UNIVERSITY OF NAIROBI

Institute of Diplomacy and International Studies

The Linkages between Immigration and National Security: A Case Study of

Kenya, 1998-2008

BY

WILFRED WANYAMA WAMELA

Research Project Submitted At the Institute of Diplomacy and International

Studies, University Of Nairobi In Partial Fulfillment For The Award Of

Master Of Arts Degree In International Conflict Management

SEPTEMBER, 2009

Structured Interview schedule

University of Nairobi
Institute of Diplomacy and International Studies

Dear Respondent,
   On behalf of the Institute of Diplomacy and International studies and Mr. Wilfred .W. Wamela, thank you for taking your time to discuss with us issues and themes related to immigration, Conflict and national security in Kenya. We highly appreciate your cooperation.

Name of the interviewee (Optional) ————————————

Organization ——————————————

Position ——————————————

Date of Interview ————————————

1. How do you view the presence of immigrants in Kenya?

2. How often do you interact with immigrants in your daily activities?

3. Do immigrants pose a specific security threats to Kenya?

4. If yes what are the sectoral specific threats?

   - Military
   - Political
   - Economic
   - Environmental
   - Societal

(NB: Questions 3 and 4 are for respondents who are knowledgeable of fields related to national security)
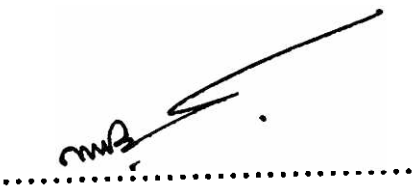
5   What are the impacts?

6   Do you have any other comment?
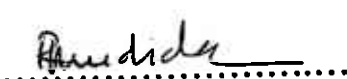

Thank you for your cooperation

DECLARATION

This project is my original work and has not been submitted to any other university or examination body.

Sign .... Date.12th, Nov. 2009

Wilfred Wanyama Wamela

This project report has been presented for examination with my approval as the University supervisor.

Sign Date.12/11/2009

Robert Mudida PhD.

i

DEDICATION

This project is dedicated to my family. My children- Lydia, Tom, Trina and Ken, you are wonderful! Despite the unprecedented financial challenges, among others, you have not, not even by sign, disappointed me in your school work. This has been a big encouragement toward completing this project.

ACKNOWLEDGEMENT

TABLE OF CONTENTS

ABSTRACT

The relationship between immigration, Conflict and National Security has not been given detailed analysis in the mainstream international relations scholarship. This is despite the reality that immigration has exponentially grown over the past three decades. Indeed in the face of the increased global interconnections in political, Economic and social fields coupled with transportation revolution and presence of inter and intra state conflicts which generates mass displacements, immigration is bound to increase. Today, due to these dynamics an estimated 200 million people are currently living outside the states of their birth.

Certainly such mass cross border movements do have impacts in the areas of destination. Their impacts have been given detailed attention in other disciplines concerned with specific aspects such as labour markets, cultural impacts and such. However these studies do not connect immigration to issues of National Security especially the broadened framework of security. The study enters the debate at this point. It has linked immigration to national security by examining the immigrants' impacts on National security in Kenya. To bring out the impact the study has employed the fruitful framework of security developed by Barry Buzan. The framework conceptualizes national security as encompassing five sectors. These are the military, economic, political, societal and environment. The framework has been enriched by locating it within the human security approach which allows for multiple objects and referents of security.

Concerning the methodology, the study has used both interviews and content analysis. The two methods have assisted in collecting of primary and secondary data. Primary data has principally focused on Kenya's experiences while secondary data has examined the local and global experiences on immigration and the theoretical/conceptual arguments on the same. Data collected have been tested against the hypotheses of the study. The study hypotheses are:

Immigrants lead to conflict and are a threat to national security in Kenya; Kenya has effective legal and policy responses to immigration; Immigrants do not lead to conflict and thus are not a threat to Kenya's national security.

The study's findings are that immigrant's poses threat to the national security. They have sectoral specific impacts which affect various levels (objects) of security. The impacts threaten the individual, society, environment and the state. However sweeping generalities cannot be made for there are intervening factors such as the identity of the immigrants, the causes of their emigration and the activities they are involved in. This is evidenced by the findings that in Kenya immigrants' threats are mainly connected to immigrants of Somali ethnic group. In the face of this evidence the study makes a case for securitization of immigration policies if various objects of security are to be cushioned from negative impacts linked by to immigrants. However such securitization should be underpinned by the need to filter out persons posing security threats. It should not be a ground for promoting xenophobia.

CHAPTER ONE

BACKGROUND TO THE STUDY

Introduction

Migration has been a part of human history. From traditional communities which moved in response to changes in climate, diseases, invasion by neighbours and famine, humanity has always been on the move due to pressures in their areas of residency which push them out and pull factors which makes other areas appear to offer a more secure source of survival and . livelihood.

Human migration both within and outside state boundaries has increased exponentially, leading to the current century being termed the 'age of migration'[1]. Advances in transport technology, easing of immigration regimes, global economic interconnection, anthropogenic activities induced climate change, has led to internal and international movement of people.

Though a global reality, migration is an exceptional phenomenon. Unlike 'migration' of other factors such as commodities in the international market, for instance, human migration is a process characterized by encounters. On one hand, a person moving from one nation to another will experience a 'nationality' and 'cultural' encounter, as he finds marked differences between his nation and the 'destination' country. On the other hand, a person moving within a culturally diverse nation will 'encounter' cultures different from his. The nationality and cultural encounters have both direct and indirect positive and negative consequences. In some instances, migrants have been a central factor in improving the 'wealth of nations' through contributions in various economic fields, enriching 'destination' cultures and enhancing population regeneration. In other situations migrants have been viewed as a source of insecurity and conflict in the areas of

---

[1] See for example Castles, S and M. Miller, *The Age of Migration International Population Movement in the Modern World*. London: Macmillan, 1996,p 4

1

destinations, eliciting hostile reactions from the hosts, due to competition for resources, engaging in criminal activities, bringing with them cultures viewed as 'retrogressive' and engaging in political activities antithetical to the values of the host population.

Due to the latter threats and global experiences such as trans-national terrorism, migration issues are no longer treated as security neutral. Internationally events such as September eleventh, 2001 bombing of world trade centre in the United States of America, has led to increased securitization of immigration policies. Internally, movement of people notably in Africa, from their indigenous regions to other regions in the country, has been attributed as a cause of conflict which threatens national security. This is most likely when the language of political competition adopts the discourse of 'indigene'and'foreigner' (outsider) dichotomization, leading to ethnic-based violence.[2]The threat attributed to migration (internal and international) makes it imperative to analyze the relationship between migration, conflict and national security.

Statement of the Research Problem

In an era characterized by mass movements of people, there has been increased negative reaction towards migrants. Migrants irrespective of whether facts state otherwise are often blamed for problems in the areas of destination. Whenever there is economic, social, political and security problems, leaders and ordinary citizens often find explanations which include immigrants. From ensuing debate targeting immigrants, critical issues are overlooked and it is often assumed that, by solving the migrant problem- whatever the means – all the problems will be resolved.

Consequently, debate concerning the impact of immigration on national security has often tended to be muddled and assumed to have a linear relationship. The immigrant thus is viewed as

---

[2] See for example, an analysis of Kenya ethnic conflict by M. Wachira *'Kenya: States, Donors and the Politics of Democratization'* in van Rory, A (ed). *Civil Society and Aid Industry*, London: Eastern Publications, Ltd, 1999, pp 135 – 167.

2

an 'outsider' who has come to 'spoil the party' without offering a critical analysis of how he is a spoiler and if he is, under what circumstances. Thus there is a need to analyze under what circumstances; immigrants threaten national security through actions such as hostile activities against the state of their nationality and the other activities in the host state. Such an analysis which is the focus of this study, answers the following questions: Does presence of migrants lead to conflict and threats to national security; if yes, what are the social, economic and political dynamics that make migrants a source of national security threats and lastly whether the aforementioned threats can best be solved through 'securitizing' of immigration processes internationally.

The analysis focuses on Kenya as its case study. This is important because Kenya is located within a volatile Horn of Africa and Great Lakes conflict system which has led to massive inflow of refugees to the relatively stable Kenya. Also the country serves as the regional economic, diplomatic, tourism and humanitarian hub. Consequently there is high inflow of voluntary immigrants involved in either of these activities.

Objectives of the Study

The main objective of the study is to establish conceptual and practical linkages between immigration, conflict and national security in the context of Kenya. To achieve this objective the study has the following sub-objectives.

1. To analyze the debates on immigration and national security and how they are linked.

2. To assess the relationship between immigration and national security in Kenya.

3. To examine Kenya's legal and policy framework on immigration and related initiatives and the challenges faced.

Literature Review

Literature review in this section is broadly divided into five parts. The first part provides an examination of immigration as an international phenomenon within a system where states still remain the principal actors and are ordered on the basis of sovereignty and principle of territoriality. The principles give states right of independence of action within their territorial jurisdiction .This right applies to immigration too. The second section reviews literature on the status of various categories of immigrants (forced and voluntary) under international law. It is informed by the view that individuals have become subjects of international law and hence possess rights and obligations under it. More so international law acts as a boundary spanner in regard to state's actions hence, analysis of immigration must consider how immigration relates to international law. The third section focuses on security. It reflects on literature which has problematized the concept of security, expanding it from the traditional and Westphalian militarized conceptualization. By expanding the notions of what security is, various aspects of security can be analyzed in relation to immigration. The fourth section focuses on the process of internationalization of conflict and how immigrants both voluntary and forced are agents of internationalization of conflict. The idea of internationalization of conflict helps to explain the complex relationships between the internal and international dynamics in a conflict situation. The final section recapitulates on literature reviewed.

International Migration and Immigrants

Zlotnik[3] has noted that though there is a problem with statistics on international migration the answer on the number of immigrants can be answered tentatively. Current immigration figures indicate that about 175 million people live outside their places of birth. Between 1965 and 1990,

---

[3] H. Zlotnik *'International Migration 1965 - 1996: An Overview'* in Journal of Population and Development Review, vol 24, No.3, Sept 1998, pp 429-469: 429

the number of international migrants increased by 45 million translating to an annual growth of about 2.1%. Since then the figure has increased to 290 million by 2006, with an annual growth of 3.2%.[4]

Zolberg[5] has argued that international migration remains an exceptional phenomenon within the world that is organized into mutually exclusive and legally sovereign states that imposes barriers to international mobility in general and international migration in particular. A view supported by Aleinikoff[6] in his observation that international law affirms the authority of states to regulate the movement of persons across borders. Such power is understood to flow from the concept of international system with states possessing primary authority over their territory and population. Consequently, every state has laws defining classes of admissible and inadmissible citizens, to remove undesirable non-citizens and to make certain benefits and opportunities available only to citizens.

Ladley and White[7] picking on the theme of states' rights in determining who is admissible and inadmissible in their territory argue that international borders mark the physical edge of political autonomy, and is deeply connected to the nature and power of sovereign state. As such it marks where governing and protective responsibilities of the states authority over its territory are both evident and called into action. Therefore the border applies to either the physical border or at other times to the 'Choke points' of control such as the place of the first landing. For this reason all states are concerned with border protection as an exercise of sovereign responsibility.

[4] International Organization for Migration, *World migration report*, , 2007. Also, R.K. Miller *The informed Argument* (4th ed) New York: Brace College, 1995, pp 249-279

[5] A. Zolberg *'International Migrations in Political perspective'* in Kutz M. et al (ed) *Global Trends In Migration: Theory and Research on International Population Movements*. New York: Center for Migration Studies, 1981, pp 3-27.

[6] A. Aleinikoff *'International Legal Norms And Migration: An Analysis*. Geneva: international Organization for Migration, 2002, p 15

[7] A. Lanley and N. White, *Conceptualizing the Border* .Wellington: Institute of Policy Studies, 2006, pp 1-10

Protection aims at: Protecting state from physical invasion, physical security of the population from attacks by other nations, keeping away threats posed by terrorism, and internationally active criminal organizations, public health risks, cultural dilution and so on.

Annan[8] explains international migration as a product of push factors in the area of origin and pull factors in the destination area. As such most people seek to migrate pushed by circumstances in their home countries, war, poverty and persecution which prompt people to become refugees, asylum seekers and labour migrants. Consequently migration brings with it many complex challenges. The challenges include: Human right issues; multiculturalism, integration in destination areas, refugee and asylum seekers flow and law enforcement.

Zlotnik[9] along the same line attributes increased international migration to liberalization of immigration regimes, transport revolution and progressive regional integration efforts in different parts of the world. Consequently, increased migration has led to diversification of countries' population as most countries host a sizeable population (300,000 persons) of migrant populations representing a significant proportion of the total.

Skeldon[10] has divided international migration in different tiers. He argues that the western developed market economies have disproportionate share of migrants and at the end of 20th century, one in every thirteen person living in the west was an international migrant. The view is supported by Zlotnik[11] analysis of states migration statistics in Western Europe. He notes that data taken relating to Belgian, France, Germany, Italy, reveal that the countries had received between then 2.2 million Turks, 1.4 million Italians, 846,000 Portuguese, 632,000 Algerians, 55,000 Spanish and 900,000 persons from the former Yugoslavia. Along the same line, studies on Jews

---

[8] K. Annan '*Africa renewal*' vol 19, No. 4 Jan, 2006, p 15
[9] H. Zlotnik, *International Migration 1965 – 1996: An Overview*' op cit, p 430.
[10] R. Skeldon. *Migration and development: A Global Perspective.* Harlow: Longman Publishers,1997,p46
[11] H. Zlotnik ,op cit p 434

migrants to Israel from soviet union, after it collapsed, shows that between 1989-1991, Israel received 346,00 Jews increasing the population of the country by 7 percent.

Weiss[12], in his analysis of guns in the Horn of Africa borderlands brings out disconnect between cultural and state understanding of international borders. He argues that in the Horn of Africa region there has been a disconnection between community – based perceptions and those of government about borders. This disconnection has been informed amongst other things by the porous nature of borders in the region. Hence in borderland factors connected with borders have enhanced the likelihoods of both internal and inter-state conflicts. For instance ethnically homogeneous Somali community straddles Kenya, Somali and Ethiopia borders and embrace pan-Somali nationalism.

A study done by the *International Organization for Migration* observes that international migration has become an important livelihood strategy for many groups across the world. While it is no penance for the poor, it accrues benefits to them"[13] .It enables them to secure resources which they remit to their kiths and kins, back home.

The *Government of Kenya, Counter-Terrorism Strategy* identifies the risks posed by immigrants to Kenya. It argues that Kenya's geo-strategic location on the Eastern Coast of Africa along Indian ocean and its borders with Somalia, Ethiopia, and Sudan, where there is internal strife has made maintenance of security difficult for they create spill over effects bearing on Kenya security as well as creating geographical space devoid of state control. Such spaces offer terrorists safe haven. Hence there is need to guard illegal entry of undesirable materials and

---

[12] T. Weiss, *Guns in the Borderlands: Reducing the Demand for Small Arms*. Pretoria: Institute of Security Studies, No. 95, Jan 2004, p 12
[13] P. Deshing, Kar and S. Grimm '*Internal Migration and Development: A Global Perspective*. Geneva: International Organization for Migration, 2005, p 8

persons through vigilance, monitoring of movement and residency of aliens and issuance of *bona fide* travel documents[14].

Smith[15] in his analysis of immigrants in Europe concludes that countries deal with asylum seekers as an issue of migration control and of domestic politics. He describes racism and xenophobia as rampant in Europe and manifests itself in terms of high rejection rates of asylum seekers, human deterrence measures of detention, reduced welfare and other measures of social exclusion. The treatment is indicative of negative perceptions about migrants by the citizens and public officials.

From the overview of immigration, it is evident that it has become an international phenomenon. Individuals are crossing international frontiers on daily basis driven by various motivations. The international aspect of migration inevitably has led to the need to regulate it at global level. Though there lacks a single codified convention on immigration, various conventions contains articles applicable to immigrants. The following section reviews aspects of international law dealing with immigrants

Aspects of International Law Related to Immigrants

There exist various conventions governing the treatment of voluntary and forced immigrants in international law. The section reviews aspects of international law relating to immigrants. Every state passes laws defining classes of admissible and inadmissible citizens, to remove undesirable non-citizens and to make certain benefits and opportunities available only to citizens. In addition, it has laws for refusing admission and mandatory expulsion on the grounds of public health risks, criminal activities and violation of immigration laws, threats to national

---

[14] Government of Kenya, *counter terrorism Strategy*, 2003
[15] J. Smith, *'Europe Bids Immigrants Unwelcome'* Washington Post Foreign Service, 23rd July, 2000

8

security, on public order or on the grounds of lack of economic means to cater for immigrants.[16]

These laws are informed by aspects of international law relating to states rights and responsibilities in relation to persons living within its territory.

Regarding nationality, every state has authority to determine its nationals, subject to conventional and customary law norms. Hence states may chose to adopt *jus soli* or *jus sanguinins* rules or both for birth right citizenship. Hence there is no international law requirement that a state extend citizenship to immigrants; however international instruments urge steps to avoid subjecting individuals to statelessness[17].

International law recognizes the right of states to protect its national security, as a core attribute of sovereignty. As such international conventions allow for expulsion and exclusion of persons who are seen as a threat to the national security. For example the 1951 convention relating to the status of refugees provides for derogation of the right to *non-refoulement* principle. Article 4(1) provides for derogation refugees right to *non-refoulement* under international refugee laws on security grounds. Shaw observes that in the International Covenant on Civil and Political Rights;

> "....an alien lawfully in the territory of a state party to the convention, may be expelled only in pursuance of decision reached in accordance with law and shall except where compelling reasons of national security require, be allowed to submit reasons against his expulsion and to have his case reviewed by and for the purpose before the competent authority"[18].

The exception of appealing against expulsion is if a person is characterized as a threat to national security and recognition in the refugee convention of 1951 that *non-refoulement* principle should

---

[16] H. Zlotnik,. Op cit, p 434
[17] For instance see *Convention of the Rights of Children*, Article 8, Nov, 1989 UN Doc A/RES/44/25 91989)
[18] M. Shaw *International Law (4ʰ ed)* Cambridge University Press, 2004, p 573

be subordinated to national security's concerns shows international law acknowledgement of state's rights to national security.

The right of states to enforce immigration laws beyond their borders, deterring unlawful entry by sea and air is also recognized under international law. The Convention of the High Seas of 1958 and the Law of the Sea, 1981[19], allow state authorities to stop and board ships bearing their flags, stateless ships and ships that have entered their territorial waters. Likewise, "annex 9 to Chicago Convention on International Civil Aviation, requires air carriers to take precautions at the point of embarkation to ensure passengers possess valid travel documents as required by the state of disembarkation. Passengers found to be inadmissible are transferred to the custody of the carrier who is responsible for their 'prompt removal to the place where they begun their journey or to any other place where they are admissible."[20]

The above examples show that states have rights under international law to determine and regulate persons entering their sovereign territories. However, the rights are tampered with responsibilities. Alenikoff, observes that the principle of *pact sunt Servanda*, is recognized in article 29 of the Vienna Convention on the Law of Treaties obliges states to perform treaties in good faith[21]. Hence states are bound by commitments in human rights conventions that they ratify and be bound by customary international law norms. Most of human rights are guaranteed irrespective of an individual immigration status, for they are a function of a person's status as a human being, not as a citizen[22]. Key norms under international human rights conventions are:

---

[19] See *Convention on the High Seas*, 29th April 1987, and *United nations Convention on the Law of the sea* of 1982, Art 98 (1)
[20] See *Convention On International Civil Aviation(Chicago Convention)*, Annex 9, 3 52-371, in Aleinikoff op cit
[21] A. Aleinikoff, '*International Legal Norms and Migration Analysis*, op cit, p 22
[22] See G. Goodwin '*The Language of Protection*' International Journal of Refuge Law, 1989, pp 14-16

non-discrimination, *non-refoulement*, general protections pertaining to immigration proceedings and norms relating to family unity.

The international convention on civil and political rights protects both citizens and immigrants. ICPR, article 26 provides;

> "....all persons are equal before the law and are entitled without discrimination to the equal protection of law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, property, religion, political or other opinion, national or social origin, property, birth or other status"[23].

The article secures the rights of migrants for it prohibits discrimination on the basis of one's nationality. The International Convention on Economic and Social Cultural Rights also guarantee a raft of rights to health and to education without discrimination of any kind[24]. However it is worth noting that, state practice demonstrates widespread divergence from the non-discrimination principle, and as the human rights committee noted, 'not every differentiation of treatment will constitute discrimination, if the criteria of such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant.[25]

However, some human right norms should not be derogated irrespective of a person's status. These include right to life, prohibitions against torture and cruel inhuman and degrading treatment, rights generated in the criminal process, freedom of thought, conscience and religion, right to leave a country and the prohibition of retroactive criminal penalties, and the right to marry.

Regarding the norm of family unity, there is recognition that the family is the fundamental group unit of society and hence entitled to protection and support. For instance Article 9(1) of the

---

[23] *International Convention on civil and Political Rights, of 1964, Art, p 22*
[24] *International convention on Economic and Social Cultural Rights, Art 2(2)*
[25] A. Aleinikoff, op cit, p 35

convention on the rights of child observes that 'child may be separated from his or her family only when competent authorities subject to judicial review determine that such separation is necessary for the best interests of the child.[26] Aleinikoff notes that, immigration regulations interacts with family unity in a number of ways and most states permit entry of immediate family members (spouses and minor children) to join a lawful resident immigrant.[27]

On the rights relating to immigration proceedings, international conventions requires that, immigrants be subjected to competent court proceedings, have right to be represented by counsel and right to present evidence and examine evidence against him, before actions such as expulsion can be undertaken. The exception to this right is only when there is compelling reasons of national security, justifying immigrant's expulsion.

International law has beyond the above norms applicable to immigrants, developed norms to deal with persons facing specific situations. The main category of such persons is forced migrants such as refugees. The United Nations Convention Relating to Refugees and the 1967 Protocol Relating to the Status of Refugees have put in place standards for treating persons defined as refugees under article 1 of 1951 convention. The refugee convention is underpinned by the principle of *non-refoulement* .Article 33 of the 1951 convention stipulates,

> "....no contracting party shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"[28].

The non-refoulement principle finds further expression in the United Nation Convention against Torture, other Cruel Inhuman or Degrading Treatment or Punishment. Article 3, states no state party shall expel, return (*refouler*) or extradite a person to another state where there are substantial

---

[26] *Convention on the Rights of the Child* Art 9(1)
[27] A. Aleinikoff 'International Legal Norms and Migration Analysis' op cit, p 39
[28] United Nations Human Rights and Refugees: fact Sheet No. 20, p 7

grounds for believing that he would be subjected to torture"[29] ;the fourth Geneva convention of 1949, article 45, paragraph 4; Declaration on the protection of all people from enforced disappearance (article 8), the principles of the effective prevention and investigation of extra-legal, arbitrary and summary executions, and conventions on the rights of the child article 22 which makes specific provision for giving appropriate protection and humanitarian assistance to the refugee child".

In practice states do not always respect *non-refoulement* principle. For instance, on 3rd January, 2007 Kenya closed its border with Somalia and expelled 400 asylum seekers fleeing Somali conflict. According to the then minister for Foreign Affairs Mr. Raphael Tuju, 'the border was closed to prevent the Union of Islamic Courts from escaping into Kenya, thereby preventing a regionalization of the conflict and a threat to Kenya security.[30] In addition, there exist gaps in the international law which states exploit. First, although there is recognized right to seek asylum, states are under no duty to grant asylum. Two, in an effort to stop unlawful migration, states have introduced restrictive measures that hinder access to their territories. Measures include complicated and burdensome visa requirements for some nationals and imposition of fines on airlines that carry undocumented aliens".[31]

Having reviewed literature on aspects of international law related to immigrants, the next section reviews literature on security. From the foregoing, it can be seen that international law does accept state's right to national security. Conventions such as the Refugee Convention of 1951, for instance, places limits on *non-refoulement* principle on the grounds of national security.

---

[29] Convention against Torture, Article 3: See m. Shaw International Law (4th ed), op cit, p 242
[30] Daily Nation, 4th January 2007, p 3
[31] See United Nations, '*Human Rights and Refugees* '. Fact Sheet no. 20, p 18-21

However, no convention clearly outlines the parameters of what constitutes national security and thus it is necessary to review literature on various aspects of national security.

National Security

Zartman[32] notes that security is and will remain the key rationale for legitimizing government. The central role of security is the creation of an environment where majority of citizens can go about their business in peace and harmony. Towards this endeavour governments seek the ability to maximize control of domestic and external factors that tend to diminish this harmony, while enhancing the resource extractive capabilities that promote the welfare of citizens. Hence, as Tiyanyana[33] notes, the security imperative is one of the primary roles of the state and states must be able to provide peace and security for its citizens within national territorial boundaries as well as to ensure their protection against threats from outside.

However there exists a debate on what constitute security and whose security. Hyde[34] argues that debates about security are typically interpreted mainly in terms of what it means to a nation state and primarily in terms of military security. Realists such as Hans Morgenthau[35] conceptualize security as meaning states' security from external physical threats. The realist view of security as essentially referring to absence of physical threats has attracted criticism.

Gomes[36] has argued that realist conception of security views states as the main actors and therefore main referents of security. Hence national security is reduced to mere security of states

[32] Zartman W.I, African *Regional Security and Changing Patterns of Relation*' In Keller E.J et al (eds) *Africa In The New International Order: Rethinking State Sovereignty and Regional Security*. Colorado: Lynne Reiner, 1996, p 55
[33] M. Tinyayana '*The Refugee Problem And The Quest For Peace and Security In Southern Africa*' International Journal of refugee Law, Vol 7(4), 1994, p 654
[34] G. Hayden '*Livelihood and Security In Africa: Contending Perspectives In The New Global Order*' Africa Studies quarterly, Vol C, 1996, pp 155
[35] See H. Morgenthau, *Politics among Nations: The Struggle for Power and Peace (5th Ed)*. New York: Alfred A. Knoff, 1978
[36] S. Gomes, '*The OAU State, Sovereignty and Regional Security*' in Keller E.J et al, *Africa in New International Order: Rethinking State Sovereignty and Regional Security*. Colorado: Lynne Reiner, 1999

from external aggression and preservation of territorial integrity and sovereignty. Aseka[37] in line with Gomes observes that conceptualization is based on assumption of state as an abstract entity that is devoid of humanity and is autonomous from domestic society.

Consequently, there has been a re-conceptualization of security. Ayoob[38] observes that definition of security has mutated and acquired broader meaning. Scholars and statesmen have realized that some factors present grave threats to survival of the state than the perceived external elements. The realization has led to alternative views of security. Buzan[39] rejects the state centric conception of security as hollow. Instead he identifies three levels of security: Individual, societal and national. Further, he argues that though states remain central actors in world politics their interaction is surrounded and complemented by the ever more important interventions of transnational and sub-national actors.

Mwagiru[40] critically notes that from the shift of security emphasis from state to other centres within it has altered meaning of security to include not only external but also threats from internal and non-state actors. Chweya[41] identifies the threats as threats to individuals, groups and communities and 'civilian' threats to the human well being, health, nutrition, education, fairness rights, freedoms and dignity.

The rejection of state-centered approach to security has led to 'humanization' of security or adoption of a human centered approach to security. The United Nations Development Programme (UNDP), *Human Development Report* in 1994, noted that human security means

---

[37] E.M Aseka 'Globalization, Intellectuals and Security in Africa' In Mwagiru M. (ed), *African Regional Security in the Age of Globalization*. Nairobi: Heinrich Boll Foundation, 2004, pp 32.

[38] M. Ayoob ,*The Third World Security Predicament' State Making, Regional Conflict and the International System* Boulder: Lynne Reiner, 1995,p167

[39] See B. Buzan, *People, States and Fear: An Agenda for International Security Studies In the Post-Cold War Era.* New York: Harvester Wheatsheaf, 1992,pp 112-140

[40] Mwagiru, 'Towards A Security Architecture in the IGAD Region' in Mwagiru. M (ed) ,*Africa Regional Security In The Age of Globalization*, op cit, pp 134-138

[41] L. Chweya 'Emerging Dimensions of Security in the IGAD Region' in Mwagiru M, Ibid, p 31

safety from constant threats of hunger, disease, crime, and repression. It also means protection from sudden and hurtful disruptions in the patterns of our daily lives, whether in our homes, in our jobs, in our communities or in our environment. Along the above definition Shaw and Schnabel conclude that, human security embodies sustainable communal, economic, ecological, gender, health and personal security.[42]

The people centered approach to security offers a useful analytical tool for it turns the focus on security to internal aspects of the state or as Makinda argues, is rooted in the view that people are the foundation of political communities and state and hence state security is derived from that of the people.

Mwagiru[43] notes that changes in the notions of security had important effects on states design of national security strategies. National security has shifted from being three legged models based on three traditional legs of national power, that is, the military, the economy and diplomacy to a four legged model which conceptualizes an addition fourth leg. The fourth leg essentially deals with the new dimensions of security that may from time to time be considered to be threats to national security. Hence it encompasses the societal dimension of security. This allows for securitization of issues identified as threats to national security.

Buzan et al[44] offers an approach which can help determine what issues deserve to be securitized. They argue for an objective and clear understanding of issues that should be non-politicized, politicized and securitized. The securitization approach relegates issues to three categories. Politicized issues (which the government must deal with and for which resources need

---

[42] UNDP, 'Human Development Report', New York: Oxford University Press, 1994, p 3
[43] M. Mwagiru 'Refugee Protection and the Diplomacy of National Security in Kenya: A Framework for Analysis' in Refugee Protection in the Context of National Security: An Analysis of the Refugee Act 2006.A Publication of Refugee Consortium of Kenya, 2008, pp 25-26
[44] B. Buzan et al, Security: A New Framework for Analysis: Boulder: Co. Lynne Reiner, 1998.

to be allocated), non-politicized issues (which do not necessarily involve the government and are easily dealt with by non-governmental actors) and securitized issues (which threaten the very existence of the state). The approach within a human security framework is useful in analyzing the relationship between immigration, conflict and national security.

States' crafting of grand strategies has included a fourth leg where they may securitize aspects which are identified as a threat to national security in its expanded dimension. Key threats may include activities that internationalize conflict and security issues from the source to across the international frontiers. Key internationalism agents are reviewed in the following sub-section

Internationalization of Conflict

Bercovitch terms conflict as a pervasive and inevitable social phenomena whether in simple or complex society and irrespective of time and space[45]. Nhema[46] observes that conflict is an expression of heterogeneity of interests, values and beliefs that arise as new social formations come up against inherited situations. Reuck[47] defines a conflictual situation as one characterized by presence of parties (however defined or organized) who perceive that they possess mutually incompatible goals. Drawing from above and similar definitions of conflict, Heinrich[48] argues that conflict comprises of three elements: conflict about perception of how things are (conflict about facts), conflict about how things should be (conflict of values) and conflict about who is entitled to what (conflict of interest).When conflict breaks up, it eventually becomes internationalized.

---

[45] See J. Bercovitch, '*The Study Of International Mediation: Theoretical Issues And Empirical Evidence*' in Bercovitch. J (ed) ,*Resolving International Conflict: The Theory and Practice of International Mediation.* Boulder: Lynne Reinner, 1996, p 15
[46] A. Nhema '*The Quest for Peace in Africa Transformation, Democracy and Public Policy.* Utrecht: International Books, 2004, p 212
[47] A. Reuck, '*The Logic of Conflict : Its Origin, Development And Research*' in Banks M. (eds), *Conflict In World Society: A New Perspective In International Relations* .Sussex: Harvester, 1984, pp 97-113
[48] W. Heinrich, *Building the Peace: Experiences and Reflection of Collaborative Peace Building: The Case of Somalia* Uppsala: Life and peace Institute, 2006, p 3.

17

Internationalization is the process through which domestic affairs become international. The idea of internationalization is a critique to the traditional dichotomy of internal and international aspects of states. In conflict and conflict management, there is now an acceptance that even though a conflict may have domestic sources, it eventually becomes internationalized[49].

Mwagiru[50] identifies several agents of internationalization. These are: the networks of interdependence among states; the universalization of some aspects of human rights, presence of ethnic groups straddling international boundaries whereby the co-ethnics across the borders are influenced by what is happening to their kins in another state; the media through 'CNN effect' and advances in media technology leading to global instantiation of local issues and refugees through their interactions with local communities, state of their nationality, host state and international governmental and non-governmental organizations.

For this study concern is focused on the impact of presence of ethnic groups straddling international borders and refugees within the context of a conflict system, which implies that every conflict is interconnected to other conflicts in the region through complex tessellations of relationships and interactions between the actors and issues within the system"[51]. Examples of conflict system are the Horn of Africa and Great lakes region conflict systems.

Internationalization of conflict through refugees and ethnic groups straddling international boundaries is more intense within an unstable security complex, Buzan[52] observes that, security being a relational phenomena, one cannot talk of national security without focusing on its embeddedness with a regional and global system. As such a comprehensive security analysis

[49] M. Mwagiru, *Conflict in Africa: Theory processes and Institutions of Management*. Nairobi: CCR,2006,pp59-60
[50] M. Mwagiru, Ibid, pp 62-68
[51] M. Mwagiru, Ibid, p 73
[52] B. Buzan, *people States and fears: An Agenda for International Security Studies in the Post-cold War Era (2nd edition)*, op cit, pp 186-221. Also B.Buzan 'Third World Regional Security in Structural and Historical Perspective' in Job, B (ed), *The Security Dilemma: National Security in Third World States*. Boulder: Lynne Reiner, 1992, pp 167-171

requires that one take particular care to investigate how the regional level mediates between states and international system as a whole. This for instance calls for attention to conflict system within a region and the internationalized networks that it generates within and beyond the region.

Along the same line, Lob, pointing to the artificiality of third world states argues that the inviolability of third world states in a formal sense is in contrast to their permeability in a practical sense. The territorial borders of states do not serve as barriers to communal movements, to media and communication, to intervention and insurgency and to legal and illegal trafficking"[53].

In a detailed study, Vlassenroot and Huggins[54] have analyzed the relationship between immigration and conflict in Democratic Republic of Congo. They argue that the relationship between immigrants and conflict in DRC has been overlooked as scholars tend to concentrate more on the role of external actors and natural resources in fuelling the conflict. Instead they argue that immigration of Hutu and Tutsi from Rwanda and Burundi especially during the colonial and post colonial period can explain the violence.The competition for resources especially land between the indigenous communities and Tutsi immigrants in both North and South Kivu regions and ensuing hostilities made the region vulnerable to politically instigated violence especially after democratization process in the early 1990's. They argue that in areas where there was large presence of immigrants, competition for land was easily transformed into an ethnically motivated conflict. Further they note that instabilities in Rwanda and Burundi in 1990 have occasioned influx of refugees in the region. Some, like ex-Rwandan Army personnel and *Interhamwe* were armed. Consequently,

---

[53] B. Lob 'The Insecurity Dilemma: National, Regime, and State Securities in the Third World' in Lob, B (ed), *The security dilemma: National Security in Third World States*, op cit, p 26.
[54] K. Vlassenroot and C. Higgins' *Land, Migration and Conflict in Eastern DRC'* in Vlassenroot K et al (eds) *Conflict and Social Transformation in Eastern DR Congo* .Ghent: Academic Press *2004, pp119-148.*

"local antagonisms between autochthonous and *Banyarwanda* communities was now altered by a new coalition of local Hutu *BanyaRwanda*, the refugees leadership and militias creating the concept of Hutu land and hunting down local Tutsi population"[55].

Lastly, they bring out the security threats posed to post genocide Rwanda, Burundi and Uganda, by presence of hostile rebel groups operating in Rwanda. The security threat eventually led to formation of military campaign against the hostile elements and Kinshasa regime.

Kamenju et al[56] has noted that the process of colonization dismantled the traditional ways of life of communities as the generation of state boundaries disregarded traditional boundaries between different communities. Consequently colonialism dismembered ethnic community by erecting boundaries between them. Boundaries also cut off communities from their source of livelihood, such as grazing land, watering points and land for cultivation. Among these frontier communities, there exists intermittent cross border crime, banditry and conflict over grazing rights, cattle rustling and proliferation of small arms. The problem is exacerbated by the porous and poorly policed borders.

Weiss[57] has brought out the connection between irregular migrations through porous borders and terrorism. He argues that growing threats of terrorism in the region as extreme military and fundamentalist politics root in the region, poses a major security threat to the country. The *Government of Kenya Strategic Paper on Counter Terrorism* notes that "Kenya's cordial relations with the western world especially, the United States, the United Kingdom and Israel has led to increased vulnerability, as international terror network targets western installations. So far, terrorism incidences include the Paradise Hotel, Mombasa attack on 28th

[55] K. Vlassenroot and C. Huggins, ibid, pp 129-130
[56] J. Kamenju et al, Terrorized *Citizens: Profiling Small Arms and Insecurity in the North Rift Region of Kenya.* Nairobi: Oakland Media Services 2003, p 4
[57] T. Weiss, *Guns In The Borderlands: Reducing The Demand For Small Arms.* Pretoria: Institute of Security studies, No. 95, 2004, pp. 45

December, 2002 which left 13 Kenyans and 3 Israelis dead; bombing of United States embassy on 7th August, 1998 killing over 200 Kenyans and 20 United States citizens and leaving more than 2000 people injured."[58]

Boswell[59], in his analysis of the role of refugees in internationalization of conflicts, brings out the role of warrior refugees. These are refugees who have reorganized the conflict of their country of origin by turning refugees' camps into military bases and using refugees as human shield. He concludes that, the 'securitized' framework of regulating forced migrants is out of reality of real security threats posed by such migrants. The view is supported by Smyser's[60] argument that governments that offer accommodation to refugees have to suffer political and possible military consequences if the refugees' country of origin believes that the refugees are engaged in hostile activities. A reality brought home by Rwanda's invasion of DR Congo. Gnamo[61] has corroborated this view and has stated that, the presence of massive population of Hutu refugees from Rwanda in DR Congo who among their ranks were *genocidaires* and ex-Rwandan army forces who continued to conduct repeated military incursions in Rwanda, made Rwanda to train and arm immigrant "Zairian' Tutsis (*Banyamulenges*). The *Banyamulenges* invaded Hutu refugee camps to flash out Hutu militias and also launched a military offensive to force regime change in Kinshasa

A field study[62] conducted by Kenya Immigration officials has identified the impacts of illegal immigration in Kenya. They note that one of the greatest security challenges posed by

---

[58] Government of Kenya, *Counter Terrorism Strategy*, 2003
[59] C.Boswell '*The Conflict between Refugee Rights and National Interest: Background and Policy Strategies.* Geneva: United Nations High Commission For Refugees, 1999, p 28
[60] W. R. Smyser, Refugees: *Extended Exile.* New York: Pragler publishers, 1987, pp 49
[61] A.H .Gnamo, '*The Rwandan Genocide and the Collapse of Mobutu Kleptocracy'* in Alderman .H and Suhrke.A, *The Path of Genocide: The Rwandan Crisis from Uganda to Zaire.* London: Transaction Publisher,1998, p,67
[62] A. Nurow, *Field Study Report: Control and Management of Northern Kenya Border (Sudan and Ethiopia).* Ministry of Immigration, July, 2007

immigrants is proliferation of small and light weapons. Small and light weapons proliferation through porous borders by frontier communities has exacerbated cattle rustling, tribal clashes and has contributed to breakdown of law and order. Further, illegal immigration has continued to provide safe passage for warlords, terrorist, drugs and human traffickers as well as insurgent leadership on the run .The insurgents find refugee camps as ideal place to recruit and propagate ideologies of hate and revenge to idle and youthful refugee population. Such threats to Kenya's national security have been addressed through laws and other initiatives but they still persist.

A Review of the History of Immigration in Kenya

The first instance of official immigration record in Kenya was of Indian and Pakistanis who had come in as engineers during the construction of Kenya – Uganda railway from 1896-1905. After the construction was completed, some remained in Kenya while others went back and brought with them their wives and children. The influx of immigrants from Asia and the need to curb it led o the first immigration control through the passing of immigration control ordinance of 1906. It targeted immigrants who wanted to come to Kenya and settle permanently[63].

Several other ordinances- 1944, 1948 and 1956 preceded that of 1967 which became 'the Immigration Act' of 1967, Cap 172 of the laws of Kenya. The act called for speedy Kenyanization of the economy and consolidated all the other laws on immigration. Currently, the department is developing a new immigration policy, which, if passed by parliament, will become an act of parliament that will hence forth guide entry of bona fide and restrict entry of mala fide immigrants into Kenya.

---

[63] P. Kafwihi, 'History of Immigration' A Seminar Paper for the Department of Immigration, 1998)

22

To address refugee related issues, for Kenya hosts a large number of refugees generated by instabilities in the region, Kenya passed a refugee act 2006[64]. The act provides for recognition, protection and management of refugees. The act is institutionally divided into three parts. The first section defines several categories of persons to be governed by the act (asylum seekers, refugees and members of refugee family); second section establishes institutional structures such as the department of refugee affairs, and refugee appeals board; and the third section elaborates on administrative processes of refugee affairs. The act seeks to balance Kenya's national security concerns and international obligations under various refugees' conventions. Importantly it marks a shift from approaching refugee issues as security issues to being administrative ones, and clearly differentiate between refugees and illegal immigrants[65].

The review of literature brings out the relationships between immigration, conflict and national security. The review notes several factors which make immigration a cause of conflict and threat to national security. Importantly it reveals a non linear relationship between immigration, conflict and national security. For immigration to lead to conflict and threaten national security there is a host of intervening variables.

Justification of the Study

The study has both academic and policy justification. Academically the study can be justified on the following grounds. Firstly, within the expanded notion of security, the approach will help focus on micro-level processes within the state and how these processes impact on different 'security' sectors and units. Secondly, from the literature review, there is evidence that, presence of immigrants does not in itself lead to conflict and threats to national security. Instead

---

[64] S. Konzolo and E. Ayiera, 'An Overview of the Refugee Act 2006' in *Refugee Protection in the Context of National Security: An Analysis of the Refugee Act*, 2006, pp 7-14
[65] See M. Mwagiru 'Refugee Protection and the Diplomacy of National Security in Kenya: A Framework of Analysis' in *Refugee Protection in the context of National Security*, Ibid, pp 29-32

the relationship between the above variables is complex. By having a country specific study on the relationship of the variables, the study enriches the debates on whether immigration has an overall beneficial or negative impact on the host states. Studies have been done on socioeconomic impacts of immigrants on the host country, but there lacks a systematized study on their impacts on national security, and more so on Kenya's national security.

On policy ground, Kenya is currently in the process of developing a modern immigration and naturalization law and policies. Through analyzing and problematizing the relationship between the above variables, the study will contribute to clearer understanding of immigration. This will contribute towards development of a more comprehensive policy that is capable of addressing immigration and national security issues.

Hypotheses

1. Immigrants are a threat to national security in Kenya

2. Kenya has effective legal and policy responses to immigration

3. Immigrants are not a threat to Kenya's national security

Theoretical framework

The study adopts an 'An expanded notion of security' as developed by Buzan and others. The expanded approach to security is reflective of the emerging understanding that national security does not exclusively mean absence of external physical threats to the wellbeing of the state. This view has taken root especially after the end of cold war, which had held security studies hostage within the realist framework which conceptualized national security predominantly on military terms and from purely state perspective.

The post-cold war period has witnessed serious challenges to the realist conception of security. The challenges have led to redefinition of security in simultaneous and complimentary

24

vertical dimension which includes other units apart from states as referents of security. Further it employs a bottom up approach to security informed by the view that secure individuals leads to secure community and by extension secure states and inter-state system[66].

Within this new approach, Buzan[67] argues that, collectives such as nation-states and regions are impacted upon by factors in five major sectors: military, political, economic, societal and environmental. Among the above sectors political, economic, societal and environmental sectors are important for this study. Political security concerns the organizational stability of states, systems of government and the ideologies that give them legitimacy. Economic security concerns access to the resources, finance and markets necessary to sustain acceptable levels of welfare and state power. Societal security concerns the sustainability, within acceptable conditions for evolution of traditional patterns of language, culture, and religious and national identity and custom. Environmental security concerns the maintenance of the local and planetary biosphere as an essential support system.

The expanded notion of security is useful to this study in various ways. By offering multiple and simultaneous referents of security, it will help in the analysis of how the presence of immigrants impacts on the political, societal, environmental and economic security of the host state. As such it offers a holistic approach to national security and helps examine factors which could be overlooked by the traditional realist and neo-realist approaches to national security. Further, considering that immigrants' actions are primarily played out within the host state and at different units, the approach helps to analyze how immigrants impact on different units within the

---

[66] J. Stremlau, 'Putting people First' In Muthoma P et al (eds) ,*Putting People First*. Johannesburg: SAIIA, 2000, p14
[67] B. Buzan, *People, States and Fears: An Agenda for International Security Studies in the 21st Century*, op cit, pp 112-140

state and consequences of the same. In addition, the approach will help to support or refute securitized or non-securitized approach to immigration.

Research Methodology

The study is of qualitative nature and relied upon primary and secondary sources. Primary data was gathered through structured interviews method where a standard interview schedule was used for all the respondents. The researcher developed a range of questions which guided the interviewing rather than strictly sticking to specific questions. This enabled for an in depth exploration of the issues related to immigration and national security as respondents had more latitude in discussing them. Importantly the method allowed for rapport building with the respondents. This was important for some of the issues dealt with concerns which respondents felt touched on sensitive area of national security and they could not divulge the information to persons they were not familiar with. The rapport created was reinforced by the fact that the researcher had prior experience in the security sector making it easy to access various departments in the field and also generate trust among the respondents.

Purposive sampling design was used. It involved selecting of individual on the basis of their familiarity with the topic of the study and professional experience on the same. Thus respondents were selected from the immigration department and various security agencies dealing with matter touching on immigrants' activities in the country. In addition the researcher selected individuals with knowledge on the impacts of immigrants in different sectors of security. The sample size was twenty: Four experts from immigration department, five experts each with knowledge on one sector of national security, two from International Organization for Migration, six from security agencies (the police, and national security intelligence services), and three from research oriented organizations focusing on above issues.

The study also used content analysis method. Content analysis involves systematic reading of relevant texts and other articles with an aim of getting implicit and explicit information of their contents. The researcher focused on three attributes of the text: One, the researcher examined the characteristics of the text especially its orientation. Two, the producers of the text or sources of the content and third, the evidence generated by the data. Through focusing on the above attributes, the researcher sorted out, categorized relevant information and eliminated possible bias which can lead to flawed data through cross referencing.

Materials have been gathered from libraries, public information centres, academic and policy research oriented organizations such as the International Centre for Migration and Refugee Consortium of Kenya, Institute of Security Studies and Africa Policy Institute. In addition current affairs on immigration has been gathered to audio, audio-visual and prints, printed news, from reputable media houses locally and internationally.

Data generated-primary and secondary-has been analyzed qualitatively. This involves textual interpretation and reporting of the findings in a narrative form as opposed to statistical manipulation. Qualitative analysis allows capturing of information which otherwise would be lost if the data was subjected to quantitative analysis. In the analysis data has been subjected to logical inferences and conclusions made.

CHAPTER OUTLINE

The study is divided into five chapters.

Chapter One : Background to the study

Chapter Two : Debates on Immigration and National Security

Chapter Three: An assessment of Kenya's Laws, Policies and Initiatives on Immigration.

Chapter Four: A critical analysis of the impact of Immigration on Kenya's National security

Chapter Five : Conclusion

CHAPTER TWO

DEBATES ON IMMIGRATION AND NATIONAL SECURITY

Introduction

Immigration and national security have attracted various perspectives. On immigration, scholars and policy makers often have attempted to offer explanations on the desirability or undesirability of immigration. Hence any study on immigration as a real global phenomena must begin its analysis by outlining the contours of theoretical and policy arguments for and against immigration. Further to understand the linkages between immigration and national security, the concept of national security need to be looked into especially now that it has become dynamic, bringing on board issues which previously were not seen as security issues.

The chapter analyses global perspectives on immigration and national security. The first section covers theoretical and policy issues regarding immigration, while the second section covers aspects of national security. The final section synthesizes arguments generated and draws linkages between immigration and national security.

An Examination of the Conceptual and Theoretical Debates on Immigration

Immigration as a theme of international relations has attracted various explanations. The explanations have broadly focused on two aspects. These aspects are: immigration control or immigration regulation and the conditions provided to resident immigrants. Theories of immigration explain states' decision with regard to how many immigrants to accept, when and which type of immigrants to accept and of which ethnic origin. Further, they explore the clarity of explanatory variables and the ability to explain concurrent immigration policies in various

countries. The main theoretical constructs include: Marxism, national identity, domestic politics and institutional approaches to immigration.[1]

Marxist Approach

The theory of Marxism approaches international processes from an economic perspective. It argues that any attempt to understand world politics must be based on broader understanding of the processes that operate within the global capitalist system[2]. Importantly 'the social world should be studied in totality and within the context of materialist conception of history, that is, the process of historical change is ultimately a reflection of the development in society"[3]. Another main aspect of Marxism is class relations. The theory argues that the most important social relations are between capital and labour"[4].

From Marxist approach, there have emerged global approaches to economic relations. The approaches are mainly attributed to the Latin American Dependencia School. Scholars like Prebisch, Gunder Frank, Herinque Cardoso and Immanuel Wallerstein argue that the dynamic of world economy alters and creates institutions which can best enable capitalist accumulation within the world system's different economic region. The relationship between the core (developed economies), semi-periphery which has its own indigenous industrial base and periphery (poor producers of raw materials) is characterized by exploitation. The semi-periphery and periphery serves as an important source of labour to the core and helps prevent upward pressures on wages[5].

[1] E. Meyers 'Theories of International Immigration Policy: A Comparative Analysis' *International Migration Review* Vol 34. No.4 2000, pp 45-1282: 1246

[2] S. Hobdan and R.W. Jones, 'Marxist Theories of International Relations' in Baylis J and Smith S, *Globalization of World Politics* (2ⁿᵈ ed). Oxford: OUP, 2001, pp 202-203

[3] Ibid, p 204

[4] Ibid, p 205

[5] See L. Wallenstein 'The Inter-State Structure of the Modern World System' in Smith S. Booth, K and Zalewski, M. (eds), *International Theory, Positivism and beyond* .Cambridge: Cambridge University Press, 1996. Also Denemark et al, *World System Theory History*. London: Routledge, 2000 and R. Cox 'Rebels without a cause? Radical Theorists and the World system after the Cold War' *New Political Economy*, 3(3) 1998, pp 445-60

Marxist approach concerns itself with this correlation between economic development and immigration. It argues that "economic factors and class-based political processes shape immigration policies. Thus capitalists import migrant workers in order to exert downward pressures on wages and thereby increase their own profits. Consequently, migrants constitute an industrial reserve army labour and immigration trends reflect the structuring of international political economy".[6]

Immigration control, the approach argues, can be explained as a part of capitalist development and international division of labour, and hence is responsive to economic cycles and unemployment rates. To explain the type of immigrants allowed in any state, Marxist approach argue that, the lower tier economic sector, with limited profit margins often prefer regularized immigration and even encourages illegal immigrants which can be easily exploited to a greater degree compared to the nationals. They conclude by arguing that migrant labour is an ideal remedy for crises of capitalism for three reasons: It is very productive in the expansionary phase; it is excludable without difficulties in the recessionary phase when there is a danger of overproduction and it consumes little, so it reduces inflationary tensions in expansionary periods and cushions the decline in demand in recessionary periods.[7]

Marxist's focus on economic explanations for immigration prevents it from explaining issues related to wars and certain political pressures. For instance, it fails to recognize the importance of immigration generated by political objectives. During the Cold War period, the United States constantly encouraged Cubans to immigrate with an objective of embarrassing the

[6] H. Hammar, *European Immigration Policy: A Comparative Study* Cambridge: Cambridge University Press, 1985, pp 7-9
[7] M. Castells 'Immigrant Workers and Class Struggles in Advanced Capitalism. The Western European experience' *Politics And Society* 5 (1) 1975, pp 33-66:36

communist Cuban regime[8]. Further, by relying so much on economic motives it also overlooks other important pressures for immigration. This includes family reunion and religious and identity motives.

National Identity Approach

The approach focuses on the internal constitution of different states. It argues that, 'the unique history of each country, its conceptions of citizenship and nationality as well as debates over national identity and social conflicts within it shape immigration policies. Brubaker argue that today's "perceptions of foreigners and policies of citizenship are derived from historical experiences that crystallized in the decades before World War I. Further, the judgment of what is in the interest of state is mandated by self-understanding, by cultural idioms, by way of thinking and talking of nation-hood".[9]

National identity (self-identification and relation identification) determines boundary of legitimate discussions and change overtime in response to broader cultural development. Money, observes that national identity approach gives three distinctions of states which partially overlap. The first distinction is between a settler society (society made of immigrants) and ethnic states (nations) which tend to reject such immigration. The second distinction is between homogenous and heterogeneous countries and the third distinction is between countries whose citizenship tends towards *jus sanguinis* and whose citizenship laws tend towards *jus-soli*.[10]

The first distinction-settler versus ethnic societies – provides different understanding of citizenship. States built by immigrants such as the United States, Canada and Australia have ideas of membership based on civic participation and generally shared commitment to democratic

[8] See M.J.McBride 'Migrants and Asylum Seekers :Policy Responses from Central America and Caribbean' *International Migration Review*,37(1),1999,pp 288-317:293-294
[9] P. W. Brubaker, *Citizenship and Nationhood in France and Germany* .Cambridge: MA Harvard University Press, 1992
[10] R W Brubaker 'Comments on Modes of Immigration in Liberal Democracies' *International Migration Review* 29(4), 1995, pp 903-908

values compared to ethnic states where membership is based on shared ethnicity and nationality. The latter tend to view immigration as a fundamental threat to national unity and common good.[11]

On second distinction, the assumption is that ethnically homogenous states are less likely to accept permanent immigration of ethnically dissimilar immigrants compared to heterogeneous ones. Zolberg observes that 'given equal challenge, the degree of tolerance of cultural diversity may vary as a function of the character of receiving society. A highly homogenous culture such as may be found in an ethnically undiversified nation with a dominant religion and which as a consequence of its insularity has experienced little immigration in the recent past, may have a lower threshold of tolerance than more heterogeneous ones, whose identity may have come to be based on political rather that ethnic criteria'.[12] A good example is Japan which despite its high level of economic development, has tended to attract relatively low number of immigrants in a bid to preserve the Japanese culture. Israel too falls on this category. It encourages Jewish immigrants to permanently settle while at the same time denying permanent immigration status to non-Jewish. This is because the state of Israel is based on the notion of 'Jewishness'[13].

The third distinction which focuses on legal conceptualization of citizenship dichotomizes states which bias citizenship towards *jus-soli* and *jus sanguinis*. In states which favour the principle of *jus-soli* there is acceptance of large scale immigration compared to those which favour *jus sanguinis* based on parentage tend to favour temporary over permanent immigration in a bid to preserve cultural homogeneity.[14] The national identity approach for instance argues that in ethnic states, there exist unresolved contradictions between exclusive ideas of the nation-state and the inclusive idea of republican and universal principles of individual and civil rights. The

---

[11] D. Meisner 'Managing Migration' *Foreign Policy*, 86, 1992 pp 66-83: 70-71
[12] A.R Zolberg 'International Migrations in Political Perspective' in Kutz M.M et al (eds) *Global Trends in Migration: Theory and Research on International Population Movement*. New York: Centre for Migration Studies, 1995, pp 3-27:16
[13] See Z. Rosewhek 'Migration Regimes, Intra-State Conflicts and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State' *Social Problems*, Vol 47 (1), 2000, pp 49-67
[14] E. Meyers, 'Theories of International Migration Policy: A Comparative Analysis', op cit, 1260

desire to preserve national identity produces nativist and xenophobic outburst. For instance Germany reunification in 1990's heightened xenophobia, as the population refocused on the exclusive Germany identity and targeted non-Germans[15].

The strength of national identity approach lies in its ability to situate immigration processes within the social-historical milieu. Thus it explores traditions and cultural idioms that frame and the judgments of what is politically imperative, it explains why countries favour either permanent or temporary immigration, and how racial, ethnic or religious composition of a given society shape immigration[16].It helps to explain why multicultural settlers' states such as the United States have generally accepted or even encouraged immigration compared to ethnic states such as Japan, which has discouraged it to retain its ethnic purity.

Domestic Politics (Interest Groups and Partisan Politics Model)

This is a society centered approach, which assumes that the state serves as a neutral arena for societal interests. It provides a platform for competing interests to contend and impact on the policy outcome. Thus immigration is not driven by economic processes as Marxists argue or by identity concerns as the national identity approach posits. Rather immigration reflects the need of various interest groups and how they manage to push for their interests within the domestic political space. Thus policy making is a product of bargaining and compromises between these interests and at times reflects the fact that one or more of these state actors has succeeded in capturing the state.[17]

The main actors are political parties which provide an arena for interest groups to influence policies. In partisan political process, each party offers a program, during elections the

[15] See E. Meyers, 'Theories of International Immigration Policy :A Comparative Analysis' International Migration Review 34 (4), 2000, pp 1252
[16] See E. Myers, Theories of International Immigration Policy, op cit, p 1258
[17] See B. Gendrot and Schain 'National and Local Politics and the development of Immigration Policy in the United States and France: A Comparative analysis in Two democracies'. New York: New York University Press, 1992

public chooses among the parties according to their program, and the party (or a coalition of parties) which gains power implements its platform. In most cases interest and pressure groups supporting immigration are employers and ethnic groups whereas nationalists and labour union groups tend to oppose it.[18]

The approach captures the dynamics of immigration policies and helps explain change and continuity. Whenever a nationalist party comes to power there is always a tendency to project immigrant negatively. This is because nationalist parties are based on exclusive identity for the purpose of claiming state power. The identity may be on ethnic, racial or religious bases. These labels tend to be treated as something you are born with and cannot be changed through assimilation or conversion. Further, nationalist parties pursue exclusionist politics and acquire support not through ideas but rekindling of fear, and reconstruction of heroic past, memory of injustices or through creation of immanent threats from those labeled as different[19]. Thus they encourage intolerance, xenophobic attacks and tightening of immigration controls. In extreme cases as witnessed in Balkans after collapse of former Yugoslavia ethnic cleansing has been preferred in order to create ethnically pure homelands.[20]

Institutional Approach

Institutions are set of rules, compliance procedures and moral ethical behavioral norms embedded in those rules and complex procedures designed to constrain the behavior of individual in the interest of maximizing wealth, social order and the well being of the society"[21]. Institutions play an important role of availing resources to some groups and denying the same to others. Further they determine what is acceptable and unacceptable and by so doing limits action. The

---

[18] Kelley.N and Trebilock M.H, *The making of Mosaic: A History of Canadian Immigration Policy:* Toronto: Toronto University Press, 1998
[19] M. Kaldor, *New and Old Wars: Organized Violence in Global Era.* London: World Polity Press, 1999, pp 78-78
[20] See M. Kaldor's Chapter 'Bosnia – Herzegovina: A case Study of a New War' In M. Kaldor '*New and Old Wars: An Organized Violence in Global Era:* Washington: Policy Press, 1999, pp 31-111
[21] B. Crawford 'The causes of cultural conflict: An Institutional Approach 'in Crawford B et al, The *Myth of Ethnic Conflict.* Berkeley University Press, 1998, p 17

35

combination of resources and definitions of appropriateness creates a strategic context of actions. The strategic context favours some actors at the expense of others and determines where interests are prioritized or ignored[22].

On immigration, the institutional approach brings back the role state. The approach brings back the state and focuses on the role of state. It argues that, political institutions can act autonomously. Political institutions can form public policy according to the interest of the state and remain unaffected by societal or interest group pressures.[23] Political choices made by earlier generations create institutions which shape both policies and ideas for later generations. Significantly the approach notes that institutions allow state to act autonomously. More so, states do possess an independent agenda, which includes issues such as the pursuit of economic security, rational bureaucratic agenda and continued legitimacy.[24]

According to the approach, state is a key actor in shaping immigration issues and the pursuit of state as opposed to societal interests often leads to policies which go beyond societal interests. This is more so in 'Strong' states, where states institutions are relatively unaffected by societal pressures and shape public policies according to the national interests[25]. China falls in this category. It is characterized by societal pressure inability to successfully penetrate state institutions and influence public policies

Synthesizing Various Approaches

The presence of multiple approaches to immigration helps to explain its complexity. Neither approach can conclusively capture the various variables which influences immigration and immigration policies. However, drawing from explanations provided by various approaches,

---

[22] S. Seimmo et al, *Structuring Politics*. Cambridge: Cambridge University Press, 1992, pp 7, 75
[23] See Fitzgerald K. *The Face of the Nation: Immigration, The State and national Identity*. Stanford : Stanford University Press, 1996
[24] A.B Simmons and K. Keohane ' Canadian Immigration Policy: State Strategies and the Quest for Legitimacy' In *Canadian review of Sociology Anthropology* 29 (4) pp 421-452
[25] E. Meyers, 'Theories of International Immigration', op cit, p 1262

it is possible to delineate the process influencing immigration. First, immigration is a product of economic needs in the host country. Economic needs often have a greater influence on states' response to immigration and helps explain the pro and anti-immigration cycles in policy making[26]. Second, the definitions of nationality or citizenship help to explain the variation of immigration responses in various states. More so, it helps to explain the various forms of discriminations as far as allowing entry into a given state is concerned. For instance, Israel, automatically offers permanent immigration to any Jew who opts to return, and refuses to grant the same to non-Jews[27]. Incase of Japan, despites its advanced economy; it has generally pursued highly restricted immigration control in a bid to preserve ethnic homogeneity.

Immigration has different sectoral impacts. Hence, within a state, there are groups which favour immigration and others who oppose it. As a rule, groups which feel they stand to gain, such as immigrant minority groups, who aim to expand their political clout through allowing for immigration of their kins will tend to favour immigration. On the other hand, groups feeling threatened by immigrants to support anti-immigration policies[28].

Lastly, immigration regimes within states may overlook sectoral or partisan demands and pursue state's interests. Immigration has been used as a foreign policy tool. For instance during the cold war periods, the United States encouraged people to move out of communist zones. In 1962, the congress noted, 'since the end of World War II, the flow of people has always been to freedom and away from communism..... in the long run battle for support of mankind, this is

---

[26] I. Wallenstein 'The Inter-State Structure of the Modern World System' in Smith S. Booth, K and Zalewski, M. (eds) ,*International Theory, Positivism and beyond* .Cambridge: Cambridge University Press, 1996. Also Denemark et al , *World System Theory History*. London: Routledge, 2000 and R. Cox 'Rebels without a cause? Radical Theorists and the World system after the Cold War' *New Political Economy*, 3(3) 1998, pp 445-60

[27] Z. Rosewhek 'Migration Regimes, Intra-State Conflicts and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State' *Social Problems*, Vol 47 (1), 2000, pp 49-67

[28] Fitzgerald K. *The Face of the Nation: Immigration, The State and national Identity*. Stanford: Stanford University Press, 1996.Also B. Gendrot and Schain '*National and Local Politics and the development of Immigration Policy in the United States and France: A Comparative analysis in two democracies*'. New York: New York University Press, 1992

certainly compelling evidence that the free world must ultimately prevail. This exodus can become a major political and psychological victory for the west in the conflict with communism'.[29] Along this view the US, in its relation with communist Cuba pursued an open door policy with regards to Cubans fleeing Castro regime as a way of embarrassing the communist regime.[30]

Debates on National Security

The concept of national security is highly contested. Debates revolving around the concept are based on two issues: 'Security against what' and 'whose security'. The two questions have led to development of various notions of security. This include: state security, societal security, human security, environmental security and regime security.

The orthodox conceptualization of security is state centric. This way it defines security as the protection of the state from external threats – violent threats which are predominantly military in nature[31]. Within this approach, the focus of security is the state. It is based on the understanding that security extend downwards to individuals from states. Conversely, the stable state extended upwards in its relationship to other states influences the security of international system[32]. As such the referent of security should be states.

The state centric approach has been critiqued. First, Buzan argues that national security is at times a smoke screen for regime security. He notes, 'it is tempting to identify national security with governmental institutions that express the state but governments and institutions have

[29] Cited in A.S.Ku 'Immigration policies, Discourses and the Politics of Local Belonging in Hong Kong(1950-1980).*Modern China*, Vol 30,No 3,July,2004,pp320-360
[30] M.J.McBride, 'Migrants and Asylum Seekers: Policy Responses from Central America and Caribbean' *International Migration Review*, vol 37(1),1999,pp289-317:293-294
[31] R. Mudida 'Links Between Climate Change and Conflicts in Ethiopia' in Nyukuri et al (eds) , *Change and Conflict in East and the Horn of Africa* .Nairobi: Acts, 2009, p 143
[32] U. Beck '*World Risk Society*. London: Polity Press, p 116

security interest of their own which are separate from those of the state and which are often opposed to broader national interests as aligned with them[33].

Lob[34] develops the above critique in his exploration concept regime security. Regime security is basically a question of the government of the day, the ruling group or elite to successfully manage and overcome problems of governance while maintaining the continuity of its authority and hold on power. In countries experiencing low level of consensus on fundamental issues of social and political organizations, regime insecurity is prevalent and how to address this forms the basis of national security. Authoritarian systems fall in this category. For instance, during the Iran-Iraq war in 1980's, the then president of Iraq Saddam Hussein was more motivated by the need to destabilize the revolutionary Shia Muslims dominated government of Iran, which was perceived as a threat to his survival for it encouraged the Iraq's Shia majority to topple the Sunni dominated regime of Saddam.

The UNDP report of 1994, critiqued the realist conceptualization by arguing that, "the concept of security has for long been interpreted narrowly as security of territory from external aggression or as a protection of national interests in foreign policy or as global security from threats of nuclear holocaust...forgotten are the legitimate concerns of ordinary people who [seek] security in their daily lives. For many of them, security symbolizes protection from threat of diseases, hunger, unemployment, crime, social conflict, political repression and environmental hazards"[35].

Such views have expanded the agenda of security. It is now agreed that security has to do with addressing of threats and vulnerabilities. Threats are easily identifiable, immediate and call

---

[33] B. Buzan, People, States and Fears: An Agenda for International Security Studies. New York: Wheatsheaf, 1991, pp 186-221
[34] B. Lob 'The Insecurity Dilemma: National, Regime and State Securities in the Third World' in Lob B. (ed) The Security Dilemma: National Security of Third World States .Boulder: Lynne Reinner, 1992, pp 11-35
[35] United Nation Development Programme, Human Development Annual Report .New York: UNDP,1994,pp 22-25

for an understandable response such as using military force to deter external or internal aggressions. Vulnerabilities are not easily identifiable and usually are interlinked to other complex factors calling for a holistic approach. For instance diseases may be linked to poverty, politics of exclusion, economic underdevelopment and so on.

The multilinkage of vulnerabilities, have made Beck to characterize traditional conceptualization of security as a "zombie" concept. He argues that we have moved beyond state-centric conceptualization of security and we have entered an age of time interlinked, interdependent globalization involving multidimensional process of change that has irrevocably changed the social and world order and the places and functions of states within that order. Within this new order which has been turned as a 'world' risk society' threats abound and overly human centered approach that focus on individual rather than sustaining power base of states and individuals provides the best guarantees of long term stability, prosperity and security[36].

This has led to multiplication of referents of security and expansion of the security agenda. Barry Buzan pioneered this expansion. He expanded the notion of security to compose five sectors each with a particular referent object and an agenda. These sectors are the military, political, society, economy and environmental[37]. In the military sector, the referent object is the territorial integrity of the state and the threats are overwhelmingly defined in external terms. In the political sector, what is at stake is the legitimacy of the governmental authority and the relevant threat can be ideological and sub state leading to security situation in which authorities are threatened. In the societal security, the group identity is presented as threatened by dynamics such as cultural flows, economic integration or population movements .In the environment sector threats include sustainability of the ecosystem, utilization of resources and ecological damages.

---

[36] U. Beck, *World Risk Society*, op cit, p 116
[37] See B Buzan *People, States and Fear :An Agenda for International Security Studies*: New York: Harvester Wheatsheaf

Within the broadened framework of security, national security has been taken to refer to maintenance of the state ability through the protection of state from threats emanating from individualistic or organization pressure on the regime, of the citizens from oppressive or otherwise threatening governmental initiative, policy or action and the protection of state from external threats emanating for the expansionist or antagonistic activities of other states. It also refers to the ability of the state to meet economic and social needs of the citizens.[38]

The expanded notion has led to securitization of threats emanating from environmental degradation, absorptive capacity of the state, illicit drugs, unregulated movement of people, large amounts of capital, epidemic diseases and terrorism[39].

Overtime, the multiplicity of security has led to the notion of human security. The concept of human security centers on the concentration of the individuals as a referent objects of security and is informed by recognition of individual rights to personal safety, basic freedoms and access to sustainable prosperity. In ethical terms human security is both a system and systemic practice that promotes and sustains stability, security and progressive integration of individuals within relationships to their states, societies and regions. In abstract terms human security allows the individual the pursuit of life, liberty and the pursuit of both happiness and justice[40].

Makinda notes that the concept of human security is rooted in the view that people are the foundation of political communities and states[41]. As such, when talking of security the only irreducible locus of security are individuals and they need to be protected from both violent and non-violent threats which threatens their safety, rights and lives. The view that Booth notes is rooted on the distinction between survival (existential condition) and security (having the

---

[38] W. Choucri and R.C North 'Population and (in) Security: National and Global Perspectives' in Devitt et al (eds) *Building a new Global Order: Emerging Trends in International Security* Oxford University Press, p 230
[39] K.A Jinada ,Political Economy of peace and Security in Africa. Harare: Apps Book, 200, pp 8-10
[40] UNDP, Human Development Annual Report, op cit.
[41] S. Makinda 'African Thinkers and the Global Security Agenda' in Mwagiru,M et al (eds), *Rethinking Global Security: An African Perspective*: Nairobi: Heinrinch Stiftung boll, 2006, p 34

41

conditions to pursue cherished political and social ambition). That way, security becomes 'survival-plus' with the plus being some freedom from life determining threats and therefore some life choices[42].

The multiplicity of security has made security studies to characterize definition of security as a speech act. Anything and everything can be securitized and what is securitized depends on actors' positions of powers, their acceptability as voices of security and having the power to define security. Treating security as a speech act provides in principle for an almost indefinite expansion of the security agenda, not only in the realm of possible threats and vulnerabilities but also on the referent objects of security[43].

In the expanded conceptualization of security, immigration mainly falls within societal security. Ole Weaver et al defines societal security as the ability of the society to exist in its essential character under changing conditions and possible or actual threats. More specifically, it is about sustainability within acceptable conditions for evolution of traditional patterns of language, culture, association, religious, national identity and custom.[44] The emergence of societal security rooted on identity has led to increased 'securitization' of issues which impact on the society. Brian argues that today's risk of migration threaten everyone. Gone are the days when a handful of police officers, plant managers and slum landlords have to deal with migrants – migrants are now a collective national problem.[45] Events like September 11, 2001 terrorist attacks has led to states paying a more closer attention on who is entering their territory as well as who is in their territory and what are his transnational linkages. These concerns have been used to justify 'securitizing' of immigration. It raises the question of the impacts of immigration and

---

[42] K. Booth 'Security and Emancipation' *Review of International Studies*, Vol 17(3) 1991, pp 313-326

[43] M.C Williams ,'Words, Image and Enemies: Securitization and International Politics' *International Studies Quarterly*, 2003, p 513

[44] O. Weaver et al, *Identity, Migration and the New Security Agenda in Europe*. London: Printer, 1993, p 23

[45] P. O'Brien, 'Migration and its Risks' Op cit, 1071

whether in an 'age of migration', immigration is really a threat to national security. These questions are explored in the following sub sections.

Sectoral Impacts of Immigrants on the Host Countries

No immigration issue has attracted so much attention than the impact of immigrants on the host country. Before examining the various arguments, there is a need to categorize immigrants as either voluntary or forced. Voluntary migrants as the term denote refers to those people who move to another state, primarily with a goal of improving their material well being without being impelled to do so.[46] Forced migrants refer to migrants who have been forcefully uprooted by a wide range of political, socio-economic and ecological factors.

Kunz identifies two types of forced migrants: Anticipatory and acute migrants. Anticipatory forced migrants refers to individuals or groups, fleeing deteriorating condition before actually being forced whereas acute migrants refers to individuals and groups fleeing imminent dangers or threat. The latter category mainly consists of refugees which he further divides as either reactive fate or purpose groups. Reactive fate groups flee reluctantly from an intolerable situation without a solution in sight whereas purpose groups leave with an aim of regrouping and organizing resistance against regime that forced them out.[47] The Somali refugees in Kenya camps of Daadab can be categorized as reactive fate groups whereas the former Interhamwe and members of *force's armee's du Rwandoise*, who fled to DR Congo after being defeated, can be defined as purpose groups.

From the above categories various classes of immigrant emerges. The first class of voluntary migrants arises out of desire inherent in most men to better themselves in material respects. They include economic migrants who can either be temporary or guest worker or

---

[46] W.B. wood 'Local Conflicts and International Dilemma' In *Annals of Association of America Geographers*, Vol 84, , Dec 1994, pp 607-634:623
[47] E Kunz, 'The Refugee in Flight: Kinetic Model and Forms of Displacement'. *International Migration Review* 15, 1973, pp 125-146.

permanent residents and legal and illegal. The other classification includes refugees and exiles. Refugees are usually created when a mass forced displacement spills across an international boundary and are usually defined under international law.

The 1951 refugee convention defines a refugee as any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear unwilling to grant himself to the protection of the country of his former habitual residence. As a result of such events, is unable, or owing to such fear, is unwilling to return to it. The definition has been expanded by the OAU convention of 1969 which add 'any one compelled to flee his or her home for another country because of aggression, occupation, foreign domination or events seriously disturbing public order'.[48]

Exiles are persons pushed out of their country of origin by official decree or for political reasons. Human rights violations and political repressions generate the desire to migrate especially for individuals labeled as dissidents. For instance during the height of apartheid, many anti-apartheid activists fled to the west. Similarly clamor for political change in Uganda, Kenya, Ghana, Nigeria, Eritrea, Ethiopia and other states has often created exodus of dissidents to exile.[49] Irrespective of the classification of immigrants, they have had impacts on the host country. The impacts are economic, social and political.

The Economic Impacts of Immigrants on Host States

Economic impacts of immigrants have attracted more interests than social and political impacts. There exist disagreements on whether immigrants do have positive or negative impacts. One view holds the impact to be generally positive whereas another view holds that the impact is

---

[48] See E. Morawska 'Intended and Unintended Consequences of Forced Migration: A Reflected Aspect of Eastern Europe's Twentieth Century', *International Migration Review*, vol 34, No 4,Winter (2000), pp 1049-1087: 1073
[49] M.O Okome , *The Antimonies of Globalization: causes of Contemporary Africa Migration to the United States of America*: http://. www.africanmigration.com/archive - 01/m- Globalization - 01.htm, p14

negative. Papademetrious argues that immigrants have played major role in industrial societies, through both their brawn and brains. Further, regulated immigration usually brings in immigrants with college and post-graduate degrees, contributing to the economy yet the host country did not foot the cost of educating them.[50]The *Center for Labour Market Studies* 2002 report of United States observed that immigrants help explain the past and current United States prosperity.[51] A view evidenced by the critical role played by software engineers from India in Silicon Valley. The view was supported by US national academy of sciences which noted "immigration produces net economic benefit for domestic residents. Consumers and investors and firms that employ immigrants typically benefit from immigration. For workers the impact is mixed. Often, those who compete with migrants are in uncompetitive industries and firms with low productivity and face lower wages and in some instances restricted job-opportunities.[52]

Coleman and Rowthorn in their study of Britain concluded that immigration helps to augment population decline, underwrite national security in a variety of ways both military and civil, expand the domestic market, augment the size of future labour force and facilitate economics of scale thus averting labour shortages ,wage inflation and promoting productivity. Importantly, immigration provides labour to fill undesirable job which the citizens are unwilling to do especially domestic work.[53] Gott and Johnson too support the positive impacts of immigration and conclude that immigration is fiscally beneficial. "Inflows" generate a net positive contribution to the national account because the modest welfare cost of (mostly youthful) immigrants are more than compensated by the tax contribution of (mostly working) immigrants.[54] Lastly, Papademetrious and D.L Martins argue that, immigration by expanding the labour force,

---

[50] D.G Papademetrious ,'Migration '*Foreign Policy* No. 109, 1997-1998, p 15-31: 80
[51] '*Immigrant worker and the great America Job machine: The Contribution of New Foreign Immigration to National and Regional Labour Force growth in 1990's*. Boston centre for Labour Market Studies, 2002.
[52] Quoted in D. Papademetrious, 'Migration', op cit, p 16
[53] Quoted in D. Papademetrious, 'Migration' op cit, 18
[54] C. Gott and K. Johnson, '*The Migrant Population in UK: Fiscal Effects*'. Home Office research Development: Directorate Occasional paper, No. 77, 2002

has been an important moderator of inflation and in the case of declining native labour force permits enterprises to flourish that otherwise would have to close down, thus maintaining the level output.[55]

From these studies, immigrants do have positive economic impacts. However, owing to their hard work and willingness to work for less, immigrants have often been 'attacked' as imposing net cost on the economy. Okome captures this view when he notes "confronted with a never ending flow of immigrants that is ready to work for wages that are patently unacceptable to indigenes, the indigenes find the immigrants a threat and respond by mounting nativist, xenophobic attacks that discredit and vilify the immigrants as a drain to the economy, the cause of unemployment and driving down of wages".[56]

Social Political Impacts of Immigrants on the Host Society

Immigrants have both positive and negative social impacts. Socially the ability to feel at home in the host society is considered a necessary ingredient for immigrant success.[57] This entails a process of acculturation which is multifaceted and complex as immigrants aim at forming or transforming their identities. Where successful, immigrants have enriched the cultures of host communities. Importantly, they have brought with them positive values which maybe declining in there host countries such as family and religious values injecting the much needed social renewal. Further, they have helped replenish the population, as evidenced by immigrants to Western Europe after World War II, which had led massive population losses.[58]

Failure to integrate successfully to the mainstream society has been a source of friction in many host states. In France, the failure of Muslim immigrants to integrate has been a source of

---

[55] D. G Papademetrious and P.L Martins, *The Unsettled Relationship: Labour Migration and Economic Development: Contribution in Labour Studies*. West Port: Greenwood, 1991
[56] M.O Okome 'The Antimonies of Globalization', op cit, p 13
[57] E. Chacko 'Identity and Assimilation among Young Ethiopian Immigrants in Metropolitan Washington' *Geographical Review, Vol 93*, No 4, October, 2003, pp 491-566: 493
[58] D. Papademetrious, 'Migration' op cit, p 16

threat to stability and security. The immigrants find themselves in a secular and republican state, where identity is based on possession of liberal civic values. It does not identify specific identity based groups and instead label everyone French. This has led to Marginalization of groups with special needs and hence need affirmative action. Muslims and French of African extraction fall in this category. This has led to instabilities. Demonstrating youths mainly from Algeria has been a source of insecurity. For instance in July and October 1998, and 2006, disgruntled youth Muslims staged massive and violent protests leading to loss of life and properties as well as shattering of French unicultural approach to citizenship. In addition, racism and ethnic violence has been on the increase. This is fuelled by high unemployment rates of the immigrants which currently stand at 50% .Living in affluent society, they have become depressed and disillusioned with their standard of life and have become vulnerable to antisocial tendencies and psychological complexes that ultimately lead to reaching negative consequences.[59]

Integration failure has also led to creation of ethnic enclaves, where certain immigrant groups concentrates. Enclaves such as Turkish enclaves in Germany have produced organizations whose actions and principles are often in conflict with national laws.[60] More so enclaves have been attacked by nationalist groups. In Germany, Turkish enclaves have been targets of neo-Nazi organizations seeking Germany's racial purity, and other alienated citizens who find immigrants as tempting scapegoats for social problems such as rising crime rates, overcrowding in urban areas and virtually any undesirable aspects of social life.

Politically, immigrants provide a ready political or campaigning capital to right wing politicians. The claims that immigrants are a threat to national homogeneity has encouraged rise of xenophobic parties which encourage intolerance and violence against foreigners. Politicians

[59] A. Selfuq 'Cultural Conflicts: North Africans Immigrants in France' *The International Journal of Peace Studies,* 2000 p 2
[60] P.O'Brien 'Migration and Its Risks' *International Migration – Review,* Vol 30, No.4, 1996, pp 1067-1077: 1070

such as Jean-Marie le pen in France, Patrick Buchanan in the United States, Umberto Bossi in Italy and Jorg Haider of Austria have thundered about 'barbarians at the gate', and surprisingly have found sympathetic listening.[61] One commentator on France noted that "The number of voters who decide in favour of the extreme right wing parties represent only a relatively small part of the general readiness for adopting a right wing point of view and the protest potential which exists in our society and which could be mobilized in favour of right wing parties incase of economic crisis or under strong pressure of immigration.[62]

In other states, especially in Eastern Europe, due to particularizing ethno-nationalism, those with executive power to put into practice or those aspiring to national statehood have tended to promote acute ethno-nationalism. This has entrenched 'strangeness' of inter-group relations in the region.[63] Nowhere was this pronounced than during the breakup of the former Federal Republic of Yugoslavia as every republic strove to create an ethnically pure homeland. Croats, Macedonians, Slovenes, Serbs, Montegerins, Bosnia Muslims and others embarked on a campaign of displacing others militarily and ethno –nationalism paved way to ethno-cleansing.

Currently, no issue has attracted attention than the link between immigration and terrorism and immigration and conflict. Terrorism is a subjective and ideologically rooted concept. Consequently, it has attracted various definitions. The United States government defines terrorism as a perpetrated violence against non-combatant targets by sub-national groups or clandestine agents usually intended to influence an audience[64]. Alexander characterizes it as use of violence against random civilian targets for the purpose of achieving political goals[65].

[61] D. G Papademetrious ' Migration and its Risks', op cit, p 1071
[62] Cited in P.O'Brien ' Migration and its Risks', op cit, p 1071
[63] E. Morawsika 'Intended and Unintended Consequences of Forced Migration: A Neglected aspect of East Europe 20th century', op cit, p 1055
[64] See article 22 of the US code, Section 2056
[65] Y. Alexander ,International Terrorism: National Regional and Global Perspective.New York: Praeger Publishers, 1976, p 4

Terrorism and terrorist threats have proliferated and increased over time. Lesser[66] observes that proliferating actors at the local, regional, national and international levels and ability of groups to act across a variety of frontiers in a complex array of variations and possibilities renders the environment which terrorism may occur a complicated one. Further terrorists are organizing themselves in less hierarchical structures and using amateurs to a greater extent than in the past. The above factors are reinforced by easy way of obtaining methods of terrorism from book stores, mall orders, on CD-Rom or over internet. This has made terrorism accessible to anyone with a grievance, and agenda or purpose or any idiosyncratic combination of the above.

The proliferation is further made complex by the target of terrorists. Terrorists view civilians as an easy and legitimate target[67]. This is more so with religious inspired groups, like al-Qaida which has declared war against a 'decadent' and infidel Western society considering not only officials but citizens as legitimate targets.

Politically inspired terrorism has become an international concern especially after the September 11, 2001 attack of the United States and subsequent 'war on terror'. Following the September 11, 2001 attack, the United Nations Security Council adopted a resolution 1368 (2001) which expressed the determination to combat by all means threats to international peace and security caused by terrorist acts. It further called all states to prevent and suppress the financing of terrorist acts, freeze financial assets of persons or entities engaged in terrorist activities and prohibit their nationals from entrusting economic resources that are used for the commission of acts, and deny safe haven for financiers, planners, supporters or perpetrators of terrorist's acts.[68]

Modern terrorist threats have merged with transnational political activities of immigrants making immigrants especially from Islamic countries be viewed with suspicion. Importantly,

[66] O.I Lesser ,*Countering the New Terrorism*. Washington: Rand, 1999, PV
[67] W. Enders and T. Sandler, *What do we Know About Substitution Effect in Transnational Terrorism*. California: University of South California, 2002, p 5
[68] C. Greenwood, 'International Law and the 'War Against terrorism', *International Affairs*, 78, 2 (2002), p 306

terrorism has made Huntington 'clash of civilization' thesis prophetic. Huntington argued that the world has been moving during the course of this century from nation states conflict to ideological conflict to finally cultural conflict. Further, he argued that civilization conflict is real because differences among civilizations are not only real, but they are basic involving among other things history, language and religion. More so increased interactions will lead to intensifying of civilization consciousness.[69] Inventible cultural conflict, transcending nation state ideologies will become the new war. Immigrants, trans-national political alliance especially with cultural kins and foreign policies of the host-countries has interacted in negative way exacerbating national security threats.

Terrorism as a kind of new war does not aim to defeat the enemy militarily. An overall aim is to intrinsically eradicate solidarity, cooperation and interdependence upon which social cohesion and functioning depend. The hope is that eventually the community will be reduced to pockets of frightened individuals concerned only with own safety and isolated from wider social context.[70] This will lead to "Strangeness" of the "other". Equally important, by exposing the government to perceptions that it can no longer fulfill its primary security function, terrorism seeks to undermine political order and substitute security and trust with insecurity and distrust.[71]

The link between immigrants and terrorism has practically manifested itself in the current west 'judeo- Christian and Islamic civilization rivalries especially after the terrorist attacks in London, Paris, Madrid, and so on. For instance, France, which has about three million Muslims, most of them coming from Maghreb, has been a victim of terrorist attacks. In July 25th and October 1995, terrorist attack left many people dead. Importantly, it led to distrust as the government responded by banning five Islamic periodicals and cracking down on Muslim

[69] S. Huntington 'The Clash of Civilization' *Foreign Affairs*, vol 72, No 3, Summer, 1993, pp 25
[70] M. Crenshaw 'The Concept of revolutionary terrorism' *Journal Of Conflict Resolution*, 16,3,1972, pp 386-396
[71] D.Chalk, 'The Response to Terrorism as a Threat to Liberal Democracy' *Australian Journal of Politics and History*, vol 44, No.3, 1999, p 376

activists which made Dalil Boubakeur remark "what we fear is that France has come to see every Muslim as a potential terrorist".[72] In Britain, the threat of home grown terrorist is real. London train bombing was a collaboration between British born second generation Pakistan immigrants and militants in Pakistan and Afghanistan. Profiling one of the attackers, the *Economist* shows how Barot Dhurian an immigrant from Pakistan, who was *Al Qaeda* point man in Britain came under influence of a fiery Muslim Cleric Abn Humza (now in Britain jail) went to training camps in Pakistan and Philippines and came back to plot terrorism in Britain in response to British foreign policy towards Islamic World.[73]A foreign policy perceived to be unfairly targeting Muslims and acquiescing to Israel's policy towards Palestinians.

Related to terrorism, is the risk of cultural conflict. The failure to integrate into mainstream society has emerged as a societal security threat. This takes place in two ways: one, the immigrant group usually living in ethnic enclaves demands preservation of and recognition of their values and culture even when it conflicts with mainstream culture. Two, failure to integrate denies immigrants a chance to acquire the necessary cultural ingredients to compete in social and economic arena leading to exclusion and discrimination especially in accessing economic opportunities. Consequently, relative deprivation, disillusionment and hatred of the 'other' emerge, with serious social and political complications.

Cultural conflict has been prevalent in France owing to its practice of overlooking cultural differences and promoting uniculturalism. Issues such as whether Muslim girls should wear scarves in schools have led to violent demonstrations. In 1989, the banning of headscarves as an 'ostentatious religious insignia' an erstwhile secular state sparked violent protests. In 2005, French second generation immigrants living in *Banilieues* across the country, rioted against discrimination owing to their Islamic heritage. Some 10,000 vehicles and 233 public buildings

---

[72] A. Selfuq 'Cultural Conflicts: North African Immigrants in France' in *International Journal of Peace Studies*, p 3
[73] 'After Britain's Terror Alerts' in *The Economist*, Nov 4th – 10th, 2006

51

were torched including schools, post-offices and government offices. All assaults on symbols of the states.[74]

In addition to terrorism and immigration, there is need to examine refugees as a class of forced migrants and internal security of their host-countries. The linkage has been brought forcefully in the great lakes region conflict systems where refugees have been central to insecurity prevalent in Eastern Democratic Republic of Congo. Boswell[75] has characterized these refugees as warrior refugees; Refugees who have reorganized the conflict in the country of origin by turning refugees' camps into military bases and using refugees as human shield. After the collapse of hutu-nised regime in Rwanda in 1994, Rwandan Hutu leaders (political and military) and their supporters fled into DR Congo where they took control of the refugee camps. They transformed them into security centers in preparation for re-invasion of Rwanda.[76] The threat of re-invasion and failure of D R Congo government to stop hostile refugee activities aimed at Rwanda, led to Rwandan government training of Zairean Tutsis (Banyamulenge). Eventually an anti-Mobutu alliance was formed backed by Rwanda and Uganda, and led to toppling of Mobutu regime.[77] Since then Eastern Congo has been beyond Kinshasa effective jurisdiction as refugees mainly Hutus fight with Tutsis.

From foregoing analysis on perspectives of immigration and national security, the following observations can be made. One, immigration as an international issue has been given peripheral attention in the mainstream international relations. Two, drawing from international relations approach, various perspectives can be developed. Key perspective includes Marxist, national identity, domestic politics and institutional approaches. Owing to the complex nature of

---

[74] 'French Riots 'One year on ' In the Economist, Nov 4th -10th,2006
[75] C. Boswell, 'The Conflict Between refugee Rights and National Interest: Background and Policy Strategies 'Geneva: United Nations High Commission
[76] K. Halworsen 'The Protection and Humanitarian Assistance in the refuge Camps in Zaire: The Problems of Security' in Adelman .H and suhrkhe. A (eds) The Path of genocide: The Rwanda Crisis From Uganda to Zaire: Kampala: Transaction Publishers, 1999, p 312
[77] IPEP: Rwanda: The Preventable Genocide: Addis Ababa: OAU, 2000 Annex 9, p 325

immigration, no approach can fully explain the process. However, each perspective helps to clarify various variables on immigration. Three, the expanded notion of security and its influence on how national security is couched has made immigration issues fit into security framework especially when one focuses on societal security. Fourth, on impacts of immigration, there exist mixed views, although many scholars and practitioners have tended to view immigration as having positive impacts on the economy, politics and society in general. Fifth, the analysis shows that the relationship between immigration and national security is not linear but complex. There is a host of intervening variables which make immigrant(s) a threat to national security.

CHAPTER THREE

AN ASSESSMENT OF KENYA'S LAWS, POLICIES AND INITIATIVES ON IMMIGRATION

Introduction

Kenya occupies a strategic position in the East Africa's region and has a long history of being a particularly attractive country of destination of various migration flows. People from neighbouring countries have crossed into Kenya for various reasons. The reasons are search for better economic opportunities, pasture especially for pastoral communities and search for security as Kenya is situated in the volatile Horn of Africa and Great Lakes region conflict systems among other reasons[1]. Further, it has a relatively well developed infrastructure, good air and land connections, well connected smuggling networks, large migrant population and a culture of hospitality to such migrants, and attractive wild sceneries making it a choice destination for tourists. More so, being a regional economic hub, Kenya hosts regional offices for multinational companies, international governmental and non-governmental organizations[2].

Consequently, there has been a large flow of immigrants. In response to anticipated flows, the state has developed laws, policies and initiatives aimed at addressing issues related to both forced and voluntary migrants. This chapter examines these aspects the legal and institutional mechanisms, immigration procedures and policies on voluntary and forced migration flows.

Legal Framework on Voluntary Immigrants

The main sources of laws regulating immigration in Kenya are the Constitution, the Citizenship Act, the Immigration Act and Aliens Restriction Act.

---

[1] International Center for Migration Policy and Development ,*East Africa Migration Route Initiative: Gaps and Needs Analysis: Country Report*. 2008, p 49
[2] Ibid, p 49

The Constitution of Kenya

The Constitution of Kenya article VI on citizenship has defined persons who qualify for citizenship. Article 87(1) grants citizenship to all persons born in Kenya since 1963 provided one of their parents was born in Kenya. It states, "provided that a person shall not become a citizen of Kenya by virtue of this section if neither of his parents was born in Kenya"[3]. These provisions are further enunciated by the citizenship act of 1967 which allows for application of citizenship by registration to persons either born in or one of his parents was born in Kenya"[4].

From these provisions, Kenya has a *jus sanguinis* citizenship policy. Only those persons who can claim a blood connection to Kenya have a right to automatic citizenship and women married to Kenyan citizens need to apply to be naturalized[5]. Other persons in Kenya not so defined are governed by the Immigration and Aliens act.

Citizenship acquired through naturalization can be revoked on various grounds. Among others, it includes a situation where the citizen 'during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or being engaged in or associated with any business that was to his knowledge carried on in a such a manner as to assist an enemy in that war[6].

The Immigration Act of 1967[7]

The act establishes the laws governing persons entering Kenya who are non-citizens as per the provisions in the constitution and the citizenship act. The act focuses on the people who

---

[3] The Constitution of Kenya, Section 87(1)
[4] The Citizenship Act of Kenya, section 3(1)(b)(i)
[5] The Constitution of Kenya, Section 91
[6] Ibid, Section 94 (1) (b)
[7] The Immigration Act Amend and Consolidates the Law Relating to Immigration into Kenya, and for Matters Incidental, thereto and connected therewith

qualify to be immigrants. Section 3(1) establishes various categories of prohibited immigrants. These includes a person incapable of supporting himself or his dependents (if any) in Kenya, a person who is mentally defective, a person who refuses to submit to an examination by medical practitioner or certified to be suffering from a disease which makes his presence in Kenya undesirable for medical reasons, person convicted for murder or of any offence whose sentence has been passed and did not receive a free pardon; a prostitute or a person who before entering Kenya lived on or received proceeds of prostitution, a person whose presence in Kenya is declared contrary to national interests, a person who upon entering Kenya refuses to produce a valid passport; person who has entered Kenya unlawfully and so on[8].

Further the act states that an entry of any person who is a prohibited immigrant shall be deemed unlawful and irrespective of whether he possesses valid documents or not should be refused entry permission[9]. However this provision is diluted by the provision that states "An immigration officer may in his discretion issue a prohibited immigrant pass to a prohibited immigrant, permitting him to enter and remain temporary in Kenya for such period and subject to such conditions as may be specified in that pass [10].This provision is prone to abuse, as an officer without integrity may allow entry of undesirable persons under the guise of exercising discretion.

The act considers persons without valid documents as illegal immigrants except for persons enjoying immunities and privileges as contained in the second part of the fourth schedule of Immunities and Privileges act. These persons enjoy privileges and immunities as defined by international diplomatic and consular laws[11]. Except for persons specified in section 4(3), the act empowers the minister responsible for immigration to order the removal of such persons to the

---

[8] Immigration Act of 1967, Section 3 (1a-c)
[9] Immigration Act of 1967, section 3 (2)
[10] Immigration Act of 1967, Section 3(3)
[11] Immigration Act of 1967,Section 4(3)

place of origin or any other place he consents to provided that the government of that place accepts to receive him[12].

Further, the act lays down various immigration offences. Section 13 states; a person who makes a false declaration when applying for entry, knowingly misleads immigration officer, alters or defaces an entry pass, knowingly uses forged documents, gives, seeks or parts with immigration documents, re-enters Kenya, harbours any person who he knows or has a reasonable cause to believe he has committed an offense, violates the terms of entry permit shall have committed an offence punishable by a fine not exceeding 20,000 Kenya shillings to a full sentence not exceeding one year[13].

The Aliens Restriction act of 1977 (Revised 1985)[14]

This establishes the legal basis upon which aliens may be restricted when entering or when in Kenya. It empowers the minister when the country is in a state of war or when it appears that an occasion of imminent danger or great emergency has arisen to impose restrictions on aliens[15]. Further it lays down the measures which the minister responsible can take in regard to aliens in the face of the aforementioned situation.

The act empowers the minister to prohibit aliens from landing or in otherwise entering Kenya either generally or at certain places and for imposing restrictions or conditions on aliens landing or arriving at any part in Kenya[16]. Further, the minister is authorized to prohibit aliens from embarking in or otherwise leaving Kenya[17], require aliens to reside and remain within

---

[12] Immigration act of 1967, Section 4(2)
[13] Immigration Act of 1967, Section 13
[14] The Aliens Restriction Act imposes restrictions on aliens and makes provisions that are necessary or expedient to carry such restrictions into effect. It defines an alien as anyone who is a non-citizen of Kenya (section 2)
[15] Aliens Restriction Act, section 3 (1) (c)
[16] Aliens Restriction Act, section 3(1) (a)
[17] Aliens Restriction Act, section 3(1) (d)

certain places or districts[18], prohibit aliens from residing or remaining in any areas specified in the order[19] and to take any other matters which appear expedient with a view to the safety of the country[20].

The subsidiary legislation of 1985 named Aliens Restriction Order further requires all aliens except those enjoying privileges and immunities, serving in the armed forces of a friendly power and their wives and children, those residing in Kenya for a continuous period exceeding three months and have a valid visitors pass, to report for registration within ninety days upon entering Kenya[21]. This requirement aims at keeping track on aliens coming to the country.

Legal Provisions against Trafficking of Persons

Kenya has increasingly become a destination or transit point for trafficked persons. Among the most trafficked groups are persons from India, Bangladesh and Nepal. The main purpose for this trafficking is to provide bonded labour in construction and garment industries as well as for commercial sex exploitation[22]. To address the problems associated with human trafficking such as forced labour or commercial sex exploitation, the government has passed laws criminalizing such acts.

Chapter five of the constitution explicitly criminalizes holding of persons in slavery or servitude and prohibits forced labour[23]. Further section 74 outlaws holding or subjecting anyone to torture or to inhuman or degrading punishment or other punishment. The constitutional provisions are further reinforced by acts dealing with specific situations such as trafficking of children for sexual purposes. The Sexual Offenses Act criminalizes anyone who supplies,

---

[18] Aliens Restriction Act, section 3(1) (c)
[19] Ibid
[20] Aliens Restriction Act ,section 3 (a) (h)
[21] The Subsidiary legislation of 1985 named Aliens Restriction Order, section 3.
[22] US Department of State 'Trafficking in Persons Report 2007" Publication 11407, available at www.state.gov/g/tip
[23] The Constitution of Kenya, Section 72 (1), (1a)

recruits, transports, transfers, harbours or receives a child within or across the borders of Kenya, for purposes of commission of any sexual offence under the act with such child or any other person"[24].

Kenya's Immigration Procedures and Institutions of Enforcements

Having provided an overview of the main process of legislation dealing with voluntary immigration, the following section reviews Kenya's immigration procedures and policies and the institutions dealing with immigrants. The immigration procedures in Kenya are informed by the need to provide a delicate balance between facilitation and control while managing the risks posed by various forms of irregular migration such as people smuggling and trafficking in human beings, international terrorism and other forms of transactional crimes and security threats[25].

The immigration procedures require that anyone wishing to travel to Kenya must process a valid travel document as defined in the Immigration Act. The main document required is a valid passport[26]. The immigration act of 1967 defines a passport as a 'passport' or any other valid travel document or document of identity issued by an authority recognized by the government of Kenya[27]. Passports help to facilitate international travel, provide evidence of a person's citizenship or country of residence. In addition to possession of a valid passport, citizens of specified countries are required to have an entry visa. The Kenya's policy on issuance of a visa requires that persons must be of good character and does not pose a potential security threat[28]. This requirement denies persons engaging in criminal activities, considered to be against the national interests or those also have been involved in war crimes or human rights

---

[24] Sexual Offences Act (this is an Act of Parliament Making Provisions on sexual offences, their definition, prevention and the protection of all persons form harm from unlawful sexual acts, and for connected purposes).
[25] Depart of Immigration, Kenya Immigration Border Procedures Manual, July, 2006, p 13
[26] Ibid, p 18
[27] Immigration Act of 1967, section 2(1)
[28] Department of Immigration, *Kenya Immigration Border Procedures Manual*, op cit, p 23

violation entry visa. These grounds for denial of entry are in addition to others laid out in the immigration act[29].

There are various categories of visa[30]. These are: Ordinary or single entry visa given to persons entering Kenya for visits, transit visa issued to persons transiting through Kenya for periods not exceeding seven days; diplomatic visa issued to diplomatic passport holders who are on official business; official or service visa for persons holding official or service passport on official visits, multiple journey visa which is issued to persons who by the nature of their business makes frequent visits to Kenya and courtesy visa for applicants who are not entitled to diplomatic visa but where issuing them with visa is considered desirable on the grounds of international courtesy.

Valid passport and visa requirement exempts members of the crew of a ship or aircraft. Instead they are required to have either of the following: One, sea farers national identity documents issued pursuant to the International Labour Organization conventions. The document should indicate name, date and place of birth, nationality, physical characteristics, photograph and signature of the holder[31].Two, Sea Man's book which contains records of employees aboard a vessel or third, Crew Member's certificate issued in accordance with International Civil Aviation Organization specifications. The specifications are name, address and place of birth, nationality, name of employer and description of duties, as well as a photograph and a signature of the holder. These documents are required to be presented at the points of entry. Immigrants'

---

[29] Immigration Act, Section 3 (i) and (2)
[30] Citizens of Bahamas, Barbados, Botswana, Burundi, Darussalam, Cyprus, Dominica, Fiji islands, Gambia, Grenada, Grenadines, Ghana, Jamaica, Lesotho, Malawi, Mauritius, Maldives, Namibia, Naura, Nauru, Papua New Guinea, St. Lucia, Zimbabwe, Zambia, Samoa, Seychelles, Singapore, Sierra Leone, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda and St. Vincent do not need visas.
[31] *Immigration Procedures Manual,* op cit, p 19

points of entry whether by land, sea or air are contained in the third schedule of the immigration act.

The enforcement function of immigration laws and procedures lies with the immigration department under the ministry of immigration and registration of persons. The department issues work permits, passports and visa. Further it has immigration officers deployed in all entry points. The entry points on land are: Border posts with Somalia at Liboi and Mandera, Busia, Lwakhakha and Suam on the Kenya- Uganda border, Isebania, Namanga, Loitoktok, Taveta and Lunga Lunga on the Kenya- Tanzania border, Moyale and Mandera border crossing on the Kenya-Sudan border. Entry via air is mainly through Jomo Kenyatta and Moi International airports. Others are Wilson, Eldoret, Kisumu, Malindi, Garrissa and Lokichogio airports.

The immigration officers under the immigration act have been given wide ranging powers. These are: one, arrest without warrant a person who on reasonable cause is suspected of having committed an offence under the act, or is unlawfully present in Kenya; two, arrest without warrant a person other than a Kenyan citizen, who is transiting Kenya after having been ordered to be deported from any country, require a non-citizen to declare if he is carrying any documents and produce such documents to the officer, search any person to find out if he is carrying any documents and retain any such documents for examination purposes; and lastly to issue written summons to non-citizens to provide any document needed to determine if they should be allowed to remain in Kenya[32].

Immigration officers are assisted by other security units stationed at entry points. The main units mandated with security on official border points are the Kenya Police Service (KPS) and Kenya Administration Police (KAP)[33]. One of the core duties of the KAP is border security.

---

[32] Immigration act of 1967, section 11 and 12
[33] The Acts of parliament cap 85 and caps 128, 67 and 75 Laws of Kenya

Kenya's Immigration Policy

Currently, Kenya lacks a harmonized policy on immigration. Instead it has been meandering through a raft of legislations and pronouncements on immigration to weave together a policy. To address this missing link, the Department of Immigration has finalized a single policy document which will be presented to parliament for cabinet approval. The rationale for the immigration policy is to enhance the Kenya's capacity to respond to increased immigration activity and political instability in the neighbouring states, transnational terrorism and instability in the neighbouring states, transnational terrorism and criminal activities and influx of refugees and asylum seekers[34].

The main objectives of the policy is to develop structures that will improve national security, development and interagency coordination, capacity build government agencies with immigration function, detect and deter illegal migration, improve the security of travel to documents meeting the international standards and protect the rights of immigrants in conformity with international legal norms and principles, among others[35]. The policy is founded on the principles guiding state's authority and responsibility with regard to admission and expulsion of persons, granting of citizenship, non-refoulment, against transnational crimes including trafficking and smuggling of persons, terrorism and piracy, on freedom of movement as provided by the universal declaration on human rights, the African Union Convention on combating and prevention of terrorism and the Vienna convention on diplomatic and consular relations and other relevant conventions on migration of persons[36].

---

[34] Kenya's Department of Immigration *'Kenya National Migration Policy'* (unpublished) , p 1
[35] Ibid, p 2
[36] Ibid pp 37-38

The policy has addressed various aspects dealing with threats posed by immigration[37]. To prevent illegal entries through borders, the policy proposes establishment of the border check points, and inter-agency committee dealing with cross cutting immigration issues such as document fraud, illegal entries and transnational crimes. This will be augmented by deploying of technology capable of detecting forged documents, working closely with other security agencies, bilateral cooperation on border patrol and intelligence sharing with neighbouring countries and providing real time update on persons on prohibited immigrants watch list. To increase the security of passports and other travel documents, the policy proposes the introduction of biometric passports to further make the current machine readable passports more tamper proof.

Lastly, in response to immigrants already in the country, the policy prioritizes on improving coordination with other security agencies to ensure all undesirable migrants are removed from Kenya. It further suggests imposing of penalties to all carriers bringing in inadmissible persons, and develops way of tracking all immigrants in the country closely[38].

Initiative on Dealing with Voluntary Migrants

The government has instituted various measures to respond to problems brought about by immigration. To enhance security problems associated with cross-border migration such as illegal possession and proliferation of small arms, drugs trafficking, motor vehicle theft, economic crime and terrorism, environmental crime and cattle rustling, the Kenya Police service has joined the East Africa Police Chiefs Cooperation Organization. The organization founded in Kampala during the first meeting of Eastern Africa Police chiefs on February, 1998 has set up institutionalized strategies dealing with the above problems[39].

---

[37] Ibid, p 16, 17, 22
[38] Ibid, pp 37-38
[39] East Africa Migration Routers Initiatives, op cit, p 60

Other inter-agency coordination mechanisms include establishing of communication between immigration department and other relevant government agencies. For instance, when a person is diagnosed as carrying infections diseases, the information is passed on to the health, police, customs and Kenya Airport and ports authorities. When a suspect trafficker is intercepted by immigration officials, the information is shared with National Security Intelligence Services, Counter Terrorism, Anti-Narcotics, Anti-Terrorism Units, Ministry of Foreign Affairs and Office of President[40].

To respond to the threats posed by fraud, forgery or provision of inaccurate information, the immigration has developed a personal identification secure comparison and evaluation system (PISCES). This is a computerized database with an ability to identify and intercept known criminals and terrorists and track suspicious travelers. An important component of PISCES is the alert list or watch list. The alert list is a database containing details and travel documents relating to immigration and passport fraud, drug and human trafficking, genocide, and sex business activities. It provides details of individuals suspected to be involved in these activities. Details on the alert list include their names, and aliases, passports number, photographs, fingerprints, group affiliations or association and so on. The immigration policy requires all persons travelling internationally to be cross-checked against the alert list[41].

In order to deter possible terrorists from entering the country, the immigration agency has developed terrorists profiling guidelines. These guidelines help in identifying characteristics or behavior of concern thus enabling closer scrutiny on travelers. Immigration officers are required to pay attention to unanticipated nervousness and stress, and the nationality of the immigrant. Nationality is important for some countries like Saudi Arabia and Pakistan have produced

[0] *Kenya Immigration Border Procedures Manual*, op cit, pp 70-71
[1] Ibid, pp 35, 63

relatively higher number of terrorists. For instance 15 out of 19 terrorist who carried out September, 11, 2001 attacks in United States were Saudis. Further they should concern themselves with travel information and history such as the countries visited in the last three years[42].

The concern with trafficking in human beings and the increasing attractiveness of Kenya as a transit and destination point, has led to development of various initiatives. Key among them includes: The establishment of a national steering committee, comprising 28 agencies, to address the problems of child trafficking, a registration program for hotels along the coast to prevent trafficking for sexual exploitation in tourism sector, inspection of employment agencies suspected of being engaged in trafficking activities and establishment of human trafficking unit within the Kenya Police Services[43].

Kenya certainly has developed its legal and institutional framework for immigration. One aspect which has been emphasized by these laws is the importance of national security. The laws allow for denial of entry, detention and expulsion of any person who is engaging in activities which poses a threat to national security and public order. After providing a detailed analysis of Kenya's legal and institutional policy framework and initiatives, the following section focuses on the forced migrants. The main group given attention is the refugees, for Kenya has been a preferred destination for individuals fleeing conflicts in the region.

The Legal Framework for Refugees in Kenya

Kenya is currently hosting between 250,000 and 280,000 refugees. The majority have come from Somalia and large numbers from Ethiopia and Sudan. The refugees are in camps mainly Kakuma and Dadaab while others have found their way to Kenya's numerous urban

---

[2] For a full profile see Appendix 10 of the *Kenya Immigration Border Procedures Manual*
[3] 'Kenya, Country Reporting on Human Rights Practices', US Bureau of Democracy, Human Rights and Labour, http://www.state.gov/g/dm/2005/61575.htm

centers. In Kenya like in any other countries, refugees are seen through the lens of security. This is because the presence of large refugee population can have serious implications for internal security, particularly in situations where the ratio of these populations to local population is high. Also there is a risk of politicization and militarization of refugee camps and settlements. All these place substantial demands on the host country which has to ensure the security and stability of areas affected by presence of refugees.

The Kakuma refugee camp located in Turkana District currently hosts 47,000 refugees. At its peak, it had 120,000 refugees mainly from Sudan. Currently, majority of refugees at Kakuma are of Somali origin. The Dadaab camp in Garissa district is made up of three complexes. These are Ifo, Dagahaley and Hagdera. The combined population of the three complexes currently stands at 270,000 persons and the number is bound to increase as conflict in Somalia, a country which has defined itself on the idea of pan-Somalism and has in practice and declarations sought to annex Somalia inhabited regions in the neighbouring states such as Kenya Ethiopia. Thus, Somalis are generally viewed as posing serious security threats to Kenya and Ethiopia. In addition there is an estimated 60,000 refugees in urban areas[44].

In responding to the presence of refugees in Kenya, the government has created a balance between the international obligations on protection of refugees and its national interests. The cornerstone of refugee law is the principle of admission into asylum and non-refoulement. For instance, the 1969 Organization of African Unity convention on refugees obligates member states to admit refugees. It states that no person shall be subjected to measures such as rejection at the frontier, return or expulsion which could compel him to return to or remain in a territory

---

[44] See UNHR '*UNHCR Global Appeal 2008- 2009 – Kenya*' UNHCR Fundraising Reports, available at 1tt://www.uhcr.org/home/PUBL/474ac8ceo.pdf. Also Department of Refugee Affairs, '*Refuges Administration and Management in Kenya*' at www.refugees.go.ke

where his life, physical integrity or liberty would be threatened"[45]. Exemptions are made only on grounds of national security.

Kenya ratified the 1951 United Nations convention on refugees on 11th of May 1966 and the 1969 OAU convention on specific aspects of refugee problems in 1993. The ratification obligates Kenya carry out the treaty in good faith. In 2006, these conventions were domesticated when the refugee act of 2006 was passed by parliament.

The Refugee Act of 2006[46]

The Refugee Act of 2006 currently stands as the main legislation governing refugees in Kenya and supersedes the immigration and aliens restriction acts when dealing with refugees[47]. The act defines a refugee as per the 1951 UN conventions. Section 3 states that a refugee is a person who owing to well founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself to the protection of that country or not having a nationality or being outside the country of his former habitual residence, is unable, owing to well founded fear of being prosecuted for any aforesaid reasons, is unwilling to return to it"[48]. Further, it incorporates the 1969, OAU convention by including persons affected by external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin...."[49]

The act prohibits refusal of entry or returning/ expelling of persons who qualify as refugees as defined in the act[50]. However it draws exceptions and empowers the commissioner of

---

[45] The 1969 OAU Convention on Refugees; Article 11 (3)
[46] The Act Assented by the president on 30th December, 2006, makes provision for the recognition, protection and management of refugees and for connected purposes
[47] See Section 13 of the Refugee act
[48] The Refugee Act of 2006, Section 3 (1) (a)
[49] The Refugee Act of 2006, Section 3 (1) (b)
[50] The Refugee Act, Section 18

refugees to withdraw refugee status of any person if there are reasonable grounds for regarding that person as a danger to national security or to any community"[51]. Other security grounds for denial or withdrawal of refugee status are outlined in section 4 of the act. These include persons who have committed a crime against peace, war crimes or a crimes against humanity as defined in any international instrument to which Kenya is a party and which has been drawn up to make provision in respect of such crimes, Serious non-political crime outside Kenya prior to arrival or when in Kenya or any person found guilty of acts contrary to the purposes and principles of the United Nations and the African Union[52].

For purposes of maintaining the record of persons entering Kenya as refugees, the act demands that any person who has entered Kenya whether legally or illegally as a refugee should avail himself to the relevant authority within 30 days, for determination of his status. Failure to comply with the provision makes such a person prohibited immigrant and is liable to prosecution. If convicted, he/she is supposed to pay a fine not exceeding twenty thousand shillings or serve a prison term not exceeding six months or both[53]. Further those who are granted refugee status are to be issued with a refugee identity card or pass and permitted to remain in Kenya.

Institutional Framework for Dealing with Refugee Matters in Kenya

The Ministry of Immigration and Registration of Persons has the overall responsibility for administering the act. More specific, is the refugee department which is tasked with coordination of all refugee protection measures and promotion of solutions for refugees in Kenya[54]. The Department of Refugee Affairs is tasked with the following functions: liaising with

---

[51] The Refugee Act, Section 19
[52] The Refugee Act, Section 52
[53] The Refugee Act, Section 9 and 11
[54] The Refugee Act, Section 7

68

UN agencies and other institutions in provision of adequate facilities and services for protection, reception and care of refugees, registering all asylum seekers and refugees; issuing identification cards and travelling documents to refugees; managing refugees camps and transit centres and other related facilities, promoting of peaceful and harmonious coexistence between refugees and host communities as well as ensuring that refugee activities do not have a negative impact on the host communities, natural resources and the environment. Lastly, arresting any person suspected of committing an offence under the act.

Under the Department of Refugee Affairs are the Refugee Affairs Committee and Refugee Appeals Board. The Refugee Affairs Committee[55] is an interagency committee drawing members from agencies with refugee related competencies. This includes representatives from ministries responsible for Provincial Administration and Internal security, Foreign Affairs, Health, Finance, and Immigration. Other committee members are drawn from the Attorney General's office, National Security Intelligence Services, Department of Police and National Registration Bureau. In addition, it has one member from the civil society and another from the host community. The committee is tasked with refugee status determination.

In case would be a refugee is denied the status by the Refugee Affairs Committee, he/she has a right of appeal. The appeal is made to the Refugee Appeals Board[56] which is an independent organ as per the act. It is composed of members appointed by the minister responsible for refugees. Upon the application of appeal which should be done within thirty days, the board can either confirm or set aside the decision of the Refugee Affairs Committee. Further, it is supposed to notify the applicant of its decision in writing. In case the applicant is aggrieved by the decision, he can appeal to the High Court within 21 days.

---

[55] The Refugee Act, Section 8
[56] The Refugee Act, Section 9

Further, the act sets up the position of the refugee camp officer[57] who is responsible for the management of the refugee camp, reception and registration of asylum seekers and submission of the same to refugee affairs committee for status determination. More so, he is tasked with issuance of movement passes to refugees wishing to travel outside the camps and coordinating of the overall security protection and assistance to the refugees. The location of the camp and transit centres is determined by the minister in consultation with the host communities.

The examination of the refugee act 2006 shows that it establishes the legal and administrative basis of managing refugee affairs. It takes over the functions previously performed by other agencies such the United Nations High Commissioner for Refugees. Importantly the act empowers the government to deny or withdraw refugee status on grounds of national security.

Challenges Facing Immigration Control in Kenya

Having examined the government's legal, institutional and policy framework as well as initiatives on both voluntary and forced migrants, the following section analyses the challenges facing the government when dealing with immigrants. The challenges ranges from lack of enough resources to monitor entry points, corruption, inadequate entry points, and lack of awareness among other government officials on the risks associated with non-enforcement of immigration laws.

There lacks enough entry points and resources to man border entry points. A field study conducted by the Ministry of Immigration and Registration of Persons noted that, the immigration control has only four operational border points along the entire 1775 kilometers border with Sudan, Ethiopia and Somalia. The border controls that include Lokichogio, Moyale,

---

[57] The Refugee Act, Section 9

70

Mandera and Liboi are few and far apart. The facilities and personnel at the control points are inadequate and function below their mandate. In other situations the border points are not effectively accessible. This situation renders the border porous, exposing the country to irregular entries including human trafficking and smuggling"[58].

The porosity of the border can be evidenced by the fact that, though the Kenya-Somali border is officially closed since 2007, more than 34,000 new refugee arrivals have been registered so far this year. Last year the Daadab camp registered some 62,000 new arrivals[59].Most of these new arrivals find their way to Kenya through numerous *panya* routes assisted by their kins living in Kenya.[60] Importantly, there has been increased smuggling of goods from Somali. Intelligence reports indicate that, money generated from smuggling network is being used to finance radical Islamists in Somali. The Islamists have threatened to invade Kenya more than once and re-unite the predominantly Somali inhabited Northern region of Kenya with Somalia state[61].

The other challenge is the security between Kenya and her neighbours. Kenya security relations are marked by unresolved territorial dispute over the Elemi triangle which is at the Kenya, Sudan, and Ethiopia border. This has created a security vacuum in the region making it inaccessible to immigration officials and key route to cattle rustlers, smugglers and gun-merchants. As a result, this tri-junction border is one of the most militarized regions in East Africa and a key source of guns and ammunitions into the country[62]. On Kenya –Somali border which is about 700 kilometers long and much of the region is arid and semi-arid, there lacks

[58] A.A Nurow '*Field Study Report: Control and Management of Northern Kenya Border*' Department of Immigration, 2007, p 18

[59] Department of Refugee Affairs 'Refugees' Administration and Management in Kenya' www.refugee.go.ke

[60] An interview with an immigration officer conducted on 20th Settember,2008

[61] See Daily Nation, June, 18th, 2009

[62] See Institute of Security Studies, http://www.iss.co. ZA/A/profiles/Kenya/secinfo.html. also A.A Nurow, *Field Study Report: Control and Management of Northern Kenya Border*, op cit, pp 21-22

government presence in large areas. Kenya's capacity has been described as weak or non-existent, with local communities relying on tribal clan militias for protection. This has made human smuggling network flourish especially when considered that Somali's clans inhabit both sides of the border and they have more loyalty to the clan than the country[63].

Related to inadequate policing are the difficulties of differentiating between bona fide Kenyan citizens and their co-ethnics in the neighbouring countries straddling the borders. Among the pastoral communities along Kenya's borders with Somalia, Ethiopia and Sudan, international frontiers are meaningless as communities traverses the land in search of pasture, water and to raid their neighbours. In addition they often cross to Kenya which has better educational and health facilities. For instance it is hard to differentiate a Kenyan-Somali with a Somali from Somalia or a Kenyan Borana with an Ethiopian one. Further, kinship ties have led to elders, chiefs and local Identification cards vetting committees issuing identity cards to their non-Kenyan kins[64].

One key identifier of the Ministry of Immigration and Registration of Persons has been corruption. For many years the ministry has been ranked among the top ten most corrupt government agencies by the Transparency International[65]. Document fraud within the ministry has been high. An official working at the Department for Registration of Persons noted that illegal immigrants with support of cartels commonly known as 'Muqalas' have devised a number of ways to enter and attain residency in Kenya. Anyone with money could illegally enter the country without any hassle and can access documents such as birth certificates, national identification cards and consequently passports and other transit documents"[66]. This was the case

---

[63] East Africa Migration Route Initiative, op cit, p 61
[64] For a detailed examination see A.A Nurow, *Field Study Report*, op cit, pp 33-38
[65] See Transparency International Kenya' *Kenya Bribery Index*' http://www.tikenya.org/documents/KBI2007.pdf
[66] An interview conducted on 22nd December,2009 with Department for Registration of Persons Official

of the 1998 Embassy terrorist bombing mastermind Mohammed Saddiq Uddah and others who had fraudulently obtained Kenyan identification documents[67].

Related to corruption is the culture of impunity especially on the top echelons of government. The 2006 scandal of the two Armenians brothers Artur Sargasyan and Artur Margaryan is a case in point. The two brothers who had masqueraded as foreign investors came into the limelight after they were implicated with the raid of the standard group on March 2nd, 2006. Later, the report by the Administration of Justice and National Security Committees produced damning evidence which connected top government official(s) to the Armenian brothers' scandal. The report states that, 'their presence in the country was initiated and protected at the highest levels of government. Their stay was part of a conspiracy to commit atrocities". Surprisingly the report noted that their stay was tainted with criminality ranging from false passports, through criminal registration of trade companies and their incorporation into the police force as Deputy Commissioners of Police"[68].

Another key challenge is the absence of a nationwide information communication and technology infrastructure, backbone to link government agencies for purposes of information sharing and verification. The PISCES system is located only at Jomo Kenyatta and Moi International airports. Other security points lack the necessary technology to detect fraud and communicate at local, regional and international levels especially before allowing entry into the country.

Prosecution of violators of immigration law is not sustained. In most cases enforcement officers from other government agencies are more interested in harassing immigrants in expectation of a bribe. In Eastleigh where there is high number of immigrants of Somalia origin

---

[67] A.A Nurow, *Field Study Report*, pp 32-38
[68] The Sunday Standard (Nairobi), March, 2nd 2009

police have developed an elaborate extortion racket targeting Somalia immigrants. They threaten them that they will be charged with belonging to *al-shabaab* militia group if they do not bribe[69]. Even where they are taken to court the fine charged is too lenient to deter illegal immigration. A respondent noted that the courts are required by law to fine illegal immigrants amounts not exceeding 20,000 Kenya shillings. This amount is affordable to many people and as such does not deter entry.[70]

Asylum seekers have 30 days within which they are obliged by law to register with the Department of Refugee Affairs. An immigration officer, for instance or any other security agency for that matter, can not question any person masquerading as an asylum seeker until after 30 days. This period is enough for an illegal immigrant with other ill motives to plan and commit a crime within our borders. Even where one is arraigned in a court of law for failing to register, a maximum fine of Ksh. 20,000/= is inadequate, especially when dealing with a community involved in piracy and associated large sums of money demanded as ransoms for release of victims.

Lastly, there is absence of awareness on the part of the population on the dangers and risks of irregular migration and smuggling in persons. This lack of awareness is further complicated by weak enforcement of existing laws and small fines and jail terms for those who have violated immigration laws[71]. The penalties are not deterrent enough to prevent future involvement in similar crimes.

---

[69] An interview with a Somali businessman, conducted on 22nd September,2009
[70] An interview with a Ministry of Immigration official on 20th September,2009
[71] Kenya, *Country Reports on Human Rights Practices*, op cit.

CHAPTER FOUR

A CRITICAL ANALYSIS OF THE IMPACT OF IMMIGRANTS ON KENYA'S NATIONAL SECURITY

Introduction

The previous chapter dealt with Kenya's legal and institutional frameworks for addressing forced and voluntary migrants. The framework focused on both procedural and substantive issues connected to the immigration. These include the required documents, registration upon arrival, residency and screening mechanisms.[1] Though there is no doubt that the country has a well developed system, it has not escaped the challenges brought about by the entry and presence of immigrants. These challenges will be analyzed within the broadened framework of national security.

The broadened framework of national security which was pioneered by Barry Buzan and others[2] is a rejection of the traditional approaches to security which reified and privileged the state as the main referent of security. Instead, the new security framework brings on board other objects, in the process reducing the state to one among many other referents of security. Consequently, the state, community, society, individual and environment have become objects of security. Indeed, the securitizing process today, means that, any issue can be an object of security.

The chapter is thus divided into two broad sections. Section one conceptualizes the broadened agenda of security. It builds on the discussions developed in the previous chapters and rationalizes the use of sectoral approach and its analytical usefulness in studying the relationship

---

[1] See 'Kenya's Immigration Procedures and Institutions of Enforcement' chapter three ,p 60
[2] See B. Buzan *'People, states and Fears: An Agenda for International Security Studies.* New York: Harvester Wheatsheaf, 1991 .Also O. Weaver et al , *Identity Migration and the New Security Agenda in Europe* .London: Printer, 1993.

between immigration, conflict and national security. This is done through elaborating on the conceptual categorizations developed by Buzan. The categorization has economic, political, military, environmental and societal sectors. The second section analyses how immigrants have impacted on these sectors. In doing this it integrates the conceptual arguments with the research findings which have been generated through non-scheduled interviews and analyzed qualitatively.

The Broadening of Security Agenda[3]

The broadening of security agenda, was seen as a radical shift from the traditional realists rooted conception of security as consisting of physical threats to the state(s) operating in an anarchical international system[4]. A system which lacks a central government and is dominated by struggle for power and security against the military capabilities of other states locked in the same logic of struggle[5]. This view of anarchy was viewed as a given and the militarized logic as a prudent way of bolstering national security.

The realist assumption of security as an objective phenomena opened itself to criticism. It was argued that like all other concepts used in human thought,

> 'security' is a social construction. The term has no meaning in itself; it is given meaning by people through the emergence of an inter subjective consensus. Overtime the term becomes understood to have a particular meaning, though that may continue to be questioned by some, and may evolve overtime, rather than remaining static'[6].

The evolution in the broader terrain of security field has led to emergence of new dimensions of security.

[3] This section builds on the debate developed in chapter one section reviewing national security,p14-17
[4] Ibid, pp 186-221
[5] See K. Waltz, *Theory of International Politics.* Reading MA: Addison Wesley, 1979, p 88
[6] M. Sheehan, *International Security: An Analytical Survey* .Mumbai Viva Books Ltd, 2006, p 5. Also See J. Searle, *The Construction of Social Reality.* New York :Free Press, 1998

The new dimensions are informed by the view that, security should no longer be limited to the military domain. Rather it should have more general meaning that could be applied not only to the military realm but also to the economic, societal, environmental and political fields. Further the referent object of 'security' the thing that needed to be secured, should not be conceptualized solely in terms of the state, but should embrace the individual below the state and the international system above it'[7]. The outcome has been opening up of possibilities for securitizing aspects which were previously treated as non-security issues.

Shaheen, though supporting the broadening of agenda, warns us of the risks it poses. He observes that though;

> 'These changes in thinking about security offered the possibility of significantly extending the area of social existence that could be considered to be security affecting.... the expansion of the concept could occur in different ways with very different social and political implications. Broadening in itself can be a very radical exercise, but this is not inevitable. It can still be done in pursuit of a conservative agenda. Much depends upon whether the objective of a particular securitization is to capture the concept for a radical, emancipatory political agenda or whether the purpose is to militarize new areas of governmental action, to colonize wider areas of social policy with an essentially militaristic mindset. It is not just what is being done that is crucial, but also how it is done and for what purpose'[8].

Essentially securitizing should not be about emasculating the social existence but should have emancipatory potential, through creating a sense of urgency in addressing of a given issue and mobilizing resources for the same.

The broadening of 'security' has led to emergence of more robust analytical frameworks, as the epistemology of security breaks away from degenerative realist paradigm and adopts a

[7] See a Discussion by B. Buzan, O. Waever and J. Wilde, *Security: A New Framework For Analysis*. London: Boulder. 1998, Introduction

[8] M. Shaheen, *International Security: An Analytical Survey*, op cit, p 44

more progressive and pluralist Lakatosian research program,[9] which equips security studies with an emancipatory potential. The outcome has been various frameworks of analysis such as the level of analysis and sectoral approaches to security. The chapter will utilize the latter in its task of delineating the impacts of immigrants on Kenya's national security.

The Sectoral Approach to National Security

The sectoral approach to national security is attributed to the works of Barry Buzan. He argued that the,

> 'Security of human collectiveness is affected by factors in five major sectors: military, political, economic, societal and environmental. Generally speaking, the military security concerns the two- level interplay of the armed offensive and defensive capabilities of states, and state's perception of each other's intentions. Political security concerns the organizational stability of states, systems of government and the ideologies that give them legitimacy. Economic security concerns access to the resources, finance and markets necessary to sustain acceptable levels of welfare and state power. Societal security concerns the sustainability, within acceptable conditions for evolution, of traditional patterns of language, culture and religion, and national identity and custom. Environmental security concerns their maintenance of the local and planetary biosphere as the essential support system on which all planetary biosphere as the essential support system on which all other human enterprises depend[10].

Sectoral approach is fruitful for it enables one to illuminate on specific type of interaction, whether military, political, societal, environmental or economic. Further, it helps to disaggregate the whole for the purpose of analysis by selecting some of its distinctive items, and later aggregating them to a whole when the task of analysis is completed. Thus, for instance, when focusing on the societal sector, one has to identify the actors(s) involved, the potential and actual threats and vulnerabilities facing the actor(s) and their impact, and whether there exists a particular issue which a given actor(s) would want 'securitized' for it subjectively does have

[9] For a Discussion on degenerative Paradigms see P. Feyerabend, Against *Method.* London: verso, 1988. On Progressive Research Programs see L. Imre 'Falsification and the Methodology of Scientific Research Programmes' In Lakatos.I and Musgrave, A.E (eds), *Criticism and the Growth of Knowledge.* Cambridge: Cambridge University Press, pp 91-96.
[10] B. Buzan, *People, States and Fears: An Agenda for International Security Studies,* op cit, p 19-20

'security' ramifications[11]. The subjective dimension is important for as Buzan et al states 'an issue becomes a security issue not necessarily because there is real existential threat in an objective sense but because the issue can be constructed as an existential threat which is then accepted as such by the political establishment[12]. The construction allows for addressing security concerns for individual(s) without necessarily doing it via the state. 'The individual becomes the direct focus of attention and can be protected from newly created threats such as the effects of inadequate health provision, poor education, political oppression and violence of various forms"[13].

The Linkages between Immigrants and Military Security

The modern state is defined by the idea of sovereignty, the claim of exclusive right to self-government over specified territory and its population. Because force is particularly effective as a way of acquiring and controlling territory, the fundamental territorial nature of state underpins the traditional primary of its concern with the use of force[14]. Indeed, states have the monopoly of using force and violence within its territories and other challenges become a threat to national security.

In Kenya, state's monopoly over the use of force has been challenged owing to the fact that it is situated in a bad neighbourhood, characterized by protracted conflicts. Consequently, Kenya is a part of highly volatile security complex[15], with ongoing violence in Ethiopia, Somalia and Sudan. The outcome has been spill over of military security threats to the country through small and light weapons proliferation, infiltration by terrorist networks operating from lawless

---

[11] M. Sheehan, *International Security: An Analytical Survey*, op cit, p 158
[12] B. Buzan et al, *Security: A New Framework for Analysis*, op cit, pp 24-29
[13] Ibid, pp 24-29
[14] See D.A Lake 'The New Sovereignty in International Relations' *International Studies Review*, Vol 5, No.3, 2003, pp 303-323
[15] For a definition of Security Complex see B. Buzan et al, *Security: A New Framework for Analysis*, op cit, pp 42

Somalia, recruiting of Jihad's especially from among the Somali community, infiltration by intelligence agents spying on dissidents or on assassination mission, and spill over of military confrontations especially in the borderlands.

Immigrants and the Proliferation of Small and Light Weapons

Small arms refer to the weapons that a single individual can carry and operate. They may include revolvers, self-loading pistols, rifles, carbines, assault rifles, sub-machine guns and associated ammunitions. Light weapons refer to weapons that can be operated by two or three people. They include heavy machine guns, hand under-barrel and mounted grenade launchers, portable anti-aircraft and missile launchers, recoilless rifles, small mortars of less than 100mm caliber, explosives, anti-personnel mines and ammunitions for all of these[16].

The presence of SALWs poses a security threat for various reasons. One, they are cheap and widely available, some are newly manufactured while others circulate from conflict to conflict or are left over from downsized armies. In the Horn of African region, the devastating civil conflicts in Uganda, Somalia, Ethiopia and Sudan in different periods has led for high levels of SALWs circulation in the region as communities seek to bolster their security against their neighbourhoods. Two, SALWs are deadly and in many cases automatic weapons such as AK47 are replacing single action guns. These automatic weapons used to kill, are simple and durable. They require little or no training and last for decades under almost any conditions. Fourth, they are easily portable, easier to smuggle and hard to monitor or track, especially where illicitly acquired[17].

---

[16] A Chloros et al 'Breaking the cycle of violence: Light Weapons Destruction in Central America' Occasional Paper No. 24. London British American Security Information Council, 1997, p2
[17] R. Muggah and B. Eric, *Humanitarian under Threat: The Humanitarian Impacts of Small Arms and Light Weapons.* Geneva: Small Arms Survey, 2004 p8

The issues of small and light weapons pose a major security threat to the country especially in the light of Weiss observation that,

> 'in the Horn of Africa, traditional definitions of power and sovereignty do not apply in the face of social, economic and cultural realities that transcend national borders. Peace and conflict are not as policy makers assume the sole domain of the states' apparatus. In most African conflicts, individuals, clans, tribes and private militias are the units of wars. Actors in violence that straddles visible state borders often define themselves as belonging primarily to groups that are outside of or more significant than national affiliation[18].

Weiss' view is evidenced by the security situation in the northern parts of Kenya especially the areas bordering Sudan, Ethiopia and Somalia. This is so in Turkana district where the Turkana and Toposa, traditionally sworn enemies have been involved in a cycle of violent conflict which has become deadlier as both communities are heavily armed with modern SALWs. A research conducted by Murray and McEnroy conclude that the Turkana are literally besieged by the Toposa and Nyangaton of Sudan, Dassennech and Nyangatum of Ethiopia. They further note that from 2005 to 2006 the military led disarmament campaign yielded 1700 firearms and 5700 rounds of ammunition[19].

The contributing factor of high presence of SALWs has been attributed to the South Sudanese migrants, who ferry weapons from the volatile south Sudan[20]. Indeed from 1989-2003, the Turkana and Sudan people's Liberation Army had open firearms market in Lodiping, Northern Kenya where Sudanese sold firearms and ammunition to the Turkana in exchange for both cattle and cash. Though the market was officially closed, a security agent attached to the

---

[18] See T. Weisss *'Guns in the Borderlands: Reducing the Demand for Small Arms.* Pretoria Institute of Security Studies, No. 95, Jan, 2004, p 12
[19] C. Mcenroy and R. Murray *'Gauging Fear and Insecurity: Perspectives on Armed Violence in Eastern Equatorial and Turkana North.* Geneva: SMRS, 2008, p 21-31
[20] Ibid, p 21-22

Lokichogio border crossing observes that, there is a thriving underground market, where an AK47 gun sells at around USD 500.

The trafficking of small arms is not limited to the Northern Kenya. Through intricate smuggling network, they have found their way to major urban centres leading to upsurge of crime. A police officer attached to the special crime unit, observed that there are a lot of problems of guns, especially in Nairobi East-lands area which have caused a lot of insecurity, deaths and destructions. Importantly, the weapons have been easily accessible to numerous organized criminal groups engaging in car jacking, extortion, robbery, kidnapping and drug trafficking. The guns are sold for around 15,000 for a Ceska pistol which is popular for its lethality and portability to Kshs. 35,000 for an AK47[21]. The easier access to guns has emboldened the control of highly organized criminal groups such as Mungiki, who are now operating like a parallel government especially in slum areas such as Mathare, Kiambio, Mukuru Kaiyaba and Kwa Njenga and low cost housing estates especially in Dandora and Kayole.

The arming of these groups and their increased control has been identified as the single largest national security threat. An intelligence officer with access to classified information indicated that, 'their (criminal gang) organizational capability, military like hierarchies, access to arms and the risk that they may link with foreign criminal and terrorist networks, poses a complex security problem unless it is urgently addressed[22].

Immigrants and Increased Exposure to Terrorist Attack

The threat of terrorism is nothing new in Kenya. Over the past ten years, Kenya has been a victim of two major terrorist attacks. On 7th August, 1998, a terrorist attack targetting United States Embassy claimed 224 lives including 12 Americans and 5,000 people were injured. Four

---

[21] An Interview with an Officer Attached to Special Crime Prevention Unit conducted on 15th of August,2009
[22] An Interview with NSIS Officer attached to immigration department conduced on 12th of August,2009

82

years later, al Qaeda operatives struck again killing 15 people in an Israel owned Paradise Hotel at Kikambala near Mombasa and simultaneously fired missiles at Israel passenger jet taking off from Mombasa airport[23].

The attacks were linked to Al Qaeda group operating in East Africa with cells in Somalia and Kenya. Among the three suspects of Paradise Hotel bombing, two were immigrants. These are Faizul Abdallah Mohammed (a Comorian national) and Abu Taha al Sudani(a Sudanese national)[24]. Indeed Faizul, has become a continuous threat especially owing to his ability to sneak into the country so easily and escaping police dragnet.

His elusiveness has spawned myth that he is being assisted by some rogue elements within the security forces. A senior security officer observed that when police officers raided Faizul's home in Malindi where he had settled and married a local girl, they found that he had two Kenyan passports, one issued in 1998 and the other one in March, 2008, under different names[25]. Further, the ease with which he managed to settle in Malindi, marry a local girl and blend with the local communities is a pointer of risks posed by terrorist. A terrorism expert observed that 'would be terrorists are not the everyday long bearded, fiery cleric shouting Jihad. Instead, there are usually quiet, reserved persons, who can easily integrate with the locals without raising suspicions[26].

The risk of having 'reserved and quiet persons' in the neighbourhoods cannot be ignored. This is so in the Eastleigh area of Nairobi, where Islamic radicalization has been growing alarmingly. The radicalization is attributable to the presence of religious extremists from Somali,

[3]See Chapter one pp, 20-21,and Chapter three pp,49-52. N. Lynan and J. Stephan 'The Terrorist Threat in Africa' *Foreign Affairs*, Vol 83, No 1, Jan-Feb, 2004, pp 75-86
[1] See R. Abrahamsen 'A Breeding ground for Terrorists? Africa and Britain's 'War on Terrorism' *Review of Africa Political Economy*, Vol 31, No 102, 2004, pp 677-684
[i] An Interview with an Officer attached to Anti-Terrorist Police Unit (ATPU) conducted on 12th of August
[i] An Interview with Security Analyst, Institute of Security Studies (ISS), Kenya conducted on 18th of August 2009

with links to radical Islamists such as *Hizbu al Islam* and *Al Shabaab*. Those groups have been fighting to establish a purist Islamic state in Somalia. A raid in Eastleigh in August, 2009 by a contingent of Anti-Terrorism Police Unit, National Security Intelligence Service and regular police officers led to the arrest of 'would be' Jihads. These composed of a group of teenagers who were being prepared to go fight in Somalia, with promises of martyrdom, holy war and monetary rewards[27]. As one officer observed, 'one can only speculate on the numbers that have been already recruited and the risks they pose to the national security especially if they survive in Somalia and come back battle hardened and with extremist and militant ideologies[28].

Related to terrorism is the infiltration by foreign intelligence services especially from Ethiopia and western countries. The internal instabilities in Ethiopia, has led to influx of refugees especially from Oromo ethnic groups. The Oromo people, who are the largest ethnic group in Ethiopia, have been fighting for seccession from Ethiopia, citing the fact that, despite their numerical strength they have been dominated by the highland groups. The groups are the Amharic and Tigreans who have alternatively held power in Ethiopia.

Most of the refugees have settled in urban centres especially Nairobi. Among their ranks are dissidents sympathetic to the Oromo case and some who are actively participating in providing material and financial support. Their activities have attracted the attention of Ethiopian security agents, who have moved into Kenya to keep tab of their activities. Though the agents' activities are not accessible, a member of Ethiopian immigrant community[29] noted that, 'the agents have been involved in assassination and kidnapping of suspected dissidents. This happens

---

[7] www.africanalerts.org/news
[8] An interview with an officer attached to ATPU conducted on 12th of August 2009
[9] An interview conducted at Pangani where there is a sizeable Ethiopian Immigrant population conducted o 20th of August 2009

behind the back of Kenyan Security agencies that either are not aware or they are extending assistance to the Ethiopian intelligence agencies'

Apart from Ethiopia, western countries have been actively involved in tracking down of terrorists and other espionage activities. The New York Times reported of a secret Central Intelligence Agency secret mission to assassinate suspected militants operating in Somali dominated Northern Eastern Province of Kenya[30]. The Mission was responsible for the killing of a suspected Islamic militant before it was suspended by the CIA top command. Though the Kenya government refuted the claims, there is no doubt that western intelligence agencies are active in the country.

One respondent, involved in counter-intelligence activities noted that 'it is not surprising that the western missions seem to have information which the government lacks and it is they who are at times warming the government about a possible security threats'[31]. They are present, operating under various guises. Some are working as humanitarian aid workers for western non-governmental organizations, journalists and consultants in various fields. This allows them access to various parts of the country without raising suspicions.

Another respondent, along the same line argued that, 'even though they (Western Intelligence agents) are our allies, we should not forget what they can do, incase a given government act in way threatening their strategic interests. They have been involved in DR Congo and Rwanda, leaving behind a trail of deaths and destruction'[32]. The respondents' views are a reflection of the fact that in inter-state relations *realpolitik* is more important than idealistic and ethical considerations. Whenever a country's interests are threatened, it is bound to act

---

[30] The mission was carried behind the knowledge of US Congress which is supposed to authorize such missions
[31] An interview with an officer attached to NSIS, counterintelligence unit
[32] An Interview with a scholar in International Relations 23rd of July,2009

within *realpolitik* logic and that is easier when it already has a functional intelligence gathering apparatus in the target state.

The Impact of immigrants on Kenya's Political Security

Buzan observes that political threats are aimed at the organizational stability of the state. Their purpose may range from pressurizing the government on a particular policy, through overthrowing the government to fermenting secessionism and disrupting the political fabric of the state so as to weaken it prior to military attack[33]. The concern on political security in third world countries, Kenya included is of great importance especially when one considers that they are yet to secure legitimacy in the eyes of all citizens. Most of the time they are challenged by competing loyalties base on clans, ethnic or racial orientations. The unique security threat is captured by Ayoob who notes,

> 'when we turn to the third world, however, we find a different situation altogether. The three major characteristics of the concept of state or national security in western states – its external orientation, its strong linkage with system security and its virtually indistinguishable nature to the security of the two major alliance blocs are in the third world, if not totally absent, so thoroughly diluted as to be hardly recognizable when compared to their counterparts in the West. The sense of insecurity that these states – and more particularly their regimes suffer from emanate to a substantial extent from within their boundaries rather than from outside. This does not mean that external threats are totally absent, for they are not. But the 'mix' of internal and external sources of threat to these state structures, and particularly to their regime is quite often heavily weighted in favour of internal sources[34].

This view can be elaborated if one views state as consisting of three components: idea, physical base and institutions. Subtracting those issues that fall into other sectors (most threats made directly to the physical base must be military, economic or environmental); we are left with

[33] B Buzan, *People, States and Fears*, op cit, p 188
[34] M. Ayoob 'Regional Security and Third World' in Ayoob M(ed) ,*Regional Security in the Third World: Case Studies From South East Asia and Middle East*, London: Croom Helm, 1986, pp 7-8, the view is also elaborated in chapter two, p.39

ideas (minus identity ideas independent of institutions) and institutions as such. It is all a question of ideas on which political institutions are built. Ideas that hold a state together are typically nationalism (especially civic but sometimes ethno nationalism) political ideology. By threatening these ideas, one can threaten the stability of the political order'[35]. The threat ranges from questioning the political order to encouraging of defections from the state identity.

The internal insecurity of the political order can be threatened by regionalizing dynamics, leading to a mix of internal and external threats. The regionalizing dynamics can be in form of irredentist claims, appeals to an overarching identity which is cross border in nature reflective state-nation split or presence of external actors within the state sovereign territory, where they are involved propagating rival political ideology.

In Kenya, these threats are more manifest in the Northern Kenya regions which are inhabited by ethnic Somalis. Prior to independence and during Kenya's independence negotiations at the Lancaster House conference, the Somali had expressed their wish to be integrated with the Somali state. This was informed by the two dynamics. One, Northern Frontier district as it was known then, had been marginalized by the colonial order largely driven by resource extraction logic. Being either arid or semi-arid, the region lacked resources which would have warranted attention of the colonialists. Consequently, it was viewed as wasteland, an economic backwater. Two, the Somalia state upon attainment of independence in 1962, had expressed irredentist ideology which sought to re-unite the 'diasporic Somalia' with the mainland with a goal of creating a Somalia nation -state[36].

[35] See B. Buzan, *People, States and Fears*, op cit, pp 188-122
[36] See A. Rahiman Huseen Abuhamiza, *The Cause of the Conflict in the Horn of Africa*, also G. Arnold, *Kenyatta and the Politics of Kenya*. TransAfrica Publishers, 1975

The marginalization and pan-Somali ideology reinforced each other leading to secessionist war in 1964. The war was responded to militarily by the Kenya's government, leading to displacements and loss of human lives. This loss was epitomized by the massacre of Somalis at Wagalla. After the defeat of the secessionist, the region was largely ignored leading to critical disconnect between it and the rest of the country. Consequently, there largely exists absence of legitimacy of the current political order which borrows heavily from the western liberal social and political thought.

In a region characterized by such absence of legitimacy of the current political order, negative regionalizing dynamics are of great concern. This primarily emanates from Somalia, where there is an ongoing conflict between secularists and moderates on one hand and purist Islamists on the other. The Islamists have not only expressed their goal as establishing an Islamic state in Somali but also re-uniting the Somali inhabited regions in neighbouring countries. These are Djibouti, Ethiopia and Kenya[37].

The threat has been made possible by the infiltration of Islamists in Somali inhabited areas in Northern Kenya and urban areas such as Eastleigh which is referred to as Little Mogadishu[38], after the Republic of Somalia capital Mogadishu. In northern Kenya, immigration officials acknowledge that, the two border points on more than 700 kilometres border are inadequate, and do not deter border crossing. There exist numerous *panya* routes, making it easy for Islamists and other people to cross unnoticed[39]. Further there are indications that, Islamists have established networks within border regions. An incident has been reported where armed

---

[37] The leader of extremist Militant Group Hassan Aweys has exposed his desire in various press conferences
[38] The flooding of Somali people in the Eastleigh and their economic dominance explains this name: might mistake Eastleigh with Mogadishu
[39] An interview with an immigration officer conducted on 24th of August,2009

Islamists walked into a school, ordered the teachers out, lectured the pupils on the decadence of western values and advised them instead to concentrate on Islamic studies[40].

In Eastleigh, there has been an upsurge of *wahabist Madarasas* which are radicalizing the young Somalis. An intelligence officer, deployed in the region, observed that, 'radical Muslim clerics from Somali are establishing *madarasa's* which thrive on literal translation of Koran, extolling the virtues of Islamic purism, jihad and martyrdom. Though it is too early to draw conclusion on what impacts this will have, one cannot overrule its radicalizing potential especially when it is targeted to young Muslims still grappling with their identity and definition of what living is all about[41]. Another respondent succinctly stated that 'once these young boys are brainwashed, the temptations for a purist Islamic political order will be irresistible and we may have to face a sustained onslaught on the secularist values which Kenya is based on[42].

A security analyst concurred in his views that, though there is no sustained threat to political security; this does not mean it is absent. The inflow of refugees from war torn Somalia, some of whom maybe harboring extremist ideologies, the desire for one united Somalia, the appeal of Islamic syncretism, may mix in a way that challenges Kenya's political order, especially due to its close association with the west and its support of the fragile Somalia government, which is viewed as externally imposed and a puppet of the west and their regional allies[43]. This potential threat has kept the intelligence community concerned especially when viewed in the light of economic activities of immigrants ethnic Somalia, their increasing

---

[40] The Incident was reported in the local dailies see www.theeastafricanstandatd.com/archives
[41] An interview with an intelligence officer conducted on 12th of August,2009
[42] An interview with a Horn of Africa Security Analyst at Institute of Security Studies conducted on 18th of August,2009
[43] Ibid

dominance, and the source of their investment funds. The issue will be discussed within the economic sector security below.

The Relationship between Immigrants and Economic security

Economic security can be approached either within the traditional security framework or within the broadened security framework. In the traditional security framework, the economic dimension was viewed as crucial because it is one of the key criteria of measuring state's power, for possession of economic power enables a state to build its military and diplomatic capabilities[44]. Thus the states need to enhance their economic security through ensuring access to key and strategic resources, markets and developing of an industrial base, capable of minimizing dependence on others.

This view argued that, 'it is not the state that leaps ahead politically or militarily that wins the race, but the one that plods along improving inch by inch in the long term competitively. In addition, major shifts of power balances have followed alterations in the productive forces balance and success in projecting external influence has always gone for the side with the greatest material resources[45].

Within this view the concern has been on the relationship between the state and the economy. Mercantilists and Neo-Mercantilists argued that the state embody both social and political purposes for which wealth is generated and providing the security necessary for the

---

[44] See M. Mwagiru 'Refugee Protection and the Diplomacy of National Security in Kenya: A Framework for Analysis' in Refugee Protection in the Context of National Security: An Analysis of refugee Act 2006. A Publication of refugee Consortium of Kenya, 2008, pp 25-26
[45] M. Mann 'Sources of Social Power Vol 11: The Rise of Classes and Nation States. Cambridge: Cambridge University Press, 1993, p 256.

operation of firms and markets. Further, international economics, is characterized by competition among states seeking to maximize relative strength and power, and tend to act in a zero-sum way[46], in their quest to shape international economic law, processes and institutions. Ultimately mercantilists and neo-mercantilists advocate for economic nationalism on the ground that a nation could only gain in trade only at the expense of other nations.

The Liberals on the other hand privilege economics over the political, in trying to explain the relationship between the state and the economy. They argue that economy should be left to operate as freely as possible without interference by the state. The state is necessary to provide law and politico-military security and to support the social fabric in areas in which markets fail to do so[47].

The liberal approach is traceable to Adam Smith, who postulated that nation's economies should be informed by the idea of absolute advantage. That is, they should specialize in producing a commodity which they enjoy absolute advantage in terms of costs and pricing and exchange it with commodities that they have absolute disadvantages on[48]. The view was modified by Ricardo, who argued for international trade on the basis of comparative advantage. According to the law of comparative advantage, even if one nation is less efficient that is (has an absolute disadvantage with respect to) the other nation in the production of both commodities, there is still a basis for mutually beneficial trade. The first nation should specialize in the production of end export the commodity which its absolute disadvantage is greater (this is the commodity of its comparative disadvantage)[49].

[46] See N. Woods, 'International Political Economy in an age of Globalization' in Baylis J et al (ed), *The Globalization of World Politics (2nd ed)*. Oxford, OUP, 2001, pp 277-298: 285
[47] B. Buzan et al, *Security: A New Framework for Analysis*, op cit, p 95
[48] See D. Salvatore ,*International Economics* (8th ed).Clement Loop: Willley and sons, 2004, p 33
[49] Ibid, p 115

The Ricardian liberal approach has been modified by other economists such or Hecksher and Ohlin who in their theory of international trade argued that nations tend to export commodities whose production requires intensive use of factors production that a nation possess in abundance and import those commodities whose production intensively use factors that are relatively scarce and hence expensive. For instance a labour abundant country will specialize in producing commodities which are labour intensive and vice versa[50].

Though this views have been modified by other economists who have critiqued[51] the assumption of a perfectly competitive market, assumption of technological resources as given, economies of scale and learning curve, Liberal approach to economics and economic security has remained prevalently informed by the claim that, 'free trade creates the preconditions for growth and increased welfare of all countries which participate in it"[52] and that governments should play an optimal role and the rest should be left to the market.

The mercantilists and liberal approach to economic security provided have failed to provide an adequate framework of approach to economic security. This is because, they approach economic security from macro-economic level, concerned about issues such as balance of payments, gross domestic products, rate of economic growth and so on. Such an approach overlooks the specific details such as who is benefiting from economic growth, what are the costs of economic growth in the long term and what are the sectoral impacts.

---

[50] Ibid, p 115
[51] For example, see J. Stiglitz, *Globalization and its Discontents* .London: Penguin 2002, S. Thomas and B. Frank; *Taking Sides: Clashing Views on Controversial Economic Issues (7ᵗʰ ed)* .New York: Dushkin Publishing group, 1995 and K. Nagesh and N.S Siedlhatan, Technology, Market Structures and Internationalization: Issues and Policies for Developing Countries. London: Routledge, 1997
[52] See the Preamble of WTO Rule in B. Hoekman et al, *Development, Trade and WTO*. Washington: world bank, 2002

As a result, new approach has emerged with emanicipatory agenda and multiple referents of economic security. The approach is informed by the view that, issues such as poverty, hunger and starvation are prevalent in the society. Shaheen observes that,

'since 1945 the world has seen unprecedented economic development, yet almost one third of the planets human population live in conditions of abject poverty and over 14 million people die of hunger each year. In the majority of third world countries the main security threats take the form of issues such as population growth, social instability, diseases, lack of proper healthcare, and inadequate access to clean drinking water.[53]'

The prevalence of these issues are not attributable to absolute lack of resources to them, but are a product of lack of political will to address them, false belief in the market ability to ameliorate human material condition, the view that the poor are poor because they are not motivated enough to get out of poverty, skewed distribution of resources within the states, and widespread marginalization and exclusion from participating in gainful economic activities.

The approach argues that economic security then should have a goal of ameliorating the human condition. Out of this concern a human security framework to economic security has emerged for any meaningful economic security, must first address basic needs, for unless a human being's basic existential survival needs are met, all other considerations become moot. Indeed, welfare and quality of life are important in any society and the standard aimed must be higher than basic survival if people are to be able to play their part as full members of society[54]. The alternative is a Kaplanian Coming Anarchy best captured by a description of a slum in Abidjan,

' it is a checkerwork of corrugated zinc roofs and walls made of cardboard and black plastic warp. Few residents have access to electricity, sewage system or a clean water supply....children defecate in a stream filled with garbage and pigs, drowning with malarial mosquitoes. In this stream women do the washing. Young unemployed men spend their time drinking beer, palm wine and gin while gambling on pinball games

---

[53] M. Shaheen, *International Security: An Analytical Survey*, op cit, p 77
[54] Ibid, p 80

constructed out of rotting wood and rusty nails. These are the same youths who rob houses in more prosperous neighborhood at night[55].

Within a human security framework for economic security, the impact of immigrant can be analyzed especially in relation to citizens' access to basic human needs. The impact is more felt in urban areas, where immigrants mostly prefer to settle especially voluntary legal and illegal ones and also refugees who manage to find a way out of refugee camps. In Kenya urban areas are estimated 60,000 urban refugees, and more than 600,000 voluntary migrants working for international non-governmental and governmental organizations, multi-national companies and in economic sectors.

It is not possible to draw generalities on their impact on economic security, for there lacks any critical attempt to analyze their activities and their impacts by the relevant government institutions. Importantly, they also act in concert with the locals hence it is not possible to point out specific immigrant related impacts in various sectors of the economy.

A research conducted by Kaliwanya[56] on urban refugees observed that,

'the refugees have led to the business enterprises such as the one witnessed in Eastleigh thus improving the living standards of not only the refugees but also the host population by reducing unemployment levels. This is a positive move. However, on the negative, refugees have been involved in illegal business of money laundering popularly known as 'Hawallah' and they have also led to increased costs of services in major towns especially on housing. The buying and rental prices of house have gone up such that it is unaffordable to the host population. Many host employees prefer to employ refugees because they pay them lower wages than the indigenous population thus creating unemployment'.

The issue of business activities of immigrants especially from Somalia has come under scrutiny. An intelligence officer noted that the inflow of capital from Somalia is not coincidental. Much of it is coming from illegal activities such as piracy, sale of weapons and smuggling of consumer

[55] R. D. Kaplan 'The Coming Anarchy' The Atlantic Monthly, February, 1994, p 4
[56] M. Kaliwanya, Urban Refugee in Nairobi. Centre for Refugee Studies, IFRA Publications, March-April, 1998

goods. Importantly, the returns on investments are finding their way back to Somalia to finance the ongoing civil war[57]. The view was supported by a foreign exchange dealer in Eastleigh operating a *Hawallah*. He stated that between the months of May and July, he had transacted over 10 million US Dollars and much of the money was sent to Somalia[58].

Related to the suspect source of capital, is prevalence of illegal business practices such as tax evasion. One respondent pointed out the mix of legal and illegal business activities in Eastleigh, which has become the busiest commercial avenue in Nairobi. He observed that, 'upscale brands of fashion, electronics and other consumer items can be purchased at 20 to 30 percent below price elsewhere in town and services such as internet and phone, can be obtained at a fraction of normal costs'[59]. The local charges are due to tax evasion. An on-going investigation by Kenya Revenue Authority indicates that, Eldoret International airport has become a major smuggling point, where immigrants with networks in major trading hubs such as Singapore and Dubai, imports their wares through. From Eldoret, goods are transported via road to Eastleigh, and distributed to various destinations. Rough estimates show that the government is loosing 100 million US dollars annually due to this smuggling, in addition to the pricing out of many legitimate businesses due to unfair competition[60].

The issues of housing costs have also been linked to immigrants. In urban areas where there is sizeable numbers of immigrants, there has been increase in monthly rents. This is more prevalent in Eastlands, (South B, Eastleigh, parklands) and along Ngong road (Hurligham,

---

[57] An interview with an intelligence officer conducted on 12th of August ,2009
[58] An interview with a foreign exchange dealer conducted on 20th of August,2009. *Hawallah* is an informal money transfer system
[59] An interview with a Kenya Revenue Authority Employee conducted on 20th of August,2009
[60] Ibid

95

Kilimani and Adams Arcade). The increase is attributable to migrants' willingness to pay more compared to the hosts.

A respondent in parklands observed that, 'the Ethiopians (who are more dominant in the area), have a lot of money. Some come and are willing to pay double the current rates and pay upfront for one year. This has made them preferred tenants at our expense. Consequently, the previously low cost housing estates such as Pangani and Ngara, have become unaffordable to locals. A single-room house, which used to cost Kshs. 3,000 is now going for Kshs. 6,000 per month[61].

Further, immigrants have pushed up the prices of housings in both middle class and up market areas especially in Mombasa and Nairobi. A respondent working with a reputable real estate agency observed that, 'the Somali are no longer restricted to Eastleigh. They are now buying houses in middle class areas like South B and some are even buying properties in upmarket areas such as Runda and Diani beach in Mombasa. Further, they have cut an image of having a lot of money and they are even willing to pay full cost upfront. This was corroborated by another real estate agent, who argued that unlike Kenyans who are always bargaining' Somalia, Ethiopians and Eritreans, are willing to pay even more than the 'valued' price, making them preferred buyers'. Their willingness top pay higher sums have made owning of house impossible for majority of Kenyans and those who can afford are buying at prices higher than the actual market price[62].

---

[61] A real Estate agent working for Crystal Valuers Ltd conducted on 21st of august,2009.

[62] Ibid

The Nexus between Environmental Security and Presence of Immigrants in Kenya

Broadly, environment refers to the aggregate of all external conditions and influences that affect the life and development of organisms[63]. The nexus between environment and security has gained attention over the past decades. Mudida observes that 'environmental security has become critical in recent years, particularly fundamental has been addressing ecological degradation and natural resource scarcity..... Environmental security has become a common security issue due to the recognition that the environment provides the fundamental life support system[64]. A pioneering study on environment and security has been Toronto school led by Thomas Homer – Dixon. The school has sought to establish the connection between environmental scarcity and violent conflict.

Homer Dixon and Blitt have developed the concept of environmental scarcity in three types: supply-induced scarcity caused by degradation and depletion of an environmental resource; demand-induced scarcity resulting from population growth within a region or increased per capital consumption of a resource either of which heighten the demands for a resources; structural scarcity which arises from an unequal distribution of a resource that concentrates it in the hands of a relative few people while the remaining population suffers from serious shortages[65].

Dixon argued that, 'we have to stop separating politics from the physical; world – the climate, public health and environment. For too long we have been prisoners of 'social- social' theory, which assumes there are only natural causes for social politics and political changes, rather than natural causes too. This social-social mentality emerged with the industrial revolution

[63] D. Pati 'Environmental Protection' *Employment News*, New Delhi, 9-15, Dec, 2000, p1
[64] R. Mudida 'Links Between Climate Change and Conflicts in Ethiopia' in J. Warkhungu and E. Nyukuri (eds), *Climate Changes and Conflict in East and the Horn of Africa.* Nairobi: Acts, 2009, p 43
[65] Cited in M. Sheehan, *International Security: An Analytical Survey*, op cit, pp 109-110

which separate us from nature. But nature is coming back with vengeance, tied to population growth. It will have incredible security implications[66]. The work of the Toronto schools and an essay titled the *Coming Anarchy* by a journalist cum ethnographer Robert Kaplan, thrusted environmental scarcity induced conflict discourse into the limelight.

The connection between environmental scarcity and conflict is not linear. As Sheelan argues,

> 'there is nothing inevitable about the link between environment problems and conflict. It is possible for the former to result in conflict but a number of other variables need to trigger not only a sense of deprivation, but also and specifically a feeling of relative deprivation in a structured situation. where the possibility to move beyond peaceful political action to violence is institutionally present"[67].

Essentially for one to synthesize the environment – security nexus, there is a need to approach it against the background of social, political and economic of environment which creates feelings of relative deprivation.

Relative deprivation is defined as the perceived discrepancy between men's value expectation and their value capabilities. Value capabilities are the good conditions they think they are capable of attaining or maintaining, given the social means, available to them. The degree of relative deprivation is of critical importance in influencing environmental conflict dynamics. This is related to Gurr's assertion that, the severity of deprivation affects both the intensity of violence and its duration [and that] mild deprivation will motivate few to violence, moderate deprivation will push more across the threshold, very intense deprivation is likely to galvanize large segments of a political community into action[68].Thus, for environmental scarcity

---

[66] Cited in R. Kaplan, 'The Coming anarchy', op cit, pp 9-10
[67] M. Sheehan, *International Security: An Analytical Survey*, op cit p 109
[68] See T. Gurr, Why Men Rebel. Princeton N.J: Princeton University Press, 1970, p13

to lead to conflict, there must be intense feeling of deprivation and importantly absence of a fair third party arbiter of distributive conflicts.

From these views, one can thus hazard that environmental scarcity induced conflict, are prevalent, in areas where a fair third party arbiter in this case a state is absent, and communities are marginalized, intensifying the feeling of relative deprivation. An exemplary case is found in the arid and semi-arid regions of Kenya there prolonged drought, absence our minimal mitigation measures, widespread poverty already generates environmental insecurity.

The insecurity has been intensified by massive movements of refugees[69] and seasonal immigrant pastoral communities to the region, creating environmental shocks which exacerbate an already complex emergency. In case of refugees, Kenya currently hosts between 250,000 and 280,000 refugees in Kakuma and Daadab camps[70]. This year alone, the intensified conflict in Somalia has led to 34,000 registered new arrivals. Certainly, such a huge influx of refugees in an already fragile resources scarce ecosystem is bound to lead to environmental security threats and vulnerabilities.

Martin[71] observes that, population increase especially when it occurs rapidly (e.g massive influx of refugees) places additional stress on local resources. For instance refugees are often provided with construction materials and fuel for cooking and these resources will often by necessity be collected from the local environment. Worse still, refugees view themselves as temporary and as such pay less attention to the long term ecological sustainability. The outcome is the resource scavenging or tragedy of commons. Environment is destroyed as lands are cleared

---

[69] Also see Chapter three, p.67
[70] See UNHCR 'UNHCR Global Appeal, 2008- 2009 Kenya at http.www.unhcr.org/home/PUBL/47ac8ceo.pdf.also Refugees Administration and Management in Kenya' at www. Refugees.go.ke
[71] A. Martin 'Environmental Conflict between refugees and the Host Community' Journal of Peace Research, Vol 42, No. 3, 2005, pp 332-333

to create space for refugee complexes and provide construction materials and wood for fuel. This intensifies resource scarcity. The objective outcome of environmental destruction is magnified by the local subjective environmental – related problems discourse, which has a tendency of viewing refugees as having an impact beyond their numbers. A view captured by Marti assertion that, 'the perception of refugees as exceptional resources users' is still very popular' among the locals[72].

In the Kakuma refugee camp, the complex has intensified resource scarcity through activities such as cutting down the acacia trees for fuel and poles for constructing shelters. A humanitarian worker, working for an international non-governmental organization notes that, 'the massive influx of refugees have stretched the fragile ecosystem coping capacity, as more land is cleared to host additional numbers of refugees and the refugees continue to rely on wood fuel[73].

Importantly the refugees have created a sense of deprivation. Despite their role in continued destruction of the environments they do not suffer more than the hosts. The United Nations High Commissioner for Refugees and other humanitarian organizations working in the camps have made life easier through provision of humanitarian assistance. Quite often, the camps have access to water from the boreholes drilled within the camps. In addition they are provided with food ration whereas the locals have to scavenge or wait for the government relief supplies[74]. This has led to building up of resentment, which as one respondent put it, 'may lead

---

[72] Ibid, p333
[73] An interview with an employee of ActionAid International, a humanitarian non-governmental organization conducted on 24th of August,2009
[74] Ibid

to outbreak of violence, for they [locals] cannot understand why the 'foreigners' are been privileged over them, yet, they are a part of the problem through environmental degradation[75].

Environmental resource scarcity is also prevalent beyond the refugee camps. One respondent noted that, 'these areas are characterized by scarcity, and pasture and water resources are often found in disputed lands. For instance most water points in Turkana District are found in Loinia and Lorengipili hills. The region border Uganda, Sudan and west Pokot. Consequently, there has been conflict, frequently degenerating to bloody clashes in the district, as communities move across border, in search for pasture and water. Another region is the Elemi triangle, which has served as traditional grazing lands for Turkana in times of drought. The movement of Toposa from Sudan and Merille from Ethiopia to the triangle has led to unending cycles of conflict. An immigration officer noted that Elemi triangle is one of the most militarized region in the country, as Turkana fight with Toposa and Meville over access to pasture and water[76].

Though it is tenuous to attribute environmental resource scarcity as the main cause of insecurity in the region, it is nevertheless, the main intensifier of conflict. It interacts with social-cultural dynamics traditional amenities proliferation of small and light weapons and absence cerate of state security complex insecurity and zones of lawlessness, where only the strong can survive, this is further exacerbated by increased population due to influx of refugees and nomadic pastoralists.

Immigrants and threats to Societal Security

In security analysis, the important attributes of the society are those ideas and practices that identify members of a social group. Within the societal sector, the organizing concept is

---

[75] Ibid
[76] An interview with an employee at PACT Kenya, an NGO operating in ASALS conducted on 24th of August,2009

identity. Anything that threatens the identity is viewed as a threat to societal security[77]. Ole Waever, who coined the term in the study on the impact of immigration in Europe, defined societal security as the ability of the society to exist in its essential character under changing conditions and possible or actual threats. More specifically it is about sustainability within acceptable conditions for evolution of traditional patterns of language, culture, association, national identity and custom[78].

Immigrants threaten societal security through various ways. First, influx of immigrants may overrun or dilute the identity of a people especially if they bring new cultures to the host population.[79] Secondly, they may bring with them diseases which were not present in the society before, and third, they may exacerbate immorality and drugs problems.

In Kenya, immigrants have contributed to societal insecurity through three main ways: These are spread of diseases, drug abuse and immorality especially in urban and popular tourism centres. In terms of diseases, the most uncontroversial one is Poliomelitis. In Turkana district, medical officers have diagnosed more than 50 cases of polio, a disease that was declared eradicated in Kenya more that twenty years ago. In a press briefing the medical officer attributed the new cases to immigrants from Southern Sudan, where owing to civil war, no concerted polio-eradication campaign has taken off[80].

On drug abuse, an officer attached to the National Alcohol and Drugs Control Agency (NACADA) painted a catastrophic picture of drugs abuse especially in coastal trip where tourism is popular. This is more so in Kisauni area, and he attributed to the presence of tourism. Most of the youths hooked to drugs are introduced to drugs by tourists who exploit them for sex. The

---

[77] B. Buzan et ai, *Security: A New Framework for Analysis* op cit, p 119
[78] B. Buzan, *People, States and Fears*, op cit, p20
[79] See chapter two, p.47
[80] Nation Television News at www.nation.con/news/archives

same situation is present in Malindi area, where the local communities are struggling to cope with drug abuse among the youths[81]. Another respondent noted that, though it is unfair to attribute drugs problem to 'foreigners', they do play a substantial role in worsening the drugs scourge. The magnitude of the problem, has led to community mobilization against drug peddlers[82]. The anger expressed projects a community which feels vulnerable as its values especially Islamic values continue to be assaulted by foreigners.

Related to the problems of drug abuse, is destruction of societal moral values, especially due to increased incidents of commercial sex, which includes even minors. A study by UNICEF on child sex revealed that the practice is widespread, as the younger boys and girls tend to earn more[83]. On average, the report estimated daily earnings of 300 Euros for minors aged 15 years and below. Though the report indicated that the child sex exploitation is not uniquely foreign tourists' phenomena, with Kenyan adults being involved, foreigners are blamable for introducing the vice in the first place.

The outcome has been widespread acceptance of commercial sex as a source of livelihood in some coastal communities. A respondent observed that, 'commercial sex is widespread here (coast strip), and residents largely turn a blind eye on it. It is not unusual for family to have a rota indicating who is to bring food home everyday. What that implies is that males and females have to go out engage in commercial sex so as to earn money for food"[84]. Another respondent stated that, 'this applies even for married couples, especially during the tourist high seasons. There is a tacit agreement between the husband and wife. The husband goes looking for white women and the wife for white men. This way they hope to capitalize on high

---

[81] An interview with a NACADA official conducted on 13th of August,2009
[82] An interview with a NACADA official conducted on 13th of August,2009
[83] The study is available at www.unicef.org/kenya/childsextourism
[84] An interview with an immigration officer working at Mombasa conducted on 13th of August,2009

season boom and accumulate enough money to see them through tourism low seasons (kusi), when there is not much economic activities'[85]. The fact that even couples can agree to engage in commercial sex epitomizes the moral rottenness which has besieged the predominantly conservative Muslim communities.

Societal security, is very fluid, and cannot be objectively measured. It is difficult to delineate the threats and vulnerabilities which can be blamed on immigrants and that which evolves due to locals contact with different cultures through other mediums such as mass media. For instance it is untenable to blame foreigners for moral; decay in coastal strip. Even domestic tourists and locals are fueling the vice, for they engage in the same activities as foreigners.

---

[85] An interview with a NACADA official conducted on 13th of August,2009

CHAPTER FIVE

Conclusion

The chapter makes a synthesis of the research findings within the framework of the objectives set and the hypotheses developed. At a broad level the study aimed at establishing the linkages between immigrants, conflict and national security.

The first chapter has dwelt into the background of the study, developed the theoretical framework to be used, objectives, hypotheses and the chapter outline. It has established that immigration potentially has both negative and positive impacts in their host countries. To delieanate the grounds which the threats and vulnerabilities thrives, the study employed a sectoral approach to national security. The approach is rooted in the broadened concept of national security which identifies five major sectors upon which an analysis of national security should rely on. These are the military, political, economic, environmental and societal sectors[1]. The sectoral approach has proven successful for it allows for disaggregation of variables and focus on several referents of security, beyond the traditional state-centric conceptions

Chapter two has analyzed the conceptual and theoretical debates revolving around immigration, conflict and national security. Immigration process has attracted various theoretical perspectives within the main stream international relations. The perspectives explain the factors influencing immigration, immigration policies, and impacts of immigration. The approaches are: Marxist approach which approaches immigration from the perspective of dynamics of the international capitalist economic relations.[2] The national identity approach focuses on national

---

[1] See B.Buzan, *People, States and Fears: An Agenda for International Security studies.* New York: Harvester ,1991,pp 19-20

[2] See E.Mayers, *Theories of International Immigration Policy: A Comparative Analysis.* International Migration Review, Vol 34, No 4,2000, pp45-1282:1246

attributes of the receiving state as the main determinant of immigration.[3]The third theoretical construct is domestic politics which argues that response to immigration is determined by nature of domestic politics in terms of the preferences of political parties in power and the constellation of interest groups linked to it[4]. The fourth approach, the institutional approach, focuses on the role of states and argues that state is a key actor in shaping immigration issues and the pursuit of state as opposed to societal interests often leads to policies which go beyond societal interests.[5] The theories do not integrate national security as a key variable in their explanations. This is a reflection of the international relations slow progress in embracing the broadened security agenda, and recognition of immigration is a dynamic of international relations. Thus immigration remains orphaned within the main stream international relations scholarship.

Chapter three analyses the Kenya's legal and institutional framework on immigrants. The main laws are drawn from the constitution, Immigration Act of 1967, the Citizenship Act, Aliens Restriction Act, Administration Police act, children's Act, and Sexual Offences Act. The laws develop procedural requirements for entry and residency in addition to the expected behavior for any non-citizen residing within Kenya's territorial jurisdiction. Further, the chapter has analyzed the institutions set up to deal with immigrations and related issued. One key characteristic of the legal and institutional frameworks is their restrictive nature. They are more oriented towards national security concerns and invest the relevant authorities with sweeping powers, to expel any non-citizens who threaten national security.

---

3 See R.W.Brubaker, Comments on Modes of Immigration in Liberal Democracies. International Migration Review, 29(4),1999,pp 903-908
4 See Fitzegerald.k. The Face of Nation: Immigration, the Nation State and National Identity .Stanford : Stanford University Press, 1996
5 See A.B. Simmons and K. Keohane, Canadian Immigration Policy: State's Strategies and the Quest for Legitimacy. Canadian Review of Sociology, 29(4), pp 421-452

Chapter four has utilized the sectoral approach to analyze the impact of immigrants on the national security. By integrating conceptual developments in the security studies field, previous research on immigration and primary data collected from key informants in the field, this chapter has provided specific impacts on the national security. It has shown that immigrants' activities do create threats and vulnerabilities in military, political, economic, environmental and societal sectors.

The summary of research findings indicates that there exist immigrants' generated sectoral specific threats and vulnerabilities. When synthesized within broadened national security framework, a number of issues have emerged.

One, there is a need to problematize immigration processes within the mainstream international relations approaches. This is possible if within an expanded conceptualization of security, which multiplies the referent objects, increases levels of analysis and allows for sectoral specific analysis within national levels. Theoretical construct discussed above are biased towards economic and political analysis, paying little attention to national security concerns. Further, they are ill-suited to address the unique national security situations faced by third-world countries. In these countries threats are predominantly internal and highly vulnerable to immigration flows, which may intensify existing tensions and generate new nation security problems. This call for an approach to immigrations founded on the broadened (inter)national security framework.

Two, there exists enough evidence on the need to securitize immigration policies relating to procedural and substantive requirements for entry and residency. However findings indicate that securitization of immigration need to pay special attention to different categories of immigrants, especially on the grounds of immigrants' ideological orientation and countries of

origin. Though international law prohibits non-discrimination on the grounds of national origin, it is evident, that, much of threats vulnerabilities posed by immigrant in Kenya come from ethnic Somalis. This calls for more stringent screening restriction measure, and surveillance for the Somalis, which may amount to discrimination. This shows the delicate balance which states must strike, between demands for national security and the international law and norms, which are general in their elucidation and consequently do not adequately address, specific states needs.

Corollary to this is that there is no linear relationship between immigrants, conflict and national security. The study findings shows that the nationality of the immigrants, ideological or value orientations, the integrity of the host state's legal and institutional frameworks on immigration and immigrants and the activities of immigrants in the host countries, are key determinants of the actual and potential national security. Thus it is not coincidental that, ethnic Somalis pose more threat than other immigrants.

Third, Kenya's response to immigrants' related threats and vulnerability is inadequate. The frameworks developed are informed by more restrictive traditional definition of what constitutes national security grounds. This restrictive interpretation have left out vast areas of security concerns unaddressed by immigration laws, institutions and policies. For instance, there is no sustained response to the increased costs of housing, environmental degradation, SALWS proliferation and encroaching immorality. This threatens different sectors and referents of security apart from the state, and can only be addressed within broadened national security framework.

The findings achieves the study objectives which were to analyze the conceptual relationships between migrations conflict and national security, assess whether immigrants have been a sources of threat to national security in Kenya, problematize the need for 'securitizing'

immigration and enhance the understanding of how immigration threatens national security. Further, they confirm the first hypothesis, that immigration leads to national security threats. The study nullifies the second and third hypotheses, that is international immigration policies should not be securitized and migration does not lead to conflict and thus is not a threat to Kenya's national security.

BIBLIOGRAPHY

Abrahamsen, R. 'A Breeding ground for Terrorists? Africa and Britain's 'War on Terrorism' *Review of Africa Political Economy*, Vol 31, No 102, 2004.

Adelman .H, and suhrkhe. A (eds) *The Path of genocide: The Rwanda Crisis From Uganda to Zaire:* Kampala: Transaction Publishers, 1999.

Aleinikoff, A. *'International Legal Norms and Migration: An Analysis.* Geneva: international Organization for Migration, 2002.

Alexander, Y. *International Terrorism: National Regional and Global Perspective.* New York: Praeger Publishers, 1976

Arnold, G . *Kenyatta and the Politics of Kenya.* TransAfrica Publishers, 1975

Ayoob M(ed) ,*Regional Security in the Third World: Case Studies From South East Asia and Middle East,* London: Croom Helm, 1986.

Ayoob, M, The *Third World Security Predicament' State Making, Regional Conflict and the International System* Boulder: Lynne Reiner, 1995.

Banks M. (eds), *Conflict In World Society: A New Perspective In International Relations.*Sussex: Harvester, 1984.

Baylis J et al (ed), *The Globalization of World Politics (2nd ed).* Oxford, OUP, 2001.

Beck ,U. *'World Risk Society.* London: Polity Press, 2002

Bercovitch. J (ed), *Resolving International Conflict: The Theory and Practice of International Mediation.* Boulder: Lynne Reinner, 1996.

Booth, K 'Security and Emancipation' *Review of International Studies,* Vol 17(3) 1991

Boswell, C. *'The Conflict Between refugee Rights and National Interest: Background and Policy Strategies '*Geneva: United Nations High Commission

Brubake. P. W. *Citizenship and Nationhood in France and Germany* .Cambridge: MA Harvard University Press, 1992

Brubaker, R.W 'Comments on Modes of Immigration in Liberal Democracies' *International Migration Review* 29(4), 1995, pp 903-908

Buzan, B *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era.* New York: Harvester Wheatsheaf, 1992.

Buzan, B, Waever, O and Wilde, J. *Security: A New Framework for Analysis.* London: Boulder, 1998

Castells, M. 'Immigrant Workers and Class Struggles in Advanced Capitalism: The Western European experience' *Politics and Society* 5 (1) 1975.

Castells, S and M. Miller, *The Age of Migration International Population Movement in the Modern World*. London: Macmillan, 1996.

Chacko ,E. 'Identity and Assimilation among Young Ethiopian Immigrants in Metropolitan Washington' *Geographical Review, Vol 93*, No 4, October, 2003.

Chalk, D. 'The Response to Terrorism as a Threat to Liberal Democracy' *Australian Journal of Politics and History*, vol 44, No.3, 1999.

Chloros ,A et al 'Breaking the cycle of violence: Light Weapons Destruction in Central America' Occasional Paper No. 24. London :British American Security Information Council, 1997.

Cox, R. 'Rebels without a cause? Radical Theorists and the World system after the Cold War' *New Political Economy*, 3(3) 1998.

Crawford B et al, The *Myth of Ethnic Conflict*. Berkeley University Press, 1998

Crenshaw, M. 'The Concept of revolutionary terrorism' *Journal Of Conflict Resolution*, 16, 3, 1972.

Denemark et al, *World System Theory History*. London: Routledge, 2000.

Department of Refugee Affairs, '*Refuges Administration and Management in Kenya*' at www.refugees.go.ke

Deshing, Kar P and Grimm, S, '*Internal Migration and Development: A Global Perspective*. Geneva: International Organization for Migration, 2005.

Devitt et al (eds) *Building a new Global Order: Emerging Trends in International Security* Oxford University Press, 1995

Enders, W and Sandler, T, *What do we Know about Substitution Effect in Transnational Terrorism*. California: University of South California, 2002.

Feyerabend, P. *Against Method*. London: verso, 1988

Fitzgerald K. *The Face of the Nation: Immigration, the State and National Identity*. Stanford: Stanford University Press, 1996

Gendrot ,B. and Schain '*National and Local Politics and the development of Immigration Policy in the United States and France: A Comparative analysis in two democracies*'. New York: New York University Press, 1992

Goodwin, G. '*The Language of Protection*', *International Journal of Refuge Law*, 1989.

Gott, C. and Johnson, K. 'The Migrant Population in UK: Fiscal Effects'. Home Office research Development: Directorate Occasional paper, No. 77, 2002

Government of Kenya, counter terrorism Strategy, 2003

Greenwood, C. 'International Law and the 'War Against terrorism', International Affairs, 78, 2 2002

Gurr, T. Why Men Rebel. Princeton N.J: Princeton University Press, 1970.

Hammar, H. European Immigration Policy: A Comparative Study Cambridge: Cambridge University Press, 1985.

Hayden, G. 'Livelihood and Security in Africa: Contending Perspectives In The New Global Order' Vol 6, 1996.

Heinrich .W, Building the Peace: Experiences and Reflection of Collaborative Peace Building: The Case of Somalia Uppsala: Life and peace Institute, 2006.

Hoekman, B. et al, Development, Trade and WTO. Washington: world Bank, 2002

Huntington S. 'The Clash of Civilization' Foreign Affairs, vol 72, No 3, summer, 1993

Imre, L(ed). In Criticism and the Growth of Knowledge. Cambridge: Cambridge University Press, 1970.

International Center for Migration Policy and Development, East Africa Migration Route Initiative: Gaps and Needs Analysis: Country Report: 2008.

International Organization for Migration, World migration report. 2007

IPEP: Rwanda: The Preventable Genocide: Addis Ababa: OAU, 2000 Annex 9.

Jinada, K.A, Political Economy of peace and Security in Africa. Harare: Apps Book, 2002.

Job, B (ed), The Security Dilemma: National Security in Third World States. Boulder: Lynne Reiner, 1992.

Kafwihi, P 'History of Immigration' A Seminar Paper for the Department of Immigration, 1998

Kaldor, M. 'New and Old Wars: An Organized Violence in Global Era: Washington: Policy Press, 1999

Kaliwanya, M, Urban Refugee in Nairobi. Centre for Refugee Studies, IFRA Publications, March-April, 1998

Kamenju, J et al, Terrorized Citizens: Profiling Small Arms and Insecurity in the North Rift Region of Kenya. Nairobi: Oakland Media Services 2003.

Kaplan, R. D. 'The Coming Anarchy' *The Atlantic Monthly*, February, 1994.

Keller E.J et al (eds) *Africa In The New International Order: Rethinking State Sovereignty and Regional Security*. Colorado: Lynne Reiner, 1996.

Keller E.J et al, *Africa in New International Order: Rethinking State Sovereignty and Regional Security* Colorado: Lynne Reiner, 1999

Kelley.N and Trebilock M.H, *The making of Mosaic: A History of Canadian Immigration Policy:* Toronto: Toronto University Press, 1998

Kenya, Country Reporting on Human Rights Practices', US Bureau of Democracy, Human Rights and Labour, http://www.state.gov/g/dm/2005/61575.htm

Ku, A.S. 'Immigration policies, Discourses and the Politics of Local Belonging in Hong Kong(1950-1980).*Modern China*, Vol 30,No 3,July,2004.

Kunz, E 'The Refugee in Flight: Kinetic Model and Forms of Displacement'. *International Migration Review*, 15, 1973

Kutz M.M et al (eds) *Global Trends in Migration: Theory and Research on International Population Movement*. New York: Centre for Migration Studies, 1995.

Lake, D.A 'The New Sovereignty in International Relations' *International Studies Review*, Vol 5, No.3, 2003.

Lanley, A and White, N, *Conceptualizing the Border* .Wellington: Institute of Policy Studies, 2006.

Lesser, O.I, Countering *the New Terrorism*. Washington: Rand, 1999.

Lynan, N. and Stephan, J. 'The Terrorist Threat in Africa' *Foreign Affairs'*, Vol 83, No 1, Jan-Feb, 2004.

Mann, M. '*Sources of Social Power Vol 11: The Rise of Classes and Nation States*. Cambridge: Cambridge University Press, 1993.

Martin, A. 'Environmental Conflict between Refugees and the Host Community' *Journal of Peace Research*, Vol 42, No. 3, 2005.

McBride, M.J. 'Migrants and Asylum Seekers: Policy Responses from Central America and Caribbean' *International Migration Review*, vol 37(1), 1999.

Mcenroy, C. and Murray, R. *'Gauging Fear and Insecurity: Perspectives on Armed Violence in Eastern Equatorial and Turkana North*. Geneva: SMRS, 2008.

Meisner, D. 'Managing Migration' *Foreign Policy*, 86, 1992

Meyers, E. 'Theories of International Immigration Policy: A Comparative Analysis'
International Migration Review 34 (4), 2000.

Miller, R.K. *The informed Argument* (4th ed). New York: Brace College, 1995.

Morawska, E. 'Intended and Unintended Consequences of Forced Migration: A Reflected Aspect of Eastern Europe's Twentieth Century', *International Migration Review*, vol 34, No 4, winter 2000

Morgenthau, H., *Politics among Nations: The Struggle for Power and Peace (5th Ed)*. New York: Alfred A. Knoff, 1978

Muggah ,R. and Eric, B. *Humanitarian under Threat: The Humanitarian Impacts of Small Arms and Light Weapons*. Geneva: Small Arms Survey, 2004.

Muthoma P et al (eds), *Putting People First*. Johannesburg: SAIIA, 2000.

Mwagiru M. (ed) ,*African Regional Security in the Age of Globalization*. Nairobi: Heinrich Boll Foundation, 2004.

Mwagiru, M 'Refugee *Protection and the Diplomacy of National Security in Kenya: A Framework for Analysis*' in *Refugee Protection in the Context of National Security: Refugee Consortium of Kenya*, 2008.

Mwagiru, M, *Conflict in Africa: Theory processes and Institutions of Management*. Nairobi: CCR, 2006.

Mwagiru,M et al (eds), *Rethinking Global Security: An African Perspective*: Nairobi: Heinrinch Stiftung boll, 2006.

Nagesh, K. and Siedlhatan, N.S, Technology, *Market Structures and Internationalization: Issues and Policies for Developing Countries*. London: Routledge, 1997

Nhema, A. '*The Quest for Peace in Africa Transformation, Democracy and Public Policy*. Utrecht: International Books, 2004.

Nurow, A, *Field Study Report: Control and Management of Northern Kenya Border (Sudan and Ethiopia)*. Ministry of Immigration, July, 2007

Nurow, A.A '*Field Study Report: Control and Management of Northern Kenya Border*' Department of Immigration, 2007

Nyukuri , E et al (eds) , *Change and Conflict in East and the Horn of Africa* .Nairobi: Acts, 2009.

O'Brien, P. 'Migration and Its Risks' *International Migration – Review*, Vol 30, No.4, 1996.

Okome ,M.O, *The Antimonies of Globalization: causes of Contemporary Africa Migration to the United States of America*: http:// www.africanmigration.com/archive - 01/m- Globalization - 01.htm.

Papademetrious , D.G 'Migration '*Foreign Policy* No. 109, 1997-1998

Papademetrious, D. G and Martins, P.L *The Unsettled Relationship: Labour Migration and Economic Development: Contribution in Labour Studies.* West Port: Greenwood, 1991

Pati, D. 'Environmental Protection' *Employment News*, New Delhi, 9-15, Dec, 2000.

Rosewhek ,Z. 'Migration Regimes, Intra-State Conflicts and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State' *Social Problems*, Vol 47 (1), 2000.

Salvatore, D, *International Economics* (8th ed).Clement Loop: Willley and sons, 2004

Searle, J, *The Construction of Social Reality.* New York: Free Press, 1998

Seimmo ,S. et al, *Structuring Politics.* Cambridge: Cambridge University Press, 1992.

Selfuq, A. 'Cultural Conflicts: North Africans Immigrants in France' *The International Journal of Peace Studies*, 2000

Shaw, M. *International Law (4th ed)*.Cambridge: Cambridge University Press, 2004.

Sheehan, M. *International Security: An Analytical Survey* .Mumbai Viva Books Ltd, 2006.

Simmons, A.B and Keohane, K. 'Canadian Immigration Policy: State Strategies and the Quest for Legitimacy' Canadian *review of Sociology Anthropology* 29 (4)

Skeldon, R. *Migration and development: A Global Perspective.* Harlow: Longman Publishers, 1997.

Smith S. Booth, K and Zalewski, M. (eds), *International Theory, Positivism and beyond* .Cambridge: Cambridge University Press, 1996.

Smith, J 'Europe *Bids Immigrants Unwelcome* ' Washington Post Foreign Service, 23rd July, 2000

Smyser, W. R. *Refugees: Extended Exile.* New York: Praegler publishers, 1987.

Stiglitz, J. *Globalization and its Discontents* .London: Penguin 2002.

Thomas, S. and Frank,B. *Taking Sides: Clashing Views on Controversial Economic Issues (7th ed)* .New York: Dushkin Publishing group, 1995

Tinyayana, M 'The Refugee Problem and the Quest for Peace and Security in Southern Africa' *International Journal of refugee Law*, Vol 7(4), 1994.

Transparency International Kenya' *Kenya Bribery Index* ' http://www.tikenya.org

UNDP, 'Human Development Report', New York: Oxford University Press, 1994.

UNHCR 'UNHCR Global Appeal, 2008- 2009 Kenya at http.www.unhcr.org/home/PUBL

UNHR 'UNHCR Global Appeal 2008- 2009 – Kenya' UNHCR Fundraising Reports, available at htt://www.uhcr.org/home/PUBL/474ac8ceo.pdf.

United Nation Development Programme, Human Development Annual Report .New York: UNDP, 1994

United Nations Human Rights and Refugees: Fact Sheet No. 20.

United Nations, 'Human Rights and Refugees'. Fact Sheet, no. 20.

US Department of State 'Trafficking in Persons Report 2007" Publication 11407, available at www.state.gov/g/tip

Van Rory, A (ed). Civil Society and Aid Industry, London: Eastern Publications, Ltd, 1999.

Vlassenroot K et al (eds) Conflict and Social Transformation in Eastern DR Congo .Ghent: Academic Press 2004.

Waltz, K, Theory of International Politics. Reading MA: Addison Wesley, 1979.

Weiss, T Guns in the Borderlands: Reducing the Demand for Small Arms. Pretoria: Institute of Security studies, No. 95, 2004.

William, M.C'Words, Image and Enemies: Securitization and International Politics' International Studies Quarterly, 2003.

Wood, W.B. 'Local Conflicts and International Dilemma' In Annals of Association of America Geographers, Vol 84, Dec 1994.

Zlotnik, H 'International Migration 1965 - 1996: An Overview' in Journal of Population and Development Review, vol 24, No.3, Sept 1998.

United Nations Conventions

Convention on the High Seas, 29th April 1987,

United Nations Convention on the Law of the sea of 1982

International Convention on civil and Political Rights, of 1964

International convention on Economic and Social Cultural Rights

Convention of the Rights of Children, Article 8, Nov, 1989 UN Doc A/RES/44/25 91989

The 1969 OAU Convention on Refugees

Laws of Kenya

The Acts of parliament cap 85 and caps 128, 67 and 75 Laws of Kenya

The Citizenship Act of Kenya

The Constitution of Kenya (2002)

Aliens Restriction Act

Aliens Restriction Order, 1985

The Refugee Act, 2006

The Administration police Act

Immigration Act of 1967

Newspapers and Magazines

The Daily Nation (Nairobi)

The Standard (Nairobi)

The Economist (London)

African Renewal (UN publication)

Websites

http:// www.africanmigration.com/archive - 01/m- Globalization - 01.htm.

htt://www.uhcr.org/home/PUBL/474ac8ceo.pdf.

www.state.gov/g/tip

www.africanalerts.org/news

www.unicef.org/kenya/childsextourism

www.iss.org