status applicant will either be allowed into the country and sent to a shelter or consented to remain in

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<sup>127</sup> Hope, K. R., *“The political economy of development in Kenya,”* (New York: Continuum International Pub. Group: 2012).

<sup>128</sup> UNHCR: *“Global Trends – Forced Displacement”* ( UNHCR report, Online publishers, 2015)

Nairobi.<sup>129</sup> Conversely, the refugee applicant might be turned down and told to leave the country. This is inconsistent to existing international asylum legislation, considering denial for asylum status doesn't at all imply deportation. UNHCR requires that refugees be helped to a third country where they will not be persecuted or sent back to their home country unless they voluntarily do so. Thirty Congolese residents were denied asylum and forced to abandon the Kakuma Refugee Camp in 2001. Refugees who have had their requests denied may file an appeal. Appellate courts will hear their case.

However, this is problematic since the UNHCR does not provide grounds for denying refugee status. When an asylum seeker is accepted as a refugee, the UNHCR sends them a document known as "the protection letter." It enables the bearer to report to a specific refugee camp, such as Daadab or Kakuma. If refugees need to live outside the camp, they must seek formal authorization from the government to leave and live elsewhere. Currently, refugee children who attend school outside of the camps are given student permits, allowing them to continue their education. Refugees and asylum seekers discovered beyond authorized zones without formal authorization are deemed to have violated Kenyan law (USCR Refugee Report 2002).<sup>130</sup>

With UNHCR financing, the Kenyan government provides paperwork to legal asylum seekers such as identification cards, passes, and permits. These papers are treasured by refugees because they translate into protection. However, some refugees are unaware of the limits of most of the papers and mistake identification cards for permission to work or a travel document.

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<sup>129</sup>Milner, J., *Refugees, the state and the politics of asylum in Africa. Basingstoke,* (England: Palgrave Macmillan: 2009).

<sup>130</sup>Hope, K. R., *The political economy of development in Kenya,* (New York: Continuum International Pub. Group: 2012).

Despite the Kenyan government's request for a halt in mid-October, it has been closely monitoring the situation in Liboi in order to establish a more effective system for screening and registering newly arriving refugees. It became imperative to take this step when it became clear that Kenyans were posing as migrants. Some refugees who were already registered at the Dadaab camps pretended to be new arrivals in order to get numerous registration cards and, as a result, additional help were given to them. Considering the fact that the population of fraudulent refugees was tiny in contrast to the number of actual new refugees, the government recognized that the system needed to be revised to guarantee that the few resources available were allocated to those who were truly in need of aid. The government is expected to become increasingly engaged in the screening and registration process in the future. All new immigrants would be asked to register, and their information will be compared to the country's database of previously registered individuals to guarantee that they are genuine. The UNHCR will also register the refugees and collect their fingerprints, which will be compared to a database of already registered refugees to assess their status.<sup>131</sup>

#### **4.4 Improvement of welfare of refugees**

The World Food Programme's new Refugee Operation, "Prolonged Relief and Recovery Operation 200737 (PRRO) 200737 - Food support for refugees," establishes the basis for WFP food subsidies in Kenyan refugee camping areas up to 2018 March from April 2015. It is the result of reviews, appraisals, research work, sampling plans, and interaction with a wide range of stakeholders. The World Food Programme's (WFP) planned interventions have the following objectives: to enable acceptable food intake among refugees; to treat mild nutritional deficiencies in toddlers, expecting

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<sup>131</sup> Abdirahman O "Somali Refugees and State Security: Kenya as a Case Study, 2002-2012", (Master of Arts Thesis, University of Nairobi, 2010)

and lactation women, and other susceptible immigrants with specific nutrition requirements; to prevent and reduce the prevalence of malnutrition in infants, pregnant and lactating mothers, and other vulnerable refugees with specific nutritional requirements; and to promote learning and entrance to the school for youngsters in conflict-affected communities. The following initiatives will assist refugees and host communities residing around the camps with food and/or voucher transfers: In general, food distributions: Every two weeks, refugees in camps will get a full ration of food and vouchers. The percentage of services provided via vouchers will progressively grow as resources allow. The introduction of GFD voucher rations in Dadaab and Kakuma would appraise productivity by limiting the monetary benefit that refugees face while exchanging meals to vary their meals.<sup>132</sup>

Complementary feeding is a dietary approach for use during pregnancy and lactation to fulfill the added nutritional necessity of children aged 6–23 months, as well as pregnant and lactating mothers. A 1,000-day period from conception would avoid sub acute hunger along with micronutrient deficiencies in the most susceptible populations in the settlements. Nutrition and baby feeding habits will be taught to men and women by health partners in the camps, particularly via mother-to-mother groups. Purposeful supplemental feeding: Supplementary meals will be provided to children aged 6–59 months who are moderately malnourished, as well as pregnant and lactating mothers, per established recommendations.<sup>133</sup>

Support for those diagnosed with HIV/AIDS, TB, as well as other degenerative conditions:

Perennially sick patients will get supplementary meals that provide sufficient nutrition and

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<sup>132</sup>Moigire E., *“Refugee Realities: Refugee Rights versus State Security in Kenya and Tanzania,”* (sage publishers ltd, Kingston University,2009)

<sup>133</sup> Abdirahman O *“Somali Refugees and State Security: Kenya as a Case Study, 2002-2012”*,( Master of Arts Thesis, University of Nairobi, 2010)

improve medication adherence. Refugee kids studying elementary schools will be given porridge to assist them to get access to education and enhance their learning skills. Lunch will be served at training facilities where young women and men from refugee camps and host communities acquire vocational skills such as carpentry, masonry, computer technology, tailoring, and other trades that are useful locally or for repatriation, among other things. The presence of a significant number of disaffected young people in and near the camps lowers the security concerns. Assets receiving food assistance: Women and men in host communities will receive a family ration in exchange for participating in activities that improve resilience to shocks and foster harmony between refugees and hosts. Asset design considers both men's and women's preferences, with the goal of avoiding undue stress on women. WFP assistance is incorporated into Garissa and Turkana's county integrated development plans. Soil and water conservation, as well as expanding water sources, will be the primary emphasis of community-based resilience-building efforts, which will also include boosting access to food, productivity, and livelihood diversification.<sup>134</sup>

Feeding in institutions: Individuals in hospitalized, as well as carers of hospital patients and children in stabilization centers would be given rations. Rations are changed to make them more appealing to the severely sick while yet fulfilling their daily calorie needs. The budget for this sector has been raised significantly from \$5.5 million in 2014 to \$5.5 million in 2015. To guarantee that child protection is becoming more prevalent in other sectors that offer significant synergies, such as sexual and gender-based violence, education, and persons with special needs, the Kakuma program has emphasized the sector by adding \$0.5 million to last year's budget (for a total of \$2.1

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<sup>134</sup> Wilhelm, Jan Philipp, “*UNHCR report: Worsening refugee situation in Africa*,” (online publishers, 2016)

million).<sup>135</sup>

Child safeguarding in Dadaab gets \$2.7 million, an increase of about \$300,000 over 2014. Psychosocial treatment and legal aid will remain part of the programming in both Kakuma and Dadaab. Community awareness and service coordination for youngsters who have run afoul of the law Preventive measures will be strengthened to protect children from violence, manipulation, and abandonment are all prevented, while their overall personal safety are improved as well. As a result of the return movements, the capacity of community structures and institutions to improve child protection will be increased, and the interests of children will be protected.

#### **4.5 The integration of the refugees with the locals**

Refugees have a lot to offer both host communities and the rest of the world. However, there is a fear and reluctance to integrating refugees into host communities, whether it is ignorance about other cultures and faiths or just apprehension about how refugee groups would contribute to the host community. Host nations seem to overlook that refugees were productive members of society in their own countries. Teachers, physicians, nurses, and craftsmen are among the refugees. All of these are valuable talents for our expanding economy.<sup>136</sup>

Kenya has extremely high levels of unemployment, and in many cases, already marginalized host community members may blame the inflow of migrants on a lack of job prospects. Refugees, on the other hand, are often highly trained, resourceful members of society whose socioeconomic value is frequently overlooked. All members of society should be given the same opportunity to

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<sup>135</sup>Nikolau, L, “*Current state of the world’s refugee crisis: 20 million and counting*” ( Humanosphere Group, online publishers, 2016).

<sup>136</sup> Verwimp, P., et al “*Forced Displacement and Refugees in Sub-Saharan Africa: An Economic Inquiry. World Bank Group*” (Online publishers, 2015).

contribute to our country's growth. Refugees can become self-sufficient and contribute socially and economically in their new communities if they are given the chance to assimilate and join. I'd like to believe that a well-planned approach would allow refugees to contribute back to their new communities by becoming employers and taxpayers, thus changing the perception of them as a burden.<sup>137</sup>

It is difficult to overlook the economic development in regions that are presently home to the bulk of refugee populations. Consider Eastleigh in Nairobi, which is also known as "Mogadishu ndogo" (Little Mogadishu) since it is largely populated by Somalis. It is a massive economic center, and although it is impossible to determine precisely how much money passes hands, Nashon Nyagha in the National Assembly official records (2000) said that Nairobi contributed 47 percent of Kenya's GDP, with the Eastleigh constituency contributing the second-highest amount. According to Jake Flanagan's essay, "it's estimated that the malls in Eastleigh alone contribute more than \$7 million to the economy each year." According to research, there is a thriving informal sector with over 2000 enterprises in Kakuma, a major refugee camp in Northern Kenya. According to the International Finance Corporation's research titled "Kakuma as a Marketplace," "total consumption is \$56 million." The camp spends KES 1.7 billion (\$16.5 million) at the time of the survey, while the town spends KES 4.1 billion (\$39.7 million).<sup>138</sup> The Kenyan, Danish, and Norwegian governments also demonstrated that the Dadaab refugee camp in Kenya had an annual internal economy of approximately \$25 million, with an additional \$14 million injected into the surrounding community.<sup>138</sup> It should not be forgotten that refugee-hosting countries receive

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<sup>137</sup> United Nations High Commissioner for Refugees., *"The state of the world's refugees,"* ( 2018. Oxford: Oxford Univ. Press.

<sup>138</sup> Nikolau, L, *"Current state of the world's refugee crisis: 20 million and counting"* ( Humanosphere Group, online publishers, 2016).



substantial financial assistance from other countries.<sup>139</sup>

Kenya is estimated to have received approximately \$111.1 million for refugee protection and basic services. If utilized correctly, this may help to enhance the infrastructure of the hosting regions, like schools, hospitals, and even highways that are open to both refugees and Kenyans.<sup>140</sup>

According to the Kenyan Constitution (2010) and any other written law in the country, the Ministry of Interior and National Government Coordination is responsible for developing criteria to encourage local integration of refugees. Local integration should be a gradual and consistent process, rather than a one-time event. In other words, refugees will be able to get an alternative legal status based on the requirements set forth by Kenyan law. Afterwards, if they so want, they will be allowed to submit an application for citizenship in accordance with the standards stated in the relevant national legislation for example, Constitutional Amendments 14 (4) and 15 (1) and (2), as well as sections 11, 13, 36, and 37 of the Citizenship and Immigration Act of 2011.<sup>141</sup> The United Nations High Commissioner for Refugees (UNHCR) and its primary government counterpart, the Ministry of Interior and National Government Coordination, are seeking concrete steps to progressively change Kenya's present camping policy into a policy of settlement alternatives in designated locations. Integration with the host society on all levels – economic, social, and legal – would be encouraged, as will the growth of peripheral regions such as Garissa and Turkana counties. An example of such a plan is the Turkana West Kalobeyei Integrated Socio-Economic Development Plan (KISEDPA), which was executed in 2018. In the long run, the method will benefit the host community, whether or not refugees are effectively incorporated into the

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<sup>139</sup> Wilhelm, Jan Philipp, “*UNHCR report: Worsening refugee situation in Africa,*” (online publishers, 2016).

<sup>140</sup> Pavanello S., et al “*Hidden and Exposed: Urban Refugees in Nairobi, Kenya,*” (HPG Working Paper, 2010)

<sup>141</sup> Mukira, C., “*Constraints in the Repatriation of Somali Refugees: A Case Study of Urban Somali Refugees in Eastleigh, Nairobi,*” (university of Nairobi, 2016)

community or a long-term solution is found.<sup>142</sup>

#### **4.6 Conclusion**

There is a need for thorough training and restructuring to ensure the efficient management of refugees in Kenya. Kenya has for long asserted that Somali refugees pose a threat to national security and are linked to the al-Shabaab group. Realists believe that in an anarchical world states have to act on self-help basis to ensure their international status

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<sup>142</sup> Verwimp, P., et al “*Forced Displacement and Refugees in Sub-Saharan Africa: An Economic Inquiry*. World Bank Group” (Online publishers, 2015).

## CHAPTER FIVE

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Summary

This study started off by bringing out the problem statement that proposed to investigate the dilemma that Kenya faces in observing refugees rights and protecting her national interest. To achieve this, the study looked at the historical context of the refugee situation in Kenya. The study went further to look at the local, regional and international, legal frameworks relating to the protection of asylum seekers and refugees that Kenya was party to.

The study objectives were met. The first objective was met in the second chapter of the study. Chapter two of the study investigated the nature of Kenya's refugee obligation since it gained independence. This was done by looking at the history of Kenya and refugee issue, the existing refugee policies then and the refugee laws that Kenya has ascribed to. The second objective was discussed in the third chapter of the study. Chapter three presented data on the impact of refugees on Kenya's national independence. On this chapter, issues of refugees as a threat to national security, waves of terrorism and conflict between host community and refugees were discussed. The final objective was discussed in the fourth chapter. The objective set out to examine Kenya's current policies on refugee protection and their impact on national interests. On this, Kenya's concern to the refugees infringing on their national interest was discussed.

The theory that the study was based on was asserted in the course of the study where the study findings pointed out to cases where Kenya enacted laws that were aimed at protecting her national interest at the expense of the refugee rights. Although this was met by condemnation from the international community, Kenya justified her action by arguing that they acted to protect their national interest which is national security.

According to the report, Kenya's open door policy on refugees has resulted in the nation receiving refugees from neighboring countries devastated by violence. Most refugees see Kenya as a safe sanctuary for people escaping violence, persecution, or other well-founded anxieties. For a long time Kenya has believed that receiving refugees is a gesture of good neighbourliness hence Kenya has welcomed the refugees with open arms. Kenya shares the belief of the international refugee bodies that each individual has a right to seek asylum.

However, the study also established that Kenya's open door policy has compromised her national security. The open door policy towards refugees adopted by Kenya has left it susceptible to terror attacks. This is because terrorists pose as asylum seekers and get into the country to carry out terror attacks. The Kenyan government holds the position genuine refugees are not a threat to the national security of the country. In fact these refugees are also victims of terrorism and other hostility in their homeland. The problem is with the criminal elements and Al-Shabaab militia who pose as refugees to get into the country and use the camps to plan and execute terror attacks.

In response the government has taken different measures which include closing of borders, strict procedures in getting refugee status and random security crackdowns on illegal immigrants and around the camps. This has been aimed at controlling entry of asylum seekers and other immigrants. Security crackdowns are meant to root out the criminal elements who are posing as refugees.

The study established the government of Kenya has in many instances raised security concerns that are linked to refugees' camps. This was after a series of terrorist attacks within the country. The attacks mainly targeted Nairobi and other small towns like Garisa, Kilifi and other small towns around the refugee camps. Kenyan security agencies have also established that some illegal immigrants come into the country with ill motives. The increased terrorist attacks by the Somalia

based Al-Shabaab group has made the country to question their policy of welcoming refugees into the country.

In response, Kenya has sent out its troop into Somalia to fight alongside the AMISOM troops in Somalia in order to root out terrorist in the neighbouring country. Kenya has also intensified the border protection measures to deter the Al-shabaab militia from getting into the country through our porous borders. Other extreme measures that the government has taken include arresting and deporting illegal immigrants back to Somalia. Through the recommendation of the joint parliamentary committee the government has also thought of closing Daadab refugee camp since the camp has been alleged to be harbouring terrorist.

The study established that despite the numerous links between refugees and terror activities, Kenya remains in a dilemma on how best to tackle the issue of insecurity and refugees. This is a tricky two way affair, on one hand the government ought to conform to the international obligations on refugees' protection while on the other hand security is a key national interest that must be safeguarded at any time. The government is also worried that in the process of formulating security laws against refugee linked terror activities, the bona fide refugees may be victimized in the process. Kenya being a country that strongly believes in the preservation of human rights such a scenario would be bad and would receive a backlash from the international community. Therefore security measure aimed at curbing the issue of terrorism and insecurity emanating from the camps must conform to the international obligation and must take into account that these refugees are fleeing persecution and hostility in their home country.

## **5.2 Conclusion**

According to the report, Kenya's open door policy on migrants has resulted in refugee infiltration, which has contributed to a rise in instability and, more specifically, terrorism in the nation. Despite

Kenya sharing the concern with international community on terrorism, the manner in which Kenya has responded to the refugee-terrorist menace has often received criticism from the international community. Terrorism remains one of the main challenges facing international community each state is striving to protect her citizens in the face of terror. However, when the terrorism is linked with refugee issues then it becomes a tricky affair for the country to formulate policies that protect the state and also conforms with the international refugee laws. Kenya hence is often face with the challenge to ensure that the counter-terrorism measures taken match the humanitarian standards and does not lead to violations of human rights especially of the refugees.

The analysis suggests that Kenya's open door policy is a success as much as the country is welcoming to the refugees, there is need to put in place measures that will deter terrorist from posing as asylum seekers and getting into the country. In the face of the numerous terrorist attacks, Kenya must ensure that her national security is maintained. However there is need to strike a balance by formulating counter-terrorism that conforms with the international refugees laws and obligations.

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Wilhelm, Jan Philipp, “*UNHCR report: Worsening refugee situation in Africa*,” ( online publishers, 2016).

**APPENDIX I: QUESTIONNAIRE**

**SECTION ONE: PERSONAL DATA**

**1. Gender**

Male [    ]. Female [    ]

**2. Education Level**

Secondary [    ]

Degree [    ]

Post Graduate [    ]

**OBJECTIVES:**

**COMPLEX RELATION BETWEEN INFLUX OF REFUGEES AND KENYA'S NATIONAL INTEREST.**

**3.** What impacts does refugees have on national interest?

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**4.** How has the influx of refugees impacted the country?

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**5.** In your opinion was the move of Kenya to welcome the refugees the right one?

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**THE GOVERNMENT’S RESPONSE TOWARDS THE INFLUX OF REFUGEES IN KENYA.**

6. How has the government responded to refugees’ influx?

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7. Was the government justified?

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8. According to you is there a better way they should have responded?

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.....

**KENYAN GOVERNMENT CAN BETTER RESPOND TO REFUGEES’ INFLUX WITHOUT OVERLOOKING REFUGEES’ RIGHTS AND COMPROMISING THEIR NATIONAL INTEREST.**

9. Is there a way kenya can protect its national interest and still observe refugees rights?

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10. Can refugees be integrated into the country?

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**11. Give a brief comment on the refugee situation in Kenya ?**

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