

**AFRICAN IMMIGRATION POLICIES:
THE CASE OF KENYA, 1906-2000.**

BY

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**UNIVERSITY OF NAIROBI
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UNIVERSITY OF NAIROBI**

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DECLARATION

This thesis is my own original work and has not been presented for a degree in any other University.

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DEDICATION

To my late father, Charles Opon Ombewa and my mother, Rispa, for whom I feel greatly indebted for their commitment and moral support, and to all who have dedicated their lives to the service of others.

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AFRICANA COLLECTION

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ABSTRACT

This study was undertaken to evaluate the relevance of colonial immigration policies in the post-independent Kenya. The work set out to achieve three objectives. Firstly, the discussion of the functions of the immigration department. Secondly, assessment of whether or not continuation of most colonial immigration policies serves the best national interest of Kenya. Thirdly, to examine the social, economic, and political impact of immigration in the post-colonial Kenya.

Most existing relevant literature were reviewed and raw data in form of personal interview were collected from sample of about 150 respondents. Such data were analysed both by use of content and table statistics techniques.

The study came out with the following findings. Firstly, the current Kenya Immigration functions and structure are a replica of the pre-independence immigration ordinances, which do not sufficiently serve the contemporary government, and the consumers of immigration services. Secondly, the continuation of the colonial immigration policies is not in the best national interest of Kenya.

Thirdly, the visa policy, the passport regulations and the citizenship legislations reflect negative economic, social and political impacts in the post-colonial Kenya.

Based on the findings, the study made cogent recommendations to the academic fraternity, to the policy apparatus of organizations and to the general public.

LIST OF ABBREVIATIONS

ABEDA	Arab Bank for Economic Development in Africa
ADB	African Development Bank
AIO	Assistant Immigration Officer
APIO	Assistant Principal Immigration Officer
CAP	Chapter
CGFNS	Commission on Graduate of Foreign Nursing School
CIN	Certificate of Identity and Nationality
CO	Clerical Officer
COMESA	Common Market for Eastern and Southern Africa
DIS	Danish Immigration Service
DLCO	Desert Locust Control Organization
DPIO	Deputy Principal Immigration Officer
DRC	Democratic Republic of Congo
DSI	Directorate of Security Intelligence
EAC	East Africa Community
EEC	European Economic Community
EU	European Union
IBEACO	Imperial British East Africa Company
IBRD	International Bank for Reconstruction and Development
IDC	Identity Card
IDIS	Institute of Diplomacy & International Studies
IGAD	Inter-Governmental Authority on Development
IMF	International Monetary Fund

IO	International Organization
IOI	Immigration Officer One
IOII	Immigration Officer Two
IOIII	Immigration Officer Three
IRLCO	International Red Locust Control Organization
ISSJ	International Social Science Journal
KC	Kenya Citizen
KDP	Kenya Dependant's Pass
KEP	Kenya Entry Permit
KPP	Kenya Pupil's Pass
KREP	Kenya Re-Entry Pass
KSP	Kenya special pass
KVP	Kenya Visitor's Pass
MFA/IC	Ministry of Foreign Affairs & International Cooperation
OUA	Organization of African Unity
PIN	Prohibited Immigrant Notice
PIO	Principal Immigration Officer
PTA	Preferential Trade Area
RPF	Rwandese Patriotic Front
SAPIO	Senior Assistant Principal Immigration Officer
SS	Subordinate Staff
TD	To Effect Department
TEP	Temporary Employment Pass
TP	Temporary Permit
UK	United Kingdom

UNCTD	United Nations Conventional Travel Document
UNHCR	United Nations High Commissioner for Refugees
UNO	United Nations Organization
USA	United States of America
USSR	Union of the Soviet Socialist Republics
WB	World Bank

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CHAPTER ONE

1.0 INTRODUCTION

This work proposes to study the factors that have shaped Kenya's immigration policies since independence. Although much emphasis will be placed on the period after 1963, attempt will be made to highlight on the evolution of these policies from the colonial time. This will help us to see clearly the pace of transition from the colonial system.

Many scholars have defined immigration as a concept in different terms. Harris and Levey (1975) have taken the concept immigration to refer to:

“entrance of a person into a new country for the purpose of establishing permanent residence”¹

This definition compares very closely with the meaning expressed in Longman English Larousse (1968) which equates the verb to immigrate with the definition:

“to enter a country of which one is not a native, in order to live in it permanently or to bring a foreigner into a country for this purpose”²

The above conceptual meanings of the term immigration are not very relevant for purposes of this work. This is because the scope of this work will not be limited to particular time span. It intends to cover both those who want to settle in Kenya permanently, those who want to transit through Kenya to other destinations and those who want to settle in Kenya temporarily. In this case our working definition should approximate very closely with those given by Horsely (1977) and The Reader's Digest Great Encyclopedic dictionary respectively:

“The movement of people into a foreign country in which they intend to settle”³ or “the act of coming as settler into a foreign country”⁴.

Settling does not only mean permanent stay. People can settle permanently or

temporarily intending to go back to their countries of origin or to proceed to other countries. Therefore temporarily refers to those seeking to stay in doing a few things before going back or those seeking to stay in doing a few things before proceeding to other destinations. Our working definition should therefore take the concept immigration to refer to the control of the entry of persons who seek to live either temporarily or permanently in Kenya which control is exercised with reference to public security and the economic interest of the Kenya citizens.

The motives for immigration have remained almost the same from time immemorial. Jones, M.A. (1960) has observed that such motives include: "a mixture of yearnings – for riches, for land, for change for tranquility, for freedom, and for something not definable in words."⁵ This means that we can classify immigrants into two distinct groups: the first group includes forced immigrants such as refugees fleeing their country of origin or exiled persons who may enter Kenya to look for protection and security, displaced persons who may enter Kenya as a result of natural disasters such as floods, prolonged droughts earthquakes among other calamities.

The second group includes voluntary immigrants – such as tourists, those looking for economic attraction like industrialists, miners, traders, professionals among others. This group also includes foreign governments and I.O. representatives in Embassies and High Commissions, students from foreign countries who come to further their studies among others.

This work intends to cover samples of people drawn from the two broad groups for purposes of analyzing reasons or motives underlying their presence in Kenya in order to

find out what influenced Kenya government to permit their presence in Kenya. In this proposal, we also seek to obtain data from the immigration department of Kenya in order to ascertain how many and what classes of immigrants have been declared by the government as prohibited immigrants and causes why they have been branded so. This will help us to understand Kenya's immigration policies, which we can then generalize to Africa. Among these groups of immigrants, we will study both their positive and negative contributions to Kenya so that we can be able to commend or call for modifications or alterations of some of Kenya's immigration policies.

1.1 STATEMENT OF THE PROBLEM

Many African countries are either discarding or modifying some of the colonial legacies, which they find inconsistent with the post-colonial politico-economic and socio-cultural situations. Kenya's immigration policies and regulations look like continuation of the Kenya Colony and protectorate laws, statutes and immigration (control) regulations of 1948⁶ as amended up to the 31st December, 1950. When Kenya attained her independence in 1963 some of these regulations and statutes were slightly modified but with overwhelming influence of the British government. It was not until 1967 when the Kenya government policy officials decided to enact another legislation, immigration Act, CAP. 172 Laws of Kenya⁷, which has continued to direct Immigration practices in Kenya up to date.

The problem is that even the current policies and regulations are not in harmony with the needs of the government and the needs of the consumers of Immigration services. In the first place the current policies contain differential visa regulations, which require some nationalities to obtain a visa for Kenya before arrival, some nationalities obtain visa on

arrival in Kenya at the ports of entry and departures, while other nationalities do not require visa at all.

Such kind of visa regulation may demoralize certain foreign nationalities in their bid to come and tour Kenya or to come and open up locally job-generating industrial establishments. Such a possibility obviously carries with it negative economic results in that the government will lose the revenue she should have collected from the tourists or perpetuate the problem of unemployment which she should have curtailed by allowing relaxed conditions for industrial venture from outside.

If some of these restrictive visa regulations are merely a continuation of the colonial legacy which the British government introduced during the colonial days in order to safeguard her colonies and protectorates against other colonial foreign master in Africa, then they need to be re-assessed with a view to finding out their relevance for independent Kenya.

Secondly, the policy on entry permit also raises the problem of revenue for the government and the job security of the citizens. During the colonial days Kenya, among other African Countries, lacked skilled manpower. The colonial governments therefore favoured very relaxed policies on the issue of Entry Permit, which allowed foreign nationals to come into the colony for purposes of work, business, trade, and profession among others. This policy was very relevant to the colony during that time and in the formative years of independence. Kenya has since independence increased the number of her skilled workforce with the increasing number of educational institutions and

facilities. It is high time Kenya re-defined her policy relating to the issue of entry permit in order to ensure job security for citizens during this time of rising unemployment and general economic decline. The current policy has a loophole of allowing foreign nationals to come into the country for purposes of performing some kind of work that can be performed by the citizens, hence posing cut-throat competition for the local entrepreneurs and professionals.

The third point of disharmony is the issue of Kenya passport. The government maintains that a passport is its property which, as provided by the Act, it can issue at will to its citizens. The citizens, on the other hand, maintain that the constitution of Kenya, from which the Act is derived, endows them with the right to move anywhere. Since a passport is a requirement for international travels, stringent conditions for issuance of a passport stand in the way of the citizens who want to exercise their right to freedom of movement. Another problem characteristic of the current immigration legislation concerns gender discrimination. The legislation requires a married woman to obtain a letter of consent from her husband as one of the requisite documents in the application for a passport. With the current women liberation movements, the viability of such legislation is apt to be put into meaningful questions.

Issues of citizenship also reflect gender prejudice where Kenya men can marry foreign ladies and secure them Kenya citizenship, while Kenyan ladies are still barred by the same law. A foreign male on Entry (work) permit can obtain dependants pass for his wife and minor (under 18 years) children while a foreign female on Entry permit may not obtain a dependant's pass for her husband, except for spouse of staff of foreign missions accredited to Kenya.

Such are the issues, which this work seeks to address with a view to prescribing solutions.

1.2 OBJECTIVES

In this study we seek to find out:

1. The functions of Kenya Immigration Department.
2. The extent to which retention of the colonial immigration policies jeopardizes the national interest of Kenya.
3. The socio-economic and political effects of immigration in the post-colonial Kenya.

1.3 JUSTIFICATION

Many political scientists and historians have written several volumes of books, theses, journals among other material on many aspects of Kenya's foreign policy but little attention, if any, has been directed to her immigration policies. The dominant documentations on Kenya's immigration include the immigration ordinance of 1948 and the current Immigration Act, Citizenship Act and Aliens Restriction Acts. These documents only contain dogmatic (unexplained) laws and regulations, which are greatly lacking in academic discussion. No major academic venture has been undertaken such as those already done in other countries namely; the work of Jones, M.A. American Immigration (1960), the work of Rose, A.M. Migrants in Europe 1967⁸, the work of International Sociological Association – The positive contribution by Immigrants 1955⁹ among other works. It is therefore necessary to provide academic discussion of Kenya's immigration policies.

In the second place this work is Primarily intended to educate the policy framers and implementers on the implications of some of the Kenya's immigration policies in the fast-changing situations from colonial days to independence. Most of the African government practices were inherited from the former colonial masters. At independence some of these legacies remained wholesale while others were modified. But the modifications were done with overwhelming influence of the former colonial masters. As it is true no level headed persons can decide to make anything to their disadvantage, these colonial practices were drawn by the former colonial masters not to serve the interests of the natives but to serve the interests of the former colonial powers. Some of the early African nationalists had to accept the continuation of these colonial state practices, as part of the independence package so that they could hasten the pace of their countries movement from the colonial yoke to freedom.

After independence the early nationalists were preoccupied with numerous obligations coupled with the supposed problem of inexperience to run state affairs to the extent that they could not re-assess the effects of these foreign legacies. One of those legacies which is of interest to this work is the immigration legislations and regulations.

Since most independent African states are now in somewhat different politico- economic situations, it is necessary to reassess the viability and relevance of some of the immigration policies and practices with a view to making them compatible with the post-colonial African situation. Due to limited resource allocation for this study, the research is concentrated on Kenya Immigration policies leaving out other African countries for the future academic research. It is our sincere hope that the policy apparatus of governments

will benefit immensely from the findings of this work.

Thirdly, this work has the general public in mind. Since its contents will include the current standard requirements for various nationalities seeking to immigrate into and emigrate out of Kenya, the general public who will read this work will be saved the trouble of presenting incomplete application for entry or departure among other troubles such as getting trapped unknowingly into immigration offences.

Most immigration laws in Kenya are scattered in various Acts and Regulations. It is not easier to get access to the Immigration Acts, which are mostly available in government printing press than to get a consolidated single volume readily available in the library. The Acts do not provide elaborate discussion of why a particular section of law exists and people may wish to clearly understand why a particular section of the law exists and that is what our work seeks to provide.

1.4 LITERATURE REVIEW

This work requires an explicit academic analysis. In this regard, therefore, we wish to review and appraise already existing work on Kenya's foreign policy and its basic determinants. It is unfortunate, however, that no work already exists on Kenya's immigration policies of the kind we want to produce. No one has used the realist theory or any other theories to analyze the determinants of immigration policies in Kenya. In this regard, therefore, there exist inadequate material from which to draw analogy. We wish, however, to review some work on Kenya's foreign policy in general, and immigration practices in other countries for purposes of comparative analysis.

Ochieng W.R. (1985)¹⁰ asserts that at independence, African leaders immediately realized that they would have to stimulate rapid economic development to create a climate for the achievement of many of the political and social objectives, which they had promised the masses. To achieve this need, writes Ochieng, the government of Kenya and the United Kingdom approached the International Bank for Reconstruction and Development to assemble an economic mission to Kenya to assess the country's economic potential and to make recommendations designed to assist the government in development planning for the period 1962 to 1967. The mission's recommendations, which the new government of Kenyatta took seriously, included an economy based, largely, on private enterprise, "a continuous supply of qualified personnel no matter what their origin". On the weight of these recommendations Kenya opted for a strategy of economic growth based on a desire to preserve the link with Western countries and to gain foreign aid and investment.

Kenya's foreign policy is also based on the sessional paper Number Ten of 1965 which stated the need for mixed economy, welcome of foreign capital as long as the foreign investors were willing to accept the spirit of mutual social responsibility by making shares in the company available to Africans who wish to buy them, by employing Africans at managerial levels as soon as qualified people could be found, and by providing training facilities for the Africans.

Commenting on Kenya's relations with the outside world, Ochieng observed that Kenya recognized the ruthlessness with which dominant powers often pursue their national interest by using their economic and technological advantages. He contends that Kenya was also aware of the difficulties encountered by small and poor states, which seek meaningful participation in international politics. In this view, Ochieng wrote, Kenya came

to the conclusion that an assertive involvement in world affairs would be futile because there would be insufficient power to back it up.

Utete, C.M.B. (1985)¹¹ writing on Africa and the former colonial powers noted cordial relations. Such cordiality is exemplified by agreements, which have often been reached between African States and their respective former colonizers in respect of such matters as cultural exchanges, immigration and citizenship. Utete argues that in the former British East Africa, thousands of resident Asians and Whites were, by mutual agreement, permitted to retain their British nationality at independence in the early 1960s despite the fact that there was little expectation that they would eventually actually all emigrate to England.

Utete continues to argue that the institutional networks, either inherited from the colonial era or established as part of the independence bargain, tend to persist over time despite an official rhetoric that may suggest their illegitimacy. He says that bureaucratic mechanisms and procedures based on British and French models persist long after independence has been gained.

Okumu J. (1977)¹² has also described Kenya's foreign policy as "low-profile" styled and as "quiet diplomacy". This style, Okumu says, avoids radical aggressiveness, which she cannot defend or promote. Okumu has attributed this low-key diplomatic relations between Kenya and other foreign nations to three major factors. First is the threat of secession in Kenya's coastal and northeastern provinces, which alerted her to the primary need to consolidate her boundaries. Second, Kenya realized that a good neighbour policy based on mutual understanding between her and her neighbours was a logical step

for the security of both her people and her territory. Third, a policy of vigorous economic development at home and economic co-operation and cultural exchange, with her neighbours would strengthen her position in Africa. Finally, Okumu says, non-alignment was to remain a major tenet in her foreign relations.

Concerning the continuation of the British colonial policies in Kenya, Okumu says that "the urge, the desire to protect British interests in Kenya is stated to be an integral part of the "golden handshake", a set of agreements that together constituted the price of independence. There are no major distracting clashes of interest in the partnership between Kenya's governing elite and Britain."

Papademetriou, Demetrios G. (1984)¹³ has noted that International migration has been an enduring component of the world economic, social and political landscape. He says that following centuries of largely unregulated international population flows, the Post-world war I period saw the beginnings of an increasingly concerted effort to control immigration. He says that after the Second World War, international migration in search of work has been almost impervious to effective policy intervention by receiving societies.

Immigration restrictions are not a new thing in international politics. Jones, M.A. (1960)¹⁴ wrote that Americans began seriously to doubt the wisdom of unrestricted immigration in 1886. He says that this doubt saw the opening of a prolonged debate, which was not to culminate until the 1920s, when the enactment of a restrictive code brought the era of mass immigration to a close.

Also writing on the emerging issues in international migration, Tabbarah Riad (1984)¹⁵ maintains that there is no doubt that illegal migration will remain a significant aspect of international migration concerns for some time to come. He says that in attempting to tighten up controls over illegal immigration, the United States can be expected to try to pass legislation that would place sanctions on employers who recruit illegal immigrants.

Adepoju Aderanti, (1984)¹⁶ writing on the linkages between internal and international migration in Africa, asserts that economic considerations are of primary importance in the decision to migrate, in that people migrate ultimately to improve their economic well being. He therefore views migration as a response to economic incentives arising largely from disequilibria between and within sectors of the economy and between countries and regions. Referring specifically to International Migration, Adepoju says that an international migrant in a regular situation is expected to conform to a set of requirements governing entry into and residence within another country. In this case Adepoju has not underscored the aspects of requirements for an international migrant such as conditions for departure from the country of origin and conditions for departure from the receiving states as well as conditions for re-entry. Adepoju is right to have observed that only a few African countries have well-articulated Immigration Laws and that even fewer enforce such laws rigidly, the notable exception being the Republic of South Africa. He is also right to have observed that migrants usually flout immigration regulations deliberately or out of ignorance of existing laws.

In his view, Adepoju attributes reasons associated with international migration not only to economic factors but also to political factors. He says that demand for adjustment of

boundaries arbitrarily drawn by the colonial administration and which cut across economic and homogeneous ethnic groups, to accommodate the socio-cultural realities of the countries concerned and to regroup the populations of ethnic group arbitrarily assigned to different countries, have led to war. He gives the example of Somalia and Ethiopia, among others with the result of hundreds of refugees and displaced persons.

Writing on Immigration Restrictions in the United States, Vittoz Stan (1978)¹⁷ highlighted the effects - both positive and negative - of immigration to constitute stimulated overall population growth, the rise of domestic mass market, increased capitalist exploitation in general by supplementing the labour supply, and keeping wages low. Vittoz says that in the United States, it was the state of the economy that led to the adoption of the Quota Act of 1921. He says that it was acknowledged by virtually everyone, including major industrial employers that some kind of effective restrictionist legislation was necessary to prevent a dangerously heavy influx of foreign labour during a period of high unemployment and general economic decline.

The work of International Sociological Association (1955)¹⁸ has also indicated that immigration is not a new concept. The work indicates that migration from which the term immigration is derived is not new. What is new is the complex of social relationships it produces and the resultant growing demand for its regulation and control. That in the past - during the slave trade period - immigration was not planned. That the current immigration planning and control is a result of the growing recognition of the desirability of rationalizing man's economic and social life. The work indicates that in the 19th Century, the advantages and disadvantages of immigration were considered largely in terms of its economic effects. That in assessing immigration in general one raises the following questions:

1. Is a rising population desirable or not?
2. Do newcomers raise or lower the standard of living of the old residents?
3. What is the effect of immigration upon industrialization; the business cycle, and the conditions of labour?

Although such questions mirrored the predominant preoccupation of state policy in that early period, they are still very essential and relevant to the analysis of the determinants of African Immigration policies today.

Also important to review, is the work of Rose, Arnold M. (1969)¹⁹ in which she analyzed how some variables determined the immigration policies in the European Economic Community (EEC), the Scandinavian countries among others. This will help us to assess how the Kenya's immigration policies have been affected by her membership of such regional economic organizations such as the Common Market for Eastern and Southern Africa (COMESA)

1.5 THEORETICAL FRAMEWORK

The realist school of international politics will guide this work. The proponents of this school of thought believe that the conduct of international intercourse should be guided by the laws of nature but not by the abstract or artificial morals prescribed by men. Morgenthau, H.J. (1991) a staunch believer in realist approach to international politics, made the following observations:

The world, imperfect as it is from the rational point of view is the result of forces inherent in human nature. To improve the world one must work with those forces, not against them. This being inherently a world of opposing interests and of conflict among them, moral principles can never be fully realized, but must at best be approximated through the ever temporary balancing of interests and the ever-precious settlement of conflict.²⁰

Among his six principles of political realism, Morgenthau's first principle reinforces the above observations to help us analyze Kenya's immigration policies, among other African Immigration policies since independence. Political realism, he argues, like society in general, is governed by objective laws that have their roots in human nature. In order to improve society, it is first necessary to understand the laws by which society lives. The operation of these laws being impervious to our preferences, men will change them only at the risk of failure."²¹

This is very relevant to understanding Kenya's immigration policies because by its very nature, it looks discriminative to some nationalities; it does not have a universal determinant with reference to visa regulations-most nationalities from the Commonwealth Countries do not require visa to immigrate into Kenya, most nationalities from Eastern Europe and the Middle East require referred visa while others particularly from Western Europe and USA can get visa on arrival at the ports of entry called the gazetted control points. This happens because of the political realities between Kenya and the Western European Countries, particularly Great Britain. Depending on what Kenya as a sovereign state views as rational irrespective of the existing municipal and international law, it can choose on certain aspects of its immigration policies which conform to its national interests.

Despite the fact that the constitution endows its citizens with the right to move anywhere, the government of Kenya can withdraw or refuse to issue a passport to the citizens as long as such withdrawal or refusal conforms to the reality of her national interests.

In the same way despite the international legal instruments relating to the status of

refugees, the government of Kenya can repatriate some foreigners whether of Somali origin or any other origin from within her borders so long as their presence in the country, in the government's view, is inconsistent with the economic and political realities of the day.

Morgenthau argues that political realism requires a sharp distinction between the desirable and the possible. That in political realism, we should know what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place. In the evolution of Kenya's immigration policies, it will be noticed that changes have occurred at all stages depending on the political and the economic realities of the time. For example it was desired at the time of the inception of the defunct East African Community (E.A.C) that the three East African Countries - Kenya, Uganda and Tanzania relax their immigration and customs restrictions to each other, but the politico-economic realities that followed the growth of East African Community up to 1977 indicated that the relaxed policies on immigration and customs could not work and they were to be changed. That was why the East African Community collapsed in 1977 because Tanzania and Uganda felt that the dominant Kenyan economy was exploiting their weaker ones.

Coulombis and Wolfe (1981)²² also describe political realism to consist of struggle for power. They define power as a "psychological relationship" in which one actor is able to control the behaviour of another actor. In this case the former colonial power in Kenya, Great Britain, is able to convince Kenya to retain some of her immigration policies and because the Kenya leadership agrees to retain those policies, it implies that these political actors are acting to promote the national interest of Kenya to continue to receive foreign

aid from Great Britain.

Other theories such as dependency and interdependence would also be relevant for the study of this phenomenon but not to the extent realist theory is relevant. Dependency theory assumes that the economies of the developed capitalist states expand and maintain self-sustaining growth while the economies of developing states can only expand and grow as a reflection of the expansion of the former. This theory is applicable to this work to a lesser extent because of its weakness of attributing all causes of underdevelopment to developed countries. It ignores other variables that can be used to explain underdevelopment in the developing countries such as policy failures and corruption among others.

Papademetriou argues that one conceptual key to understanding the place of immigration in a global political, economic and social context is the idea of interdependence. That in its most neutral sense, interdependence refers to:

"a relationship of 'mutual relevance' and emphasizes the 'reciprocity' inherent in all conduct among state actors"²³

While this theory can be used to explain Kenya's foreign policy in general vis-a-vis her former colonial master, Great Britain, it is insufficient to explain specifically Kenya's immigration policies as such. We cannot believe that the presence and operation of Lonrho Africa in Kenya is of mutual and reciprocal relevance to both Kenya and Great Britain because only a few Kenyans may be benefiting from trade Lonrho does in Kenya. The same case applies to many more other foreign investments in Kenya, particularly the multinational corporations. Americans and other Europeans can come to Kenya and get visas on arrival while Kenyans have to apply and obtain American and Schengen visa at

the American embassy and Schengen states missions in Kenya. The principle of reciprocity is lacking in this practice.

Whatever happens - within or outside Kenya - it is Kenya as a sovereign nation state that will determine what is best pursuing for its survival, and it is the head of state who will rationalize such determination for the entire nation state. That is why we wish to adopt the realist school to examine immigration policies in Kenya as a starting point to generalize to Africa as a whole.

1.6 HYPOTHESES

1. The more Kenya retains colonial immigration policies, the more she injures her own needs and the needs of the consumers of immigration services - in terms of job security for her citizens.
2. The more Kenya retains her present immigration policies; the more she will lose revenue accruing from the immigration services.
3. The more Kenya immigration policies reflect British colonial policies; the more it will jeopardise Kenya's national interest.

1.7 METHODOLOGY

This work adopted direct interview method as a primary method of data collection. This is because of the nature of the population the survey is concerned with. Some foreigners on work permit in Kenya may not understand the local languages and interpreters may be sought. The study was based on primary data mainly because not much work has been done on this aspect of study to allow for extensive use of secondary data. Most available

relevant literature have, however, been reviewed.

Other sources of information were obtained from the statistical abstracts from the Office of the President - Immigration Department of Kenya, embassy reports, newspapers, magazines and policy papers from the Ministry of Foreign Affairs and International Cooperation. In the absence of statistics personal experience as an immigration officer applied in my data analysis.

Respondents were put into five categories:

1. One immigration officer from each of the five relevant sections of the department.
2. Residents aliens –50 employers and 50 employees.
3. Visiting aliens, on different types of visas, 10 on multiple journey visa, 10 on single entry visa, 10 on transit visa and 10 on referred visa.
4. One from registrar of companies.
5. One officer from each of the five selected diplomatic missions accredited to Kenya.

Due to limited monetary resource allocation of ksh 18,000, random sampling was used to identify not more than 150 respondents.

For similar reason, the research concentrated in the capital city of Nairobi. This is partly because most data that were required in border controls were available at the immigration headquarters in form of annual reports.

Another reason for choosing Nairobi as the research center is that most organisations that employ expatriates who often encroach on the job security of Kenyans prefer to work in the city where infrastructure and security look relatively better than in the rural areas.

PROBLEMS FACED

- (a) Most prepared questionnaires were not answered so I resorted to personal interview. Most embassies, High Commissions and Immigration Officials were very apprehensive to volunteer information, so I had to go round the questions.
- (b) Resources got depleted before the work was completed because collecting data was cumbersome and took longer than the two-year scholarship period.
- (d) Secondary data were very scarce, as no work has ever been done on Kenya Immigration Policies.

The subsequent four chapters dwell on different aspects of the various immigration variables. Chapter two examines historical evolution of immigration policies and practices from 1906-1990s.

In chapter three, assessment of the full impact of visa regulations and entry permit legislations on government revenue and job security of Kenyans is examined. Chapter four focuses on the passport guiding principles, the citizenship legislations and gender discrimination detected in those legislations and regulations.

Chapter five summarizes the study by highlighting the findings and recommendations to academic researchers, policy apparatus of the government and to the general public.

CHAPTER TWO

2.0 THE EVOLUTION OF KENYA IMMIGRATION POLICIES 1906-1990s

INTRODUCTION

In this chapter a chronological historical evolution of Kenya Immigration Policies is addressed. Various stages of immigration policy development have been briefly discussed. These include the British colonial interest in Kenya, the colonial Immigration Acts and Regulations, the Immigration Frontiers, administrative cadres, Immigration Status and the functions of the Immigration Department. The chapter ends with the critical analysis of the evolution and preliminary policy observations.

Policies regarding immigration practices as seen in Kenya today are composed of events that have continued to unfold both within the country and in the entire international system from the beginning of the 20th century. These events occurred when Kenyans were not directly involved in the management and governance of their own country. The affairs of the country were absolutely the preserves of the British colonial administration, which was in complete control of the country, then called British Colony now called Kenya.

2.1 THE BRITISH COLONIAL INTERESTS IN KENYA

A brief background to the British interests in Kenya dates back to the early 19th century. Ochien'g (1985) argues that before 1850, the more important economic concern in Europe's search for colonies had been the need for raw materials. By 1870, he argues, this had been replaced by the need for new market for manufactured goods, as European nations such as Germany, France and Belgium became increasingly self-sufficient and protectionist and no longer needed British textiles, machinery and hardware. Ochien'g says that equally important after 1870 was the need to find new outlets for surplus capital.

To safeguard investments abroad in new underdeveloped areas, they needed strict administration. In this case, therefore, close political ties rather than loose economic relations appeared to be more necessary.

The formal colonial period in Kenya started in 1888 with the granting of a Royal Charter to the Imperial British East Africa Company (IBEAC) to exploit the British sphere of influence between Zanzibar and Uganda. The IBEAC however did not perform to the expectation of the foreign office. The foreign office then took over the colony and renamed it British protectorate in 1895 and started establishing an administrative system from the scratch. The natives posed several resistances.

The spread of effective political control from the Coast was a slow and uneven process. To secure the eventual political control of the country the British decided to build a railway across the country from Mombasa to Lake Victoria. This work began in 1896 ending in 1901. The British Governor of Kenya at that time was Sir Charles Eliot. This is the time systematic political control and economic exploitation of Kenya began. The British government liked the protectorate so much so that it had to guard its borders from possible foreign encroachment coming from the French, the German, the Spanish, and the Italian among other Western countries interested in colonial acquisition at the time. Immigration had to be controlled.

2.2 THE COLONIAL IMMIGRATION ORDINANCES IN KENYA

The first immigration ordinance was brought into force in 1906. It was named the immigration Ordinance 1906. This ordinance provided for restrictions to be imposed on all those persons who wished to come to Kenya for permanent settlement. The intending

immigrants were required to make cash deposits as financial security to cover their own possible repatriation out of Kenya should they be found undesirable.

A person from Europe was required to pay fifty sterling pounds (£50) while a person from India paid ten sterling pounds (£10). People from India paid less because their country was in close proximity to Kenya and also to make it easier for purposes of providing cheap labour to the construction and maintenance of the Kenya-Uganda railway. On completion of the railway those Indians who were desirous of returning to India were allowed to go while those who preferred to remain in Kenya were also allowed to remain. Those lots of Indians who preferred to remain are the pioneers of the India community in Kenya today. The Immigration Ordinance 1906 contained a very close similarity to the current immigration practice in terms of financial security. The current practice requires an intending immigrant to carry a return air ticket and sufficient money for subsistence and accommodation commensurate with the number of days the immigrant wants to stay in Kenya. Thus at the entry point-airports and boarder controls the immigrant fills in entry declaration form, returns it to an immigration officer, who, in due consideration of the aforesaid financial security, among other immigration requirements, may either immigrate or declare the subject a prohibited immigrant. A person declared a prohibited immigrant is served with a Prohibited Immigrants Notice (PIN) and given sometime within which to leave Kenya, either at his/her own expense, at the expense of the owner of the carrier that carried him/her to the country, or at expense of his/her government's embassy or high commission in Kenya who may undertake to pay repatriation cost. If, however, a person is found to be too undesirable, the government of Kenya may undertake to deport this person back to his/her country of origin at its own expense. Responsibility for removing a prohibited immigrant from Kenya depends on a number of considerations as

will be seen in the current immigration Act, CAP. 172 laws of Kenya.

Until 1948 the department of immigration was under the police immigration branch. The department had specific number and category of staff in Nairobi, Kisumu and Mombasa as outlined below:

NAIROBI

- One superintendent of police
- Three assistant inspectors of police
- One assistant inspector of police (Female)
- Three European clerks (Female)
- Nine Asian clerks

MOMBASA

- One assistant superintendent of police
- One assistant inspector of police
- One European clerk
- Five Asian clerks

KISUMU

- One inspector of police
- One Asian clerk

The archival literature is silent on the rationale behind gender and racial categorization of

the staff but inferences could be attributed to level of education as far as races are concerned. Europeans were top in terms of education followed by Asians with indigenous Africans at the bottom. The European therefore occupied the highest echelon of the officer cadre and Asians and European women worked in the clerical cadre.

Before 1948, immigration was under three legislations:

- (i) Immigration restriction ordinance (Cap 62 laws of Kenya) as amended by various ordinances. This restricted immigration and there was no provision for bona fide visitors (on business or touring) to be granted entry.
- (ii) The defense (admission of male persons) regulations 1944, and
- (iii) The defense (admission of women and children) regulations 1940. These were wartime legislations and made it incumbent on all persons desirous of entering the colony, for whatever reasons to obtain an entry permit and further laid down hard and fast rules governing the persons who should be granted such permits.

At the end of hostilities a less restrictive immigration ordinance was enacted by the British colonial administration. This ordinance came into effect on 1st August 1948 and it carried the following provisions:

- (i) In the first place it instituted a system of permit and passes similar to the one incorporated into the current Immigration Act.
- (ii) Secondly this ordinance formed the basis of permanent immigration department in Kenya, with Principal Immigration Officer (PIO) as head of the department and supporting staff of all categories.

(iii) Thirdly, the ordinance formed the basis of a proper immigration registry with a file reference number, having been allocated to the head of the family together with an index alphabetically arranged for the purpose of locating the file of an individual.

(iv) A fourth feature and provision of the 1948 ordinance is that it provided for the Governor to appoint the Principal Immigration Officer or his deputy and it vested all the power in the Principal Immigration Officer or his deputy.

(v) The Ordinance gave the P.I.O the power to delegate in writing some of his duties to other immigration officers.

(vi) The sixth provision of the 1948 ordinance was a statutory board whose function was to consider the approval and non-approval for entry permits.

(vii) Lastly, the ordinance provided for the establishment of the appeal tribunal to hear the appeals against the decision of the statutory board. A close scrutiny of the 1948 ordinance reveals that it shares almost every similarity with the current Immigration Act, except that in the present act the President of the independent Kenya takes the role of the governor of the colonial Kenya and the Minister of state in the Office of the President in charge of immigration matters takes the role of the appeal tribunal. The rest of the features remain the same.

In 1956 further controls and regulations were enacted in what was known as the immigration ordinance 1956. It came into force on July 1st 1956. Majority of features and

provisions in the previous ordinance were retained. It however, introduced for the first time the issue of the Temporary Employment Pass (TEP). The issue of this particular pass was necessitated by the fact that the country was experiencing extreme shortage of skilled manpower. A good number of skilled labour were allowed into the country. This TEP was initially lasting for one year and subsequently it was extended to maximum period of four years. Depending on the need to retain such skilled workers in the country it was expected that these temporary immigrants while undertaking essential services would also train the local residents in their lines of career. During their tenure of service the temporary immigrants were required to pass a proficiency trade test connected to their profession. The Ministry of labour arranged this proficiency trade test. The 1956 ordinance also went further to provide for permanent immigration by issuing permits for professions, foreign investors, industrialists with assured annual incomes. By this time the authority to issue permits had been vested in the Principal Immigration Officer and the authority to consider appeals against the principal Immigration Officer's refusal was vested in the Minister responsible for immigration. The 1956 ordinance however provided for the following: -

- (i) Any person born in Kenya, with a mother also born in Kenya, was granted a resident certificate for life time, a privilege to leave and return to Kenya any time during ones life time.
- (ii) Any person who was lawfully and physically residing in Kenya for a period of five or ten years immediately preceding the date of application for permanent residence was entitled to grant of residence certificate valid for ten years or for life time.
- (iii) Owing to the close association of the partner states of the former East African High

Commission, the holder of a resident certificate in one country was entitled to the grant of the same in the other country- Uganda, Tanzania and Kenya all of which then fell under the British administration.

(iv) Any unmarried woman who was over the age of twenty-one and who was a resident of Kenya was permitted to go abroad, get married to a foreigner and the husband was entitled to the grant of exemption permitting him to come and live in Kenya, take up any job or engage in any profession, trade or business. His entry and subsequent stay in Kenya was, however, subject to two conditions: first he was required to enter Kenya within one year from the date of marriage and; second, he had to be accompanied by his wife at the time of first arrival and to cohabit with his wife for a minimum period of five years before they could divorce or separate if they had to.

(v) Also owing to close association with the Arab rule at the coast, Arabs who were the descendants of the Sultan of Zanzibar were entitled to the grant of exemption permitting them to enter and live in Kenya, take up any job or engage in any profession, trade or business freely. They were also qualified to get permanent resident certificates after lawful stay in the country for more than five years. It was this immigration ordinance of 1956, largely a British colonial Administrations initiative that continued to direct the immigration practices in Kenya until the early years of the country's independence.

Filled with the desire to deliver freely the meaningful fruits of independence, the early nationalists in Kenya, like other nationalists elsewhere in Africa, realized that many of the provisions of the 1956 immigration ordinance stood in their way to ensure the public

security and the economic interest of the Kenya citizens. The ordinance, despite the attainment of independence, gave immense leeway to non-citizens to acquire citizenship easily and take sensitive decision-making positions both within the Kenyan civil service and in the private sector.

2.3 THE POST-COLONIAL IMMIGRATION ACTS AND REGULATIONS IN KENYA

In order to activate their commitment to the Africanisation (or Kenyanization) programme—a programme that sought to control key policy-advising and formulating posts by citizens—the government of Kenya decided to revise the 1956 ordinance into what became the Immigration Act, Chapter 172 laws of Kenya.

The Immigration Act, CAP 172 laws of Kenya was an Act of parliament to amend and consolidate the laws relating to immigration into Kenya, and for matters incidental thereto and connected therewith. Its date of commencement was 1st December 1967. The aim of the revision of the earlier ordinance in 1967 was to correct the politico-economic anomalies that had been realized since independence. The national goal and aspiration of the Kenya Government was to be achieved by making it possible for a good majority of Kenyan citizens to secure jobs both in the public service and in the private sector.

The most outstanding feature of this revised Act was the creation of further specific powers to the Minister responsible for immigration to require a non-citizen or a class of persons who were residents of Kenya under the provision of the old ordinance to apply to an immigration officer in the prescribed manner for a permit or pass authorizing that person to enter Kenya for specific purpose. Those who were not citizens of Kenya but mere residents were given three months to apply for an immigration status failure to

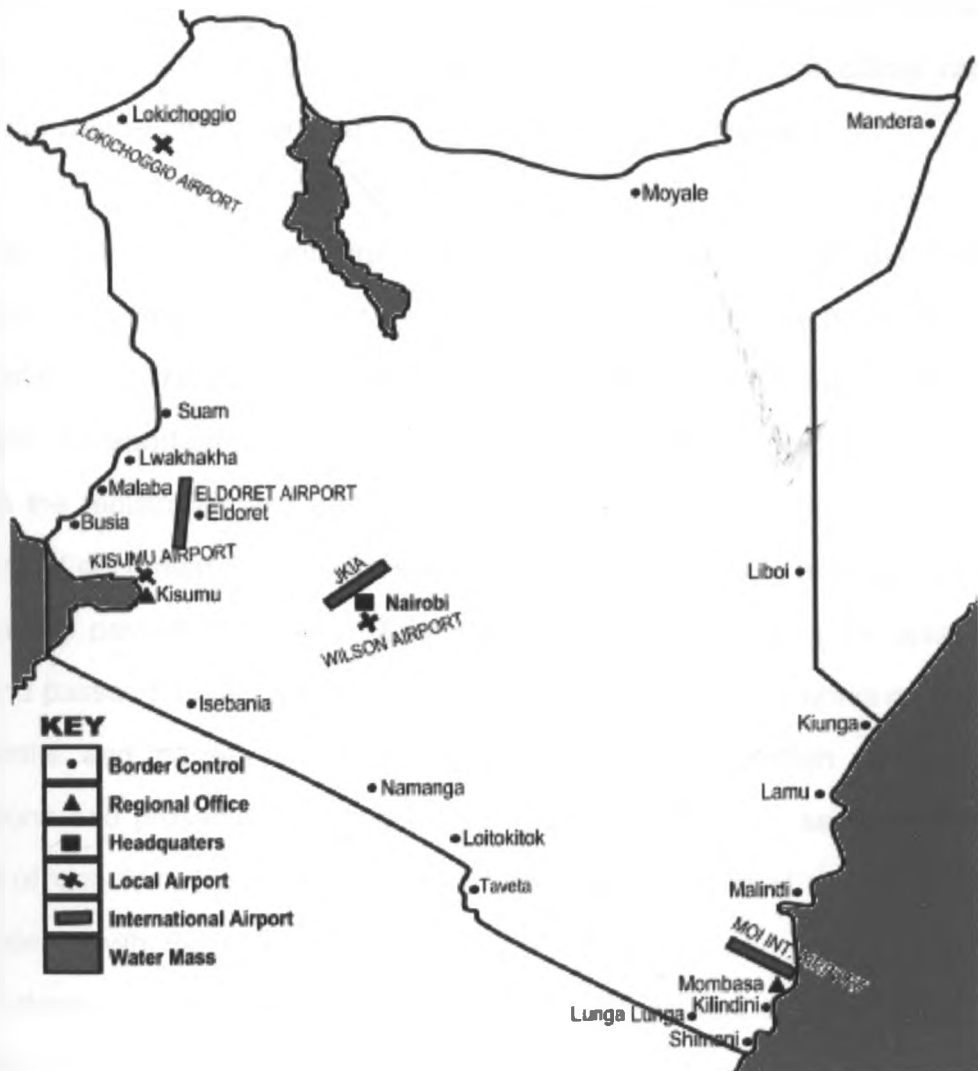
which would render their presence in Kenya unlawful.

2.4 THE IMMIGRATION FRONTIERS

The 1967 Immigration Act established and recognized already existing immigration entry and departure control points. These include: Jomo Kenyatta international airport, Wilson airport, Namanga immigration control, Liboi, Loitokitok, Moyale, Mandera, Lokichogio, Mombasa Seaport, Lamu, Malindi, Moi airport, Taveta, Shimoni, Suaam, Lunga-Lunga, Kiunga, Kisumu airport and Pier, Isebania, Busia and Malaba.

MAP OF KENYA SHOWING THE POSITION OF IMMIGRATION FRONTIERS

The following map illustrates the position of the Kenya Immigration frontiers border control points, regional offices, headquarters, local airports and international airports.



2.5 THE IMMIGRATION ADMINISTRATIVE CADRES AND SECTIONS

For purposes of internal administrative organization, the 1967 Immigration Act also provided for the following administrative cadres: The Principal Immigration Officer (PIO) as the head of the immigration department, assisted by: The Deputy Principal Immigration Officer (DPIO), Senior Assistant Principal Immigration Officer (SAPIO), Assistant Principal Immigration Officer (APIO) Senior Immigration Officer (SIO), Immigration Officer I, II, III, and Assistant Immigration Officer (AIO) in the lowest rank of the officer cadre. All categories of clerical officers and sub-ordinate staff were also created.

Further for purpose of administrative efficiency, the services of the immigration department have been assigned to different sections: section A deals with general administration and registry. Services rendered in this sections include the work of accountants, transport officers and office superintendents in charge of registry; section B deals with the registration and the issue of aliens certificates; section C deals with the issue of travel document such as passports, certificates of identity and nationality (CIN), and temporary permits for travel in East Africa; section D concerns the issue of entry permits and passes for aliens of Asian and African origin; section E works on the issue of entry permits and passes for aliens of European origin; section F specializes in investigations and prosecution of culprits of immigration offences; section G deals with the issue of visa for aliens who require visa to Kenya; section H deals with statistics; section I deals with the issue of citizenship to non-citizens who qualify for the same; section J deals with Kenyanization; lastly there is a general section called physical immigration which operates counter services. All the services rendered in the other sections are represented in the physical immigration and counter services for the issue of application forms and payment of application fees for each service required.

2.6 THE IMMIGRATION STATUS IN KENYA

Under the Immigration Act of 1967 the following are among the many immigration status under which all persons in Kenya-both aliens and locals-should fall.

In the first place is the Kenya Citizen (KC). One becomes a Kenyan citizen by four lawful ways: by birth, by descent, by registration and by naturalization. The issue of citizenship is discussed adequately in chapter four of this work. A Kenya citizen can leave and re-enter Kenya without any obstacles as long as the travel document of that person is valid. The second immigration status is Kenya visitor's pass (KVP). This status is given to non-citizens who arrive in Kenya for purposes of visiting. A visitor into Kenya in most cases has two major purposes, namely; to spend a holiday or to attend some business. A non-citizen on a KVP is usually given on first arrival up to three months to stay in Kenya after which that non-citizen registers as an alien in Kenya before applying for an extension of his period of visiting. The extension can then be given up to a maximum of three more months. This implies that a visitor arriving in Kenya can be given up to a maximum of six months to be on KVP after which his stay in Kenya is rendered unlawful unless he has adopted another status. It is also important to note that as soon as a person arrives from outside Kenya, that person should first report to a passport control officer who will issue him with an entry declaration form to fill in stating, among other things, his country of origin, country of residence and contact address in Kenya. This will help the passport control officer to determine whether the person requires a visa at all or not and if he requires, then what category of visa.

The third category of Kenya immigration status is Kenya-in-transit (KIT). This is usually given to visitors who intend to stay in Kenya shortly before proceeding to other

destinations. It is usually given up to a maximum of seven days only.

Another very important immigration status in Kenya is Kenya entry permit (KEP). Kenya entry permit is commonly referred to as work permit in a layman's language. KEP is given to aliens who have been authorized by the government of Kenya to undertake some employment, business, trade, profession or any other investment. Kenya Entry permit is issued after very careful consideration along the line of economic security of the Kenya citizens and the need to promote foreign investment in Kenya. It is usually given for two years and it is renewable after several considerations. The topic of KEP is widely discussed in Chapter three of this work.

There is also exemption under section four (4) subsection three (3) A-H of the Immigration Act (Ex.4 (3) (A-H)). This is given to any person, or class or description of persons, exempted by Minister from the provision of this section by notice in the gazette. This category of people includes holders of diplomatic passports on official duties under international organizations, which Kenya recognizes, and foreign representatives in Kenya.

Kenya Dependents Pass (KDP) is an immigration status given to a person who is dependent on an alien holding KEP; Ex 4(3) A-H or KC. But this facility is commonly given to men as opposed to women. It is very difficult for a lady on any of the above immigration status to apply for a dependant's pass with a view to bringing into Kenya a male adult dependant unless very special references is given that the male dependant has some physical disabilities that renders him a dependant. Therefore a Kenyan citizen can marry an alien lady applies for a dependant pass for her before registering her as a citizen of Kenya. KDP remains valid as long as the person depended on remains on a

valid Kenya immigration status. As soon as the presence of the person depended on becomes unlawful, the person on KDP becomes unlawfully present in Kenya. KDP cannot, however, be canceled without prior reference to the Minister in charge of immigration. Only children of minor age (below 21) and female spouses of ordinary residents and general spouses (wife or husband) of resident diplomats qualify for KDP.

Kenya Pupil's Pass (KPP) is status given to aliens who have been admitted into educational establishment in Kenya. It is the educational establishment to apply for a KPP on behalf of the student. It remains valid as long as the period of training or learning continues. As soon as the specified period of learning expires, that status also expires and the person is required to regularize his/her immigration status accordingly. A lot of care is taken when deciding on who qualifies for KPP. Age and the level of education required is considered. A 40-year-old person may not be considered for primary or secondary education in Kenya.

There is also a status given to undesirable immigrants. This is called Kenya prohibited immigrants notice (PIN). Any person arriving in Kenya without sufficient financial securities for accommodation, subsistence and return fare to place of origin is a prohibited immigrant. The description of a prohibited immigrant is stipulated in the Immigration Act, section three subsections one (a) to (j). A prohibited immigrant may be refused permission to enter Kenya or an immigration officer may in his discretion issue a prohibited immigrant's notice permitting that person to enter and remain temporarily in Kenya for such period and subject to such condition as may be specified in that pass.

Kenya re-entry pass (REP) is given to aliens on valid entry permits or valid Kenya

resident's passes who wish to leave Kenya temporarily with a view to returning to Kenya within a specific period. REP cannot be given beyond the validity of the entry permit or the resident's passes.

There are also some aliens who may lose their travel documents in Kenya. These aliens are usually issued with new travel documents- either as passport or one way travel document-by their governments' representatives in Kenya. Once they obtain those documents, they report to the Immigration Officer to endorse their documents with T.D. (to effect departure) authorizing them to remain temporarily in Kenya while making arrangements to leave the country. T.D. may also be given to aliens who have lost their former immigration status and only request an immigration officer to allow them make arrangements to depart in a more dignified manner than to be declared prohibited immigrants.

Alternatively an alien who has unknowingly lost his former immigration status may be given Kenya special pass (K.S.P). The purpose of K.S.P is both punitive and privilege but corrective. It is punitive because while KVP is not charged any fees, K.S.P is charged some fee, now Kshs. 12,500. It is a privilege because a person who would, otherwise, be declared prohibited immigrant is given time to recover his lost immigration status or to move on to another immigration status and continue to stay in Kenya. K.S.P is valid for three months and is not usually extended. It therefore implies that a person on K.S.P must ensure that he regularizes his immigration status within three months or make arrangements to leave Kenya before the expiry of the pass otherwise his continued presence in Kenya would be unlawful and he would be liable for prosecution in a court of law.

Any person who does not have any of the above mentioned immigration status is unlawfully present in Kenya and can be prosecuted in a court of law. So far this is the stage in which Kenya is in the evolution of her immigration policies and practices.

Other legislations worth noting in the evolution of Kenya Immigration Department include:

(i) The Kenya Citizenship Act, Chapter 170 Laws of Kenya. This is an Act of parliament to make provision for the acquisition of citizenship of Kenya by registration in certain cases; to regulate the manner and circumstances in which aliens may be naturalized as citizens of Kenya and in which citizens of Kenya may renounce or be deprived of their citizenship; and to make provision for certain other matters relating to citizenship of Kenya and for matters incidental to and connected with the aforesaid purposes.²⁴ This Act commenced on 12th December 1963 and its operations are discussed in the chapter four of this work.

(ii) The Aliens Restriction Act, Chapter 173 Laws of Kenya. This is an Act of parliament to enable restriction to be imposed on aliens (non-citizens of Kenya) and to make such provisions as are necessary or expedient to carry such restrictions into effect.²⁵ This Act took effect on 18th May 1973 and still operates to date.

iii) The visa regulations of 1986 as revised by executive circular of 1994 and amended by the visa regulations of 1999. The provisions of these regulations are well discussed in the chapter three of this thesis.

2.7 THE FUNCTION OF THE KENYA IMMIGRATION DEPARTMENT

Human beings the world over crave for change of one form or another and this change is always aimed at a better standard of living. People look for better political, social, economic and cultural life. Because countries in different parts of the world offer more or less different forms of life, people through the modern communication system, have learnt of these different forms of life wherever they exist. This is why people have to move from one place to another, one country to another and one continent to another. For instance one would explain the presence of white community and the Asian community in Africa within the African context of unexploited economic opportunities within the African continent. By the same token one would attribute the presence of African talented manpower in the European labour markets to the better economic remuneration offered by those markets as compared to the labour markets in Africa. People dissatisfied with the authoritarian and totalitarian political systems in one country would like to move to countries that would recognize their democratic belief systems.

The importance of immigration needs not be overemphasized because not a single civilized nation of the world can afford to function without it. The United States of America, the United Kingdom, Germany, among other Western European countries have their own forms of immigration and so do the countries of Africa and Asia.

The current Kenya immigration department is one of the key security and revenue collection departments in the Office of the President. Contrary to popular belief that immigration and customs department are the same it is noteworthy to dispel this misplaced notion because immigration department is concerned with human beings crossing the borders and living in the country while customs department deals with goods crossing the borders and circulating in the country.

Historically the department has evolved with its core functions but with complexities that have developed in the formative years of independence, certain peripheral functions sprung up. These include finance management and control, supplies and procurement, personnel services, information technology services (computer programming and analysis), transport management, clerical, secretarial, cleaning and messengerial services.

The cardinal functions of the department can be summed up to the safeguarding and promotion of security and socio-economic development of Kenya by regulating and controlling the entry, exit, residence, citizenship and issuance of travel documents and passes in accordance with the various Acts and regulations under which the department operates. These include the Immigration Act, Cap. 172 laws of Kenya, the Citizenship Act, Cap 170 laws of Kenya, the various visa regulations, and the Aliens Restriction Act, Cap. 173 laws of Kenya.

Briefly discussed below are the core functions of the Kenya immigration department.

(i) First and foremost the department of immigration was set up to control and regulate immigration into Kenya so as to protect the economic interests of Kenyans. In order to observe the Kenyanization programme, any foreigner who wishes to apply for entry permit authorizing him or her to work in Kenya must be subjected to a particular form of scrutiny. That person must prove to the Immigration Officer that he or she possesses a kind of skill lacking in the local labour market. Secondly, that person is expected to train the local person within a specified period to be able to take over the employment. Besides, any foreigner who wishes to engage in any trade, business, and profession in

Kenya is obliged to succumb to the same scrutiny.

(ii) The second most vital role of the Kenya immigration department is to guard and enhance public security of the state in relations to the incoming undesirable foreign nationals. An Immigration Officer is empowered by the immigration Act to require any person seeking to enter Kenya to answer any question or to provide any document in his possession for the purpose of ascertaining whether that person is or not a citizen of Kenya, for the purpose of determining whether that person should be permitted to enter Kenya under this Act. If an immigration Officer is convinced that the presence of a foreign national in Kenya would be injurious to the public security and the national interest of Kenya, the officer has the power to refuse that person entry into Kenya. The class of persons whose presence in Kenya would be detrimental to public security and contrary to national interest are outlined in the section three subsection one (a) to (l) of the Immigration Act, CAP 172 laws of Kenya.

iii) Other than protecting the economic interest and ensuring public security of Kenya citizens, the department of immigration also issues and renews permits and passes in accordance with the provisions of the immigration Act and regulations. Immigration permits are issued in classes for different purposes to foreign nationals who wish to undertake some activities in Kenya. The permits are in classes A-M and will be discussed in details in the Chapter three of this work. Reference has been made above as to the kind of passes issued by the immigration department. They appear under the immigration status recognized in Kenya under the Act.

(iv) To issue and renew Kenya passports and other travel documents such as the

Certificate of Identity and Nationality (C.I.N), temporary permits for travels in East Africa and United Nations Conventional Travel Document (UNCTD) for conventional refugees.

(v) To control and regulate the issue of visa for Kenya strictly in accordance with the visa regulation in force.

(vi) To register all aliens other than exempted or excluded persons over 18 years old and residents in Kenya under the Aliens Restriction Act and Aliens Restriction order.

vii) The department of immigration also functions to consider and grant citizenship of Kenya to desiring and deserving non-citizens residents in Kenya under the provisions of the Kenya constitution and the Kenya Citizenship Act.

viii) When the government of Kenya finds it necessary to remove a non-citizen from within her borders for particular reasons, it is the department of immigration that possesses and exercises the power of deportation of such undesirable immigrant. Where extradition treaties exist, it is the immigration department that enforces the provisions of such treaties.

(ix) A Kenya citizen stranded in a foreign land either for financial reasons or other reasons is taken care of by the consular officer operating in the foreign office. Repatriation is done and it is the immigration department in the home office that takes care of the recovery of any expenses that the government might have incurred in respect of the repatriated national.

(x) The department of immigration also undertakes the registration, control and recognition of refugees in Kenya in consultation with the United Nations High Commissioner for Refugees (UNHCR) and the Ministry of Home Affairs and National heritage, and sports.

(xi) The immigration department also collaborates with the Directorate of Security Intelligence in respect of all persons who apply for passports, entry permits, passes, visa and Kenya citizenship, for security clearance of whoever has to be issued with any of the above.

(xii) The department of immigration also has an investigations and prosecution wing that brings to book offenders under the Immigration Act, Aliens Restriction Act and the Citizenship Act.

(xiii) Another important function of the Kenya immigration department is quasi-consular function on behalf of some of the commonwealth countries that do not have resident representatives based in Kenya. A good example is the quasi-consular agreement between the government of the Republic of Kenya and the government of the republic of Ghana. A Ghanaian national stranded in Kenya is provided with a Certificate of Identity and Nationality (C.I.N), which facilitates his/her one way travel back to Ghana. Quasi-consular functions are performed on reciprocal basis.

2.8 CRITICAL ANALYSIS OF EVOLUTION AND FUNCTIONS OF KENYA IMMIGRATION DEPARTMENT

A critical analysis of the evolution of immigration policies in Kenya before and after independence reveals that even the current immigration legislations are insufficient to achieve the purposes for which they were enacted. This shows their out-datedness and dire need for revision in order to accommodate both the political, economic, and social changes that continue to unfold in the international system after independence and particularly after the speedy dissolution of the centralistic one party system in the early 1990s.

On January 7, 1990, notes Winrich Kuhne (1990)²⁶ a decision of immense significance was made in Moscow for the Soviet Union to renounce its claim to the party's monopoly of power. This eventually led to the end of the cold war in Europe and the end of the antagonistic confrontation of East and West not only in Europe but also in Africa and other third world countries. The rapprochement of Washington and Moscow and the end of the cold war, which is the outcome of the new realism in Soviet policy under Gorbachev, has had far reaching effects on the third world. Consequently the role of the third world conflict in the international system has dramatically changed. In the past, argues Kuhne, they were a lever to shift the international balance of power ideologically and militarily from one side to the other in the bi-polar international world order.

Now the third world conflicts have become a burden to the superpowers and their allies if not a disturbing factor in East-West relations and the problems therein. Africa must therefore expect a dramatic change in international environment of its politics. The collapse of Marxism-Leninism in Central and Eastern Europe should offer some lessons

to Africa. The end of East-West rivalry may result in increased conflict in Africa and there is a possibility that the continent will be pushed into the background of international attention to humanitarian and economic assistance because of the event in Central, Eastern Europe as well as Latin America and the middle East.

The rise of political pluralism and multiparty democracy in Eastern Europe has acted as a catalyst for political and constitutional reforms in Africa. The single party dictators in Africa have been adamant to allow those reforms resulting in brutal civil wars in many parts of Africa. Classical example in the last decade of the twentieth century include: Burundi, Sierra Leone, Liberia, Ivory Coast, Rwanda, Somalia, Sudan, Ethiopia, Eritrea, and Zaire (now the Democratic Republic of Congo- D.R.C). This has led to influx of refugees to the few islands of peace in Africa-mainly Kenya and Tanzania. Kenya has been a popular destination of refugees from Somalia, Rwanda, Burundi, Zaire, Sudan, Uganda, among other war-torn Africa countries. These refugees have entered Kenya with their weapons and have posed serious security threat to the host state because some of these arms have come into the hands of criminals who not only cause security havoc to citizens but also to the government itself. The proliferation of small arms which has led to the collapse of state systems like in Somalia in 1990s, continue to be a big problem in the entire African Continent and must be checked at all cost.

Factors such as ethnicity and tribal as well as clan political alignments, personal rule and military rule as well as scramble for scarce resources such as diamond in Congo, and Sierra Leone, among others, have all led to political turmoil in Africa. Gur Robert (1991)²⁷ argues that since the 1960s, the countries of Africa South of the Magreb have been wrecked by more deadly conflicts than any other world region except South East

Asia. He argues that eleven genocides and politicides occurred in Africa between 1960 and the late 1980s compared with 24 elsewhere in the world.

Globalization and the liberalization of the world economies are other factors that precipitate cross-border flows of human race as populations search for economic survival. All this calls for the expanding role of the immigration department. All these political, economic and social revolutions need to revolutionize the role and scope of immigration department in order for it to remain relevant and effective in its functions.

In order to formulate effective immigration policies, one needs to take into accounts the geopolitical and economic environment, which the country occupies, in the international system. Veronique Parque and Filip Reyntens (1999) analyzing the shifting alliances, extraterritorial conflicts and conflict management in the Great Lakes²⁸ once observed:

Once seen as peripheral, enclosed and of no political or economic interest, the Great Lakes region of Central Africa is today the center of a major geopolitical and economic shake up with repercussions for the whole continent. Countries as far apart as Southern Namibia, Northern Libya, Western Angola and Eastern Uganda are directly involved in a regional war that knows no boundaries.

Taking Kenya as our focal point of analysis, the problems associated with illegal immigration-resulting from unrestricted immigration structures currently in place-such as pressure on scarce resources; production of counterfeit and forged passports and visas; the imposition of stricter visa conditions on Kenya passport holders wishing to visit Europe and America; the proliferation of small arms and the near collapse of security systems in most of Nairobi city estates and other major towns-can be traced back to the collapse of Somali state and the cyclonic civil wars in the Great Lakes Region. These include the attack by the Rwanda Patriotic Front (R.P.F) from Uganda in 1990 and the

civil war that ensued, or the assassination of Burundi's democratically elected president, which sparked the massacre of tens of thousands of people and civil war of 1993. The region's sharp destabilization began with the Rwanda genocide that definitely put an end to the peace deal strongly backed by the international community.

Refugees poured into the Kivu region of ex-Zaire (now D.R.C), which later became the site of the regional and continental conflict known as the Congo war which broke out in August 1998. These conflicts have regionalized due to three factors: the geographical proximity of the conflicts, population flows and the game of alliances. The population was certainly greater in Rwanda and Burundi but the Kivu regions were equally exposed to serious tensions over land, especially in the border areas of Rwanda and Burundi. The population flows have made international borders porous. The nationality debate was profound in Zaire (D.R.C) culminating in the Sudden arrival of over million Rwandese in the mid-1994.

These three factors have combined to produce a highly unstable political and military arena and its nature cannot be divorced from a border context. This ugly scenario implies that illegal immigration into Kenya, as a relatively peaceful country is inevitable.

Since Kenya is also undergoing rough economic hard time since 1992, following the suspension of economic aid by the Bretton Woods Institutions-International Monetary Fund (IMF) and the World Bank-as well as the Paris club, most of these illegal immigrants had to seek asylum either in Europe or in the United States and Canada.

Discouraged by the prohibitive visa restrictions into Europe and the United states on the passport holders from the war-torn countries, the illegal immigrants from Rwanda,

Burundi, D.R.C, Somalia among other countries resorted to the forgery of Kenya Passports which had no strict visa requirements to enter Europe, United State of America up to the early 1990s. Rampant forged Kenya passport cases impacted negatively when most European countries, the United States and Canada imposed highly strict visa restriction on Kenya passport holders including Kenya's major economic and political ally-Great Britain.

Kenya changed its passport in 1994 to circumvent forgery but to no avail. The fraudstars quickly learnt the trick and more passports were forged or fraudulently obtained culminating in the historic and horrific twin-bombing of the United States Embassies in Nairobi and Dar-es-salaam on August 7, 1998 by illegal immigrants who entered Kenya and fraudulently obtained Kenya passports. It is also worth noting that prior to 1948 the department was not widespread across the country with established borders. This could be attributed to the fact that major towns in Kenya had not sprung up and the only centers that could attract immigrants were the major urban commercial and administrative centers of Nairobi, Mombasa and Kisumu. Border controls were meaningless at this early period because the three East African countries were all under the British colonial administration.

The same immigration administrative centers of the colonial period have been retained and strengthened by the post-colonial Kenya government. Although border control points have sprung up immediately before and since independence, most major towns in Kenya do not have established immigration offices. Immigration offices are only found in the headquarters-Nairobi, the two regional offices of Mombasa and Kisumu and the airports and border control offices. Unlike the provincial administration that has

spread up to the sub-locational level, immigration has never spread to all provincial headquarters let alone the district and divisional headquarters.

This trend is dangerous for the country because with the few immigration officers based in Nairobi, Mombasa, Kisumu and the borders, it is not possible to monitor and control the influx of illegal immigrants who may be working not only in the remote towns of Kenya but even in the provincial and district headquarters, as well as in the Nairobi City itself.

This dangerous trend must be arrested before it explodes. The assumption that the police, who are well spread across the country, can detect and prosecute culprits under all Acts is misplaced. This is because immigration department with its highly specialized functions and Acts, is no longer a police branch and police officers rarely understand the operations of the immigration Acts due to lack of specific training on the immigration practice and procedures.

2.9 OBSERVATIONS

With the growth of major towns in Kenya and the influx of all sorts of immigrants into the country, more immigration officers need to be trained and at least every district should have a district immigration officer to handle immigration affairs of the district. That way illegal immigrants and workers will be reduced and the safety of Kenyans and their jobs security will be assured. Most of the illegal immigrants do not enter through the gazetted entry and departure points but sneak through unauthorized routes into remote towns and remote parts of the city. Some immigrants enter legally and disappear into these remote parts of the towns and the city, thus the government should not be

content with the border controls, headquarters and regional offices established during the colonial period.

Aliens population in Kenya has grown many fold and in order to monitor and control the activities of those foreign nationals to conform to the Kenyan national interest, the department should now move away from the colonial legacy of concentrating surveillance in the headquarters of Nairobi, regional offices of Kisumu and Mombasa and the border controls.

All provincial and district headquarters should have at least an immigration officer. Of urgent and immediate requirement is the fact that all persons charged with the responsibility of determining Kenya citizenship and nationality should have some basic immigration training right from the headman in the village, the sub-chiefs, the chiefs, the District Officers, the registrars of persons. Functions of the immigration department should be harmonized with the functions of the registrar of births and deaths in terms of issuance of birth certificates, the registrar of persons in the issuance of national identity card, which form core pre-requisites for acquisition of passport and citizenship.

From personal experience during vetting of illegal immigrants netted in a police-swoop in Nairobi, an alien with valid immigration status narrated that the police only wanted his Kenya national identity card not his national passport or entry permit. This clearly shows that some police officers do not know who should have Kenya national identity card and who should not. It also implies that any alien holding National Identity card-whether or not fraudulently obtained would be assumed to be a national and escape police arrest, and therefore continue illegally staying or working in Kenya. It is therefore necessary to

hold regular seminars for all persons who can enforce the Immigration Laws to be addressed by Immigration Officers on key immigration legislations and practices. All these will go along way in achieving the goals and purposes for which the immigration department was set up. District Offices, increase in the number of Immigration Officers (I.O), police training and involvement in immigration work, should be the focus of the current immigration establishment in Kenya to accommodate the aforesaid changes since independence.

CHAPTER THREE

AN ANALYSIS OF THE FULL IMPACT OF VISA AND ENTRY PERMITS ON NATIONAL REVENUE AND JOBS BEING TAKEN AWAY FROM KENYANS

3.0 INTRODUCTION

This chapter forms the core of this thesis. We are going to examine the meaning, the categories, the types, the rationale and the economic impacts of the two core immigration variables (I) Visa and (II) Entry (work) permit. It will be of great significance to examine the categories of these two variables in Denmark and the United States of America which have older immigration legislations and from which most African immigration legislations have borrowed. Russian, French, German Embassies and the British High Commission were listed for interview but only the Royal Danish Embassy and U.S. Embassy cooperated in providing data.

The questions of immigration, of the entry and expulsion of aliens, fall within traditional conceptions of domestic jurisdiction. Matters of admission and expulsion from a state are usually for that particular state to decide in the plenitude of its sovereignty. Under general principles of interventional law there are certain categories of persons who should not be denied entry by any state. These include nationals returning home either voluntarily, deported or repatriated from foreign countries. Asylum seekers also may not be denied entry but it is difficult to distinguish between genuine asylum seekers and criminals escaping arrest and trials in their own countries. Diplomatic agents, special missions, international officials and crew members of aircrafts and ships always have free access to foreign countries particularly where the host states are parties to the international conventions or treaties providing for such free access. All the other

categories of persons are left to the mercy and discretion of the municipal legal and political regimes of the respective states.

In Kenya, constitutional and executive regulations concerning the issuance of visas and entry (work) permits have been guided by the general foreign policy orientation of the government since independence. Jona Rono (1999) argues that the most important policy formulation institution in Africa is the presidency, often supported by the respective Ministries of Foreign Affairs. In his view Kenyatta's style of leadership from 1963 was reflected in his foreign policy where his wishes were that Kenya would be built along the lines of free enterprise, tied to the West, and that the accumulation of foreign capital would be necessary for economic growth, which led to the foreign investment protection Act of 1964.

In his willingness to cooperate with Britain, the settlers and foreign investors, Kenyatta surprised those settlers who thought they would be expelled immediately after independence by stating that:

The government of an independent Kenya will not be a gangster government. Those who have been panicky about their property, whether land or buildings or houses, can now rest assured that the future African government, the Kenya government, will not deprive them of their property or rights of ownership. We will encourage investors in various projects to come to Kenya and carry on their business peacefully in order to bring prosperity to this country. We are going to be an orderly and responsible government. We want to run our county in the most peaceful and friendly way.

Such desire to cooperate with former colonial master – Britain in particular and the West in general-was an enduring feature of Kenyatta's administration of 1963 to 1978.

There has been remarkable continuity and consistency in Kenya foreign policy under Moi. Positive non-alignment formed the cornerstone of Moi's regime and his Nyayo philosophy, following the "footsteps" of Kenyatta was aimed at achieving three espoused principles – love, peace and unity – as well as the more concrete objective of maintaining close link with the West. Good neighbourliness, peacemaking and peacekeeping were basic tenets in the Nyayo philosophy.

In recent years President Moi's major foreign policy preoccupation has been the wooing of foreign investors. In May 1994, while on transit to China, the president took time to meet members of the Indian business community and urged them to invest in Kenya. In November of the same years, he travelled to Britain to address a Confederation of British Industry (CBI) conference on investment in Kenya. Featuring prominent in his incentives include investment allowances of up to 85 per cent on plant and machinery in manufacturing and hotel sectors, liberal depreciation rates, and remission of the customs duty. Export Processing Zones (EPZs) have also been set up and enjoy special incentives.

Security has been a major concern for Kenya since independence. On territorial integrity, Kenyatta made it very clear that Kenya would not concede any part of its territory. In September 1963, notes Rono, he cautioned the British Government against negotiating away the Northern Frontier District (NFD), which the Somalia government was claiming.

In 1990s, an influx of about 500,000 refugees, caused by civil wars in Somalia, Sudan, Ethiopia, Rwanda, Burundi and lately, Zaire (now Democratic Republic of Congo),

strained the country's security and resources. Rono rightly argues that Kenya has been a popular destination for refugees because it has continued to be a relatively stable and important country in Africa despite the challenges facing it as a result of the collapse of the state systems in many neighbouring countries and the difficulties of the democratisation process. It has continuously maintained civilian government since gaining independence in 1963; it accomplished one presidential transition from Jomo Kenyatta to Daniel arap Moi in 1978; and it transformed itself, though with difficulties, from one-party to a multi-party state in the 1990s.

In his conceptualisation of Kenya-US Relations, Korwa G. Adar (1995) noted that Kenya acquired her sovereign status in 1963 and in the process became a subject of international law. As a participant in international relations, argues Korwa, she like any other sovereign state defined her foreign policy within the context of her national interests.³⁰ In order to achieve the goals and objectives of her national interests, she has since 1963 relied heavily on foreign aid, both economic and military. In the process, she has maintained and expanded linkages with the industrialised countries, which were established during the colonial rule.

With this background, conceptualisation and understanding the rationale and categorisation of the Kenya government visa and entry permit regimes become less cumbersome.

3.1 KENYA VISA

The Ministry of Foreign Affairs, protocol division defines visa as a recommendation that a foreigner may be allowed to enter Kenya. In other words, it is a kind of certificate

issued by the ambassador; consul or immigration officer verifying that the application for stay in Kenya on the purpose and duration indicated therein has been deemed appropriate.

Kenya visa takes the form of a stamp in the applicant's passport or any other recognized travel document. It is not in the form of a sticker as practised by most industrialized countries. The visa practice of endorsing a stamp is very open to fraud because the only security feature in such a stamp is the immigration officer's stamp number. It is not secured by any watermarks that can only be identified under ultra-violet light machine and therefore can be made by any fine artist and used by immigration fraudsters. Control and accountability of fees collected under such stamp visa regime become almost nil because the stamp number of an officer can easily be altered or intentionally blurred and the official receipts in respect of visas issued also can be printed. Since ordinary visas are issued at the Kenya borders by border control officers, the immigration headquarters has just to take what the border officers present as visa collection as long as such amount corresponds to the figures reflected in the official receipts returned.

Sticker visa practice should be adopted in Kenya because it is extremely difficult to forge. It has watermark security features visible only under ultra-violet light machine. The system of accounting and control in respect of visas issued and fees collected become authentic because the issuing authority at the immigration headquarters is able to ascertain the number of visa stickers released to each regional office, border control office and mission abroad, and the amount of fees expected from the issuance of such visa stickers.

Piano and Olton (1988) define a visa as an endorsement on a passport by an official of the country to be entered, authorising admission to that state³¹. These definitions are not any different from the operational visa practice in Kenya except that in Kenya, the endorsement does not necessarily have to be put on a passport. Such clearance certificate, or consent usually take the form of stamp endorsement in any recognized travel, nationality and identity documents.

A visa is therefore a preliminary and mandatory (for those nationalities required to have it) requirement in addition to the ordinary immigration requirements such as possession of a valid passport, good purpose for entry and the economic ability of the intending immigrant to be issued with the relevant immigration status to enter Kenya. This fact is reaffirmed in the chapter II of the Kenya Visa Regulations (1986), which states that:

It should be noted that the possession of a visa for Kenya is not the final authority to enter Kenya. The Immigration Officer at the port of entry may refuse such a person permission to land if he is satisfied that such visitor is unable to fulfil the immigration requirements and that the entry and presence of such a person in Kenya would be contrary to national interests, even though such a person may be in possession of a valid visa for Kenya. Provided that any such refusal is consented to by the Principal Immigration Officer, Nairobi, his deputy or provincial heads in Mombasa and Kisumu.³²

The Kenya Visa Regulations has borrowed a great deal from the United Kingdom's immigration practice particularly in terms of the discriminative nature of the regulations.

Under the law of the United Kingdom, observes Goodwin, a patrial (a person with the right of abode in the United Kingdom) may enter the United Kingdom without leave, and to that extent he is not bound to undergo any form of examination abroad, although in some circumstance he may need a certificate of patriality as proof of his right of abode.

For non-patrials, however, the documentary requirements have been tightened up and any non-patrials who want to settle in the United Kingdom must have an "entry clearance" in the form of a visa, or an entry certificate or home office "letter of consent" the precise document depending on his national status.³³ Examples of non-patrials include nationals of most East European countries, some Asian and African countries as well as Cuba. This practice is clearly reflected in the Kenya Visa Regulations where most commonwealth nationals do not require visa to enter Kenya (Category 1) while nationals of most Eastern European countries and the religious fundamentalist countries both in Asia and Africa including Cuba (Category 3) are required not just to have visa on application but referred visa from home office for approval before setting foot on Kenyan soil.

The visa practice in the United States of America, is, however, uniform. The study of the American visa practice as noted by Goodwin-Gillis shows that although for many years immigration into the United States was restricted by laws directed to the exclusion of certain racial groups, a most significant amendment now declares that no person shall be discriminated against in the issue of an immigrant's visa because of his race, sex, nationality, place of birth or place of residence. Although this exists in the statute books, practice proves otherwise because booking an appointment for a U.S. visa is almost impossible, let alone getting the visa itself.

3.1.0 TYPES OF KENYA VISA

The Kenya Visa Regulations is not a parliamentary legislation but a formulation of the executive, in this case, the Ministry of Foreign Affairs, and the office of the president - department of immigration and the Directorate of Security Intelligence. Under the Revised Edition of the Kenya Visa Regulations of 1986, as amended by Visa Regulations of 1999, we have seven types of visas though one has ceased to operate because it has been overtaken by the events, which have taken place in South Africa- the fall of apartheid. These types include:

(i) **Ordinary/Entry Visas** - These are visas required by all persons intending to enter Kenya for visits or residence and shall be issued strictly in accordance with the provisions of categories 2, and 3 of the visa regulations.

As we shall see in the visa categories later, it is important to note that category 4 has ceased to operate because of the collapse of apartheid Government in South Africa.

Ordinary/Entry Visas are in most cases issued to nationals of countries that fall under category 2 of the Visa Regulations as shown in table 1 below. Visa fees are paid in foreign currency, mostly in U.S. dollars and for a long time until August, 1994 the standard fee for ordinary/Entry visa was ten U.S. dollars (\$10) and normally issued valid for three months.

(ii) **Transit Visas** – these are visas required by all persons intending to transit through Kenya for periods not exceeding seven days and shall be issued strictly in accordance with the provisions of categories 2, and 3 of the Visa regulations. The fee

charged in relation to the issue of this visa has been, up to August 1994, five U.S. dollars (\$5). This is the type of visa that has been severely abused by dishonest foreign nationals who pretend to be transiting through Kenya while just conducting their businesses in Kenya and going back to their countries.

Our field survey as immigration officers has revealed that out of fifty passports examined forty percent (40%) foreign nationalities come to Kenya with the intention of transiting to Uganda with their textile material and ornaments but a close examination of their passports shows no Ugandan Immigration Entry or Exit Stamps which means that they dispose of those goods in Kenya and taking off back to Pakistan for more goods. The aim of these foreign nationals is not to transit through Kenya but to avoid the higher ordinary/Entry visa fees and probably the custom duty on their goods. Further inquiries revealed that these foreign nationals who pretend to be transiting through Kenya actually aim at avoiding the bureaucratic channels and fees involved if they were to come in as ordinary visitors on business purpose to obtain Entry permits and conduct business in Kenya. Conditions for the issue of business Entry permit is discussed in the part two of this chapter and the fee, if the applicant qualifies for one, is twelve thousand Kenya shillings per year and the business man will have to continue remitting income tax to the government. Dishonest foreign businessmen therefore use the resident businessmen already established in Kenya and with the provision of this Transit Visa, dispose of their goods in Kenya thereby avoiding what the government would have received from them in terms of revenue. No official statistics on these cheats can be found to compute how much has been lost over a given period but indications are that the amounts are colossal.

The issue of this type of visa should be reviewed with a view to either discarding it or employing safety measures to ensure that those who fail to comply with its provisions are punished in some way. At present no such measures exist and a holder of a Transit Visa is able to get his way through the airport back to his country without any explanation of why no transit took place.

Holders of Diplomatic Passport on official visits are entitled to the issue of Transit Visa free of charge.

(iii) **Diplomatic Visas** – are issued gratis (free of charge) to holders of Diplomatic Passports on official visits. These visas are also issued strictly in accordance with the provisions of categories 2 and 3 of the Visa Regulations. They are mostly issued valid for three months.

(iv) **Official/Service Visas** – these visas are issued to holders of official or service passports on official visits and they are issued gratis, strictly in accordance with the provisions of categories 2 and 3 of the Visa Regulations. Validity usually lasts three months.

(v) **Multiple Journey Visas** – These visas are issued to all persons who are nationals of countries which require visas for Kenya and who by nature of their business or circumstances require to make frequent visits to Kenya. They are normally issued for a period ranging between six and twelve months and the fee has, for a long time, remained fifty US dollars (\$50). An example of a person who may require a multiple journey visa is a foreign national who is an established customer or supplier of some

goods or services to a particular company or organization established in Kenya.

Applications for all Multiple Journey visas shall be referred to the Principal Immigration Officer, Nairobi, for approval, in the usual manner.

(vi) **Courtesy Visas** – These may be issued gratis in accordance with the provision of categories 2 and 3 of the Visa Regulations where the applicant is not entitled to a Diplomatic Visa, but where it is considered by the issuing officer to be desirable on the grounds of international courtesy. An example is where an important personality of foreign state such as retired president is on an ordinary visit to Kenya.

(vii) **Exit Visas** – These visas are not operating any more in Kenya but were heavily operational during the time of sanctions against apartheid policy in South Africa. It stopped operating immediately the apartheid policy in South Africa collapsed around 1990.

Exit Visas were incorporated in the Kenya Visa Regulations as one way of showing Kenya government's solidarity with those states that were opposed to and bent on bringing down the discriminative white minority apartheid government in South Africa.

While it was in operation, all citizens and residents of Kenya intending to visit the Republic of South Africa for any purpose required Exit Visas. Such visas were applied for and issued by the Principal Immigration Officer, Nairobi, strictly in accordance with the provisions of chapter IV of the Visa Regulations. Such Regulations provided that: The validity of an exist Visa was thirty days while deserving cases were considered for

long periods but not exceeding three months. In the case of bona fide students the Exit Visas were issued or extended for periods not exceeding twelve months and the fee for the issue or renewal of an Exit Visa was Ksh. 1,000 for all other purposes.

The provisions of these types of visas were meant to discourage any manner of visits to the Republic of South Africa during that period when the government was at its height of practising racial segregation, and therefore such discouragement was meant to champion the good of humanity for the majority of South African nationals and residents.

3.1.1 KENYA VISA CATEGORIES

Under the same Kenya Visa Regulations of 1986, four categories of visas can be identified as category 1,2,3 and 4. Category 4 is no longer practised because it has outlived its purpose of serving as one of the Kenya immigration Sanctions against the then existing and annoying racial discrimination as practised by the Republic of South African government. Though not in existence any more, it will be necessary to outline the operations of category 4 for purposes of common knowledge and record. Currently there are only three categories of visas, namely category 1, 2 and 3.

(a) Category 1 – Includes nationals of countries which do not require visas to enter Kenya and these are:

Citizens of commonwealth countries (A voluntary association of independent states that were once part of the British Empire) and the Republic of Ireland with the exception of nationals of Australia, British passport holders of Asian origin, Guyana, India, Nigeria, Ghana and Sri Lanka.

These countries are exceptions because they also charge visa fees for Kenya and therefore Kenya decided to reciprocate.

- (b) Countries with which Kenya has Visa Abolition Agreements – Denmark, Ethiopia, Federal Republic of Germany (West Germany) Finland, Norway, San Marino, Spain, Sweden, Turkey and Uruguay.
- (c) Australian holders of officials service or diplomatic passports while on official business.
- (d) All persons whose passports are endorsed with valid Kenya re-entry passes (see chapter 2 of this work on immigration status in Kenya) or any other written authority in lieu of a re-entry pass.
- (e) All passengers arriving and leaving by the same ship and who do not leave that ship.
- (f) All passengers in transit through Kenya arriving and leaving by the same aircraft or transferring to another aircraft and who do not leave the international transit lounges at Jomo Kenyatta International Airport in Nairobi or Moi International Airport in Mombasa or any other airport of embarkation or disembarkation
- (g) The manifested crew of ships and aircraft passing through or stopping over in

Kenya for periods not exceeding seven days in the case of air crew and fourteen days for ships crew.

- (h) Owners of private aircraft stopping over for fuelling in Kenya and who do not leave the precincts of the airport.
- (i) Holders of Laissez-passers (official passports) of regional or international organisations of which Kenya is a member such as the United Nations Organisation (U.N.O.), the organisation of African Unity (O.A.U), African Development Bank (A.D.B), Arab Bank for Economic Development in Africa (A.B.E.D.A), International Red Locust Control Organisation (I.R.L.C.O), Desert Locust Control Organisation (D.L.C.O) and Preferential Trade Area (P.T.A) among others while on official business of those organisations?

Category 2: -Include countries whose nationals may be issued with visas on application, and without reference to the Principal Immigration Officer, Nairobi, provided that they are not prohibited immigrants in Kenya. Countries that fall under this category are listed in the table 1, which combines category 2 and 3 of the Visa Regulations. Fee under the 1986 visa regulations is ten US dollars (\$10).

Category 3: – This includes nationals of countries who shall not be issued with visas under any circumstances without prior reference to, and approval by the Principal Immigration Officer, Nairobi. The table 1 below shows lists of countries that fall under visa categories 2 and 3 of the Visa Regulations.

Category 4: - Used to include citizens, residents, and those nationalities who transit

through South Africa before coming to Kenya. People falling under this category also required referred visas, approved by the Principal Immigration Officer before entering Kenya. In the case of categories 3 and 4 reference fee had been for a long time five US dollars (\$5) excluding the visa fee if approved and the application was to be submitted at least one month in advance to the time the applicant intends to enter Kenya.

The referred visa regime should at least make exceptional provisions for genuine impromptu visits to Kenya. If referred visas have to take at least one month to process, then it means that people who require this category of Visa may have to cancel important business trips to Kenya either due to lack of information on the time limits of such visa application or due to abrupt intention to visit Kenya. Cases such as funeral attendance do not give notice or impromptu need of medical attention or workshops, seminars and conferences.

The technotronic facilities like faxes and e-mails make it quite possible for visa application to reach Nairobi in a matter of hours and to any part of the world and Kenya should not be left behind on this important communication revolution.

TABLE 1 LIST OF COUNTRIES FALLING UNDER CATEGORIES 2 AND 3 OF THE KENYA VISA REGULATIONS

CATEGORY 2			CATEGORY 3
- Angola	- France	- Pakistan	- Afghanistan
- Algeria	- Gabon	- Paraguay	- Albania
- Australia	- Greece	- Philippines	- Bulgaria
- Austria	- Guatemala	- Portugal	- Cambodia
- Antiqua	- Guyana	- Panama	- Cameroon
- Bermuda	- Guinea Bisau	- Peru	- Czechoslovakia
- Brazil	- Guinea	- Pacific Isles	- Cuba
- Belgium	- Haiti	- Qatar	- Hungary
- Bhutan	- Hong Kong	- Rumania	- Iran
- Bolivia	- Honduras	- Rwanda	- Iraq
- Bahrain	- Iceland	- Reunion	- Jordan
- Burma	- India	- Sri Lanka	- Kampuchea
- Benin	- Indonesia	- Surinam	- Lebanon
- Burundi	- Israel	- Salvador	- Libya
- British passport holders of Asian origin with returnability to UK or country or domicile.	- Italy	- Switzerland	- Laos
	- Ivory Coast	- Saudi Arabia	- Mali
	- Japan	- Sao tome	- Nigeria
	- Korea(South)	- St. Christopher & Nevi	- North Mongolia
	- Kuwait	- Tunisia	- North Korea
	- Luxembourg	- Togo	- Poland
	- Liechtenstein	- Thailand	- Senegal
	- Liberia	- United Arab Emirates	- Somalia
	- Madagascar	- United States of America	- Syria
	- Malagasy	- Upper Volta (Bukina Faso)	- Sudan
	- Monaco	- Venezuela	- USSR
	- Mauritania	- Vatican City	- Vietnam
	- Mozambique	- Yemen (Northern)	- Stateless persons
	- Morocco	- Yugoslavia	
	- Mexico	- Zaire (DRC)	
	- Netherlands		
	- Niger		
	- Nicaragua		
	- Nepal		
	- Oman		

Source: Kenya Visa Regulations (Revised Edition 1986)

In August 1994, the government of Kenya had noticed some shortcoming of the 1986 Visa Regulations, particularly with reference to visa fees, in respect to Transit Visas and Ordinary/Entry, or Single Journey Visas. Some countries had increased their visa fees to Kenyans while Kenya still charged them less fee. The government issued an immigration circular dated 8th August, 1994 revising visa fees upwards to keep up with the current international visa fee trend. The circular also reaffirmed the provisions of the chapter IV (c)(vi) of the Kenya Visa Regulations where nationals of countries which charge Kenya nationals visa fees in excess of that currently charged by Kenya shall be charged visa fees on reciprocal basis. The circular, which took effect immediately, affected the countries outlined in the table 2 below. Countries listed in the table below are charged visa fees on reciprocal basis.

TABLE 2: LIST OF COUNTRIES CHARGED VISA FEE ON RECIPROCAL BASIS

Types of Visas affected	Standard Fee in US\$	Countries affected	Fee in US\$
Transit Visas	10	Australia	40
		Belgium	35
		Brazil	35
Standard Single Journey visas.	30	Canada	40
		Djibouti	40
		France	40
Multiple Journey visas	50	Iraq	40
		Mozambique	42
		New Zealand	50

Source Immigration circular 8th August 1994.

In the new immigration circular countries listed in table 2 are charged higher than the normal charges of \$10, \$30 and \$50, because that is what they charge Kenyans.

In 1999 the 1986 visa regulations was amended and the changes brought in the amendments to visa regulations (revised edition 1999) include:-

(i) Provision that the following categories of persons are classified as prohibited immigrants in Kenya and accordingly shall not be issued with visas or permitted to enter Kenya.

(a) Any person incapable of supporting himself/herself or his/her accompanying dependants in Kenya.

(b) Any person suffering from mental disorder or being a mental defective.

(c) Any person who refused to submit to a medical examination on arrival when required to do so by an immigration officer in accordance with the provisions of the Immigration Act.

(d) Any person certified by a medical practitioner to be suffering from a disease which shall make his/her presence in Kenya undesirable on medical grounds.

(e) Any person who, not having received a free pardon, has been convicted in any country including Kenya, of murder, or any offence for which a sentence of imprisonment has been passed for any term and who, by reasons of such convictions and imprisonment is considered to be an undesirable immigrant.

(f) Any person whose entry and presence in Kenya is deemed by the Minister to be contrary to national interests.

- (g) Any prostitute or person living on or receiving or who has lived on or received the proceeds of prostitution.
- (h) Any person in respect of whom there is in force an order directing him/her to remain out of Kenya.
- (i) Any dependants of the persons mentioned in the foregoing categories and classes.

Some of these categories of persons are very difficult to determine. Unless an intending immigrant behaves in a manner likely to suggest that he/she is mentally defective or suffering from any visible disease at the time of applying for a visa, it is very difficult to determine provisions (b), (c), and (d). Provision (g) is also not easy to determine because immigration officers at the borders do not have list of registered prostitutes in the world and unless it is indicated in his/her passport as a professional prostitute, the immigration officer has extremely difficult task proving that the person is a prostitute. Very few, if any prostitutes, declare by self-confession that they are actually prostitutes because prostitution has not be held as a noble profession to be proud of in many parts of the world. Although in some industrialized countries like Belgium, one may find official prostitution allowed but even those are restricted in certain areas of the city. While on a Diplomacy study tour of Brussels in September 2000, I had a chance to pass through the Nord Street and saw almost nude ladies displaying themselves in their glass cubicles. In many parts of African, such practice is almost a taboo.

3.1.2 Provision for Visa Waiver

Under the amendments to the Kenya visa regulations (Revised Edition, 1999)³⁴ visas for citizens of the following countries have been waived if visiting Kenya for periods not exceeding 30 days. United Kingdom, France, Switzerland, Belgium, Netherlands, Luxembourg, Germany, Italy, Spain, Austria, Japan, United States of America, Canada, New Zealand and Australia.

3.1.3 Visa fees.

Under the 1999 visa regulations visa fees are as follows:

- (a) The transit visa fee shall be US\$20
- (b) The referral visa fee shall be US\$10 non-refundable.
- (c) The ordinary/single journey visa fee shall be US\$50
 - (i) The multiple journey visas shall be US\$100 for all nationalities.
 - (ii) The 1999 visa regulations provide that visa is not required by citizens of the following countries which have concluded Visa Abolition Agreements with Kenya: Denmark, Finland, Spain, Norway, Uruguay, Turkey, Ethiopia, Eritrea and San Marino.

There seems to be great anomaly in this provision because our field survey has revealed that the following countries purported to have concluded Visa Abolition Agreement with Kenya are charging Kenya citizens visa fees as follows:

Country	Visa fee for Kenyan (Kshs)
Denmark	2250
Finland	2300
Spain	1765
Norway	1200

If Kenya does not charge these countries visa fees on grounds of the Visa Abolition Agreement, then Kenya has lost immensely in terms of foreign exchange which would have accrued from Visa fees by visitors from these countries. Kenya should charge fees on reciprocal basis because such agreement seems not to be in place any more.

Our survey has also revealed that the countries whose tourist visas have been waived by the government charge Kenyans visa fees as follows:

Country	Visa Fee (in Kshs.)
United Kingdom	4,600
France	2,163
Switzerland	1,800
Belgium	1,900
Netherlands	3,500
Luxembourg	not available
Germany	1,600
Italy	1,786
Spain	1,765
Austria	1,700
Japan	1,500
United States	3,500
Canada	5,800
New Zealand	not available
Australia	3,000

Such visa waiver became effective from June 1999 and the magnitude of revenue lost from such an abrupt policy decision cannot be over emphasised.

3.1.4 The impact of Kenya Visa Regulations

(a) Revenue lost arising from forged stamp visas in Nairobi.

Records from immigration department reveal that out of approximately 400 cases investigated and prosecuted in courts monthly, about 250 are of forged visa

endorsements. Unlawful engagement in employment and unlawful recruitment of aliens take about 100 while the rest immigration offences take 50. This means that 62.5% of immigration offences arise from the stamp visa regime, which is easy to forge. Alien illegal workers and illegal employers take 25% while the rest takes 12.5%. This means that the government is losing revenue (foreign exchange) of approximately $(250 \times 12 \times \$50) = \$150,000$ or Kshs. 11,850, 000 (US. Dollar rate being 1:Kshs 79) annually accruing from the reported forged visas in Nairobi alone, let alone other regional offices. It is therefore projected that by the year 2005, the government shall have lost approximately $(11850,000 \times 5) =$ Kshs. 59,250,000 arising from forged visas in Nairobi alone. Official immigration annual reports are not available for the 1990s where we would get figures to compute visa forgeries and fees lost for the entire country.

(b) The Inadequate Rationale for Visa Waiver

On the visa waiver, a great deal of revenue has been lost for no apparent reasons. The waiver was done mainly to act as incentive to tourists from those countries to visit Kenya and to improve the deteriorating Kenya international image as a tourist destination in Africa and the world. The deteriorating Kenya image was not because of visa fees but because of a number of reasons featuring prominently is the insecurity that faced near collapse since the early 1990s following violence that rocked parts of Kenya during the first and second multi-party elections. Most tourist attractions are to be found in the Rift Valley and Coastal areas which was home to land clashes and the 1997 Likoni violence in the Coast during the 1992 and 1997 general elections. Central to the tourist

slump in the 1990s is therefore attributed mainly to collapsing security system and lack of strategic marketing of tourist attraction through the internet and not because of visa requirements.

The table 3 below will illustrate Kenya's international visitor arrivals by country of residence. From this table we are going to analyse the trend of number and nationalities of Kenya visitors and how much money in terms of visa fee has been lost due to the current visa practice in place such as the visa waiver and the visa abolition agreement.

TABLE 3: KENYA'S INTERNATIONAL VISITOR ARRIVALS BY COUNTRY OF RESIDENCE (1992-1998)

COUNTRY	1992	1993	1994	1995	1996	1997	1998
TOTAL AFRICA	212964	315576	274768	265318	273328	272674	236566
Tanzania	187896	108366	113404	109500	112806	112536	106310
Uganda	54900	67685	70832	68385	70449	70281	60974
Zambia	7213	8892	9306	8982	9253	9231	8009
Others	62955	77616	81226	78452	80820	80627	69950
TOTAL AMERICA	66512	82001	85814	82865	85365	85161	73884
Canada	14622	18027	18865	18217	18767	18722	162243
Mexico	42	51	54	56	57	57	49
U.S.A.	51289	63234	66174	63887	65816	65658	59964
Brazil	123	152	159	167	173	173	150
Other America	436	538	563	536	552	551	478
TOTAL ASIA	52617	64872	67888	46500	67544	67382	58459
Japan	12053	14860	15551	15016	15470	15433	13389
India	18769	23141	24216	23378	24084	24026	20844
Israel	5771	7115	7446	7191	7407	7389	6411
Other Asia	16024	19756	20675	19980	20583	20534	17815
TOTAL EUROPE	442299	545303	570659	390800	567642	566283	491295
Denmark	7151	8816	9226	8911	9180	9158	7945
Finland	2738	3376	6921	6683	6884	6868	5959
Ireland	1951	2406	3686	3553	3660	3651	3168
Norway	1448	1785	1985	1918	1976	1971	1710
Sweden	25232	31108	34890	33685	34701	34618	30034
U.K.	130341	160695	154259	148952	153449	153082	132811
Greece	1156	1425	1491	1438	1481	1477	1281
Italy	38955	48027	54114	52254	53833	53704	46592
Portugal	450	555	580	550	566	565	490
Spain	7974	9831	10289	9926	10226	10201	8850
Austria	15581	19209	20220	19528	20117	20069	17411
Belgium	5060	6238	6539	6317	6507	6491	5631
France	37235	45906	48507	46840	48254	48139	41764
Germany	122035	150455	158735	153266	157894	157716	136658
Netherlands	14013	17277	18080	17456	17982	17939	15564
Switzerland	29832	36779	39657	38295	39452	39357	34145
Other Europe	1147	1415	1481	1438	1481	1477	1281
Australia	3573	4405	4609	4456	4590	4579	3973
New Zealand	2944	3629	3799	3666	3776	3767	3447
OTHER WORLD	591	729	763	733	755	753	653
TOTAL ARRIVALS	781500	963500	1008300	973614	1003000	1000600	868100

Source: Central Bureau of Statistics and Ministry of Tourism and Wildlife.

(C) VISA REVENUE LOST DUE TO DEFECTIVE VISA ABOLITION AGREEMENTS AND WAIVER

(i) Revenue loss due to visa abolition agreement

From table 3 above it can be computed that between 1992 and 1998, 60387 Danish, 39429 Finish, 12793 Norwegians, 67297 Spanish nationals visited Kenya as tourists. This sums up to 179906 numbers of tourists who visited Kenya from the respective countries purported to have concluded visa abolition agreements with Kenya. Kenya did not charge those tourists any visa fee of \$30 on the respect of such visa abolition agreements – which these countries have not respected. Denmark, Finland, Norway and Spain charge Kenyans visa fees of Kshs. 2,250, 2,300, 1,765 and 1,200 respectively.

In seven-year period 179906 Danish, Finish, Norwegians and Spanish visited Kenya. If each failed to pay \$30 visa fee, Kenya has lost $(179906 \times \$30) = \5397180 ; translated into Kshs. $(\$5397180 \times 79) = \text{Kshs. } 426377220$; translated into annual revenue loss $(426377220) \div 7 \text{ years} = \text{ksh}60,911031.43$ Appr. Ksh61 million. In five years Kenya is likely to lose $\text{Kshs. } 61,000,000 \times 5 = \text{Kshs. } 305,000,000$.

(II) EXPECTED VISA REVENUE LOSS DUE TO VISA WAIVER.

From the table three above, the trend of international visitor arrivals in Kenya from countries whose visa fees have been waived by Kenya, indicate that these are the countries with the greatest number of tourists visiting Kenya. From 1992 to 1998 the total number of visitors arriving in Kenya from Canada, U.S.A., Japan, United Kingdom, Austria, Belgium, France, Germany, Netherlands, Switzerland, Australia and New Zealand summed up to four million, one thousand, four hundred and

ninety eight (4,001,498). If this number was charged standard single journey (tourist) visa fees of \$30 obtaining during the period under review, it means that the government has earned a total of $(4001,498 \times \$30) = \$120,044,940$ which is approximately Kshs $(120,044,940 \times 79) = \text{Kshs. } 9,483,550,260$. This can be translated into annual visa revenue of $(9,483,550,260 \div 7) = \text{Kshs. } 1,354,792,894$. (Approximately 1.3 billion Kenya shillings). The figures used can be interpreted as follows:

\$30 = standard visa fees

Kshs 79 = \$1 (current rate)

7 = Seven year period of visitor arrival

As we have seen earlier that the standard single journey (tourist) visa fee currently in place (during the visa waiver period - June, 1999) is US\$50, the government of Kenya is likely to lose an annual revenue and foreign exchange of $(4,001,498, \times \$50 \div 7) = \$ 28,582,128.57$ which is approximately Kshs. 2,257,988,112. (Approximately 2.2 billion Kenya shillings)

From 1999, Kenya has been losing to the tune of over two billion Kenya shillings annually arising from the visa waiver. It is, therefore projected that if visa waiver obtains for the next five years, in the year 2005 Kenya shall have lost approximately over ten billion in terms of visa fees from the tourists arriving from those European countries whose tourist visas have been waived. This figure is arrived at as follows:-

The total number of visitors in seven years as seen in the table 3 above =

4,001,498 from countries whose visas were waived in 1999. To calculate the trend of annual visitor arrival, you divide 4,001,498 by 7 (number of years) and then you multiply by the visa fee per person (\$50) to get annual revenue expected. This can be arithmetically presented as under: $4,001,498 \div 7 \times \$50 = \$ 28,582,128.57$

This figure is translated into Kshs. by multiplying the dollars by Kshs. 79, the current dollar rate. $28,582,128.57 \times 79 = \text{Kshs. } 2,257,988,112$. This is an annual revenue loss of two billion, two hundred and fifty-seven million, nine hundred and eighty eight thousand, one hundred and twelve. It therefore implies that since the visa waiver of June 1999, Kenya government has been losing over two billion annually. If visa waiver remains in force for the next five years, by the year 2005, the government shall have lost $\text{Kshs. } 2, 257,988,112 \times 5 \text{ years} = 11,289,940,560$.

The effects of visa waiver is already being felt particularly in the foreign missions where several staff members have been recalled back home because the visa fees which used to sustain the missions has greatly reduced.

According to the precedence list of ambassadors and high commissioners of the Ministry of Foreign Affairs and International Co-operations as at January 2000, there were 59 ambassadors and high commissioners, 11 Charge d'Affaires, 14 honorary consulates and 40 international organization heads representing their governments and organisations in Kenya. This makes a total of 124 foreign missions represented in Kenya. At the same time Kenya had only 44 foreign missions abroad. Out of these 44, eight (8) positions of ambassadors and high commissioners were vacant including London, Tokyo, Vienna, Washington, Lagos,

Kinshasa, Khartoum and Kampala. The period of visa waiver since mid-1999 several visa officers have been recalled from foreign missions particularly from countries whose visa fees that used to sustain embassy officials have considerably reduced. The posting of visa officers to foreign missions has also stalled because there is little visa duties to perform.

Another impact of visa waiver is that it may strain relations between Kenya and the Central European, Middle East and Asian countries whose visa fees have been almost doubled at a time when Western European countries, United states of America, Canada and Japan have had their tourist visas waived. The Daily Nation of Friday March 17, 2000 quoted the visiting Slovak ambassador, Mr. Radomir Bohac, to have said that the doubling of visa fees for nationals from Central European countries will dissuade tourists from visiting Kenya³⁵. The envoy was also reported to have said that his mission had taken up the issue with Kenya's Foreign Affairs Ministry. His sentiments, the report says, was that the fees were doubled from \$25 to \$50 in 1999, ironically at a time when visa requirements for other European countries were waived.

The same diplomatic sentiments were echoed by the visiting Iranian foreign Affairs Minister, Dr. Kamal Kharrazi, as reported by the Daily Nation of Friday, March 31, 2000. He argued, according to the report, that Visa denials were discouraging potential investors to Kenya.³⁶ He argued that if more visas were issued, there would be an increase of investors from East and Central Asia visiting Kenya. The report also says that in his meeting with the Kenya Minister for Foreign Affairs and International Co-operation, Dr. Bonaya Godana, Dr. Kharrazi expressed eagerness in Iranian businessmen exchanging ideas with Kenyans. These two cases are just

a tip of the iceberg as many countries in Central and Eastern Europe as well as the Asian continent could hold the same complaints.

If the rationale of the visa waiver is to attract tourists to Kenya considering that majority of tourists to Kenya come from Western Europe, United States, Canada and Japan, the rationale is defective. From table three above we can see that the leading tourist arrivals are from Germany followed by United Kingdom, U.S.A., Italy, France, Switzerland and India. In the seven year period from 1992 to 1998 the international total visitor arrivals by country of residence were as follows: Germany 1,036,559; United Kingdom 1,033,589; U.S.A. 436,022; Italy 347,479; France 316,645, Switzerland 257,517 and India 158,458. The rest of European countries whose visas have been waived have fewer numbers of tourists arriving in Kenya than India over the same period. It is, therefore, illogical to leave India out if the rationale was to lure tourists.

Based on the Economic Survey, the Daily Nation of Saturday, May 27, 2000 has reported that the tourism industry made remarkable recovery in 1999 with a 22 percent growth in earnings.³⁷ The paper cited improved security, particularly at the coast as the reason for improvement, not the visa waiver. The depreciation of the shilling against the major currencies during the second half of 1999 has also been reported as reason for the recovery of the tourist industry. It is argued that the Coast province, the major attraction points in Kenya, was hit by a wave of violence towards the end of 1997, and the after effects were felt throughout 1998. The paper reports that earnings from tourism rose to Kshs. 21.3 billion compared to Kshs. 17.6 billion the previous year.

On table 3 it can be seen that in 1998 the international visitor arrivals fell significantly by 132,500 from a total of 1000600 in 1997 to 868,100 in 1998. The figure reflects a drop of 32.2 per cent. Stakeholders in the industry have also attributed the steady deteriorating international visitor arrivals in Kenya of 1998 to poor marketing strategies. Coupled with increased competition from the emerging tourist destinations like Tanzania, Uganda, South Africa among others. Citing an example of a good marketing strategist, the Daily Nation of Tuesday, April 25, 2000 reported the then Malindi mayor, Gideon Mung'aro to have praised the management of the Tropical African Dream village Hotel for being the only outfit which undertook serious marketing campaigns, managing between 70 and 100 per cent bed occupancy rates during the season.³⁸ It is also argued that more than 40 percent of international bookings were now being done through the internet, a fact witnessed recently when a delegation of the Kenya Tourism Board and the government visited trade fairs.

Deteriorating infrastructure and related tourist facilities in the national game parks and game reserves as well as historical and cultural centres are factors which greatly contribute to slump in tourism industry. Visa waiver becomes useless if security, infrastructural development and aggressive marketing strategies are ignored. Visa waiver can be abolished but tourists will continue to arrive as long as other factors more crucial to tourism are taken care of. Tourists make very good planning including financial budgeting and \$50 visa fee will never make a difference in their decision to come and enjoy themselves in Kenya. Elaborate bureaucratic red tapes in visa processing should be reviewed in order to avoid

delays in referred visa applications. Visa Officers in the Kenya missions abroad should be well spread to cover at least three or four major cities in each of the countries with largest number of tourists visiting Kenya such as UK, U.S.A., Germany, Italy, France and Switzerland. This way visa processing will speed up. Instead of visa waiver as a means of luring tourists, more consulates may be opened up in these countries to improve efficiency in visa processing.

All attempts at wooing tourists overseas by visa waiver will come to nought unless the internal factors are addressed seriously. Insecurity is tourists arch enemy. No tourist will leave the safety of their homes to die in foreign lands just because he/she is taking advantage of the visa waiver.

3.1.5 KENYA ENTRY (WORK) PERMIT

The issue of entry permit is one of the major functions of the Kenya immigration department and a brief discussion of the same has already been highlighted in the statement of the problem of this work, in Chapter one.

Definition: An entry permit, in the layman's language, is a work permit. It is a legal document issued by a competent authority, in this case, the government, to foreign nationals who wish to engage in employment, business, trade, or profession in Kenya.

3.1.5(a) CLASSES OF ENTRY PERMIT

There are as varied classes of entry permits as there are varied kinds of employment, business, trade or profession available in Kenya. There are those foreign nationals who want to engage in government, private, missionary or United

Nations employment. There are also those foreign nationals who want to engage whether alone or in partnership in different kinds of business like agriculture, mining, manufacturing and other prescribed professions.

It is therefore important to note that the issue of an entry permit is determined by the kind of business concern a foreign national wants to venture into and also the age of that person as well as the immigration status of that particular individual. In the current Kenya immigration practice, we have in all thirteen (13) classes of Entry permit, namely, classes: A, B, C, D, E, F, G, H, I, J, K, L, M. We shall focus our discussion on classes A and H because they are the ones mostly issued in Kenya and they are the ones which are of concern to this work. A brief mention will, however, be made of each class of permit for readers to know what they entail.

Class A. Issued to a person who is offered specific employment by a specific employer who is qualified to undertake that employment and whose engagement in that employment will be of benefit to Kenya. The issue of this particular class of entry permit has raised some controversy among the law-makers of Kenya; for example, the issue raised in parliament as reported by the Daily Nation of October 28, 1993 in which one legislator accused the government of issuing permits to foreign nationals as labourers, while Kenya has labourers in an appalling excess.³⁹ In the same debate, an Assistant Minister in the President's Office was reported to have confirmed that between 1990 and 1993, the government of Kenya issued a total of 10,765 Entry permits to foreigners but denied the claim that the government had allowed some Asians to work as labourers.

In the chapter two of this work we observed that one of the major functions of the immigration department in Kenya is to control and regulate immigration of foreign nationals into the country and the purpose of such controls and regulations is to protect the economic interests of the Kenya citizens. The government policy on Entry permits is contained in the explanatory notes of the first schedule of the Immigration Act (1967) and it states:

It is the government policy that the economy of Kenya should be manned by trained and competent citizens. Entry permits are issued to non-citizens with skills not available at present on the Kenya labour market, only on the understanding that effective training programmes are undertaken to produce trained citizens within a specified period.⁴⁰

In this consideration, the issue of class 'A' Entry permit to foreign nationals is to be guided by three important principles:

- (a) First, the principle of superior academic or/and experiential competence of a prospective foreign national in a particular field of work.
- (b) Second, the principle of the condition of the local labour market and
- (c) The principle of suitable local understudy for subsequent or eventual take-over.

These three principles operate as discussed below.

Any employer in Kenya who wants to employ a foreign national in Kenya must satisfy an immigration officer, that the concerned individual is both academically and/or experientially qualified to undertake a particular appointment. This should be verified by the production of that individual's academic and/or experiential testimonials.

From the results of our field interviews among selected city employers, the following came out as the general practice:

(b) THE PRINCIPLE OF ACADEMIC OR/AND EXPERIENTIAL COMPETENCE.

Most employers usually submit only uncertified copies of their employees' academic and/or experiential certificates and testimonials. This practice is very open to possible forgery of those documents by unscrupulous foreign employers who may want to employ only their close relatives and acquaintances. Most employees could not produce their original certificates and in those uncertified photocopies they have been overloaded with big titles as Chartered Accountants, Financial Controllers, Technical Supervisors among other rare professions in Kenya. Even after being overloaded with such rare titles and professions many employees did not engage in the specific employment they applied for. For example, a Chartered Accountant or a Financial Controller would be found in a very small scale business with not a single office and such a professional would be found selling goods across the counter; a work which should normally be done by a shop assistant. Out of 20 foreign employees interviewed 15 could not produce their original academic and work testimonials. This represents 75 per cent of aliens who could be working without superior qualifications to those of locals.

(c) THE PRINCIPLE OF THE CONDITION OF THE LOCAL LABOUR MARKET.

Most employers, particularly in the private sector, do employ foreign nationals though some with genuine requisite professional qualifications, the appointment is given before a thorough search into the local labour market is undertaken through the recommended media such as the local dailies among other media of

advertisement. Most employers argue that they advertise through friends so that they can get an employee with a reliable background. Out of ten foreign companies interviewed, only three companies advertised jobs in the local dailies. Therefore about 70 percent of foreign companies do not advertise jobs in the local dailies but recruit staff through in house advertisement. This may leave out several Kenyans who are qualified for the same job, thereby aggravating the escalating unemployment in Kenya.

(d) THE PRINCIPLE OF SUITABLE LOCAL UNDERSTUDY

Some employers, particularly in the private sector, give names of a citizen their expatriate will train to take over the appointment within a specified period just for the sake of filling in the entry permit application form. In the first place, for example, in the case of a Chartered Accountant, the name of the citizen to understudy the expatriate is a primary school leaver and how long will a primary school leaver take to learn the techniques of accountancy and replace the expatriate at the managerial level. The idea is to perpetuate the renewal of entry permit in respect of the expatriate while in fact, there exists no citizen being trained to take over from the expatriate. In areas where a suitable understudy is available the person is not given sufficient time for such study so that the expatriate may keep on renewing the entry permit.

(e) THE PRINCIPLE OF TRUST.

A subsidiary practice seems to have emerged. Many foreign employers in Kenya particularly those of Asian origin are very worried about working with employees whose character they are not very sure of. Some have requested the government

that they may be given some allowance to employ foreign nationals not on the basis of their academic qualifications but on the basis of trust acting as 'technical' supervisors to oversee a number of local employees. This is not a logical principle because logical investors should put sufficient control measures to control theft and where such controls fail, the law of the land usually apply to deal with dishonesty and theft.

Class B – Issued to a person who has been offered specific employment by the government of Kenya or any other person or authority under the control of the government and whose engagement in that employment will be of benefit to Kenya.

Class C – Issued to a person who is offered specific employment under an approved technical aid scheme under the United Nations organization or some other approved agency (not being an exempted person under section 4(3) of this Act) and whose engagement in that employment will be of benefit to Kenya.

Class D – Issued to the holder of a dependant's pass (see chapter 2 for KDP) who is offered specific employment by a specific employer, whose engagement in that employment will be of benefit to Kenya.

Class E – Issued to a person who is a member of a missionary society approved by the government of Kenya and whose presence in Kenya will be of benefit to Kenya.

Class F – Issued to a person who intends to engage, whether alone or in partnership, in the business of agriculture or animal husbandry in Kenya and who (a) has acquired or has received all permission that may be necessary in order to acquire, an interest in land of sufficient size and suitability for the purpose; and (b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that business will be of benefit to Kenya.

Class G – Issued to a person who intends to engage, whether alone or in partnership, in prospecting for minerals or mining in Kenya and who: -

(a) Has obtained, or is assured of obtaining any prospecting or mining right or licence that may be necessary for the purpose; and

(b) Has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that prospecting or mining will be of benefit to Kenya.

Class H – Issued to a person who intends to engage, whether alone or in partnership, in a specific trade, business of profession other than a prescribed profession in Kenya and who:-

(c) Has obtained or is assured of obtaining, any licence, registration or other authority or permission that may be necessary for the purpose; and

(d) Has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that trade, business or profession will be to the benefit of Kenya.

Results of the field interview among foreign investors holding Class H entry permits in Nairobi have revealed that nearly half of the holders of this particular class of entry permit have obtained such permit through falsification of the materials facts and documents presented to support application for entry permit. Out of twenty, ten were found to have submitted forged bank statement which is 50 per cent of the total number of investors.

Among the supportive documents falsified include the bank statements or certificate of balance purported to have been issued by particular banks such as the Standard Chartered Bank, Delphis Bank, Habib Bank among other foreign banks operating in the country. In many cases cross-checks of the presented documents purported to have originated from some banks have revealed that either the accounts quoted are non-existent or if the accounts exist at all, the balance quoted for a particular date does not tally with the balance the applicant presented to the Immigration Officer to support application for Class H, entry permit. These bank statements were verified by the various banks they were purported to have originated and found to be falsified. Such cross-checks were undertaken by field survey conducted by immigration Officers.

The findings also revealed some falsification of material facts by some applicants of Class 'H' entry permit. Such facts include wrong information about the kind of business, trade, or profession a particular applicant intends to engage in. One example is a case where a company called Lilinkola Boutique and Investment belonging to a West African national stated that the company was to engage in the

manufacture of textile and that the factory would be situated along Ngong Road, Nairobi. Instead the company engaged in the trade of mineral with a small office situated in Jubilee Exchange building within the city centre, after the permit was issued. Later the individual applicant turned out to be one of the 1995 suspected drug dealers in Kenya. Another textile company belonging to a Canadian citizen of Asian origin changed into a grocery with a different name called Cash and Collect situated within the city centre. No documentation in such cases as they were practical field findings by immigration officers on patrol.

One Japanese lady was issued with Class H entry permit to operate a restaurant business within the city centre, and, her restaurant failing to take off, turned into a health and fitness club with her offices based in Hurlingham in the outskirts of the city centre.

Any Immigration Act or regulations however, do not prohibit such changes so long as they are done with prior notification and the subsequent approval of the Principal Immigration Officer. Without such notification and approval the changes become offences under the Immigration Act and the sited cases were punished under the Immigration Act Chapter 172 laws of Kenya. The term specific trade, business or profession should be understood by the foreign investors to mean that one permit is not issued to cover all sorts of trade, business or profession but a particular one. Many holders of Class H entry permits have either misunderstood or intentionally flouted the conditions of this class of permit and such misunderstanding and/or intentional flouting had led to friction between Italian investors and the Kenya Government in July, 1994, and this friction was covered

by the Daily Nation of July 28, 1994. In this friction, the Italian investors claimed that the government was refusing to give work permits to prospective Italian investors in Malindi, and some investors were reported to be threatening to disinvest.⁴¹ The Government on her part responded by counter-claim that some of the investors had got off the track by venturing into small-scale businesses contrary to what their entry permits allowed them by engaging themselves into businesses whose scale and nature suited Kenya citizens most.

Turning to Entry permit classes I, J, K, L, and M the conditions for their issuance are almost the same as the conditions for the issue of Class H except that Class I is for a specific manufacturer, Class J is for a member of prescribed profession and Class K is for a person who is not less than 21 years of age who undertakes not to accept paid employment of any kind but to rely on assured incomes both from outside and within Kenya. Class L is for those who want to retire in Kenya after having held permit in Kenya for over ten years. Classes K and L are very rare. Class M is issued to a person who is a conventional or a recognised refugee under the United Nation High Commissioner for Refugees (UNHCR) who intends to engage in employment, business, trade or profession and there is no fee charged for the issue of this particular entry permit, since refugees receive almost similar treatment as citizens as provided for by the various international conventions relating to refugees status.

Entry permit fees vary from class to class and from time to time and in 1994, fees for the most frequently issued permits in Kenya which are Classes A and H was Kshs. 7,500 and Kshs. 12,000 respectively per year. Under normal circumstances these two dominant entry permits are issued valid for two years in the first instance

and may be renewed depending on the satisfaction of the Immigration Officer of the conditions for renewal.

Refusal of the issue or renewal of an entry permit can be appealed against and there is provision of such appeal in the Immigration Act to the minister responsible for immigration matter through the Principal Immigration Officer.

3.1.6 THE UNITED STATES OF AMERICA AND DENMARK VISA AND WORK PERMIT PRACTICES

It is important to examine the categories of entry permit and visa in the United States and Denmark where immigration laws are well established and effectively enforced and from which African Immigration policies have borrowed. We should have examined British work permit and visa policies since Kenya has borrowed its immigration policies from Britain but attempt to obtain the necessary data failed because the officials claimed that such matters are handled by home office. A brief study of the United States and Danish immigration practices is sufficient to offer some useful lessons to the analysis of Kenya immigration policies. We have however, included some information on British immigration from literature.

(a) IMMIGRATION IN THE UNITED STATES OF AMERICA.

Immigration laws and procedures in the U.S. fall under the United States Department of Justice, Immigration and Naturalisation service. Issuance of visas and work permits is based on certain classification of alien immigrants. In a pamphlet detailing instructions for filing petitions for temporary workers or Trainees (1990)⁴² the following visa classifications are in practice:

(i) Petition for Registered Nurse (H-IA classification) key requirements among others, for an employer who needs to employ a foreign Registered Nurse in the United States must submit:

(a) A copy of the alien's permanent licence to practice professional nursing in the country where his/her nursing education was obtained, or evidence that the alien's nursing education was received in the United States or Canada.

(b) Test results showing that the alien nurse has passed the examination given by the Commission on Graduate of Foreign Nursing School (CGFNS)

(c) A current copy of the Department of Labour's notice of acceptance of the employer's attestation concerning the conditions of employment of that particular Nurse. This practice applies to all other classes of aliens such as:

(ii) Petition for Alien of Distinguished Merit and Ability (H-IB classification). This includes aliens with national or international acclaim and recognition for achievements, unique or traditional artists, exceptional career achievements like sports, music, member of a prominent group and accompanying alien.

(iii) Petition for alien to perform temporary or seasonal agricultural labour services (H2A Classification).

(iv) Petition for alien to do temporary non-agricultural work (H-2B classification).

(v) Petition for trainee (H-3 classification). Featuring prominently on the petition

requirements for aliens intending to work in the United States and of significant lesson to Kenya immigration department are the following provisions:

(a) Equivalent education, training, and experience. The employer must submit evidence that the alien has substantial education, specialised training, and/or experience in the profession that is equal to training, and/or experience in the profession that is equal to training received by obtaining a college degree.

(b) Such equivalence to be determined by a recognised authority by submitting evidence of one or more of the following:

(i) An evaluation of the alien's transcripts, certificates records of employment or other required documents by an official who has authority to grant credit in the profession at local university.

(ii) Certification or registration in the profession from a nationally recognised professional association or society for the profession.

(iii) Results of recognised college – level equivalency tests or special credit programmes.

(iv) An evaluation of education only from a reliable credentials evaluation service which specialises in evaluating foreign educational credentials.

(v) Concerning prominent aliens in the arts, cultural or entertainment industry. In cases where the documentation submitted does not clearly show that the alien meets the requirements for H-1B classification, Immigration and Naturalisation service (INS) will consult with the appropriate labour union and a management organisation or recognised expert in the field for an opinion regarding the alien's qualifications and the level of work to be done.

(vi) Filing fee. Filing petition to employ an alien attracts a fee of \$ 50 to file Form 1-

129H. The fee will not be refunded, whether the petition is approved or not. If the filing fee is paid by cheque which is dishonoured, the INS will charge the petitioner \$5.

(vii) Title 18, United States code, section 1001, states that whoever wilfully and knowingly falsifies a material fact, makes a false statement or makes use of a false document will be fined up to \$10,000 or imprisoned up to five years, or both.

(b) IMMIGRATION IN DENMARK

The Ministry of the Interior, Danish Immigration Service (DIS) enforces immigration legislations in Denmark, according to Photostat extract from the Royal Danish Embassy, Nairobi. The booklet contains rules of the Aliens Act which provide that pursuant to section 9(2) (iii) of the Danish Aliens Act, a residence permit can be granted to an alien if significant employment or business considerations make it appropriate to grant the application. Under this Act, notes the booklet, residence and work permits can be granted to aliens possessing special qualification⁴³. That pursuant to section 30 of the Aliens order, certain aliens are, however, exempt from the requirement of a work permit for three months from entry. This applies to lecturers, artists, fitters, consultants and instructors. In such cases the Danish Immigration Service will submit the application to the Regional Labour Market Council. The Labour Market Council then assesses whether the work is indeed of a special nature, and whether labour is already available in the form of Danish nationals or resident aliens already holding a residence and work permit to carry out the work. If the Labour Market council cannot recommend a work permit, the Danish Immigration Service (DIS) will not grant a residence permit. If an application is lodged for a residence and work permit with a view to work outside

the general labour market, the Danish Immigration Service will grant a residence and work permit if the applicant possesses special qualifications not already available in Denmark.

Issuance of residence and work permit in Denmark is not a preserve of the DIS. The Danish Immigration Service often has to hear other public authorities or organisations in connection with its examination of the application. If the applicant is dissatisfied with the decision of the Danish Immigration Service, the applicant can complain of the decision to the Ministry of the Interior.

CHAPTER FOUR

PASSPORT REGULATIONS, CITIZENSHIP LEGISLATIONS AND THE GENDER QUESTIONS ARISING THEREFROM

4.0 INTRODUCTION

In this chapter we are going to discuss the Kenya passport practice under the following sub-headings:

- (i) What is a passport?
- (ii) The importance of a passport.
- (iii) The beneficiaries of a Kenyan passport.
- (iv) The types of Kenya passports and rationale behind the typology.
- (v) The issuing authority and the question of authenticity.
- (vi) The circumstances under which application for a Kenya passport may be refused.
- (vii) The circumstances under which a Kenya passport already issued may be withdrawn
- (viii) The validity of a Kenya passport.
- (ix) Other aspects of Kenya passport-such as post-dated passport, replacement of lost, or destroyed passports, filled up passports, amendments to passports, deceased person's passport, renewal or extension and addition of children.
- (x) Gender and constitutional bias

4.1 WHAT IS A PASSPORT?

Passport issue becomes a central theme when discussing policies regarding immigration practices in any part of the world. Having listened to conversations following general introduction between immigration officials and laymen, the laymen often ask the officials: "how is the immigration Department? Do you issue passports easily these days?". This brings out the realization that in fact a great many people narrow down the functions of the immigration department to the issue of passports only. When they talk of immigration they talk of passports. The questions also bring out the fact that passports have been difficult to get until certain conditions are fulfilled. The East African Standard of December 4th 1994 quoted the Tanzanian president to have suggested in the East African Summit, Kampala, that passport requirements for East Africans to enter each other's territory should be waived because it is very expensive and difficult to get.⁴⁴ He proposed a simple document such as inter-state pass or even identity card to enable the East Africans to enter any of the East African territories. Passport practice in Kenya is an executive regulation and not a matter of constitutional provision. Whatever we are going to discuss under this is based on oral interviews of immigration officials competent in immigration procedures and a few literatures related to passports.

Plano and Olton (1988) rightly define a passport as "A legal document issued by a state, which identifies an individual and attests to his or her nationality"⁴⁵.

In order to distinguish further a passport from other identity and nationality documents, Plano and Olton argue that passports are issued to citizens who wish to travel abroad and entitle the bearer to the protection of his or her country's

diplomatic and consular representatives.

In the view of the two authors, passports are also requests to foreign government to allow the bearer to travel or sojourn within their jurisdiction and to grant lawful aid and protection.

Goodwin-Gills (1978) also argues that passport issue also touches upon the relations between states, which include, particularly, the issues of nationality and its proof, diplomatic protection and the returnability of the holder to the state of issue⁴⁶.

In light of the above views on the definition of a passport, one would be justified still to raise the question:

What then are the fundamental differences between a passport and other travel documents such as certificate of identity and nationality; Temporary permits; United Nations Conventional Travel Documents, National Identity Cards and Emergency Certificates?

All these documents are issued by a state; they also identify individuals and attest to their nationality.

In my view, a close examination of the table below (Table 4) will reveal that the fundamental differences between a passport and other travel documents mainly lie in its recipients and international recognition, the nature and quality of materials used in its production, its security aspect, its durability and its value.

TABLE 4: Showing the difference between passport and other travel and Identity documents Issued by the immigration department of Kenya.

PASSPORT	UNCTD	CERTIFICATE EMERGENCY	C I N	T.P	I.D CARDS*
1) Issued to citizens and recognized for international journeys.	Issued to conventional refugees and recognized for international journeys.	Issued to citizens who have lost their passports abroad and is valid for only one way journey back home.	Issued to citizens and recognized for continental journeys, for example Africa.	Issued to citizens for regional journeys, for example East Africa.	Issued to citizens for Identification purposes and mostly nationally recognized.
2) Prepared in good quality material booklet.	Prepared also in a booklet.	Prepared in some sheet of papers.	Prepared in some sheet of papers.	Prepared in some sheet of paper.	Prepared mostly in a laminated card.
3) Contain most high security features such as the coat of arms.	Contain less security features.	Contain less security features	Contain lower security features.	Contain lower security features.	Contain lowest security features.
4) Has the lifespan for example 10 years running in bits for the case of Kenya.	Has longer lifespan, usually two years for the case of Kenya.	Has the shortest lifespan-validity expires with the holder's arrival at home.	Has longer lifespan, usually two years for the case of Kenya.	Has shorter lifespan, usually one year for the case of Kenya.	Has the same lifespan as the passport, 10 years but running at once before replacement
5) Commands high fee in Kenya and difficult to get.	Commands no fee in Kenya.	Commands no fee in Kenya.	Commands low fee in Kenya and easier to get.	Commands low fee in Kenya and easier to get.	Commands no fee in Kenya and also easier to get.

Source: My own creation as an immigration practitioner, as at 1994.

Each country under normal circumstances only issues passports to her nationals who qualify for the same. Non-citizens may only obtain passports through false presentation in order to achieve their egocentric, most often, sinister goals. Although passports and United Nations Conventional travel documents command international recognition, and both are in form of good quality paper material, the difference lies in their recipients; a passport is issued to a citizen while a U.N.C.T.D is issued to a conventional refugee. The same case applies to the difference between a passport and the international, or regional Laissez-passers. Laissez-passers are also produced in form of a booklet like a passport but regional and international bodies only issue them to officials of those international and regional organizations for purposes of distinguishing status of the holders in their official international journeys.

Other travel and identity documents such as Certificate of Identity and Nationality (C.I.N), Temporary Permits (T.P), and National Identity Cards are different from a passport because they do not command international recognition, they are produced in loose low quality paper material and their validity period is shorter except National Identity Card. They are not globally recognized travel documents.

A passport is prepared under and with higher and tighter security features such as the coat of arms, seal among other security features whereas most other identity and travel documents contain loose security features open to easy forgery by fraudulent individuals.

In most cases National Identity Cards, United Nationals Conventional Travel Documents (U.N.C.T.D), and International and Regional Laissez Passers are issued freely to deserving individuals and other identity and Travel Documents such as Certificate of

Identity and Nationality (CIN) and temporary permits are issued to deserving individuals at lower cost than that charged for passports. For example, at the time of writing this thesis, the cost of a Kenya passport rose from KShs 400 in early 1994 to KShs 1500 by late 1994. At the same time the cost of Kenya Temporary Permit (usually issued to citizens who wish to visit Uganda and Tanzania) and the cost of Certificates of Identity and Nationality (mostly recognized by African countries) rose from KShs. 300 to KShs. 500 and from KShs. 500 to Kshs.1000 respectively.

The cost of these travel documents changes from time to time but these are 1994 costs. Whereas the lifespan of a Kenya passport is ten years due for replacement, the lifespan of a Temporary Permit and Certificate of Identity and Nationality are one year and two years respectively. Emergency Certificate expires immediately the holder arrives home.

It is also important to note that the basic difference between a national passport among other national identity and travel documents and laissez-passers lies in their issuing authority. Whereas national passport and other national identity and travel documents are issued by the states, of which an individual is a citizen and a resident, Laissez-passers are issued by the international and regional bodies of which an individual is an official. Laissez-passers, in most cases, are only recognized by states which recognize the issuing international and regional bodies in so far as the holders are on official business of those bodies. If one is not on official business, he or she is obliged to use his or her national passport for international travel. Laissez-passers are meant to prove the official status of the individual so that the necessary diplomatic immunities and privileges may be accorded to that person – by the host state.

It therefore implies that one can possess both national identity card, national passport, and Laissez passer at the same time but not any two identity and Travel Documents. For example in Kenya, a citizen of Kenya cannot lawfully possess a national passport and a Certificate of Identity and Nationality (CIN) or a Temporary permit (T.P) at the same time. Only one national travel document at a time.

From the foregoing discussion a passport may be defined as a legal identity, nationality, status and travel document issued by a recognized state to her citizens for international travels. In a passport almost exhaustive descriptions of the bearer are provided such as the recent facial photograph, the date and place of birth, nationality, country of residence, marital status, profession, height, colour of the eye and of the hair and any other special peculiarities used to identify the bearer. All these particulars help the immigration and other Officials to ascertain whether the bearer of the passport is the rightful owner or it has been forged. A passport is the most recognized international travel document in the contemporary world because it almost fully identifies the international migrant both in his or her national and international status.

4.2 THE IMPORTANCE OF A PASSPORT.

Highlights of the significance of a passport have so far been seen in its definitions. When we talk of the significance of a passport we should not restrict the discussion to the recipient of the document. We should also look at the part it plays for the issuing authority in its local administration and in its international intercourse.

(i) PASSPORT AS AN INTERNATIONAL TRAVEL DOCUMENT.

In the first place possession of a passport gives the bearer the chance to exercise his or her right to personal liberty and freedom of movement. Being essentially an international travel document, a passport opens the way for an intending international migrant to legally move across frontiers and fulfil his or her international ambitions.

(ii) PASSPORT AS A NATIONALITY DOCUMENT

Any person arriving in a foreign country must prove his or her nationality. The proof of nationality is essential for the passport holder to secure diplomatic and consular protection and assistance in case of any problem in the foreign land. Secondly, the proof of nationality is important for the receiving state's immigration officials to determine whether the holder requires a visa before allowed entry and if so, what kind of visa.

Thirdly, nationality proof is necessary for purposes of returnability in case the passport holder is found to be undesirable immigrant in the host state.

(iii) PASSPORT AS A STATUS DOCUMENT.

The kind of a passport a person holds reflects his or her status in a foreign country. The holder of a diplomatic passport is entitled to diplomatic privileges and immunities as recognized by Articles 29-34 of the Vienna Convention on Diplomatic Relations of 1961.⁴⁷

(iv) PASSPORT AS A GOVERNMENT PROPERTY.

Because the passport issuing authority is the state, the state can use her power to control the international movement of her citizens outside the country. The state can also control the movement of foreign nationals into the country. Although passport practice does

involves principles which affect the international relationships, its issue is largely left to the local administration of states and therefore open to executive and arbitrary control. On the controversial question of the right to travel as a human right, municipal systems vary considerably.

In the case of Kenya there are no statutory provisions governing the issuance of Kenya passports. There are, however, guiding principles and procedures pertaining to the issue of and control of Kenya passports, by the executive branch of government. All Kenya passports are issued under the authority of the government of Kenya. The Principal Immigration Officer (P.I.O) in Nairobi is the principal passport control officer in Kenya and he further delegates his powers to branch passport control offices in the two local branches in Mombasa and Kisumu and to consular offices in the missions abroad. The Principal Immigration Officer enjoys and delegates almost absolute discretionary powers to issue, extend, renew, amend, withdraw and cancel Kenya passports.

This almost absolute discretionary power of the Kenya government to control Kenya passports implies that the government can deny the citizen's right to travel and to personal liberty. The government can keep its citizen within its borders if it deems that the citizen's activities outside the country would be detrimental and injurious to the national interest of the country. So this discretionary control of the issuance of Kenya passport is important to the Kenya government in preserving its internal security and international image.

Restricting our argument to the right of Kenyan citizen to leave Kenya and the government's absolute control of the issuance of Kenya passport, keen attention needs to

be drawn to the chapter (v) section 81 of the constitution of Kenya.

Section 81 (1) provides that:

No citizen of Kenya shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya⁴⁸.

Many people stop at this point and think that the government is flouting the constitution by refusing to issue or by withdrawing passports already issued to some citizens.

Section 81 (3) (a) provides:

For the imposition of restrictions of the movement or residence within Kenya of any person or on any person's right to leave Kenya that are reasonably required in the interests of defence, public safety or public order.⁴⁹

The implication, therefore, is that the government can conveniently control the movement of its citizens across frontiers without flouting any section of the constitution. The problem therefore lies in the constitution because it leaves the government with discretion to decide on the description of its citizens whose freedom to movement is reasonably required to be restricted in the interests of defence, public safety and public order. Passport, being a government property, is a very useful tool in the hands of the government to control the movement of its citizens across frontiers.

(v) PASSPORT AS AN IDENTITY DOCUMENT

A passport can be used as identity document in such transactions as monetary bank transactions among other important transactions that need authentic identity of an individual.

Summed up, a passport has five basic uses, namely, as an international travel document; as nationality proof document; as a status reflection document, as a government's tool to control the movement of its nationals across frontiers and finally as an identity document.

4.3 THE BENEFICIARIES OF KENYA PASSPORT.

There are only two categories of people who can be lawfully issued with a Kenya passport; the first category includes the citizens of Kenya who can prove that:

(a) They are citizens of Kenya by birth, descent, registration or naturalization (see chapter 4 for details of citizenship) proving so by production of birth or registration certificates, national identity card and presenting himself/herself personally to an immigration officer for interview in local official and national languages.

(b) They have a genuine reason to travel abroad, documentarily supported if necessary.

(c) They are financially capable of sponsoring such intended international travel, supported by documentary evidence.

(d) They have been officially released by their employer, if any, for that specific journey,

(e) They have fully filled the prescribed passport application form-PP1 in the case of adult applicants, PP2 in the case of minors and both PP1 and PP7 in the case of applicants whose applications require supplementary identity and nationality information.

(f) They have fully filled in the prescribed security bond – form A43,

(g) They have submitted two certified recent machine taken facial passport size (2" X 1½" inches) photographs depicting their own true likeness.

(h) They have paid the prescribed passport application fee.

These requirements are not written anywhere but have been long established practice.

In addition to the above passport application requirements, married women and minors

(under the age of 21) are further subjected to other requirements. In the case of a married woman, she is further required to submit proof of marriage by way of valid marriage certificate or marriage affidavit. She is also required to submit a letter of consent from the husband authorizing her to travel abroad. The idea of letter of consent from the husband implies that the right of the wife to freedom of movement as stipulated in the section 81 (1) of the constitution of Kenya is left to the whims of her husband and can be easily abused by the husband if he feels that his wife should not travel outside Kenya. This requirement is quite irritating particularly at this time of global democratisation of world affairs and political and legal reforms. While in the past, women were subjugated to the status of sub-human beings and men were enjoying their utmost male chauvinism, it may look quite irrelevant today because the western education system has taken deep roots in the African continent both for men and women and the irrelevant rigid traditional practices are fading away. When we talk of the fundamental human rights as enshrined in the international legal instruments and in the municipal constitutions, we talk of such rights in their universality without undue reservations for gender biases. Unless a woman has been deemed to be insane in some way, the necessity of putting her under the absolute custody of her husband becomes very minimal if any.

In the case of minors, male chauvinism is again exhibited in the additional requirement for passport application. The minor in question is required further to submit a letter of consent from the father and not the mother. If, however, the father has died, proof of that death is required by way of death certificate to show that the minor is now under the custody of the mother. Only in that instance is the mother elevated to the rank of the father and is competent to write consent letter to the minor to obtain a Kenya passport. In cases of divorce, court orders are required as evidence that the minor is left under the custody of

the mother before a letter of consent may be accepted from the mother.

Although this requirement is necessary to ensure the safety of the minor who is incapable of making major independent judgment, it leaves the woman with almost no major say in matters affecting her child. The requirement gives the man overwhelming say in major matters affecting his child. In my view a mother and a father should have equal say over matters affecting their children unless one of them is incapacitated in one way or another.

There is another area of male chauvinism in the passport issue. There are situations where a joint passport may be issued. A husband and his wife may be issued with a joint passport at the time of issuance, but the particulars of the wife may not be added or included to an already issued husband's passport. The conditions for the issuance and the use of a joint passport also reflect a weakness in the guiding principles which tend to give the husband undue advantage over his wife on the issuance and the use of the joint passport. One aspect of it specifies that the husband is the holder of the joint passport and he can use the passport while travelling abroad alone, the wife is not the holder and she can only use the passport while travelling abroad in the company of her husband but not alone. The second aspect is that the immigration files are opened in the name of the husband and not the name of the wife. Even in cases where a married woman applies for a passport the file is to be opened in the name of her husband even if the husband has not applied for a passport. These are some of the arbitrary principles that should be addressed by the current law reform commissions.

It is also important to note that minors below the age of seven may not be issued with their own separate passports but always have their particulars endorsed in their parent's passports.

In the case where the Kenya passport applicant is a citizen by registration, naturalization or dual citizen, he or she must prove that he or she has renounced the former citizenship by way of submitting renunciation certificate and the cancelled passport, if any, of the former nationality. In the Citizenship Act, Cap 170 laws of Kenya, dual nationality is not allowed beyond the age of twenty-one.

The second category of persons who can be lawfully issued with Kenya passports include nationals of commonwealth countries with which Kenya has Quasi-Consular Agreement, for example, Ghana and New Zealand. They can only be issued with Kenya passports if they have lost their national passports and when their passports are expired before they complete their journeys. They may be issued with a Kenya passport for a maximum validity of six months to enable the applicants to complete their journeys and to obtain replacements of their national passports. Where this arrangement is made, the description: "Citizen of Kenya" on the page two of the Kenya passport is deleted and replaced by the description "commonwealth citizen". An observation should also be made on the page five of the Kenya passport as follows: "The bearer is citizen of ---(name of the country of nationality) and this passport has been issued in accordance with Quasi Consular Agreement entered into between the government of ---(name of country of nationality) and the government of Kenya". Passports issued to commonwealth citizens under Quasi-consular arrangements are not renewable or replaceable.

Because diplomatic ventures are very expensive but necessary ventures in the contemporary international relations, developing countries with limited resources to undertake diplomatic ventures usually prefer to give consular functions on reciprocal

basis to particular governments in particular regions where they have interests. This reciprocal transfer of consular functions or duties by one government to another government to provide an immigration service to its nationals in one region is what is referred to as Quasi-consular agreement. Quasi-consular agreements are very important aspects of inter-state interactions because not any single country can afford to open up full diplomatic missions in every single country of the world.

Any person who is not a citizen of Kenya and who is not a national of a commonwealth country with which Kenya has Quasi Consular agreement does not qualify to be issued with a Kenya passport. If any person outside those two categories of people is found in possession of a Kenya passport, he or she has obtained that passport by fraudulent means or it may be a forged passport or counterfeit.

4.4 THE TYPES OF KENYA PASSPORT AND THE RATIONALE BEHIND THE TYPOLOGY

In the current guiding principle, there are three types of Kenya passport, namely, diplomatic, ordinary and service passports. The diplomatic passport contains 64 pages, red in cover colour and is issued to Kenyans who are officials in the Kenya missions abroad, as well as some categories of high ranking government officials. The ordinary passport is in two series –'A' and 'B'. 'A' series contains 32 pages and is issued to Kenyan citizens who do not need frequent international journeys. 'B' series contain 64 pages and is issued to Kenyan citizen who wish to engage in frequent international journeys. The ordinary Kenya passport is blue in cover colour. The new generation 'B' series passport has 48 pages.

Service passport is issued to Kenyan citizens who are in the armed forces and are sent by the government of Kenya to go and work abroad. It is almost the same as the 'A' series ordinary passport. It is usually issued to soldiers proceeding on peacekeeping missions.

The rationale behind the typology is simply for distinguishing status of the individual migrants abroad and to take care of the frequency of international journeys. Holders of diplomatic passports are entitled diplomatic immunities and privileges while performing their official diplomatic duties abroad. This type of passport shows the host government the status of the individual and therefore the appropriate treatment the bearer deserves. The number of pages is meant to take care of the frequency of journeys an individual intends to use the same passport for before it is filled up. A person who wishes to make many journeys would opt for a 64-page passport so as to avoid the necessity of premature passport replacement before expiry date.

4.5(i) THE ISSUING AUTHORITY AND THE QUESTION OF AUTHENTICITY

As it has already been mentioned under the importance of a passport, all Kenya passports are issued under the authority of the government of Kenya. The Principal Immigration Officer (P.I.O), in Nairobi is the Principal passport control officer in Kenya and he further delegates his powers to branch passport control officers in the two local branches in Mombasa and Kisumu and to consular offices in missions abroad.

Any Kenya passport issued outside the above mentioned authority is not authentic and may be a forgery of a counterfeit. Such a passport may have been obtained through fraud and may not be recognized anywhere for purposes of identity, nationality, status and

international travel.

4.5(ii) THE CIRCUMSTANCES UNDER WHICH THE APPLICATION FOR A KENYA PASSPORT MAY BE REFUSED

The Kenya Immigration Department established what is called a passport suspect list. The passport control office in the headquarters maintains the list and copies of the same circulated to all passport control offices in the local branches and missions abroad. This list contains names and particulars of persons who should not be issued with Kenya passports and these include:

- (a) Persons over 21 years old or a foreign woman married to Kenya citizen who have voluntarily acquired citizenship of another country.
- (b) Persons who have been refused passports on security grounds.
- (c) Persons who are dual citizens and have failed to renounce their other citizenship on or before their 23 birth-day.
- (d) Persons who have renounced Kenya citizenship.
- (e) Person whose citizenship was deprived by the Minister.
- (f) Persons whose passports have been withdrawn by the state for security reasons.
- (g) Persons who have been repatriated to Kenya on government expenses and have not repaid the repatriation expenses.
- (h) Persons who obtained Kenya citizenship by fraud and misrepresentation.
- (i) Persons whose passports have been declared null and void by the government and are not expected to be issued with replacements.
- (j) Persons who are criminals and absconded justice in Kenya.

Where a person has been refused a passport by a passport branch other than the headquarters in Nairobi, the names and particulars of the person are sent to the Principal Passport Control Officer in Nairobi with full reasons for refusal before the person can be

included in the passport suspect list.

4.5(iii) THE CIRCUMSTANCES UNDER WHICH A KENYA PASSPORT ALREADY ISSUED MAY BE WITHDRAWN

The government has the power to withdraw a Kenya passport from an individual if it is so convinced that:

- (a) The individual obtained that passport through fraud and misrepresentation.
- (b) The individual's activities outside Kenya have been or are likely to have a negative bearing on the international image of Kenya: For example, if that individual uses that passport for illegal activities such as drug trafficking among other prohibited acts.
- (c) The individual has sold or given his passport to another person to use.
- (d) The individual has forged – altered particulars or defaced parts of the passport or substituted the photograph – without consultation with the passport control office.
- (e) The individual wants to leave Kenya either in consequence of his or her having been found guilty of a criminal offence under the law of Kenya or for the purpose of ensuring that the individual appears before a court at a later date for trial or for proceedings preliminary to trial or for proceedings relating to his or her extradition or lawful removal from Kenya simply to escape justice.
- (f) The individual wants to escape any obligations imposed on him or her by law.

4.5(vi) THE VALIDITY OF A KENYA PASSPORT

Under normal circumstances Kenya passports are issued valid for five years in the first instance and may be renewed for a further period of five years making the maximum lifespan of ten years from the date of issue. Under no circumstances may a Kenya passport be issued, extended, renewed beyond ten years from the date of issue. For

certain reason some Kenya passports are issued restricted to lesser periods. The extension of such passports should be done after the conditions for restriction have been met to cover the remaining period to make it five years as the case may be. The extension is done free of charge. Such circumstances may include lost passport which may be replaced as an emergency pending search for the lost one, emergency need of a person to travel but lacking basic passport requirements like birth certificates or National Identity cards, among others.

Passports issued to minors with dual nationality are restricted to their 23rd birthday and appropriate endorsement under observation in page five should be made. Such passports may be extended free of charge on production of evidence of renunciation of the other nationality.

Where a Kenya passport is reported lost or destroyed and it is proved so, a new passport is issued valid for one year, which may be extended for a further period of four years free of charge, if the previous lost passport has not been found.

One may be justified to inquire into the rationale behind the nature of the lifespan of the Kenyan passport. Some countries issue passports valid for more than five years in the first instance while Kenya is only issuing up to five years under normal circumstances. The passport guiding principles are silent on this issue but the rationale may be to take care of the possible changes an individual passport holder may assume such as the facial appearance among other major physiological changes. Secondly, the activities of an individual passport holder may be too discouraging for the government to secure him passport renewal or replacement. But all these are not sufficient explanations because

the government has provisions for passport amendments and for withdrawing or declaring a passport null and void.

In this case, one would explain the shorter lifespan of a Kenya passport in the context of the revenue the government intends to accrue from the frequent renewals and replacements. This in my opinion, is a welcome idea because for the government to run effectively, it needs flowing revenue and the department of immigration is one of the major sources of government revenue arising from the vital services the department offers both to Kenya citizens and to the foreign nationals. If revenue were the rationale here I would recommend increase in the initial fee and make lifespan of ten years instead of expecting more revenue during renewal after every five years.

4.6 OTHER ASPECTS OF A KENYA PASSPORT.

Under this sub-topic we are going to discuss issues pertaining to:

- (a) Post-dated passports,
- (b) Replacement of lost, stolen, filled up or destroyed passports,
- (c) Amendments to passports,
- (d) Deceased person's passport,
- (e) Renewal or extension of a passport
- (f) Addition of children to a passport

(a) POST-DATED PASSPORT

The issue of this kind of passport is very rare but certain situations may call for the issue of such a passport, for instance when a couple plans a marriage and intends to travel abroad immediately after the marriage ceremony. Passports may be issued in their married names and post-dated to the date of their wedding ceremony subject to the

following conditions: that the passports issued in the applicants married names are collected from the issuing office by the official who presided over the wedding; that the official keeps the passports in his custody until the actual wedding is completed before handing it over to the applicant; that the names on the marriage certificate will be the same as those on the passport application form; and that the wedding official will forward a letter to the passport issuing officer confirming that the marriage actually took place.

The provision for this kind of post-dated passport arrangement, in my opinion, is redundant and too cumbersome for logical reasons. As long as a person has fulfilled all the required conditions for the issue of a Kenya passport, the person should be simply issued with a passport. In such a case of marriage, it would look as if the issue of a passport is dependent on a further condition above the basic requirements for the issue of a Kenya passport, which is marriage and it is unnecessary.

(b) REPLACEMENT OF LOST, STOLEN, FILLED UP OR DESTROYED PASSPORTS.

In addition to the basic requirements for the issue of a new passport, the applicant is required to submit the following:

- (h) A duly completed questionnaire form PP8 for lost, stolen or destroyed passports (for filled up passports the questionnaire is unnecessary),
- (ii) Police abstract report on the loss, theft or destruction of the passport.

Replacement of lost, stolen or destroyed passport is issued for one year in the first instance and may be extended for a further period of four years free of charge if the issuing officer is satisfied that the previous passport has not been recovered and is unlikely to be recovered

An observation should be made on the page five of the new passport of the particulars of the previous (replaced) passport such and its number, date of issue and place of issue and the condition of replacement such as loss, destruction, theft or filled up.

If the passport earlier reported lost or stolen is subsequently found, it must be cancelled and the restricted replacement passport may be extended on application free of charge to cover its full validity. Either the new passport or the recovered passport may be cancelled depending on the choice of the applicant and on whether the recovered passport has not been tampered with in any way. The reason of cancelling one passport is to ensure that the applicant holds only one valid passport at a time in order to avoid the possible abuses of the passport such as the temptation to sell one or to use one carelessly for if it is withdrawn, one still remains. A cleverly forged Kenya passport fetches incredibly exorbitant price in the black market because of the overwhelming influx of refugees in Kenya whose national passports are not recognized in many countries of the world for lack of effective government following out break of civil war in countries such as Somalia, Rwanda, Burundi, Sudan, among others.

Immediately after the issue of a replacement passport the issuing officer must communicate the particulars of the lost or stolen passport to all passport control offices at home and to Kenya missions abroad.

There exist some shortcomings in the procedure to secure replacement of a lost or stolen passports, the shortcoming is in the police abstract report. In the first place the Police

Department may delay to issue this report to the applicant and it may also delay or completely fail to officially communicate this report to the Immigration Department. In this case the lost or stolen passport may have been cleverly forged and used by unauthorized person. For example, only the photograph may be substituted leaving other particulars intact and the passport, being an identity, nationality, status, travel and government security document, may be used to secure some services and it will be difficult to trace the forger, after he or she has secured the services provided on the weight of that passport. In order to overcome this possible occurrence, the loss, misplacement or theft of a passport should be directly, immediately and officially reported to the passport issuing authority who will in turn circulate the particulars of that passport immediately to all passport control offices both locally and overseas. This may secure the recovery of that passport in case it was to be used by unauthorized person for international travel. It should not be misconstrued that reporting the loss, misplacement or theft of a passport to the police is unnecessary .It is very necessary but some passport holders who have lost, misplaced or had their passports stolen, remain contented with police report. They forget to inform the passport issuing authority and the general public of such unfortunate occurrence. The general public also deserves to be informed through the mass media so that they remain cautious in any dealings that may involve them with that illegal passport holder.

On the issue of restricting validity period for the replacement passport for stolen, destroyed, misplaced or lost passport, it is necessary to restrict only the replacement for stolen, misplaced or lost passports because there is a possibility to recover the lost, misplaced or stolen passport. But in the case of destroyed or filled up passport, the restriction is quite unnecessary because destruction and filling up cannot be undone.

There is also the provision since October, 1994 to charge higher fee for replacement of lost or stolen passport than that charged for new application or ordinary replacement of filled up, or expired passport. This provision is commendable because it increases the passport bearer's sense of carefulness in the security of their passports. Fee for lost passports is Kshs. 5,000, which ordinary replacement is Kshs. 1,500.

(c) AMENDMENTS TO PASSPORTS.

The issuing officer in the following cases may amend passport particulars on request:

- (i) Change of name by marriage
- (ii) Change of profession.
- iii) Change of height
- (iv) Change of residence.
- (v) Change of special peculiarities
- (vi) Change of name by Deed Poll.

There is a fee charged in case of any amendments and an observation should be made on the page five of the passport or any other page if page five is filled up. Where a change of name is made by Deed Poll a new passport must be applied for. If a new passport is issued an observation should be made in the new passport indicating the nature of name change and date of change. This observation may be omitted where the change in name by Deed Poll has been in force for a period of more than five years.

The provision for this passport amendment is good because it gives the passport bearer the chance to authenticate the obvious physiological and particular changes so that their passports may not be doubted on examination.

(d) DECEASED PERSON'S PASSPORT

When a passport holder dies, his or her passport should be presented to the nearest immigration office together with a copy of the death certificate. The immigration officer should cancel the passport and surrender it back to the deceased's relative but retain the copy of the death certificate for onward transition to the principal passport control officer for records. This is done so that the passport of the deceased person may not pass on to unauthorized person who may forge it and use it for sinister motives.

(e) RENEWAL OR EXTENSION OF A PASSPORT

Application for renewal or extension of a Kenya passport should be made on form PP3. If a person under 21 submits such application, a written consent from the father or the guardian is required. There is prescribed fee for renewal. Application for renewal of passports may be made at least nine months before expiry. This is important because some countries may not admit any person whose passport validity is less than six months. Passports may not be renewed or extended beyond ten years from the date of issue, and passports which were previously restricted must fulfil the conditions for restriction before the renewal or extension is done.

(f) ADDITION OF CHILDREN'S PARTICULARS.

Kenya citizen children under 16 may have their particulars added to their parents' passports with express consent of the father. Application for the addition of children's particulars should be made on the prescribed form PP4. Documentary evidence of citizenship must be submitted with the application form. Children below 6 years may not be issued with a passport because the children are taken to be under the absolute care of the parents. Where a child's particulars were included in the parents' passports and the

child has attained the age of 16, the child's particulars may be cancelled in the parent's passports and a separate passport issued to the child.

The passport guiding principle is rather unfair on this issue. It assumes that every child under 6 can only travel in the company of parents. It assumes that the child may not travel abroad in the company of a guardian or any other relatives. Let us take the hypothetical situation where a couple gets married in Kenya and brings forth a child. After one year the couple secures scholarship to study in the United States of America. The condition of scholarship does not provide for the couple to go with their child. The couple leaves the child under the care of a grandmother, and proceeds for studies to the States. After two years the couple completes studies and secure lucrative jobs in the States. The couple then writes to the grandmother to go and visit them with the child immediately. The couple makes all accommodation arrangements and sends return Air Ticket to both the grandmother and the child. How can this grandmother leave Kenya to the United States with this three years old child while the guiding principle states clearly that children below 6 may not be issued with a passport? It will force the couple – either mother or father – to travel back to Kenya, have the child's particulars endorsed in his or her passport before they take another flight to the united states. The guiding principle also cautions the Child's mother that if she makes a mistake of forgetting father's consent that its particulars be endorsed in the mother's passport, she may have to write back or call the father to submit the same before such endorsement is done. In this case the passport guiding principle may be working in the worst interest of the citizen. The principle should therefore be redefined to take care of such unfortunate gender anomalies.

4.7 SOME HIGHLIGHTS ON PASSPORT AND THE CONSTITUTIONAL PROVISIONS IN KENYA.

Granting of Kenya passport fall within the discretionary powers of the executive. This

waters down section 81 (i) of the Kenya constitution, which states that:

No citizen of Kenya shall be deprived of his freedom of movement that is to say, the right to move freely throughout Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.⁵⁰

Since the right to leave Kenya and the right to hold a passport are married, section 81 (3)(g) of the Kenya constitution divorces the two rights as it provides for the imposition of restrictions on the right of any person to leave Kenya that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law and, except, so far as that provision or, as the case may be the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.⁵¹ In his examination of passports and the right to travel, Goodwin-Gill (1978) observes that given the almost universal acceptance of the passport requirement for aliens, it is clear that a refusal by a national state to issue such a document may seriously hamper the individual in his exercise of the right to travel. Although such a right finds expression in a number of international instruments, notes Gill, state practice in the municipal sphere tends to reflect a claim of absolute discretion rather than any restrictive rule of general international law.⁵²

Even in the United States where the issue of passports is governed by statute and by extensive established regulations, it is provided that a passport may be refused where the applicant has not paid repatriation loan and where the Secretary of State determines that the national's activities abroad are causing or are likely to cause serious damage to the security of foreign policy of the United States.

In the United Kingdom there are no published rules and regulations which set out the reasons which may justify the withdrawal or refusal of a passport and general practice tends to support the views that this is an area of prerogative and discretionary control and only occasionally have the courts been called upon to consider the effects of possession of a passport.

The analysis of the passport practices in the United States and the United Kingdom from where most African passport practice have borrowed indicates that a citizen does not have absolute right to a passport. The general rule as Gill discovered remains that the issue of passports is a matter within the reserved domain of domestic jurisdiction and an aspect of executive control over foreign affairs. States feel themselves free; therefore to impose those conditions and restrictions which they deem fit and it is apparent that the majority of states accept that the passports may be used to control the movement of their nationals.

4.8 GENDER AND CONSTITUTIONAL BIAS

From the critical analysis of the impact of passport regulations on citizens in general and on women in particular, certain burning gender issues become quite prominent. It is quite clear that the discriminatory colonial immigration practices continue to linger long after independence was attained in Kenya – about four decades ago .It also reflects the constitutional weakness as far as the protection of fundamental rights and freedoms of the individuals are concerned.

In the first place the passport guiding principles are in some ways discriminatory against women citizens in that a woman cannot secure a Kenya passport without the express

consent of her husband and therefore is unable to exercise freely her freedom of movement. A married woman applying for Kenya passport is required to produce her marriage certificate and a letter of consent from her husband. Her husband is not required to do so when applying for Kenya passport.

Secondly, the Kenya constitution gives the government extreme powers over the control of movements of its citizens abroad because it leaves the President and his appointees to decide on the description of persons whose movement outside Kenya are required to be restricted in the interests of defence, Public safety and public order. I am not against the restrictions to the citizens' movement outside Kenya, because such movements outside Kenya have both direct and indirect bearings on the political and economic welfare of Kenya. Human beings cannot be left like birds of the air or fish of the waters to move in any directions at will. The restrictions are necessary except safeguards should be worked out to give the court freehand to determine lawful justifications for any restrictions to freedom of movement. Section 81 (4) of the constitution only provides for review of such restriction by a presidential appointee who, under normal circumstance, does the will of the President.

Following this analysis, it is right to conclude that the dominant determinants of Kenya passport regulations or what may be termed as the guiding principles are gender and security consideration. Defence, public safety and public order are all aspects of national security which become crucial in the government's determination of who should have a passport and who should not. Married women have very little say over their right to travel abroad. A statutory provision should be worked out to cater for these shortcomings, as passport practice in Kenya is a clear reflection of the British colonial practice of the pre-independence era.

4.9 CITIZENSHIP

Citizenship as a legal concept is closely related to another concept, nationality and the two may be easily confused. I find the clarifications of Plano and Olton (1988) very useful. Writing on the major aspects of International Law these authors define citizen as "a legal status whereby an individual has both the privileges and responsibilities of full membership in the state".⁵³

These scholars argue that the status of citizen can be acquired by three major means:

- (a) at birth, by jus soli, or citizen by place of birth:
- (b) by jus sanguinis, or citizenship at birth determined by the allegiance of the parents.
- (c) by naturalization, the formal transference of allegiance.

Plano and Olton, on the other hand, say that nationality is:

The legal relationship between an individual and a state whereby the individual claims protection from the state and the state in turn requires allegiance and performance of certain obligations.⁵⁴

Citizenship is therefore a legal status of full membership in a state while nationality is legal relationship between a citizen and the state of which the citizen is a member. There is, therefore, only a difference of semantic choice while all other aspects of both concepts remain the same. Examples of obligations a citizen or a national may owe his or her state include paying taxes and serving in the armed forces as well as participating in the general development of the state. An example of privileges a citizen or a national may enjoy from the state is the protection of his or her fundamental human rights both within the state and abroad.

Tudor Jackson (1984) outlines the more important rights as follows:

Every person, whatever his race, or tribe, political opinions, colour, creed or sex, has the right to each of the following:

- (a) Life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, of expression and of assembly and association; and
- (c) Protection for the privacy of his home and other property and from deprivation of property without compensations⁵⁵.

In Kenya these rights have limitations on the premise that their exercise does not prejudice the rights and freedom of others or the public interest. Other rights and their limitations are provided for in the constitution of Kenya but need not be emphasized in detail here due to their being of less concern to this thesis.

Akehurst (1988) argues that under the rules of international law, states are not obliged to admit aliens to their territory, but, if they permit aliens to come, they must treat them in a civilized manner.⁵⁶ This supports the principle that each government has the right to decide who shall qualify for citizenship, and to impose severe restrictions on entry is virtually unquestioned. It therefore follows that however much one may regret the ways which particular governments may chose to act on it, it is not unreasonable principle, Margolis & H. Guiton (1966).⁵⁷

A citizen may expect a lot as far as fundamental human rights are concerned not only under the municipal legal regime but also under the Universal Declaration of Human Rights, the latter covers even the aliens admitted into state.

That Universal Declaration of Human Rights is a resolution passed by the UN General Assembly on 10th December 1948 and in it are provisions enunciating what have

subsequently come to be known as civil and political rights. First, they prohibit slavery, inhuman treatment, arbitrary arrest and arbitrary interference with privacy, together with discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. They also proclaim the right to a fair trial, freedom of movement and residence, the right to political asylum, the right to have and change nationality, the right to marry, the right to own property, freedom of belief and worship, freedom of opinion and expression, freedom of peaceful assembly and association, free elections and equal opportunities for access to public positions.

The second group of provision is concerned with what have subsequently come to be known as economic, social and cultural rights: the right to social security, to full employment and fair conditions of work, to an adequate standard of living, to education and to participation in the cultural life of the community.

Akehurst rightly argues that some of these rights remain abstract to state implementation. In his opinion, many laymen imagine that states are under obligation to respect the rights listed in the Declaration. Most states, which voted in favour of the Universal Declaration, regarded it as a statement of a relatively distant ideal, which involves little or nothing in the way of legal obligations. The Declaration, in his view, merely recommends states to keep it in mind and to strive by progressive (not immediate) measures to secure universal and effective recognition and observance of its provisions. That at the most, the Declaration is simply a list of human rights which member states pledge themselves to promote under Articles 55 and 56 of the Charter, but the Charter leaves a wide discretion to states concerning the speed and means of fulfilling their pledge.⁵⁸

Malcolm N. Shaw (1997) refers to nationality as the link between the individual and his state as regards particular benefits and obligations.⁵⁹ In his view, it is the vital link between the individual and the benefits of international law, because it is only through the medium of the state that the individual may obtain the full range of benefits available under international law. Although development of international law slowly recognises individuals as subjects of international law, historical reluctance to permit individuals the rights in international law to prosecute claim against foreign countries, for reasons relating to sovereignty and non-interference in internal affairs, individuals still rely on their states to take up claims on their behalf.

4.9.1 WAYS OF ACQUIRING KENYA CITIZENSHIP

The current authoritative document on all matters relating to Kenya citizenship is the Kenya Citizenship Act, Chapter 170 laws of Kenya. Tudor outlines ways in which Kenya nationality can be acquired under the constitution of Kenya Act 1969:⁶⁰

(a) By birth. Anyone born in Kenya before independence, one of whose parents were born in Kenya, became a citizen of Kenya on 12th December 1963. Every person born in Kenya after 11th December 1963, shall become a citizen of Kenya at the date of his birth. A person cannot become a citizen of Kenya in this way if at the time of his birth:

- (i) Neither of his parents is a citizen of Kenya and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited Kenya; or
- (ii) His father is a citizen of a country with which Kenya is at war and the birth occurs in a place then under occupation by that country. This provision is to be found in the section (89) of the Kenya Constitution.

(b) By descent. Any person born outside Kenya after 11th December, 1963, shall become a citizen of Kenya at the date of his birth, if at that date his father is a citizen of Kenya. This provision is contained in section (90) of the Kenya Constitution. Tudor has not underscored the gender discrimination contained in this provision because it would imply that any person born outside Kenya after 11th December 1963 of a foreign father and a citizen mother may not become a citizen of Kenya. The provision seems to favour fathers vis-à-vis mothers in matters of citizenship. This discrimination on grounds of sex seems to violate the provisions of chapter V of the Kenya Constitution concerning the protection of fundamental rights and freedoms of the individual.

(c) By registration. Any woman who has been married to a citizen of Kenya shall be entitled to be registered as a citizen of Kenya. Certain other persons are eligible to be registered as citizens by virtue of their connection with Kenya after 11th December 1963. Registration of a married woman falls under section (91) of the constitution but Tudor has not critically examined the gender discrimination therein. This section would imply that only an alien woman may be married by a male citizen and be entitled to grant of citizenship. It gives male citizens advantage over female citizens in that male citizens are allowed to marry a lady from any part of the world and secure her registration as a citizen of Kenya on account of that marriage. Kenyan ladies are disadvantaged by this provision because while they are at liberty to get husbands of any nationality, by virtue of their marriage the alien husband is not entitled to be registered as a citizen. He has to adhere to the rules and conditions for registration like any alien, his being married to a Kenyan lady, notwithstanding. It is understood that African cultural practice requires a married woman to move to the place of the husband, such gender discriminatory cultural practices

should be reviewed to accommodate the globalisation and universality of fundamental human rights that cut across gender and national boundaries.

(d) By naturalisation. Any person who:

- (i) Has attained the age of twenty-one years;
- (ii) Has been ordinarily and lawfully resident in Kenya for the period of twelve months immediately preceding his application;
- (iii) Has been ordinarily and lawfully resident in Kenya for a period of, or for periods amounting in the aggregate to, not less than four years in the seven years immediately preceding the said period of twelve months;
- (iv) Satisfies the Minister in charge of Immigration that he is of good character;
- (v) Satisfies the Minister that he has an adequate knowledge of Swahili language; and
- (vi) Satisfies the Minister that he intends, if naturalized as a citizen of Kenya, to continue to reside in Kenya,

Shall be eligible to be naturalized as a citizen of Kenya.

4.9.2 DEPRIVATION OF CITIZENSHIP

Provisions in the constitution of Kenya also provide that the Minister in charge of immigration matters can by order on grounds specified in the constitution such as that that citizen has shown himself by act or speech to be disloyal or disaffected towards Kenya, deprive of his citizenship of Kenya any person who is a citizen by registration or naturalization. Provisions on conditions or factors that may lead to deprivation of Kenya citizenship fall under section (94) of the constitution.

4.9.3 REGISTERED, NATURALIZED AND DUAL CITIZENS.

Under the citizenship practice derived from section (97) of the constitution of Kenya deprivation of citizenship can be effected by a Ministerial order if certain conditions are not complied with within specified dates:

(i) Adults and married women who acquired citizenship of Kenya by Registration or Naturalization are required to renounce their previous nationality/citizenship within ninety (90) days from the date of Registration or Naturalization. The application for renunciation should be made to the High Commission or Embassy of the applicant's previous country of citizenship or nationality.

(ii) Kenya citizenship laws provide for dual citizenship for minors who are registered as citizens of Kenya when under the age of twenty-one. All persons in this category are required to officially renounce their previous citizenship on or before twenty-three. Application for renunciation should be made to the High Commissions and Embassies of the applicant's previous citizenship or nationality. Any registered, naturalized or dual citizen of Kenya who fails to renounce his/her previous citizenship/nationality within the specified date automatically ceases to be a citizen of Kenya with effect from the expiry of the specified date.

Attention is drawn to section 11(1) of the Citizenship Act Cap 170 laws of Kenya, which states that:

Where, under the citizenship provisions of the constitution or the foregoing provisions of this Act, a person is required to renounce the nationality or citizenship of any country other than Kenya and the law of that other country makes no provision for the renunciation of nationality or citizenship, such a person shall make the appropriate declaration specified in the second schedule to this Act and a person who makes such declaration shall, subject to the second provision to section 5 of this Act, be treated as having complied with any such requirement.⁶¹

National legal systems commonly provide for deprivation of nationality in certain circumstances, as mentioned above, and current state practice does not support general rule prohibiting such measures. Even in Europe such practice obtains. A study of Danish Citizenship laws contained in circular No. 90 of 16 June 1999 shows that acquisition of Danish citizenship is a matter within the domestic domain of the Naturalization Committee of the Folketing (Danish Parliament), which is charged with the responsibility of examining applications for naturalization.⁶² In the Danish practice, Naturalization may be granted to persons who fulfil the guidelines of the circular with respect to residence, age, general conduct, arrears owed to public authorities as well as language proficiency.

It is a precondition that the applicant agrees to renounce his present nationality. Unless the applicant loses his present nationality automatically by naturalization, release from his present nationality shall be required as a condition for acquiring Danish Nationality. Persons with refugee status in Denmark or persons from countries where experience shows that it is impossible or implies extreme difficulty to obtain release from nationality shall, however, not be subject to this requirement. The same shall apply where an applicant has been denied release, or where it is documented that the person in question has made a serious but unsuccessful attempt to be released from his present nationality.

In Denmark acquisition of citizenship through marriage has no gender consideration. A person who lives in a marriage of at least three years' duration with a Danish national may be granted naturalization after being resident in Denmark for four (4) consecutive years. Where a marriage is of two (2) years' duration, five (5) years residence in Denmark is required, and where a marriage is one (1) year's duration six (6) years residence is required.

In accordance with the UN convention on the rights of the Child of 1989, children who were born stateless in Denmark may be granted naturalization if they were resident in Denmark. Illegitimate children of an alien mother and a Danish father may be granted naturalization where the father shares the parental authority.

Under the Danish Nationality law, persons who have arrears owed to public authorities may not be naturalized. The same applies to people with criminal records and who do not have command of the Danish language. But the language rule has exceptions on account of age, mental disorder or physical disability. A person who is over 65 years of age is exempted from the language requirements but even the mental disorder or physical disability must be documented by a specialist's statement.

4.9.4 CRITICAL ANALYSIS OF CITIZENSHIP PROVISIONS

From the careful analysis of the constitutional provisions for Kenya citizenship, the following points are brought out very clearly that:

(a) The constitution provides for the acquisition of Kenya citizenship by four ways, namely, by birth, by descent, by registration and by naturalization. The grant of Kenya citizenship is governed by the constitution of Kenya and the Kenya citizenship Act.

These two legislations made a substantial number of persons citizens automatically on December 12, 1963 to apply and become Kenya Citizens. They also catered for those who did not become Kenya citizens by registration or naturalization. All the non-citizens were granted grace period of two years from 12th December 1963 within which to apply for registration or naturalization as the case may be as citizens of Kenya.

(b) The Constitution reflects a very conspicuous gender prejudice particularly with the provision pertaining to the foreign nationals married to Kenya citizens. Under Kenya Citizenship Act, a Kenya citizen can marry a foreign woman. In the first place the husband should apply to the Principal Immigration Officer for the grant of Kenya Dependant Pass (KDP) to enable the foreign woman stay with him in Kenya as his wife. The husband can later apply to the Principal Immigration Officer for the registration of his foreign wife as a citizen of Kenya. Registration fee for a married woman is Kshs. 15,000 at the time of writing this thesis.

Conversely, under the Kenya Citizenship Act, a Kenya woman cannot marry a foreign man and apply for the grant of Kenya Dependant pass (KDP) in respect of this man to stay with her in Kenya as her husband. She is further not permitted by the law to apply for the registration of this man as a citizen of Kenya for purposes of staying with him as husband and wife in Kenya. The foreign husband can only stay with his Kenyan wife in Kenya as a visitor subject to the regulations governing visitor's passes in Kenya. He should not enjoy the privileges which other Kenya citizens are entitled to such as being engaged in any employment or other profit generating activities. The Kenyan woman, therefore, is not allowed to import a husband from a foreign country while the Kenyan man is allowed to do so through marriage.

Satisfying justification for this provision is quite lacking for the Kenyan woman crying for the equality of men and women under the law and if a review of such provisions cannot be attained, the voices of the Kenyan women will justifiably continue to be heard both at the local and at International fora. This justifies the problem that the current immigration laws and regulations are not equitably serving the interests of the consumers of the immigration services, and in this case, the problem bites deep into the flesh of the

Kenyan women.

A supplementary weakness of this provision for married foreign women is that it can be exploited by the foreign women who may want to use Kenyan men as a gateway to Kenya citizenship. A foreign woman who has her own or her country's selfish interests in Kenya can conveniently bypass the long and complicated requirements for the grant of Kenya citizenship by simply forging a marriage relationship with a Kenyan man. For example a foreign woman marvelled by the booming business opportunities in Kenya but discouraged by the variant visa and the Entry (work) permit requirements may find a convenient solution in the marriage provision simply by marrying a Kenyan man to enable her carry out her selfish activities without any commitment to the marriage relationship.

She may even divorce immediately after acquiring the citizenship and continue to live in Kenya as a citizen of Kenya. A subsidiary legislation may be worked out to ensure that the foreign nationals married to Kenyans do not abuse this provision. The period of cohabitation may be made as long as five years before registration as it is in the United Kingdom citizenship laws.

(c) Section 94 of the constitution provides for the deprivation of citizenship for naturalized and registered citizens. This brings out the problem of statelessness because before a foreign national is either registered or naturalized as a citizen of Kenya he or she must, inter alia, renounce the citizenship of his or her former country of nationality, take the oath of allegiance to the government of Kenya. Likewise to the dual citizen. A dual citizen, (see section 97(1) of the Constitution of Kenya) in order to retain his or her Kenya citizenship must renounce his or her citizenship of that other country, take

the oath of allegiance to the government of Kenya by his or her 23rd birthday. All this implies that by renouncing the other citizenship and taking the oath of allegiance to the government of Kenya, the registered, naturalized and dual citizens have lost their other citizenship and are only citizens of Kenya. Sections 94 and 97 provide for the deprivation of Kenya citizenship thereby rendering people who were registered, naturalized and dual citizens stateless. The problem of statelessness is one of the worst problems affecting African states leading to increased number of refugees, which hit hard on the already staggering African economic base. Any law that may lead to statelessness may be reviewed with a view to accommodating the varying particular individual circumstances. Careful considerations should be taken before registration or naturalization to avoid citizenship deprivations.

It is therefore important to work out legal strategies with a view to stripping the citizenship law of its gender prejudices and the apparent loopholes that remain open to possible abuse.

(d) Penalties provided for under section 13(1) of the Citizenship Act, Chapter 170 laws of Kenya, which is a fine of two thousand shillings or imprisonment for a term not exceeding six months or both, it less prohibitive for those who contravene the provision of this Act. In the US, the fine is as much as \$ 10,000 or imprisonment up to five years or both. Kenya should revise such penalties upward to deter the would be offenders under this Act.

CHAPTER FIVE

SUMMARY, FINDINGS AND RECOMMENDATIONS

5.0 INTRODUCTION

Immigration policies have been and will continue to be a significant aspect of both domestic and foreign policies not only among the industrialized world but also among the third world countries. It is on the basis of this fact that we have undertaken to initiate a study of the determinants of African immigration policies, taking Kenya as our case study to find out whether the current policies and regulations are in harmonious relations with the needs of the government and the needs of the consumers of immigration services. This work consists of five related chapters, namely, the Introduction covering the entire proposal to the study; the Evolution of Kenya Immigration policies from 1906-2000; the Impact of visa and Entry (work) permit regulations on national revenue base and job security of citizens; passport regulations, citizenship legislations and the gender questions arising therefrom; and finally the summary, findings and recommendations.

5.1 SUMMARY

Chapter one covers the general introduction and the operationalization of the concept of immigration, statement of the problem, objectives, justification, literature review, theoretical framework, hypotheses and the methodology.

Chapter two examines the historical evolution of Kenya immigration policies from 1906-2000, the core and peripheral functions of the Kenya immigration department and the critical analysis of such evolutions and functions.

Chapter three forms the core of this study. It assesses the impacts of visa and entry (work) permit regulations on national revenue base and job security of citizens. In this chapter, the meaning, types and categories of Kenya Visa and entry permit are examined. A comparative study of Visa regulations in the United States of America and Denmark has been included to help in the analysis of Kenya visa and entry permit practice.

Chapter four examines two other very important variables of Immigration – passport regulations and citizenship legislation and the gender questions that arise from the provisions, several aspects of Kenya passport are addressed including highlights on passport and the constitutional provisions. Ways of acquiring Kenya citizenship and deprivation of citizenship and critical analysis of citizenship provisions are also examined.

Chapter five forms the overall summary, findings and the recommendations to the academics, policy formulation and implementation agencies and the general public.

5.2 FINDINGS

Our findings are generally based on the objectives of this study. In the chapter one of this work, we set out to examine:

1. The functions of Kenya immigration department.
2. The extent to which retention of colonial immigration policies jeopardises Kenya's national interest.
3. The socio-economic and political effects of immigration in the post-colonial Kenya.

5.2.1 FUNCTIONS OF THE KENYA IMMIGRATION DEPARTMENT

To study this objective it was hypothesized that the more Kenya retains colonial immigration policies, the more she injures her own needs and the needs of consumers of immigration services. The hypothesis was tested by assessing how much immigration has achieved its cardinal and core function of safeguarding and promotion of security and socio-economic development by regulating and controlling entry, exit, residence, citizenship and issuance of travel documents and passes in accordance with the various Acts and regulations.

It was found out that Kenya still retains the centralized British colonial immigration structures where Immigration Officers were based in Nairobi, Mombasa, Kisumu and border entry and departure points. Immigration officers who control entry and exit have not been spread to all the Kenya provincial and district headquarters to put up with increasing number of illegal aliens who continue to pour into the country following collapse of state systems in the neighbouring countries such as Somalia, Ethiopia, Rwanda, Burundi, Congo, Sudan among others. Insecurity has worsened in the city and major towns arising from the illegal aliens entering Kenya with their guns, which are either hired or sold to criminals. Security and socio-economic development go together. In the absence of security, socio-economic development fails. The Immigration Department has not decentralized and devolved power to the districts to move services closer to the people.

Our hypothesis in this case has been confirmed and therefore our objective achieved. If Kenya does not increase the number of immigration officers and spread them to the

provincial or district headquarters, the Department's function of safeguarding security and promoting socio-economic development may not be adequately achieved.

5.2.2 THE EXTENT TO WHICH RETENTION OF COLONIAL IMMIGRATION POLICIES JEOPARDISES KENYA'S NATIONAL INTEREST

To study this objective it was hypothesized that the more Kenya immigration policies reflect the British colonial policies, the more Kenyan's national interests are jeopardised. This hypothesis was tested by the examination of the historical evolution of the Kenya immigration policies from 1906 to 2000. We found out that immigration policies in Kenya as we see it today can be traced to as far back as 1895 when the British took over Kenya colony from the Imperial British East Africa Company (IBACO) and renamed it British Protectorate. Governor, Sir Charles Eliot began systematic and political control of the protectorate and decided to guard its borders from possible foreign encroachment from other European colonial powers. In the evolution it was found out that the following colonial immigration ordinances have formed the basis of the current immigration practice in Kenya, namely, (i) the 1906 ordinance which provided for restrictions to be imposed on all those seeking permanent immigration into Kenya. Restrictions were in form of financial security such as fifty sterling pound (£50) for Europeans and ten sterling pound (£10) for people from Asia. This is what is reflected in the security bonds of Kshs 100,000 for Aliens residence permits and passes, Kshs 60,000 for passport applicants, and a return air ticket for alien visitors.

(ii) The 1948 and the 1956 ordinances which instituted: a system of permits and passes similar to the one currently operational under the Immigration Act, chapter 172 laws of Kenya; the structure of administrative cadres of the Immigration Department with the

Principal Immigration Officer at the top and his deputies, assistants, other officers and clerks of all categories. The 1956 ordinance also instituted ways of acquiring permanent residence and citizenship similar to the one obtaining under the current Citizenship Act, chapter 170 Laws of Kenya.

Retention of British colonial immigration policies all the way from 1906, 1948 and 1956 ordinance has not been consistent with Kenyans national interests. This confirms our hypothesis and achieves our objective..

5.2.3 THE SOCIO-ECONOMIC AND POLITICAL EFFECTS OF IMMIGRATION IN THE POST-COLONIAL KENYA

To study this objective, we hypothesized that the more Kenya retains her present immigration policies, the more she will lose revenue accruing from the Immigration services and by obtaining data from the Immigration department we found out that out of approximately 400 cases investigated and prosecuted in court monthly, 250 were cases of forged visa endorsement; 100 were cases of unlawful engagement in employment and unlawful recruitment of aliens; and 50 were cases of the rest immigration offences. This represents 62.5 percent of immigration offences arising from stamp visa regime, which is easy to forge, 25 percent of immigration offences arising from unlawful engagement in employment due to insufficient and inefficient surveillance by the few number of Immigration Officers while the rest offences take 12.5 per cent. Our findings has revealed annual revenue loss of approximately $(250 \times 12 \times \$50) = 150,000$ or $(\$150,000 \times 79) =$ Kshs 11,850,000. 250 persons prosecuted per month. This sums up to 250×12 per year. Each has evaded visa fee of \$50. Current Dollar rate is Kshs. 79. This come to $250 \times 12 \times \$50 \times \text{Ksh}79 = \text{Kshs } 11,850,000$.

Concerning visa waiver of June, 1999, we obtained statistics from the Central Bureau of Statistics and found that the trend of visitor arrivals in Kenya from the sixteen countries whose tourist visas were waived, over 4 million tourists have visited Kenya between 1992 and 1998. To get the average annual revenue lost since the visa waiver was implemented in 1999 we computed that Kenya is likely to lose an annual revenue and foreign exchange of $(4,001,498 \text{ divide by } 7 \times \$50)$ \$28,582,128.57 or Kshs. 2,257,988,112, which is over two billion. This figure is arrived at as under:

Total number of visitors from the 15 countries in seven years	= 4,001,498
Visa fee each person would have paid were it not for waiver	= \$50
Total annual revenue the government would have collected	= $4,001,498 \times \$50 \div 7$
Current dollar rate = \$1:Kshs.79	= \$28,582,128.57
Annual revenue loss calculated in Kshs.	= $\$28,582,128.57 \times 79$
	= Kshs. 2,257,988,112

We also found out from the statistics that between 1992 and 1998, Kenya has lost approximately seven million Kenya shillings arising from the purported visa abolition agreements between her and Denmark, Finland, Norway, Spain whose total number of tourists visiting Kenya during this period was 179,906. We found out that these countries were charging Kenyans visa fee while Kenya was not charging them any fee on the understanding of such purported visa abolition agreements.

On job security of citizens we found out that almost 75 per cent of aliens employees interviewed could not produce their original academic and other work experience testimonials indicating that they most likely obtained those jobs by presenting false

documents thereby denying Kenyans job opportunities. We also found out that about 70 percent of foreign companies and organizations do not advertise jobs in the local dailies to attract local applicants in competition with aliens.

On investment capital requirement we found out that almost 50 per cent of investors present false documents like bank statements to secure investment opportunities in Kenya in competition with the local investors.

These revelations confirm our hypothesis and achieve our objective of examining socio-economic effects of immigration in the post-colonial Kenya.

The study of this objective has revealed that the variant visa regulations-where some nationalities do not require visa to enter Kenya, some nationalities are allowed either to obtain visa on arrival or in the Kenya missions abroad and some nationalities require referred visa before coming to Kenya has caused some protest among the countries that feel discriminated particularly from Central Europe and the East and central Asia. These diplomatic protests were highlighted by the local Daily Newspapers particularly from the Slovak and Iranian ambassadors respectively while protesting to the Minister for Foreign Affairs and International Cooperation of Kenya on the waiver of visa requirements for Western European countries, U.S.A. and Japan while at the same time doubling fee for the Central and Eastern European as well as the East and Central Asian countries.

We have also discovered that representatives of International Organizations both within Kenya and from outside have expressed the apparent discrimination of some nationalities who require referred visas to enter Kenya. That even members of these organizations

including United Nations Agencies who fall under categories of people who require referred visa to enter Kenya, must apply and obtain those visas even though visas are issued free of charge (gratis).

On the social front, we found out that the visa waiver of 1999 saw a number of visa officers recalled home and 8 out of 44 Kenyan missions abroad ambassadorial position remained vacant reflecting a general reduction of the number of staff accredited to Kenya missions abroad. Based on the data obtained from Ministry of Foreign Affairs and International Cooperation, position of Ambassadors and High Commissioners in 8 capitals – London, Tokyo, Vienna, Washington, Lagos, Kinshasha, Khartoum and Kampala were vacant as at February, 2000. This position has arisen because the Visa fees that used to supplement embassies and High commissions recurrent expenditures was greatly reduced due to visa waiver. Embassy staffs had to either leave their children in foreign schools or relocate them back home causing serious disruption in their social and academic progress. This confirms our hypothesis that the more Kenya retains her current immigration policies, the more she injures her own needs and the needs of the consumers of immigration services and achieves our objective.

5.3 RECOMMENDATIONS

Based on our findings the following recommendations are made to academic researchers, policy makers and implementers and the general public.

(a) To Academic Researchers

There are many areas of this work, which our study did not adequately explore due to the limited material resource allocation to the work. These include the examination of the

positive and negative contribution of immigrants to the economic, social and political development in Kenya. Refugee phenomenon is an important aspect, which partly falls within the province of Immigration Department, the Home Affairs Ministry and the United Nations High Commissioner for Refugees (UNHCR). Concerted efforts need to be put on the examination of the role of Immigration Department in matters of asylum seekers and in the integration of recognized refugees, the conflicts between municipal immigration laws and the International Instruments relating to the status of refugees. This study also recommends further research on the role of immigration department in the emerging regional and sub-regional organizations like the Common Market for Eastern and Southern African States (COMESA) and the East Africa Community (EAC) as well as (IGAD).

This study having focused on Kenya immigration policies, similar research initiative is recommended for other African countries. This research not being able to cover border security problems, it is recommended that some study be carried out in border security problems in Kenya in response to the threat of international terrorism which has targeted foreign interests in Kenya in recent times.

(b) To Policy Makers And Policy Implementers

(i) General Policy Recommendations

The immigration department plays a vital role in safeguarding security and boosting the revenue base of the government. Policies regarding immigration and admission of aliens must, therefore, be harmonized with the security and the revenue needs of the government and the other consumers of immigration services. In the first place the role of immigration should be decentralised to cover the entire country to control the activities

of illegal aliens who hide in the remote parts of the city and other interior towns of Kenya and to move services closer to the people. This can be achieved by opening up provincial or district immigration offices to handle immigration matters of those provinces and districts. At the same time border control offices should be strengthened to do more than their traditional role of clearing the incoming immigrants and the out-going emigrants. They should be allocated regions to cover in terms of investigating and prosecuting illegal workers and accepting passport, permits and other immigration passes applications and forwarding them to the headquarters and regional offices, functions which are, hitherto, the preserve of the immigration headquarters. This will decongest the headquarters and ensure efficient discharge of immigration services, and minimize temptation to corruption arising from such congestion and delay of services by applicants who want to by-pass others.

Secondly, the immigration should give priority to training needs of their staff. An immigration officer being the Office Operation Personnel receiving tourists and other categories of aliens need to be trained not only in the traditional immigration roles but also in the customer care services in order to equip him/her with the relevant techniques to handle both Kenyans and visitors with the utmost civility that they deserve.

Thirdly, computerization of departmental services become key to improving services both to the government and its clients. The ever swelling number of files in the registry will soon exceed the available space. Information needs to be stored in the current trend of information technology so that delay of services arising from missing files can be curtailed or eradicated and the speed and efficiency of service delivery can be achieved.

Fourthly, the current legislation and regulations governing immigration practice in Kenya – such as the Immigration Act, the Citizenship Act, the Aliens Restriction Act and Visa Regulations should be amended with a view to getting rid of the gender discrimination, nationality discrimination arising from visa categories, the meagre penalties for immigration offences and the colossal loss of revenue arising from the stamp visas as opposed to sticker visas.

The Immigration Department should form its own board to look into the terms of service since officers in this Department work even at odd hours beyond the official working hours and need to receive remuneration commensurate with their work to boost their morale and to augment their efficiency.

(ii) SPECIFIC POLICY RECOMMENDATIONS

(a) Recommendations On Work Permit

From the revelations of our field survey, the following recommendations are advanced:

(i) Photocopies of academic and practical experience certificates should be accompanied by the originals during application for Entry permit and verified before being returned to the applicant as in the case of birth certificate during application for Kenya passport. This will reduce the rampant forgeries, by foreign nationals who seek employment in Kenya.

(ii) The Kenyanization and the investigation sections of the immigration department should be strengthened both numerically and in terms of training to be able to deal with both employers and employees who contravene the immigration regulations

and fines in the Act should be revised upwards to discourage the would-be offenders of Immigration Act and Regulations. The weaknesses of the two sections mainly arise from the small number of officers expected to cover the entire country in terms of inspection of illegal employees and employers.

In this case there should be a thorough survey of the proposed employment establishment to see whether it has the capacity to employ a particular kind of alien before a permit is issued. There should be a follow-up to see whether the employee is working for the specific employer and whether the employee is engaged in the specific employment applied for. The intending employer of a foreign national should also satisfy the government that a suitable citizen has been identified for the appropriate training programme for eventual take over within a specified period, to be in keeping with the government policy on the issue of entry permit.

(iii) Workshops and seminars should be organised periodically to consist of the immigration experts and the foreign employees and employers with a view to exchanging ideas – officers offering advice and receiving feedback.

Just as it is important to organise seminars and workshops to educate the public on the AIDS scourge, Family Planning, among other developmental agenda, it is also important to educate the foreign employees and the foreign investors on the detailed conditions of their employment and investments so as to avoid unnecessary international friction and confrontational solutions in law courts.

It is very apparent that some foreigners contravene the conditions of their permits unknowingly because they are not quite conversant with the provisions governing such permits and they end up being arraigned in court and fined for offences they unknowingly committed.

When foreigners of a particular nationality are frequently taken to court for immigration-related offences, the punishment is usually accompanied by a repatriation order and when so many foreigners are repatriated, their governments back home may not appreciate the legality and the course of justice taken by the Kenya government; but may be viewed as Kenya's hostility towards those governments; and this can cause an actual strain in the international relations between the nations concerned. For example many East African nationals still harbour the East African Community brotherhood long after the community collapsed in 1977. During the community days, human and resource traffic was relatively free across the borders. When the community collapsed, immigration controls were tightened but because of the frequent political turmoil in Uganda, many Ugandan nationals sneaked into Kenya, which has been comparatively peaceful. Some of these individuals did not bother to regularise their immigration status in Kenya because the East African brotherhood was still lingering on their minds and most of them started engaging in businesses without any consultation with the immigration department. When these people were discovered committing immigration offences and repatriated, the Museveni Government viewed it as Kenya's hostility towards Uganda not as justice allowed to take its natural course. That is why it is very important for the Department of Immigration to organise periodical educational seminars and workshops so that Kenya guests may get to

know what they are supposed to do and what they are not supposed to do in Kenya. Such educational seminars and workshops will act as shock absorbers to the possible frictions, which normally jeopardise the job security of Kenya citizens, foreign investment and cordial international intercourse.

(iv) The Ministry of labour and Manpower Development should be involved in the determination of immigrants who qualify for Class A entry permits; and the Ministry of Trade and Industry in the case of Class H entry permit. It should not be a preserve of the immigration department because those ministries are better placed to know the conditions of the local labour markets and the level of domestic investment.

(v) As we have seen in the United States of America immigration practice, other stakeholders need to be brought in at the examination of alien's credentials that want to work in Kenya. The current practice where an immigration officer becomes the credentials evaluator is not sufficient particularly where certificates and letters of experience are submitted to support work permit application. An alien's equivalence certificate or licence to practice a particular profession should be determined by a recognized authority or an official who has authority to grant credit in the profession at the local universities, or certification by a nationally recognised professional association or society for that profession. Even practice in Denmark, issuance of residence and work permit is not a preserve of Danish Immigration Service (DIS). The DIS has to hear other public authorities or organisations such as the Labour Market Councils, which must certify that an alien deserves to be employed.

(vi) Filing fees are currently not charged by Kenya immigration while in the U.S. it is \$50 – non-refundable. Kenya should also adopt this practice to boost the government revenue base, because the applications for work permit are worked on whether they become successful or not.

(vii) Very prohibitive penalties for employers and employees who submit false declaration or documentation to support application for work permit, have been provided for under the US immigration practice to the tune of \$10,000 or imprisonment of up to five years or both.

In Kenya the maximum penalty for any immigration offence is Kshs. 20,000 or one year imprisonment or both. This penalty is not deterrent and it should be increased to discourage those employers and employees who present false documents to support application for work permit, or any other immigration documents.

(b) Recommendations On Visa

Also arising from the revelations of our field survey, the following recommendations are necessary to improve Kenya visa regime:

(i) The revision has been long overdue after the government has lost a great deal of revenue accruing from the visa fees in terms of foreign currency. As we have discussed earlier about the abuse of the provisions of Transit Visas, this type of visa may be reassessed and, if possible, its fee may be put even higher than the fee charged for Ordinary/Entry or Standard Single Journey Visas so as to

discourage the dishonest foreign nationals bent on abusing its loose provisions.

(ii) The current Kenya Visa Regulations still need further review particularly in terms of its types, fees and categories, rationale to forestall the loss of revenue arising from their defects.

In terms of its types and categories, we have seen that the Exit Visa was incorporated in the Regulations to take care of the racial political behaviour of the former apartheid Republic of South Africa. Now that the apartheid policy has collapsed and replaced by majority rule, the existence of such a provision in regulations become unnecessary and confusing not only to the general public but also to some immigration officials who may have to rely on reading the written regulations instead of the general practice. The same argument goes for the category of the Visa regulations. Concerning Multiple Journey Visas, reassessment of its fee is necessary because if a foreign national is issued with a visa valid for, says, 12 months and that national makes, say, 4 visits to Kenya within that one year, the government shall have lost seventy US dollars (\$70) if he were to use the Ordinary/Entry or the Standard Single Journey visa which is now \$30 and Multiple Journey Visa which is \$50, as at 1994.

Concerning visa category, category 3 which concerns the referred visas, the issue here looks like a mere ideological colonial legacy which should be thoroughly reviewed taking into account, the collapse of the former Soviet Union and the collapse of apartheid in South Africa. The duration which the application for referred visas takes to be processed (at least one month) can discourage potential investors and individuals of noble ideas who may want to come and share with

Kenyans a portion of such investments and noble ideas. Security checks are very important to carry out on suspicious nationals intending to enter Kenya but such checks should be well balanced with the possible economic benefit any foreign national may bring to Kenya, particularly in terms of job creation, professional ideas and the revenue that the government may accrue from any investment. Kenya Visa Regulations being under absolute discretionary executive control have no provision for any appeal against the government refusal to issue any foreign national with a visa. If there were provisions for appeals as in the case of entry permit a prescribed fee would be charged for such an appeal and this will go along way to raise government revenue. It is therefore very important that such issues may come forward during any committee sitting to review the Kenya Visa Regulations.

(iii) Categorisation of visa should now be professionally not nationality based as this may strain international relations. The former USSR and its Eastern European Confederates have embraced democracy and the rationale of categorisation along ideological line is not longer relevant.

(iv) Stamp visa is outdated and open to forgery. It should be replaced by sticker visa to check forgery and to ensure accountability.

(v) Visa waiver should be completely abolished because its fiscal negative effects far outweigh its anticipated benefits since the government has lost billions of shillings since its implementation in June 1999.

(vi) Major Kenya tourist sources should have visas issued in as many cities of those countries as possible to avoid congestion and delays in the visa processing. More consulates are needed in the major cities of major Kenya tourist sources.

(vii) Immigration Officers should be trained in customer care and public relations

techniques to handle their clients with civility and dignity that they deserve.

(viii) Changes in visa fees should be implemented at least six months after the announcement to allow tour operators to adjust their tourist packages, which normally include visa fees.

(c) To The General Public

It is recommended that the general public should place applications for immigration services well a head of time they intend to obtain such services. Immigration services being government monopoly services and obtained only at the Department of Immigration attract a great number of applicants within a given time. With the on-going rationalization and right sizing of the civil service as recommended by the Bretton Woods Institution - World Bank and the International Monetary Fund as one of the aid conditionalities, the number of officers needed to handle service delivery has remarkably reduced. The general public should therefore not expect their services to be delivered over night if officers have to examine and process the applications prudently. The public should fulfil all requirements for the services they apply for. This way they will avoid any temptation to compromise the Immigration Officers to favour them by giving preferences and priorities and thereby losing their universal principle of fairness in the discharge of their duties without fear or favour.

Secondly the public should act as the eye and the ear of the immigration officer by reporting any suspicious alien living or working among them.

END NOTES

1. Harris, W.H. & Levey, J.S. ed, the New Columbia Encyclopedia (New York: Columbia University Press, 1975) P137.
2. Longman English Larousse (London: Associated Companies, Branches and representatives throughout the world, 1968) P. 566.
3. Horsley, E.M. ed., The New Hutchinson 20th Century Encyclopedia (London:Hutchinson & Co. (Publishers) Ltd., 1977) P. 649.
4. The Reader's Digest Great Encyclopedic Dictionary (Dictionary (London: Reader's Digest Association Limited, 1978) P. 438.
5. Jones, M.A. American Immigration (Chicago: the University of Chicago Press, 1960) P. 4.
6. Immigration Control Regulations, 1948 P.3
7. Immigration Act. Chapter 172 Laws of Kenya (Nairobi: Government printer, 1968)
8. Jones, M.A. *op.cit.*, P.5.
9. International Sociological Association, The Positive Contribution By Immigrants (Paris: UNESCO, 1955) P11.
10. Ochieng' W.R. A History of Kenya (London: Macmillan Publishers Ltd., 1985) P. 155.
11. Utete, C.B.M. "Africa and the Former Colonial Powers" in Ojo, *et al.* African International Relations (London: Longman Group U.K. limited, 1985) P 109.
12. Okumu, J. "Kenya's Foreign Policy" in Aluko and Olajide ed., The Foreign Policies of African States London: Hodder and Stoughton, 1977) P. 136.
13. Papademetriou, D. "The political Economy of International Migration" in International Social Science Journal Vol. 36. 1984. P. 409-410.
14. Jones, M.A. *op. cit.* P 8.
15. Tabbarah, Riad "Prospects of International Migration" in L.S.S.J *ibid* P 432.

16. Adepoju, A. "Linkages between Internal and International Migration: the African situation" in International Social Science Journal Volume 36. 1984. P 442.
17. Vittoz, Stan "World War I and the Political Accommodation of Transnational Market Forces: The Case of Immigration Restriction" in Politics & Society Vol. 8 1978: P. 53.
18. International Sociological Association *op.cit.*, P 12.
19. Rose, A.M. Migrants in Europe (London: Oxford University press, 1969) p.14
20. Morgenthau, H.J. Politics Among Nations: the Struggle for Power and Peace (New Delhi: Kalyani Publishers, 1991) P.3.
21. Morgenthau, H.J. *Ibid.*, P.4
22. Coulombis, T.A. and Wolfe, J.U. Introduction to International Relations: Power and Justice (New Delhi: Prentice-Hall of India, 1981) P. 56.
23. Papademetriou, D. *op.cit.* P.40
24. The Citizenship Act, Chapter 170 Laws of Kenya (Nairobi Government Printer) P. 3.
25. The Aliens Restriction Act, Chapter 173 Laws of Kenya (Nairobi: Government Printer) P.2
26. Kuhne, W. "Africa and Gorbachev's 'New Realism'" in Deng, F.M. & Zartman, W. ed. Conflict Resolution in Africa (Washington, D.C: The Brookings Institution 1991) P.42.
27. Gur, T.R., "Theories of Political violence and Revolution in the Third World" in Deng, F.M. & Zartman, W. *ibid.* P. 153.
28. Parque, V. Reyntjens, F. "Shifting Alliances, Extraterritorial Conflicts and Conflict Management" in Makenkamp, P.M. et. al., ed. Searching for Peace in Africa (Utretcht: European Centre for Conflict Prevention, 1998) P.181.
29. Rono, Jona "Kenyan Foreign Policy" in Wright, S. ed. African Foreign Policies (Colorado: Westview press, 1999) P. 102.

30. Korwa, G.A. "Kenya - US Relations" in Macharia, M. et al ed. The US and Africa from Independence to end of cold war (Nairobi: General printers Ltd. 1995) P 89.
31. Plano, J.C. & Olton, (1988) *op.cit.* P. 266.
32. Kenya visa Regulations (Revised Edition 1986) P. 4.
33. Goodwin-Gill, C.S. International Law and the Movement of Persons between States (London:Oxfarm University Press, 1978) P. 106.
34. Amendments to Kenya Visa Regulations (Revised Edition. 1999) P.2
35. *Daily Nation, Friday March 17, 2000* (Nairobi: Nation Media Group, Limited) P.13
36. *Daily Nation, Friday March 31st, 2000 Ibid., P.5*
37. *Daily Nation, Saturday May 27, 2000 Ibid., P.3*
38. *Daily Nation, Tuesday April 25,3 Ibid., P.12*
39. *Daily Nation, October 28, 1993 Ibid., P.12*
40. Immigration Act. Chapter 172 laws of Kenya *op.cit.*, P 38
41. *. Daily Nation, July 28, 1994 op.cit P.4*
42. Immigration and Naturalization Service "Instructions for Filing petitions for Temporary workers or Trainees H Visa classification" (U.S. Department of Justice, 1990) P.3
43. Extract on the Danish Rules of the Aliens Act, 1973 P.3
44. *East African Standard, November 28-December 4, 1994. P.5*
45. Plano, J.C. & Olton, R. *op.cit.*, (1988) P.265
46. Goodwin-Gill, G.S. (1978) *op.cit.*, P. 46.
47. Dembinski, L. Diplomatic and Consular Law, Selected Instruments (New York: Peter Lang inc. 1992) PP.11-13
48. The Constitution of Kenya (Nairobi Government printer) P. 54

49. The Constitution of Kenya (Nairobi Government printer) – *ibid.*, P. 55
50. The Constitution of Kenya (Nairobi Government printer) – *ibid.*, P. 54
51. The Constitution of Kenya *ibid* P.55
52. Goodwin-Gill, G.S. (1978) *op.cit.*, P. 29
53. Plano, J.C. & Olton, R. *op.cit.*, (1988) P.261
54. Plano, J.C. & Olton, R. *op cit.* (1988) P. 264
55. Tudor, J. the Law of Kenya An Introduction (Nairobi: Kenya Literature Bureau, 1984) P.86
56. Akehurst, M. A Modern Introduction to International Law (London: Unwin Hyman, 1987) P. 88
57. Margolis & Guiton Public Economics (Stockton press, 1966) P.17
58. Akehurst, M. (1987) *op.cit.*, P.78.
59. Shaw, M.N. International Law (New York: Cambridge University Press, 1997) P.562.
60. Tudor, J. (1984) *op.cit.*, P.84
61. Citizenship Act, Cap. 170 Laws of Kenya *op cit.*, P.6.
62. Danish Immigration circular No. 90 of June 16, 1999 P.10.

BIBLIOGRAPY

Adepoju, A. "Linkages between Internal and International Migration: the African situation" in International Social Science Journal Volume 36, 1984.

Akehurst, M. A Modern Introduction to International Law (London:Unwin Hyman, 1987)

Amendments to Kenya Visa Regulations (Revised Edition, 1999)

Citizenship Act, Chapter 170 Laws of Kenya *op cit*.

Coulombis, T.A. and Wolfe, J.U. Introduction to International Relations: Power and Justice (New Delhi: Prentice-Hall of India, 1981).

Daily Nation, October 28, 1993.

Daily Nation, Tuesday, April 25, 2000.

Daily Nation, July 28, 1994.

Daily Nation, Friday, March 13, 2000.

Daily Nation, Friday, March 17, 2000 (Nairobi: Nation Media Group, Limited).

Daily Nation, Saturday May 27, 2000.

Dembinski, L. Diplomatic and Consular Law, Selected Instruments (New York: Peter Lang inc. 1992)

East African Standard, November 28-December 4, 1994.

Extract on the Danish Rules of the Aliens Act, 1973.

Goodwin-Gill, C.S. International Law and the Movement of Persons between States (London:Oxfarm University Press, 1978)

Gur, T.R., "Theories of Political violence and Revolution in the Third World" in Deng, F.M. & Zartman, W. ed. Conflict Resolution in African (Washington, DC: the Brookings Institution, 1991)

Harris, W.H. & Levey, J.S. ed, the New Columbia Encyclopaedia (New York: Columbia University Press, 1975)

Horsley, E.M. ed., The New Hutchinson 20th Century Encyclopaedia (London:Hutchinson & Co. (Publishers) Ltd., 1977)

Immigration and Naturalization Service "Instructions for Filing petitions for Temporary workers or Trainees H Visa classification" (U.S. Department of Justice, 1990)

Immigration Control Regulations, 1948

Immigration Act, Chapter 172 Laws of Kenya (Nairobi: Government printer, 1968)

Immigration Act, Chapter 172 laws of Kenya *op.cit.*

Immigration ordinance 1956 and the Immigration Regulations, 1957, (Nairobi Government Printer, 1957)

Immigration Ordinance 1948

Indian Immigrants in Kenya.

International Sociological Association, The Positive Contribution by Immigrants (Paris: UNESCO, 1955).

Jones, M.A. American Immigration (Chicago: the University of Chicago Press, 1960)

Kenya Visa Regulations. Revised Edition, 1986.

Korwa, G.A. "Kenya - US Relations" in Macharia, M. et al ed. The US and Africa from Independence to end of cold war (Nairobi: General printers Ltd. 1995)

Kuhne, W. "Africa and Gorbachev's 'New Realism'" in Deng, F.M. & Zartman, W. ed. Conflict Resolution in Africa (Washington, D.C: The Brookings Institution 1991)

Longman English Larousse (London: Associated Companies, Branches and representatives throughout the world, 1968)

Margolis & Guiton Public Economics (Stockton press, 1966)

Morgenthau, H.J. Politics Among Nations: the Struggle for Power and Peace (New Delhi: Kalyani Publishers, 1991)

Ochieng' W.R. A History of Kenya (London: Macmillan Publishers Ltd., 1985)

Okumu, J. "Kenya's Foreign Policy" in Aluko and Olajide ed., The Foreign Policies of African States London: Hodder and Stoughton, 1977)

Papademetriou, D. "The political Economy of International Migration" in International Social Science Journal Vol. 36, 1984.

Parque, V. Reyntjens, F. "Shifting Alliances, Extraterritorial Conflicts and Conflict Management" in Makenkamp, P.M. et. al., ed. Searching for Peace in Africa (Utretcht: European Centre for Conflict Prevention, 1998)

Plano, J.C. & Olton, R. (1988)

Report on Migration 1949 to 1953 (Nairobi: E.A. Statistical Department, 1956)

Rono, Jona "Kenyan Foreign Policy" in Wright, S. ed. African Foreign Policies (Colorado: Westview press, 1999)

Rose, A.M. Migrants in Europe (London: Oxford University press, 1969).

Selected Guides of Migration since World War II Proceedings of the 24th Annual Conference of the Milbank Memorial Fund.

Shaw, M.N. International Law (New York: Cambridge University Press, 1997)

Tabbarah, Riad "Prospects of International Migration" in L.S.S.J *ibid.*

The Aliens Restriction Act. Chapter 173 Laws of Kenya (Nairobi: Government Printer).

The Citizenship Act. Chapter. 170 Laws of Kenya (Nairobi: Government Printer).

The Constitution of Kenya (Nairobi Government printer)

The Reader's Digest Great Encyclopedic Dictionary (Dictionary (London: Reader's Digest Association Limited, 1978)

Tudor, J. the Law of Kenya An Introduction (Nairobi: Kenya Literature Bureau, 1984).

Utete, C.B.M. "Africa and the Former Colonial Powers" in Ojo, *et al.* African International Relations (London: Longman Group U.K. limited, 1985)

Vittoz, Stan "World War I and the Political Accommodation of Transnational Market Forces: The Case of Immigration Restriction" in Politics & Society Vol. 8, 1978.

APPENDIX

Opon Dan Odhiambo,
University of Nairobi,
Department of Political Science &
Public Administration,
P.o.Box 30197,
NAIROBI.

February 10th 2000.

Dear Respondent,

Receive greetings from Nairobi University. I am a Master of Arts student at the Department of Political Science and Public Administration, University of Nairobi. I am conducting study/research on African Immigration Policies, a case study of Kenya since 1963. You are one of the respondents carefully selected to offer some pieces of information by way of filling in the questionnaire herein attached.

I am assuring you that the pieces of information you are going to offer will be confidentially kept by the researcher and never shall it be divulged in part or in whole to any other person for any intent or purpose other than the academic for which the researcher sought them. In this regard, you are not under any obligation to write your name although the researcher would appreciate if you do so, as a sign of good faith, and more so should he require an oral interview with you at a later date. Relatedly whereas there is nothing wrong in refusing to answer the following questions, there is everything wrong in giving a wrong or inaccurate answer.

WELCOME!

QUESTIONNAIRE FOR VISA SECTION (G)

1. What is the:

(a) Meaning of visa?

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(b) Operations of visa regulations?

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(c) Rationale behind the visa regulations?

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(d) Economic implications of visa regulations on government revenue?

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.....

(2) Give statistical revenue collection from visa fee between the following years (periods)

- (a) 1963-1972
- (b) 1973-1982
- (c) 1983-1992

(d) 1993+

(e) Explain reasons for variations if any

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(3) What is the position of Kenya government in the:

(a) Current visa regulations? (Indicate date it took effect)

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(b) Previous visa regulations (indicate date it took effect)

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(c) Explain variations if any

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(d) How many categories exist in the visa regulations fees for each nationality and reasons for categorization

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(e) Do you have quota system with regard to visa application?

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(4)What do you consider to be the current shortcomings of the current visa regulation?

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(5)How often has your visa been forged?

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(6)What measures do you have in place to ensure that your visas are not forged?

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QUESTIONNAIRE FOR ENTRY PERMIT (SECTIONS E, D, &J)-ENTRY PERMIT

7. what is the:

(a) Meaning of entry permit?

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(b) Operations (government policy etc) on entry permit?

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(c) Rationale behind entry permit legislations

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(d) Economic implications of entry permit on government revenue?

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8. Give statistical revenue collection from entry permit (all classes) between:

- (a) 1963-1972
- (b) 1973-1982
- (c) 1983-1992
- (d) 1993+

9. In the same period as No.8 above, state how many persons:

(a) Got class'A'permit



- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(b) State their professions and job descriptions (were jobs advertised)

- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(c) Number of renewals they got:

- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(d) Among them, how many have got citizenship?

- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(e) Which nationalities hold the highest number of entry permits and why?

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(f) Do you have quota system with regard to entry permit and give reasons for yes or no and give the basis of quota system if any?

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10. (a) Give a list of foreign companies registered with your section and the corresponding countries from which they have originated

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(b) Give their locations in the country

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11. What is the capital requirement for foreign investment?

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12. How often are your entry permits forged and what measures do you have in place to counter the forgery?

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13. What measures do you have in place to ensure that the initial capital originates from outside and not locally raised?

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14. Give a list of locals trained by expatriates and who have taken over the positions of these expatriates since 1967

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.....

QUESTIONNAIRE FOR SECTION I-CITIZENSHIP

15. What is the:

(a) Meaning of citizenship?

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(b) Under which laws can one acquire Kenya citizenship?

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(c) What is the rationale behind such citizenship laws?

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(d) What are the benefits of citizenship laws to Kenya?

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16. Give statistical revenue collection from citizenship fee between:

- (a) 1963-1972
- (b) 1973-1982
- (c) 1983-1992
- (d) 1993+

17. State the annual registration and naturalization of aliens as citizens.

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18. Does the government have quota system with regard to registration and naturalization of aliens as citizens? Give your reasons for YES or NO

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19. State clearly the distinctions between registration and naturalization

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QUESTIONNAIRE FOR SECTION (F)-INVESTIGATION AND PROSECUTION

20. What is the scope of your operations?

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21. Give a list of offences you normally investigate and prosecute?

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22. Explain the extent to which the following immigration documents have been forged between 1963 to date

(a) Visa

- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(b) Entry permit

- (i) 1963-1972
- (ii) 1973-1982
- (iii) 1983-1992
- (iv) 1993+

(c) Passport & other travel documents (T.P, UNCTD, CIN)

- (i) 1963-1972
- (ii) 1973-1982

- (iii) 1983-1992
- (iv) 1993+
- (d) Citizenship
 - (i) 1963-1972
 - (ii) 1973-1982
 - (iii) 1983-1992
 - (iv) 1993+
- (e) Aliens registration certificate
 - (i) 1963-1972
 - (ii) 1973-1982
 - (iii) 1983-1992
 - (iv) 1993+
- (f) Pupils pass
 - (i) 1963-1972
 - (ii) 1973-1982
 - (iii) 1983-1992
 - (iv) 1993+
- (g) Dependants pass
 - (i) 1963-1972
 - (ii) 1973-1982
 - (iii) 1983-1992
 - (v) 1993+
- (h) Special pass

(i) 1963-1972

(ii) 1973-1982

(iii) 1983-1992

(iv) 1993+

(i) Re-entry permit

(i) 1963-1972

(ii) 1973-1982

(iii) 1983-1992

(iv) 1993+

23. How much money (kshs) in terms of court fee has the government collected from successfully prosecuting the offences in number 22 above since 1963?

(a) Visa

(i) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(b) Entry permit

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(c) Passport & other travel documents (T.P, UNCT5D, CIN)

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(d) Citizenship

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(e) Aliens registration certificates

(I) 1963-1972

(II) 1973-1982

(III) 1983

(IV) 1992

(V) 1993+

(f) Pupils Pass

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(g) Dependants pass

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(h) Special pass

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(i) Re-entry pass

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

(j) Visitors pass

(I) 1963-1972

(II) 1973-1982

(III) 1983-1992

(IV) 1993+

24. Are perpetrators of these forgeries easily identified, if not why?

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25. What problems do you encounter during the course of your investigation and prosecution?.....

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26. What measures do you have in place to reduce or eliminate forgeries and to overcome the problems of investigations and prosecutions?

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QUESTIONNAIRE FOR HIGH COMMISSIONS AND EMBASSIES

- 1. British High Commission
- 2. US Embassy
- 3. Russian Embassy
- 4. German Embassy
- 5. Danish Embassy

27. What is the structure of your Immigration Department?

(a) Ministry under which it falls and why?

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(b) Hierarchical organization from top to bottom

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(c) Sections within Immigration and their functions

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28. What are the general functions of your Immigration Department?

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29. What is your government position with regard to:

(a) Considerations for visa issuance

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(b) Rationale behind those considerations-political, economic, security etc.

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(c) Does quota system exist with regard to visa application, if yes, on what factors is it based?

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(d) Classes of visa and the basis of classifications

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30. What is your government position within regard to work permit?

(a) Issuance considerations

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(b) Rationale behind such considerations

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(c) Does quota system exist and why?

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(d) Classes of permit if any and the basis of classification

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(e) Duration of validity

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31. What is your government position with regard to citizenship?

(a) How is it acquired?

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(b) Conditions under which it can be withdrawn if any

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(c) Does quota system exist, if YES why and how do you operate it?

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32. What is your government position with regards to passports:

(a) Who qualifies for it?

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(b) Points of issue (issuing authorities) public or private, provincial or District Headquarters)?

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(c) What measure do you have in place to ensure that unauthorized person does not get it and ensure no forgeries?

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33. (a) Do you have any publications or documents used as reference with regard to immigration practices and regulations or they are practiced on the basis of adhoc executive circulars?

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(b) If any books,journals,theses,or any other publications exist, please indicate :

(I) Authors.....

(II) Titles.....

(III) Publishers, places and years of publication.....

QUESTIONNAIRE FOR REGISTRAR OF COMPANIES

34. What are your requirements for registration of a foreign company?

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35. Give a list of all foreign companies registered in Kenya and the corresponding countries of origin?

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36. In the foreign companies listed, how many have open doors for local share capital and how many are purely foreign?

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37. Do they regularly submit annual returns?

38. Do you consider the origin of capital before registration of a foreign company whether it is from outside or locally generated?

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Thank you very much for your cooperation and good luck.

Yours Faithfully,

Opon Dan Odhiambo