

**REFUGEE INFLUX AND (IN)SECURITY:  
KENYA'S EXPERIENCES, 1991 - 2012**

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**AUGUST 2013**

## DECLARATION

This thesis is my original work and has not been submitted for a degree to any other University.

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This thesis has been submitted for examination with our approval as University supervisor.

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**Dr. Ibrahim Farah**

**Date**

**Supervisor**

## **DEDICATION**

To my family and friends, for their continuous support and patience that helped me realise the completion of this Program at the Institute of Diplomacy and International Studies (IDIS),  
University of Nairobi.

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I thank God, the Almighty, for His sufficient mercies and grace, which have enabled me to complete this Masters Program. Secondly, I would like to thank my Supervisor, Dr. Ibrahim Farah for his undiminishing patience and guidance in carrying out this research project.

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## **ABSTRACT**

The evolution of the perception of refugee issues from being a humanitarian issue to being security a threat in the 21<sup>st</sup> Century, has made the government of Kenya to take the wrong course in seeking to deal with security issues. Today, refugee discourses, policy-making processes and scholarly fields are dominated by the language of ‘security threats’. The analysis of the relationship between the refugee influx in Kenya and insecurity from 1991 – 2012, brings out a different perception. The study in seeking to investigate the effects of refugee influx on security in Kenya, the contribution of refugees to proliferation of small arms in Kenya and to critically analyse the role of the Government of Kenya in handling refugee issues vs. security concerns, separates refugee issues from security issues. The analysis of human security concept, translates to respect of human rights while handling refugees issues. While World society theory locates real power in identity groups, societal security theory on the other hand, reveals the security of societal groups. Securitization theory plays a role where refugee issues are over securitized a situation, which prompts reaction from the government. This study used concepts from these theories to contribute to knowledge and understanding of the nexus of refugee issues and insecurity. Secondary data was obtained from published scholarly materials, government reports, journals, newsletters and newspapers and primary data from personal interviews. It is established that criminal groups from the warring neighbouring countries are responsible for the rise of insecurity in Kenya. They use the large refugee influxes to their advantage, to engage in illegal activities such as trafficking illegal firearms through the porous borders to the North of Kenya, which then, are used to commit crime in the country. Refugees, being a vulnerable group, and most of them from Somali, a country that has had protracted conflicts for many years, are blamed for the insecurity. In consideration of all circumstances notwithstanding, Kenya has a mandate: to respect and improve the international refugee instruments of protection while at the same time ensuring security for its citizens.

## **LIST OF ABBREVIATIONS**

DRC - Democratic Republic of Congo

DRA - Department of Refugee Affairs

IDP's - Internally Displaced Persons

IOM – International Organization of Migration

IRC- International Rescue Committee

IRIN – Integrated Regional Information Networks

IRO - International Refugee Organization

JRS- Jesuit Refugee Services

LWF – Lutheran World Federation

NCKK – National Council of Churches of Kenya

NGO's – Non-Governmental Organizations

OAU - Organization of African Unity

UNHCR - United Nations High Commission for Refugees

UN - United Nations

US - United States of America

WFP- World Food Program

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# CHAPTER ONE

## INTRODUCTION TO THE STUDY

### 1.0 Introduction

There have been various definitions to the concept of security over time, making it a complex concept. The transformation of security goes beyond technological change: it involves a transformation of the social relations of warfare and the character of the threats that we face.<sup>1</sup> Buzan argues that, although security goes beyond military considerations to include political, economic, societal and environmental factors it cannot incorporate human security.<sup>2</sup> Buzan finds “human security” concept a problematic concept in international security, because to him, human race levels are difficult to construct as referent objects for security. On the other hand, his argument is centred in international state-centric perspective and therefore logically cannot endorse another view of security.<sup>3</sup>

Sean Kay defines security as the absence of a threat to the stability of the international system, to countries or to individuals.<sup>4</sup> Traditionally, security has been viewed as a state concern in international system.<sup>5</sup> This view is realist in nature, whereby the understanding of security is viewed as the ability of a state to protect itself militarily. Lippmann, defines security as the extent to which a nation is not in danger of having to sacrifice its core values, in the wish of avoiding the war and if challenged, its able to maintain the values by conquering in that war.<sup>6</sup>

The importance of a state to security is meaningful if at domestic level, the state is the source of order and authority, which claims to represent the interests of the whole society. It is assumed that it has the monopoly of the means of violence, which makes it the only organization

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<sup>1</sup> Kaldor Mary, *Human Security*, (Malden: Polity Press, 2007), 1.

<sup>2</sup> Collins Alans, *Contemporary Security Studies*, (UK: OUP, 2013), 9.

<sup>3</sup> Ibid

<sup>4</sup> Kay Sean, *Global Security in the Twenty-First Century: The Quest for Power and the search for Peace*, (USA: Rowman & Littlefield Publishers Inc., 2006), 2.

<sup>5</sup> Mwagiru Makumi, *African Regional Security in the Age of Globalization*, (Heinrich Böll Foundation, 2004), 1.

<sup>6</sup> Baylis John, “*International and Global Security*” in J. Baylis and S. Smith (ed), *The Globalization of World Politics* (New York: Oxford University Press, 2001), 255.

capable of maintaining order by mediating relations between members of society and of providing protection.<sup>7</sup>

Whether or not refugees are considered a threat to security depends on the manner in which the two concepts are conceptualised and theorized. How we define, think or conceptualise security, depends on the theories adopted for analysing the concept since different theories offer competing explanations in talking about security. This study examines how refugee theories make possible for a rethink in the way they are constructed and how the expansion of security concept in Post Cold War era enabled this.

While the existing literature recognises the real and potential security threats refugee flows can pose, there is little empirical investigation of the nature and extent of the refugee threat on host states.<sup>8</sup> This study will dig deep into finding out what relationships there are between refugees and insecurity in Kenya. And what nature of threats they pose, if any.

## **1.1 Background to the study**

The International refugee law protects people who have been forced to flee their home country due to fear of persecution or violence and whose own governments are unwilling or unable to protect and to safeguard their basic human rights. This law comprises of the 1951 Convention relating to the status of the refugees,<sup>9</sup> and the 1967 protocol relating to the status of refugees as well as the 1969 OAU convention governing the specific aspects of refugee problems in Africa.<sup>10</sup>

The term security is based upon two major assumptions: one, that most threats to a state security arise from outside its borders and that these threats are primarily if not exclusively military in nature and usually require a military response if the security of the target state is to be

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<sup>7</sup> Zacarias Agostinho, *Security and the State in Southern Africa*, (New York: Tauris Academic Studies, 1999), 95.

<sup>8</sup> Mogire, Edward, *Victims as Security Threats: Refugee Impact on Host Security in Africa*, (England: Ashgate Publishing Company., 2011), 18.

<sup>9</sup> UN Convention Relating to the Status of Refugees adopted on July 1951 by the UN conference of plenipotentiaries on the status of Refugees and stateless persons, and entered in to force in 1954

<sup>10</sup> UN Protocol Relating to Status of Refugees taken note of with the approval from the economic and social council in resolution 1186 (XLI) of 1966 and entered in to force in 1967.

preserved.<sup>11</sup> According to the international encyclopaedia of the social sciences, security is the ability of a nation to protect its internal values from external threats, which are frequently transformed into interstate conflicts due to their spill over effects into the neighbouring countries.<sup>12</sup>

To understand the nature of security threats refugees pose to African host states, it is necessary to define the term as applied in Africa. This is because what is or is not a threat differs from time to time, just as Buzan notes that security is a “contested” subject, while Baldwin views it as “ambiguous”.<sup>13</sup> It is therefore useful to pose questions such as “security for whom, security for what, and how” in order to open the particular meaning of the concept.<sup>14</sup>

The concept of security in the third world is state-centred in character and emphasizes the political connotation of the term.<sup>15</sup> This does not mean that the social and human realms should be ignored, but when developments in other realms ranging from economic to the ecological are perceived as being able to threaten state boundaries, political institutions or governing regimes, these should be taken into account as being part of the state security.

Robinson gives a simple definition of security as an “absence of a threat”.<sup>16</sup> So according to him, state security means absence of a threat in a state. Despite the fact that refugees are conceived and presented as humanitarian issues, they are now increasingly viewed as security threats in many states.

In the 1990s, refugees flee into Kenya coming from the politically unstable neighbouring countries particularly Sudan, Somali, Rwanda, Democratic republic of Congo and Burundi. The United Nations High Commission for Refugees in conjunction with the Government of Kenya supports and protects refugees and assists in resettling them. It is therefore, every state’s

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<sup>11</sup> Ayoob, Mohamed, *The third world security predicament*, (UK: Lynn Reinner publishers, 1995), 5.

<sup>12</sup> Morton, Barry, and P.B. Bock, “National Security” *International Encyclopedia of the Social Sciences vol. 11* (New York: Free Press.,1968), 5.

<sup>13</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company., 2011), 18.

<sup>14</sup> Ibid

<sup>15</sup> Ayoob, Mohamed, *The third world security predicament*, op cit.

<sup>16</sup> Robinson Paul, *Dictionary Of International Security*, (USA: Polity Press., 2008), 1.

obligation according to international refugee law specified in the UN convention relating to status of refugees, 1954, 1967 and 1974.

Before the influx of refugees which began in early 1990s, Kenya was hospitable and welcomed relatively small numbers of refugees that were seeking asylum in their territories. The Kenyan government assisted refugees to acquire identification cards to enable them to access social services, to seek jobs and participate in commercial activities. The Kenyan economy was skewed towards skilled labour and investments, which they could provide.<sup>17</sup>

## **1.2 Statement of the research problem**

In April 2001, thousands of refugees fled to Kenya.<sup>18</sup> The Somalis, the Sudanese and Ethiopian refugees have stayed in Kenya long, due to protracted conflicts in their home countries. Refugee camps in Kenya are located in semi-arid areas with a hot dry climate, without surface water and attractive natural resources to enhance UNHCR's efforts of building self-sufficiency. This situation makes refugees, permanent dependants on UNHCR relief and a constant drain to host country's resources.

Insecurity in Kenya has been on the rise since refugees started streaming in, in large numbers. This situation has caused a lot of concerns in the government institutions mandated with handling security in Kenya. This study focuses on Kenya, a destination of most refugees from Sudan, Rwanda, Burundi and Somali. These refugees flee from conflict and political instability in their home countries. The United Nations High Commission for refugee's office identified Kakuma in Turkana District and in Dadaab in Garissa District to accommodate, protect and provide assistance of any nature to refugees.<sup>19</sup> Here, they are provided with basic needs such as temporary shelter, food, education, for the children and security. This study seeks to find out if there is a relationship between the refugee flows and insecurity in Kenya. The refugee "burden" has heightened insecurity in the camps and urban areas in Kenya due to

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<sup>17</sup> Peter Kennedy, *Ethnicity, Gender and violence in Kenya, forced migration, review*, (New York: Tarrus Academic studies, 2000), 25.

<sup>18</sup> Human Rights Watch, *Landmine Monitor Report 2001: Toward a Mine-free World*, (USA: Human Rights Watch 2001), 84.

<sup>19</sup> Human Rights Watch, *From Horror to Hopelessness: Kenya's forgotten Somali Refugee Crisis*, (USA, 2009), 32.

banditry occasioned by the proliferation of small arms across porous borders.<sup>20</sup> Since Integration is not possible and repatriation is remote, essential services as education, vocational training and income generating activities are necessary. As a result of the concentration along the borders, Kenyan border points have become extremely insecure which has been caused by mass movement of armed immigrants assumed to sneak in small arms and have had devastating consequences in sustaining armed and ethnic conflict as well as crime near the border entries.

Weiner, observes that, refugees can be a threat to the regime of their home country, to host country, can also pose cultural, social or economic threat and can be used as an instrument to threaten the host or country of origin. Perceived threats have a more significant impact on a state's actions than the real threats. This point has been reiterated by Rudolph, who argues that, a state's threat lies in a Nation's grand strategy including migration and border policies. Changes in the public discourse of refugee flows provide one indication of how international refugee flows have come to be posed as security issues. The relationship between international refugee flows and national security can be understood as a social construct whereby discourses and practices have shifted refugee flows from a humanitarian idea to a security-oriented idea.<sup>21</sup> The current rise in terrorist activities has been associated with the increasing number of refugees in Kenya. Kenyan anti-terrorist operations have targeted aliens including refugees especially from Somalia Kenya, seen as the source of terrorists it faces.<sup>22</sup>

The Government's concerns are that terrorists can camouflage as refugees to enter the country and cover their activities including recruiting from the refugee population. Some groups such as the al-Haramain Islamic Foundation, al-Itihaad which have links with al-Qaeda, were carrying out humanitarian work in Somali refugee camps where they have established close links

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<sup>20</sup> UNHCR Refugee Emergency Relief No. 91 (Dec 1992)

<sup>21</sup> UNHCR, Refugee emergency paper, op cit.

<sup>22</sup> A. International, *The Impact of Antiterrorism Operations on Human Rights*, (Washington DC: AI, 2005)

with the Somali refugees consequently smuggling dangerous weapons to Kenya via, the Kenya-Somali border.<sup>23</sup>

This study sought to establish if there is a relationship between the rising insecurity in Kenya and refugee flows and also seeks to find out what factors contribute to the increasing proliferation of small arms.

### **1.3 Objectives of the study**

The general objective of the study is to find out the relationship between refugees and insecurity with a case of Kenya's experiences, 1991-2012. The study specifically aims to:

- a. Investigate the effects of refugee influx to security in Kenya.
- b. Examine the contribution of refugees to proliferation of small arms in Kenya.
- c. Critically analyse the role of the Government of Kenya in handling refugee issues vs. security concerns.

### **1.4 Literature Review**

Ullman, Waeber, Deudney and others defend the view that many things are threatening in terms of security aside from military threats.<sup>24</sup> These writers can be grouped into two groups depending on the account they offer on the scope of security discourses. One group seeks to include non-military threats in the discussion of security as long as these threats undermine the security of states, while the other group seeks to include non-military threats in discussion of security as long as these threats undermine the security of both states and certain other entities.<sup>25</sup> This study reflects on the second group of writers.

While the existing literature recognises the real and potential security threats refugee flows can pose, there has been little empirical investigation of the nature and extent of these threats. Whereas security analysts acknowledge that, migration in general and refugees in

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<sup>23</sup> Loescher Gil and Milner James, *Protracted Refugee Situations, Domestic and International Security Implications*, (London: IISS, 2008), 41.

<sup>24</sup> Edward Algar et al (eds), *Human Security and the Environment: International Comparisons*, (UK; Edward Elgar Publishing LTD, 2002), 31

<sup>25</sup> Ibid

particular, may pose a threat, they have not undertaken any in-depth and extensive analysis of the nature and extent of these threats.<sup>26</sup>

The review of the literature has four topics upon which the proposal and the analysis of the study are based. Literature review focuses on gaining theoretical information related to refugee discourses in order to find out how the issue of refugees and insecurity have been argued and analysed by scholars. The themes focussed in the literature review are: The Perspective of scholars on Security, Causes of forced Migration in Eastern Africa, The relationship between Refugees and insecurity in Kenya from 1991 to 2012 and Other causes of insecurity in Kenya. For all the four themes, emphasis has been put on the views of authors in the 21<sup>st</sup> century with reference to Kenya's refugee discourses within this period.

#### **1.4.1 Perspectives on security**

The state, being the main actor in International Relations, highly features security in its national interest. State security is the ability of a state to secure its borders from foreign invasion and secure the protection of its citizens.<sup>27</sup> Lippman argues that, a nation is secure to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war and is able to challenge to maintain them by victory in such a war.<sup>28</sup> Buzan argues that, national security means the security of the whole socio-political entity. Its about country as well as about states. It concerns a way of life of self governing people including their cultural political and economic modes of organization and their right to develop themselves under their own rule.<sup>29</sup>

State security is basically defined in terms of military defence.<sup>30</sup> The basis of state action in international system is the concept of state defined in terms of power. Realists content that, there are three key assumptions in security field of study; the state is the central unit in International Relations and thus it's the central reference point for security, armed conflict

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<sup>26</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011), 2.

<sup>27</sup> Pant Peter, *International Relations in the 21<sup>st</sup> Century*; (New Delhi, Tata McGrawHill), 12.

<sup>28</sup> Zacarias Agostinho, *Redefining Security notes* in M. Basegu and C. Landsberg, *From Cape to Congo* (USA: Lynne Rienner Publishers, 2003), 23.

<sup>29</sup> Zacarias Agostinho, *Security and the State in South Africa*, (USA Canada, St. Martin's Press 1999), 96.

<sup>30</sup> Rudolph Christopher, *National Security and Immigration*, (USA: Stanford University Press, 2006), 28.

between states over competing interests constitute the major and recurring threat to security, material capabilities and especially military force represent the main currency by which security can be provided or threatened.<sup>31</sup> The special nature of security threats justifies the use of extraordinary measures to handle them. The invocation of security has been key to legitimizing the use of force, but more generally, it has opened the way for the state to mobilize, or take special powers, to handle existential threats. Traditionally by mentioning “security”, an emergency condition is declared, thus claiming the right to using whatever means is necessary to block a threatening development.<sup>32</sup>

Political realism has dominated the modern theory and practice of International Relations. The way in which realism embodied in conjunction with the Westphalian inheritance of state sovereignty has shaped the contemporary security paradigm of world politics, raises concern and defines the character of states as rational, egoistic actors and will always pursue what is in their best interests; state interests are driven primarily by necessity of national survival.<sup>33</sup>

According to Karadawi, state security puts emphasis on the state as centralized, governing organization and less on individuals existing within the state.<sup>34</sup> When threats to the state come from internal challenges, the principles of national security may be invoked to justify arbitrary measures to impose control and hegemony from the centre. Challenges to state security may be seen to emanate from pressures organized by internal groups as well as external powers. The state of the economy, ecological pressures and the dependence of the population on the resources of the physical environment are factors that may influence state security. Buzan observes that, all states exist in the hub of a whole universe of threats, which finally define its insecurity and the agenda of national security as a policy problem.

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<sup>31</sup> Butler Michael, *International Conflict Management*; (New York: Routledge 2009), 27.

<sup>32</sup> Buzan, Waever and Wilde,; *Security; A new Framework for analysis*, (UK, Lynne Rienner Publishers.,1998), 21.

<sup>33</sup> Evans Mark, *Just War Theory*, (Great Britain; Edinburgh University Press Ltd; 2005),158.

<sup>34</sup> Karadawi Ahmad, *Refugee Policy in Sudan 1967 – 1984*, (U.S.A; Berghahn Books, 1999), 21.



Buzan, considers three levels at which security should be analysed: individual, state and international levels. The concept of national security is of greatest importance because it tends to organize the other two levels of security. For him national security, means security of the whole socio-political entity. He also sees the state as an ambiguous component in world politics reflecting a variety of forces and processes. His central concern is with the purposes expressed by the states and in particular with the ways in which ideas and values provide a 'cement' for states and their identity.

A specific manifestation of state purposes is the notion of national security referred to by much of Buzan's argument.<sup>35</sup> He centralizes the concept of national security on the state and treats it as a completely separate entity that doesn't pay attention to actors that do not approximate to either state or nation. Smith observes that Buzan sees states as ontologically prior to other candidates and the problem with this is that the collectivities of individuals are prevented from knowing what was going on with regard to their security until they are constituted in states or nations. To Buzan, insecurity in those countries is solely caused by illegitimacy of governments, ethnic rivalry and adoption of wrong ideology<sup>36</sup>.

Jervis observes that, the attempt of one state to achieve security precipitates a feeling of insecurity in other states. All states tend to assume the worst of others and respond accordingly. Their collective actions unintentionally generate a spiral of insecurity and in a situation of anarchy there can be no solution to this security dilemma. The security dilemma is further exacerbated by the inflexible images that it generates in the minds of decision makers both of their own intentions and those of their opposite members'.<sup>37</sup>

Buzan posits that, Third World countries are weak, it is therefore hard to identify the referent object of security than in the developed States of the West. To Mwagiru, the traditional (western) understanding of what constitutes security threats to states are not wholly applicable in

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<sup>35</sup> Buzan Barry, *The Idea of the State and national security* notes in R. Little and M. Smith, *Perspectives on world politics*, (USA: Routledge, 2006), 29.

<sup>36</sup> Zacarias Agostinho, *Redefining Security* notes in M. Basegu and C. Landsberg, Op. cit

<sup>37</sup> Jervis Robert, *The Spiral of International Insecurity* notes in Little Richard and Smith Michael, *Perspectives on world politics*, (USA: Routledge, 2006), 54.

the African setting where threats to security are conditioned by its different operating environments.<sup>38</sup>

The Third World “insecurity dilemmas” fall into four categories: a variety of communal groups fighting for their own security and hegemony over their competitors, regimes in power that lack support from significant sectors of the population because the regime is perceived as representing the interests of a particular ethnic or social stratum, or an economic or military elite that has taken control of the reins of the state, Third World states lacking the capacity to provide for basic needs and to maintain political order: and regimes in which the real threat to the regime or leader is from within the state, and thus the distinction between threats to the leader and the state become blurred.<sup>39</sup> Consequently, the views raised by these scholars above, shall be used in carrying out the study in Kenya, being a Third World country.

#### **1.4.2 Causes of Forced Migration in Eastern Africa**

A migrant is someone who moves from one place of residence for a minimum period of time thus excluding tourists, business travellers, etc.<sup>40</sup> There are many types of migration but the ones identified by the Global Migration group are three.<sup>41</sup> Forced migration, which is described as movement due to harsh conditions of life or threats to life, transit migration is movement from one place to another due to employment and Return Migration which is movement of people returning to his/her country of origin or habitual residence usually after spending at least a year in another country. Voluntary repatriation falls under return migration.<sup>42</sup>

This review focuses on forced migration. Forced migration has been a major feature of the 20<sup>th</sup> and early 21<sup>st</sup> Centuries. People have been forced to flee their homes as a result of

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<sup>38</sup> Mwangi Makumi, *African Regional Security in the age of Globalization*, (Heinrich Böll Foundation Regional Office, East and Horn of Africa, 2004), 1.

<sup>39</sup> Midgal Joel, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* (Princeton: Princeton University Press, 1988), 11.

<sup>40</sup> Vandererf Bob and Heering Liesbeth, *Causes of International Migration*, (Brussels: ECSC-EC-EAEC., 1995), 7.

<sup>41</sup> Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights* (Global Migration Group, 2008), 10.

<sup>42</sup> Ibid.

political persecution, conflict, natural and man made disasters.<sup>43</sup> Betts identifies various causes of forced migration: environmentally-induced causes and conflict-induced causes of migration.<sup>44</sup> This study puts more focus on the conflict-induced migration. According to Doyle and Sambani's, an armed conflict is classified as a civil war if it satisfies the following criteria: if the war has caused more than one thousand battle deaths, the war presented a challenge to the sovereignty of an internationally recognized country, if the war occurred within the recognized boundary of that country, the war involved the state as one of the principal combatants and the rebels were able to mount an organized military opposition to the state and to inflict significant casualties on the state. Weiner identifies categories of a civil war as ethnic, if linguistic or racial groups, tribes or religious communities are in conflict with the state or with other ethnic groups in their own country, while non-ethnic civil wars include those based upon class, regional or ideological differences or armed struggle for political power by the military or by political fraction.<sup>45</sup> When citizens of a country, fall victim of one or various types of civil wars mentioned above, this makes them flee to another country to seek refuge.

Until the mid 1980s, the traditional and dominant view is that, refugees are victims of insecurity, hence humanitarian problems. Viewed this way, academics and policymakers based their analysis and responses to refugee issues on humanitarian paradigms whose primary focus is individual refugees and their rights, the provision of relief assistance and the role of UNHCR. As a result, in the great debates over the causes of war and the conditions of peace, refugees are usually seen as the tragic, but politically irrelevant by-product. This began to change in the 1980s, when analysis first shifted to the economic and social impact of refugees and then to their political and security impacts on states. Weiner, for example, argued that 'viewing asylum-seeker in humanitarian terms contradicts the conception of the refugee as one with fear of

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<sup>43</sup> Betts Alexander, *Forced Migration and global politics*, (UK:Wiley Blackwell publishers, 2009) , 2.

<sup>44</sup> Ibid  
Desseranno Eric, *Conflicts and Forced Migration: Empirical evidence for Africa*, (Germany: Auflage, 2008), 6.

persecution.<sup>46</sup> Loescher, similarly argued that ‘the view that refugee movements pose humanitarian problems marginal to the central issues of peace and war, or that they are unique and isolated events, must be superseded by a serious consideration of refugee problems as an integral part of international politics and relations’.<sup>47</sup> As a result of these changes in the manner which scholars viewed refugees, new paradigms such as the foreign policy strategic paradigm which focused on the impact of the host states, national interest and foreign policies on their policies towards refugees and the stability/security approach that focuses on the impact of refugees on national, regional and international security began to dominate refugee studies.

In Eastern Africa, refugee migration is due to internal violence as credible mechanisms for resolving conflicts peacefully or seeking redress for violations of human rights are eroded or cease to function altogether.<sup>48</sup> Refugee movements reflect deeply seated political and economic problems that need concerted efforts to resolve them. Unresolved political and economic problems provide impetus for prolonged conflicts.

Deng et al, are wary of the spill over effects from internal conflicts in Africa that always threaten neighbouring States.<sup>49</sup> Given sovereignty and permeable borders, instability from one conflict is often transmitted to neighbouring states, particularly because similar conditions prevail in the region. Mwangi, describes such related conflict zones as having a systemic problem whose solutions can be found by addressing an entire region’s conflict especially by identifying the subtle shifting epicentre of the problem.<sup>50</sup>

Lack of representative political institutions, independent judiciary, impartial law enforcement or free elections may lead people to resolve to armed resistance as the only way to

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<sup>46</sup> Ferris Elizabeth, *Beyond Borders: Refugees, Migrants and Human Rights in the Post- Cold War Era* (Geneva: WCC Publications, 1993), xvii.

<sup>47</sup> Loescher Gil, *Refugee Movements and International Security*, (London, International Institute for Strategic Studies, 1992), 2.

<sup>48</sup> Bogdandy. Armin, *Refugees and Development*, (Germany, Barden and Barden, 1983), 12

<sup>49</sup> Deng M. Francis et al, *Sovereignty as a Responsibility Conflict Management in Africa*; (Washington DC: The Brookings Institution, 1996), 20.

<sup>50</sup> Mwangi Makumi, *Conflict: Theory Processes and Institutions of Management* (Nairobi, Water Mark Publications 2000), 60 - 67

bring about change. As political conflict degenerates to anarchy, the population is deprived of any form of national security. Somali, with many of them dead and millions displaced is an example of such a nightmare. Eastern Africa experienced the largest migrations in early 1990s, during which Rwanda, Burundi, Somali and Sudan were at the highest peak of political instability. Kamanga states political exclusion of certain groups based on discrimination, authoritarianism and other forms of monopolization of power as sources of conflict.<sup>51</sup>

The UN, OAU and the Kenyan national refugee legislation have identified the major causes of refugee flows as: “a well-founded fear of persecution for reasons of race, religion, nationality, membership to a particular group or political opinion.”<sup>52</sup>

### **1.4.3 The relationship between refugees and insecurity in Kenya**

A refugee, as earlier defined is a person who crosses international borders in order to flee human rights abuses and conflict. According to Betts and Loescher, they are prima facie evidence of human rights violations and vulnerability. They are persecuted and deprived of their identity and communities and means of livelihood and frequently forced to flee across borders of their home countries to seek safety abroad.<sup>53</sup> However, some literature views refugees not only as a consequence of insecurity but may also contribute to insecurity and conflict.<sup>54</sup>

Refugee protection in Kenya has changed from relatively tolerant and hospitable regimes of the 1970s and 1980s to open hostility and resistant to refugees in the post 1990s. With time, the phenomenon has come to be seen as a force of national and regional insecurity and instability. It is due to these reasons that refugee policies and administrative structures are geared towards keeping refugees and asylum-seekers out by closing borders, denying entry and asylum as well as sending them back even forcefully.<sup>55</sup>

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<sup>51</sup> Kamanga Khoti, *Human rights, use of Force and Displacement in Great lakes region*, in D. Hollenbach, *Refugee Rights: Ethics Advocacy and Africa*, (Washington DC: Georgetown University, 2008), 163

<sup>52</sup> The Llectic Law library, *Refugee*, (USA: The Llectic Law Library, 2011)

<sup>53</sup> Betts Alexander and Loescher Gil, *Refugees in International Relations* (UK: OUP, 2011), 1.

<sup>54</sup> Ibid

<sup>55</sup> Corazon Ma and Gaithe B. *The Rights of Refugees and Asylum seekers*, (Institute of Human Rights, U.P Law Centre, 1996), 71.

In many countries, there has been a paradigmatic shift in refugee and security studies, which has allowed analysts and policy-makers to perceive refugees as a security threat, while they are charged with the duty of treating them as asylum-seekers and as people who need protection and shelter. How has Kenya been handling refugees; has it achieved its international objective of protecting refugees in the wake of terrorist era, or it has shifted blame to the refugees as the sole perpetrators of violence and conflict.

These have driven scholars to begin examining refugees as a security concern.<sup>56</sup> At the same time, shifts in security studies, which emerged with the end of the Cold War, reinforced the perception and analysis of refugees as security threats. The Realist paradigm dominated international security studies and focused almost entirely on external military threats and state security came under attack from a number of theorists working under the umbrella of Critical Security Studies who redefined and expanded the concept of Security to include non-military threats in their analysis of security threats.<sup>57</sup> This allowed for non-military issues such as population, immigration, including refugees, environment, and crime among others to be viewed as security threats.<sup>58</sup>

Trived and Patil, examine the inter-relationship between migration, refugees and security in the 21<sup>st</sup> Century.<sup>59</sup> They observe that recent years have witnessed a growing interest in the relationship between the movement and presence of refugees and the maintenance of local, national, regional and international security. They cite a number of developments as a reason for this; a new awareness of the security and human rights problems that are likely to occur when refugee camps and settlements are politicized, militarized and controlled by armed elements; an

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<sup>56</sup> Weiner Myron, *Security, Stability and International Migration*, *International Security*, 17 (3) (UK :OUP, 1993, 91-126, 106-7.

<sup>57</sup> Weiner Myron '*Security, Stability and International Migration*', *International Security*, op cit.

<sup>58</sup> Ibid

<sup>59</sup> Trived R. Priya and Patil Vishwanath, *Migration, Refugees and Security in the 21<sup>st</sup> Century*; (New Delhi: Authors press 2000), 85.

apparent growth in the armed attack on refugee camps and settlements undertaken by regular armies, rebel movements, militia formations and local populations.

As Mogire denotes that;

“Forced migration can become over-securitized to the point where it is in danger of creating threats where before there were none, while at the same time undermining the international refugee regime in the name of an increasing amorphous claim to security needs”<sup>60</sup>

In most cases, refugees are viewed as diplomatic burdens, political irritants and embarrassment to East African countries, all of which consider themselves as neutral in these conflicts. For instance relations between Tanzania and Burundi has gone sour since Burundi 1995 accused Tanzania of aiding and providing Burundi refugees with training facilities and shelter after they attacked their country in the 1990s.<sup>61</sup> The democratization process increases domestic fragility and instability as tensions within and between the ruling parties and the opposition mounted, party alliances shifted and as competition for political space increased, refugees were caught in the political crossfire.

Refugee flows are associated with other trans-boundary movements such as organized crime and the demand for trafficking and smuggling networks. These types of transnational networks whether negative or positive in their effects, can feed into domestic politics by defining voting behaviour e.g. in Northern Kenya, Somali refugees were the key determinants of electoral outcomes as they were recruited and registered as voters for the incumbents.<sup>62</sup> A significant part of literature on refugees and International Relations, highlights that refugees are not only a consequence of insecurity and conflict but may also contribute to insecurity and conflict.<sup>63</sup>

Loescher, identifies three types of violence that can be caused by the presence of refugees; First, the native population can commit violent acts against refugee populations, secondly the refugee community can erupt in to violent behaviours themselves such as in refugee

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<sup>60</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011), 34.

<sup>61</sup> Niklaus Gibney and Loescher Gil, *Problems of Protection: the UNCHR, Refugees and Human Rights*; (New York, Routledge 2003), 128.

<sup>62</sup> Niklaus Gibney and Loescher Gil, *Problems of Protection: the UNCHR, Refugees and Human Rights*, op cit.

<sup>63</sup> Betts Alexander and Loescher Gil, *Refugees and International Relations*, (New York : OUP, 2011), 17.

camps, and thirdly, immigrants may plan formal violent attacks against the state in which they reside. This includes acts of terrorism, a form of political violence or fear-inducing action targeting.<sup>64</sup>

A mounting recognition that attacks on refugee camps and other forms of insecurity in refugee populated areas are likely to undermine public and political support for the institution of asylum and the principles of international protection. There is proven danger that the presence of armed elements in camps aggravates tension between States posing a threat to regional stability and cooperation, uncontrolled and irregular movements of people across international borders give a challenge to the sovereignty and stability of receiving countries. The concept of ‘militarised camps’ elicits images of full-scale involvement of refugee population in armed conflict; which cannot be reconciled with the peaceful appearance and general normalcy of the refugee camps in Kenya.<sup>65</sup>

#### **1.4.4 Other causes of insecurity**

In order to understand insecurity it’s important to understand security. Buzan views the State as a source of security and that security can only be assured within the state framework.<sup>66</sup> This view, is also shared by John Locke. However, this view is criticised by some scholars who argue that the state alone cannot address all the security requirements to its citizens, so development of international cooperation is vital in order to attain a greater sense of security at a national, regional and global levels.<sup>67</sup> Azar and Moon add to the criticisms by arguing that focussing attention on the security environment and on “hardware” that is to say threats and capabilities distort real security problem in the Third World. According to him, more attention needs to be paid to what he refers to as “software” side of the security, which is, the political context and the

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<sup>64</sup> Loescher Gil, *Beyond Charity, International Cooperation and The Global refugee Crisis*, (New York: OUP.,1992), 49.

<sup>65</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011), 34.

<sup>66</sup> Zacarias Agostinho, *Security and the State in Southern Africa*, (New York :Tarus Academy Studies,1999), 122.

<sup>67</sup> Ibid



policy capacity through which national values are defined, threats and vulnerabilities are perceived.<sup>68</sup>

For Morgenthau, the concept of security rests on a subjective or psychological base. The generally professed and most frequent actual motive for armaments is fear of attack: feeling of insecurity.”<sup>69</sup> However, he commits himself into recognizing that a feeling of security results from material conditions that allow us to find a link between Morgenthau’s concept of the national interest and his concern with security.<sup>70</sup> Morgenthau links the concept of security to physical integrity and sovereignty. The collective feeling represented in the state makes the psychological component of security.<sup>71</sup> The two components make up Morgenthau’s understanding of security.

Buzan assumes that insecurity in third world countries is under-explored and that insecurity in these countries is solely caused by illegitimacy of governments, ethnic rivalry and adoption of wrong ideology.<sup>72</sup> According to him, Third World security problems also include economic development. Potential threats in the related conflicts among humans, underlie the notion of environmental insecurity.

There are two schools of thought that explain this further; one adopts neo-Malthusian model, which lays blame on scarcity of resources. This model identifies three types of resource scarcity; economic scarcity, which refers to the quantity of a resource; ecological scarcity which refers to its quality and structural scarcity which is caused by the unbalanced distribution of resources. Resource scarcity can lead to declining agricultural production, which is the mainstay of most economies of developing countries. When resource scarcity reduces the ability of a

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<sup>68</sup> Ibid, 123.

<sup>69</sup> Hans Morgenthau, *Politics Among Nations. The Struggle of Power and Peace*, 5<sup>th</sup> edition (New York: Alfred A Knof, Inc., 1972), 402.

<sup>70</sup> Lott Anthony, *Creating Insecurity: Realism, Constructivism and United States Security*, (USA: Ashgate Publishing Limited., 2004), 10.

<sup>71</sup> Ibid

<sup>72</sup> Zacarias Agostinho, *Security and the State in Southern Africa*, (New York :Tarus Academy Studies, 1999), 142.

country to meet the needs of its population, it increases the vulnerability of such citizens. These vulnerabilities are manifested in poor access to health, education, food, water and sanitation.<sup>73</sup>

The second school of thought, expounds on “greed theory” where powerful groups appropriate most of the resources to themselves, excluding the less powerful majority of the population. This creates negative economic and political effects such as slow growth, poor governance, weak institutions and political instability.<sup>74</sup>

According to Brainard “grievance” factors play a driving conflict. In this view, ethnic groups that experience discrimination should be the most likely to erupt in undemocratic states and those with pronounced social divisions. He also views economic conditions as paramount whereby poverty and falling income, are key to sparking civil conflicts hence insecurity. This may be either because poverty breeds armed violence aimed at looting assets or natural resources. A region that is neglected by the central government in terms of public investment and jobs may become poorer due to its political marginalization leading to violence.<sup>75</sup> In Third World countries including Kenya, all of the above schools of thought give the possible causes of insecurity.

## **1.5 Hypotheses**

The study will test the following;

1. Refugee influx affects security.
2. Refugees do not contribute to proliferation of small arms and light weapons.
3. Kenya’s security policies are based on the increase of refugees.

## **1.6 Justification of the study**

The border areas, especially areas of North East Kenya where Dadaab and Kakuma are located, are characterized by banditry, insurgency as well as violent clashes between the Kenyan army and local armed groups. The development of refugee camps has revealed a security paradox and

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<sup>73</sup> Brainard lael and Chollet Dereck, *Too Poor for Peace: Global Poverty, Conflict and Security in the 21<sup>st</sup> Century*, (Washington DC: The Brooking Institution, 2007 ), 77.

<sup>74</sup> Ibid

<sup>75</sup> Ibi.,51.

instead is seen to have led to a geographical concentration of violence and proliferation of illicit arms, as a result augmenting security problems.<sup>76</sup> All the above, makes Kenya's security to be compromised due to the many illegal arms in the wrong hands.

This study helped the government institutions concerned with formulating refugee and security policies, to work towards one objective of enhancing security of Kenya. The report triggers action on the government side to seal the loopholes of insecurity emanating from the refugees or any other source. Foreign investors in Kenya need confidence as they go about their businesses to invest in a secure country, and without the assurance from the government, they are bound to change their decision by withdrawing from Kenya. Recent research hasn't provided any solid answers to the security problem. This study is an eye-opener to the concerned government institutions to discover the main problem and with the help of the recommendations given, will adopt policies which will enable them to deal with the threat, whether real or imagined. It also allows them to pursue and implement refugee policies. By reclassifying refugees as a security threat the Government aimed at legitimizing actions that it could take in response to the refugees including detention, forced removals and rejection of refugees at the borders. It will also exploit other ways of handling the refugee security problems, ways that may have been used by other countries, but are in line with the International Refugee Conventions.

While the construction of refugees as threats will enable Kenya to adopt policies that respect international law and will not violate human rights as well as make her prudently take proactive measures to seal any opportunities that may be taken by insurgent groups of using Kenya as their operational base. Security and refugee protection are not mutually exclusive and can be achieved with neither being sacrificed.

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<sup>76</sup> UN Note on International Protection Executive Committee of the High Commissioner's Programme 52<sup>nd</sup> Session Sep 2001 paragraph 28

## 1.7 Conceptual Framework

This study integrated concepts from realist's views and world society, human and securitization theories. Galtung, posits that, social, political and religious structures in society generate tensions and create un peaceful society, which produces refugees.

The world Society view sees the International system as having many actors; International Organizations, Non-governmental Organizations, Transnational Corporations. It's the activities of these actors that cause different tensions straining the system towards conflicts. These actors can as well, work together towards the realization of a mutual objective of peace. These theories perceive the states as interrelated and superimposed cobweb of complex interrelationships that often overlap on another.<sup>77</sup> These relationships need to be mutual so as to fulfil human needs.

World Society developed by Kant, locates real power in identity groups that may be more cohesive than states. Human needs such as food, shelter, clothing, security, development, identity and recognition cannot be negotiated with the social system that fails to provide for these needs and instead be met with violence. This theory, has migration and insecurity as the variables for the study, since movement of people may affect security of host societies, hence, affecting the stability of that society.<sup>78</sup>

The quest to satisfy human needs through a rigid state causes international conflict. The concept of Human Security is concerned with protecting the fundamental freedoms of humans, which are the essence of life. Human security is required as a comprehensive approach that uses the wide range of new opportunities to tackle threats, which range from poverty, ethnic violence human trafficking to climate change in an integrated manner.

The study also based its arguments on the societal security conceptions that focus on safety and stability of a society and individuals, protection and empowering them. It will also

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<sup>77</sup> Mitchell Robert, *World Society as Cobweb of State Actors and Systemic Processes in Banks (eds) Conflict in World Society. A New Perspective in International Relation*, Brighton Wheat-sheaf 1984, 34.

<sup>78</sup> Kleinschmidt Harald, *Migration, Regional Integration and Human Security: The Formation and Maintenance of Transnational Spaces*, (England: Ashgate Publishing LTD, 2006),114.

draw attention to multitude of threats that cut across the country and will engage in promoting a new integrated coordinated people-centred approach to advancing peace, development and security across Kenya. The study therefore dwelled on political security that creates confidence in people thereby restoring the state's stability. The fact that boundaries are not dividing lines between the domestic and the international arena, hence, refugee protection being a task of International Community, also brought out the concept of internationalization of conflicts which cause increase of the flight of armed refugees.<sup>79</sup>

## **1.8 Research Methodology**

The study explored the interrelationship between refugee influx and rise in insecurity. It is carried out in Nairobi, Eastleigh, Westland and some North Eastern areas of Kenya.

Data collection instruments included primary data and secondary data. Primary data involved methods such as personal interviews from security officials, UNHCR officials, Refugees and Civil Society officials, where the researcher will get first hand information. Personal interviews are guided interviews. They can either be telephone interviews or face to face; this depends on the availability of the interviewee. Self-administered questionnaires are sets of questions to be answered by the respondent.

Secondary data was obtained from analysing publications of scholars, journals, Internet websites, government reports published and unpublished materials, newsletters and newspapers.

Data analysis is the method of interpreting data. Qualitative data analysis will be used to get detailed information to achieve all the set objectives. Data will be coded, edited, analysed and interpreted.

This study will be conducted in Nairobi where some refugees are resettled. Several government institutions such as the ministry of internal security and Ministry of Defence will be involved in providing relevant information for a successful study. The study will also involve a sample of forced migrants especially from Rwanda, Somali and Sudan. The assumptions made

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<sup>79</sup> Schnabel Albrecht, *Southeast European Security: Threats, Responses and Challenges*, (New York, Nova Science Publishers, 2001), 105

are that all refugees are victims of political conflict and that all have the same level of education meaning they belong to the same identity group. The limitations of the study are time to collect all valuable information so most of the facts may not be sampled. Language barrier might also bring in difficulty in communication especially where I will need to deal with those refugees who neither understand English or French nor Kiswahili languages.

## **1.9 Chapter outline**

Chapter one dealt with introduction of the study. It gives an overview of the study, conceptual framework, its objectives, and hypotheses, statement of the problem, literature review and methodology to be used in the study. Chapter two gave the historical background of the study. It slowly unfolds the events concerning refugees since they started coming into Kenya, the policies that regulated refugees since 1991 vis-à-vis that regulate refugees in Kenya today.

Chapter three involved collection of primary and secondary data collected from the field and the methods used in recording it. While Chapter four is based on the a critical analysis of the collected data is done in this chapter. Information is processed and made simple for conclusion to be made. Chapter five which is the last chapter gives and draws collusions of the study based on data collected and analysed. Policies and recommendations will be suggested which can be used as a source of information to provide solutions to the problems regarding insecurity posed by increasing number of refugees in the country.

## CHAPTER TWO

### REFUGEE INFLUX AND INSECURITY; HISTORICAL BACKGROUND

#### 2.0 Introduction

Chapter one has given an introduction of the concept of security and how it has been linked with the changing meaning of the word 'refugee' by scholars. The objectives of the study have been set in the same chapter. It has mainly focussed on setting the skeletal framework of the study and establishing an understanding of the reality of relationship between refugees and the government of Kenya since 1991 to 2012.

This chapter gives details on how a refugee has evolved from a humanitarian subject to a security subject. It concentrates on refugees and how they can constitute to security threats on many different dimensions, which include human security, societal security and national security. The presence of armed elements within the refugee population has significant effects on national security. It will take a closer look at how emerging refugee-related security concerns have been received by the Kenyan government. This chapter will also give a general overview of the refugee law and protection in Kenya as well as the historical background of the impact of influx of refugees on the country's security.

Prior to 1991, Kenya hosted a large refugee population mostly from Uganda, Ethiopia, Southern Sudan and the Great Lakes Region. They mainly lived in small camps in Northern Kenya (Mandera, El Wak, and Walda) and in urban settings such as Thika, Nairobi and Mombasa.<sup>80</sup> However, at the height of the refugee influx in 1991, that resulted from the collapse of Somalia, and the fall of the Ethiopian governments the number of refugees rose drastically to an estimated 370,000 to 700,000.<sup>81</sup>

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<sup>80</sup>Burton John, *The Plight of Urban Refugees in Nairobi*, in D. Hollenbach, *Refugee Rights: Ethics Advocacy and Africa*, (Washington DC: Georgetown University, 2008), 91

<sup>81</sup> Ibid

## **2.1 The dynamism of the refugee concept in the 21<sup>st</sup> century**

The 21<sup>st</sup> Century has seen mankind faced with refugee problems of formidable dimensions despite the fact that refugees have always existed. The refugee problem is international in scope and character and the responsibility for the international protection of refugees rests with the international community. Attempts have been made to produce a legal definition of the word refugee. Between the Second World War's international instruments on refugees contained an ad hoc generalized definition of the term. The important criterion was that a refugee came from a certain state or the nationality implicitly. It was indicated that political events in the named country forced the person to escape. In 1936, the provisional agreement concerning the status of refugees coming from Germany was adopted, the same course was followed, and the term refugee covered all persons coming from Germany.<sup>82</sup>

The refugee problem became a subject of constant concern for the allied powers during the Second World War. At the Bermuda conference in 1943, it was decided that protection should be given to persons who as a result of events in Europe had to leave or had left their countries of residence because of the danger to their lives or liberties on account of their race, religions or political beliefs.<sup>83</sup> A similar definition is also contained in the 1969 OAU Convention governing specific aspects of the refugee problems in Africa as that in 1951 refugee convention and 1967 Refugee Protocol. In 1948, the International Refugee Organization (IRO) attempted to find permanent solutions for the 1.5 million refugees remaining on the continent. It was hampered by the Cold War, as the IRO was unable to operate in the Soviet zone of Germany. In 1951 the UN therefore created another temporary organization to deal with the remaining refugees in Europe and in the same year the universal definition of a refugee was provided. The UN convention on the status of refugees along with the institution of the UNCHR, an agency of the United Nations, was to provide the foundations for dealing with international refugee problems. The convention is still the standard benchmark for establishing refugee status.

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<sup>82</sup> Marrus Michael and Bramwell C. Anna, *Refugees in the Age of Total War*; (London, Unwin Hyman Ltd, 1988) , 7

<sup>83</sup> Ibid. 8



The 1951 convention was modified in 1967 by the Bellagio protocol, which retained the definition of a refugee but removed the time and geographical limitation.<sup>84</sup>

However the refugee concept has “evolved”. Traditionally, refugees were primarily viewed as victims of insecurity but scholars today view them as a core security problem. They are seen as threat to security rather than a humanitarian issue.<sup>85</sup> To fully understand how refugee issues have become security issues, we employ the “securitization theory” developed by Copenhagen. Securitization theory tries to elaborate the insight that no issue is a menace.<sup>86</sup> This insight is characterized in several ways. Those working on post-structuralist tradition believe in “social magic” or the power in a spoken word. Weaver asserts that the word “security” is a speech act and by saying it, something is done. Some statements do more than merely describe a given reality and such cannot be judged if true or false. This view constitutes the Copenhagen’s school called philosophical approach.<sup>87</sup>

Another way of characterizing the insight is “social theory”, whereby, securitization is seen in terms of practices, context or power relations that characterize the construction of threat images.

## **2.2 Refugee influx in Kenya in 1991**

In 1991, a large number of Somalis arrived in Mombasa town by boat, and the Government viewed their presence whether inside or outside the camps as a threat to its valued tourist industry<sup>88</sup> that had made it become one of the most successful tourist destinations in Africa.<sup>89</sup> The Government maintained that presence of refugees created insecurity and crime, thus driving tourists away as a result; it designated refugee camps away from the coastal area of Mombasa. Despite all these efforts by the government to keep away refugees, they still settled in urban

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<sup>84</sup> Marrus Michael and Anna Bramwell C. Anna.,Op. Cit

<sup>85</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011) , 17

<sup>86</sup> Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve*, (USA, Canada: Routledge, 2011), 1.

<sup>87</sup> Ibid.

<sup>88</sup> Tiyaambe.P. Zeleza and Cassandra R. Veney, *Leisure in urban Africa*. (Asmara; Africa World Press, Inc.,2003), 34.

<sup>89</sup> Africa Watch, *US Committee for refugees 1996*, (Africa Watch, 1989).

centres and set up businesses for financial self-sufficiency. Their increasing populace in urban centres instilled fear and insecurity and triggered off the government to conduct annual swoops in urban towns and cities as it shifted its refugee policy to encampment of all refugees. In 1997, the President of Kenya made an announcement about all foreigners and aliens, which prompted security swoops by the police throughout urban centres. The 1998 bombing of the US embassy in Nairobi opened a terrorist chapter in Kenya's security history and even meant more effort and networking of security enforcement in the country. More swoops were conducted in an effort to force refugees into camps. The Government's encampment policy has however born fruit in the sense that, only refugees who reside in the camps have access to international assistance.

Kenya borders five nations, which have all generated sufficient internal conflict to produce asylum seekers in Kenya except Tanzania. In the late 1980s Kenya experienced an influx of displaced persons as a result of the continued conflict in Uganda, after 1986 later in Ethiopia and Somalia. In 1990, over 400,000 Somalis crossed into Kenya including Sudanese young men who came walking due to pressure from the increasing numbers of refugees.<sup>90</sup> The government of Kenya was unable to deal and absorb more refugees and therefore sought assistance from the international community. In order to attract funding the government of Kenya agreed to designate specific areas and put up camps to house refugees throughout the country. In 1992/93 UNHCR spent 40million to establish refugee border sites in Kenya.<sup>91</sup>

The Sudanese refugees were largely settled in Kakuma camp while the Somali refugees were settled in Dadaab. By 1997, all other camps were closed down and only Kakuma and Dadaab were left.

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<sup>90</sup> Verdirame Gugliemo, "Human Rights and Refugees; The case of Kenya" *Journal of refugees studies* vol. 12 no. 24, 1999) 56-57

<sup>91</sup> Hyndman Jeniffer and Nylund Viney, *UNHCR and the status prima facie refugees in Kenya*, (International Journal of refugees law vol, 10 no. 1, 1998), 24

### 2.3 The Legal framework for Refugee protection in Kenya

Despite Kenya being a signatory to all the main international conventions on refugees: the Geneva Convention Relating to the Status of Refugees of 1951, the Protocol Relating to Status of refugees of 1967 and the OAU Convention governing the Specific Aspects of Refugee Protection in Africa, did not have administrative and domestic legal framework nor the capacity to handle the rapidly changing situation.<sup>92</sup> Before 1991, the Kenyan government used ad hoc administrative system to recognize refugees.

Kenya's refugee policy of integration worked well before 1990s when the number of refugees was manageable. Refugees were allowed by government to mix with the rest of Kenyans and even get absorbed in the job market. They would get professional employment in the institutions as nurses, doctors, teachers etc. This worked well for refugees because they felt part and parcel of the entire Kenyan community and there were no traces of discrimination whatsoever.

Until 2006, Kenya had not known a specific refugee law or an official policy on refugees, paradoxically; the large number of refugees was managed under the Aliens Restriction Act. In the 1980s and 1990s, Kenya relied on immigration and restriction of aliens laws dealt with matters regarding and relating to refugees in order to determine their legal status in a bid to manage its refugee population.<sup>93</sup> After independence, an ad hoc committee was established to deal with the issue of asylum seekers and refugees. The UNHCR together with the government provides for the welfare of the refugees and in protection activities. The identity and definition of a refugee is provided for under international conventions and their protection is governed under international instruments and overseen by UNHCR.

One thus becomes a refugee by virtue of crossing international borders in fear of persecution on religious, racial or political grounds. National system that defines and bestows

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<sup>92</sup>Burton John, *The Plight of urban refugees in Nairobi*, in D. Hollenbach, *Refugee Rights: Ethics Advocacy and Africa*, (Washington DC: Georgetown University, 2008), 92

<sup>93</sup>Hyndman Jeniffer and Nylund., *UNHCR and the status prima facie refugees in Kenya*, Op. Cit.

legal status of a refugee is crucial to his or her protection. Countries have a common procedure of determination of a refugee status.<sup>94</sup> Although states are not obliged to admit refugees in their countries they cannot return a refugee to a country where he/she is at risk of torture, persecution or death. A signatory to the refugee conventions of 1967 and 1951 binds them to examine their status and admit them.

In 2006, Kenyan government was urged by different organizations to enact and implement a clear policy on refugees and IDP's and to streamline immigration screening procedures, for the entry of refugees into the country<sup>95</sup>. Despite that Kenya is a signatory of the international agreement on the protection of refugees, however it has not enacted any legislation specifically to make provision for human rights but has enacted fundamental rights and freedoms in Chapter 5 of the constitution of Kenya that accords protection of the rights and freedoms of every person in Kenya without exception so aliens and refugees in Kenya are protected by the constitution in the same way as Kenyan citizens.<sup>96</sup> It further entitles all Kenyans to seek legal redress from any Kenyan court.

However, there are serious limitations to what rights refugees can enjoy in Kenya, i.e. limitations created by lacunae in law. Refugees have found it very difficult to enforce the enjoyment of their rights in the courts for a number of reasons including the fact that the constitution denies them some rights for example the freedom of movement, a right reserved exclusively for the citizens of Kenya, consequently, refugees almost have no legal capacity to bring action in the courts of law since they cannot afford to do so because no legal aid is provided for them.

Citizenship laws are applied on refugees as and when they become necessary.<sup>97</sup> The constitution of Kenya acts as an important law within the territory of Kenya. The UNHCR has

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<sup>94</sup> <http://www.unhcr.org/3d58e13b4.html>

<sup>95</sup> Aderanti Adepoju et al., *International Migration and National Development in Sub-Saharan news*. (Netherlands, IDC Publishers and others; 2008), 184

<sup>96</sup> Government Of Kenya, *The Constitution of Kenya*, (Nairobi, Government Press, 2010)

<sup>97</sup> Hyndman Jeniffer and Nylund Veney, *UNHCR and the Status Prima Facie Refugees in Kenya*, Op.cit

been mandated to carry out refugee status determination while the government suspended its refugee status determination and involves itself only in registration of those refugees who have been recognized by UNHCR. This is important since UNHCR provides assistance to recognized refugees and this arrangement makes it convenient for UNHCR to focus on genuine refugees and avoid assistance being abused by persons who are not of concern to UNHCR administratively. Unfortunately the UNHCR can only provide refugees with mandate letters; it cannot bestow the full conventional status that the government can. This full conventional status enables refugees to enjoy the status enshrined in the 1951 convention relating to the status of refugees.

### **2.3.1 The 1951 convention**

This convention was ratified and became part of national law in 1961.<sup>98</sup> UNHCR maintained the 1951 Refugee Convention as the foundation and guidepost for the further development of the refugee law framework.<sup>99</sup> The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term “refugee” in Article 1.

The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. The convention is both a rights and status-based instrument underpinned by a number of fundamental principles, notably non-discrimination, non-refoulement and non-penalization.<sup>100</sup>

The 1951 convention provides for the following; defines the term refugee, defines the legal status of a refugee, takes into account the interests of the contracting parties, provides for

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<sup>98</sup> Selm Joanne (ed) *The Refugee Convention at Fifty: A View from Forced Migration Studies*, (USA, Lexington Books, 2003), 97

<sup>99</sup> Lewis Corinne, *UNHCR and International Refugee law; From Treaties to Innovation*, (USA, Routledge, 2012),

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<sup>100</sup> <http://www.unhcr.org/3b66c2aa10.html>

cooperation between contracting states and UNHCR and settles relations between the convention and previous treaties.<sup>101</sup> Given the further objective of a solution (assimilation or integration), the Convention concept of refugee status thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of Contracting States. It is at this point, where the Convention focuses on matters such as social security, rationing, access to employment and the liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that one still finds the greatest number of reservations, particularly among developing States.

### **2.3.2 The 1967 Protocol relating to the status of refugees**

The origins of the 1967 Protocol relating to the Status of Refugees, which reflected recognition by UNHCR and the States members of its Executive Committee that there was a disjuncture between the universal, unlimited UNHCR Statute and the scope of the 1951 Convention, were quite different from those of the latter. Instead of an international conference under the auspices of the United Nations, the issues were addressed at a colloquium of some thirteen legal experts which met in Bellagio, Italy, from 21 to 28 April 1965. The Colloquium did not favour a complete revision of the 1951 Convention, but opted instead for a Protocol by way of which States parties would agree to apply the relevant provisions of the Convention, but without necessarily becoming party to that treaty.

The approach, was approved by the UNHCR Executive Committee and the draft Protocol was referred to the Economic and Social Council for transmission to the General Assembly. The General Assembly took note of the Protocol (the General Assembly commonly “takes note” of, rather than adopts or approves, instruments drafted outside the United Nations system), and requested the Secretary-General to transmit the text to States with a view to enabling them to accede (resolution 2198 (XXI) of 16 December 1966). The Protocol required just six ratifications

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<sup>101</sup> Hathaway C. James, *The Rights of Refugees Under International Law*, (UK, Cambridge University Press, 2005), 16

and it duly entered into force on 4 October 1967.<sup>102</sup> The protocol is often referred to as “amending” the 1951 Convention but it serves as an independent instrument.

The Protocol provides that; the state parties undertake to apply all articles of the convention (articles 2 – 34), which relate to the status of refugees, suppresses in the definition of the term ‘refugee’ the time limit of 1<sup>st</sup> July 1951, does not provide for a geographic limitation but enables contracting state that has opted for this limitation when acceding to the convention to maintain that option, and is open for accession by all states whether parties to the convention or not.<sup>103</sup>

#### **2.4 The structures and procedures of managing refugees in Kenya and their failure**

There are no specific structures or institutions established for the purpose of determining refugee status.<sup>104</sup> The National Secretariat of Refugees (NSR) was established within the home affairs department in September 1993 to coordinate relief activities and carry out the other administrative duties. In September 1998 a new eligibility committee was established to deal with the growing urban refugee problem. The eligibility committee comprised of the representatives from departments of the earlier eligibility committee plus an additional toe from the office of the attorney general.<sup>105</sup>

There is a problem of lack of defined institutional framework to deal with refugee affairs. There has always been a conflict between the Immigration and Home affairs Departments in relation to refugee issues in the 1970s to early 1990s. The Immigration Department argued that they were mandated by the Aliens Restriction Act of 1973 and the Immigration Act of 1967 to handle refugee issues. They also claimed that when refugees entered into the country, they first encountered the immigration officers who vetted them and allowed or denied them entry into the

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<sup>102</sup> Guy S. and Goodwill-Gill, *Audio Visual Library of International Law*, at <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>

<sup>103</sup> Ibid

<sup>104</sup> Likosky Michael (ed) *Transnational Legal processes: Globalisation and Power Disparities*, (UK, Butterworths, 2002), 453

<sup>105</sup> Verdirame Guglielmo and Herrel-Bond Barbara, *Rights in Exile: Janus-Faced Humanitarianism*, (USA, Berghan Books, 2005), 31

country. They would then issue entry permits to those allowed into the country and so to them it was only then that the Home affairs ministry were able to take over otherwise it had no business dealing with refugees and due to the involvement of Home affairs department there arose confusion as to which department was responsible for refugees and what particular duties each was supposed to perform. This resulted to laxity by both the departments to control the growth of refugee numbers in urban areas not to mention those hosted in far away camps. This has led to illegal aliens hiding amongst genuine refugees from the police and the immigration officers. The Aliens Restriction Act 1973 defines alien as any person who is not a citizen of Kenya. Although the Act doesn't deal with refugees as mentioned it does in so far as the definition of an alien include all Non-Kenyans.<sup>106</sup>

However, there is a difference between a refugee and an alien. Aliens can still enjoy protection of their countries of their nationality while refugees cannot because they may be fleeing from their governments and have lost the protection of their governments. Aliens can also call on their governments to protect them against violation of their rights and can seek remedies of national international level while refugees are a special category of vulnerable persons requiring international protection.

The Alien's restriction act 1973 prescribed the manner in which aliens may be dealt with in relation to registration but it did not provide for a procedure for the determination of status of different types of aliens entering Kenya. The Alien's Act 1973 doesn't provide any particular rights and privileges for aliens. As the name suggests and from its contents its main purpose is to regulate for the restriction of aliens entering Kenya.<sup>107</sup> The Aliens Act is inappropriate and shouldn't be applied to refugees. It was enacted to resist movement into and within Kenya and to guarantee the security of the state by empowering the minister concerned to remove aliens from Kenya. It did not provide any rights for refugees or any other aliens because it goes against the

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<sup>106</sup> Michael Likosky (ed) *Transnational Legal processes: Globalization and Power Disparities*, (UK, Butterworths, 2002) , 446

<sup>107</sup> Human Rights Watch, *Hidden in Plain View: Refugees living Without Protection in Nairobi and Kampala* (USA, Human Rights Watch, 2002), 55



spirit and the grain of international conventions and the constitution of Kenya and the writer suggests that in the absence of any other refugee specific law, it should not be relied on to fill the gap since it does not address the refugee problem in Kenya. The Refugee Act 2006 is the latest version of law that protects refugees. It gives the provisions to the stakeholders of refugee protection, guidelines on how some of these provisions should be applied. It also outlines the rights of refugees and their obligations within the territory of Kenya. It mandates minister in charge of refugee affairs to set up camps and appoint the commissioner in charge of Department of Refugee Affairs.

The weakness of this Act is that just like the other instruments governing refugee protection it does provide for encampment policy,<sup>108</sup> which denies refugees their right to movement and is not in line with international instruments of refugee protection. It still is not specific on what rights should be enjoyed by the refugee community.<sup>109</sup> Kenya has also failed as a government in providing the refugees with some basic human rights, which include; right to liberty and rights to security of persons. It should also allow refugees who have their rights abused, an access to the police or seek redress in courts.<sup>110</sup>

A 2011 law created the Kenya Citizens and Foreign Nationals Management Service Board to absorb the duties of several government agencies, including the ministry. Currently, the UNHCR and the DRA have responsibility for both urban refugees and the refugee camps (Kakuma and Dadaab). The DRA registers refugees in Nairobi, and the UNHCR coordinates protection services. The DRA and UNHCR are responsible for the overall management of Kakuma and Dadaab camps, with the Lutheran World Federation (LWF) acting as UNHCR's implementing partner for camp management.<sup>111</sup>

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<sup>108</sup> Michael Likosky (ed) *Transnational Legal processes: Globalization and Power Disparities*, (UK, Butterworths, 2002), 446

<sup>109</sup> Burton John et al (eds), "The plight of Urban Refugees in Nairobi" in Hollenbach David, *Refugee Rights: Ethics, Advocacy, and Africa* (Washington DC, Georgetown University Press, 2008),91

<sup>110</sup> Op.cit

<sup>111</sup> UNHCR, *Safe Havens; Sheltering Displaced Persons from Gender-Based Violence* (Berkeley University of California, 2013), 20

Although Kenya has never officially adopted a policy requiring refugees to stay in camps, in practice it has sustained an un-codified encampment policy since the early 1990s. Enforcement has been mixed, and many refugees have migrated to urban centers to pursue education, to seek medical treatment or jobs, or simply to become anonymous. For many years, no services were provided to refugees outside the camps, but this changed following the launch of the Nairobi Initiative in 2005 and the UNHCR's revision of its urban policy in 2009.<sup>112</sup>

## **2.5 The impact of refugee influx in Kenya**

The unpredictability of the political situation in Somalia and the potential of a wider civil war resulted to an influx of refugees into North-Eastern Kenya. Inter and intra-clan fighting and impact of drought and destitution were factors that influenced refugee migration.<sup>113</sup> These refugees were settled in Dadaab and others in Kakuma, the areas which, were identified and deemed fit by the Kenyan government. The influx of refugees has caused an impact to Kenya, an impact that has been felt both economically and politically. Security has also been affected in that, there have been claims of The Al-Shabaab and the Federal transitional Government recruiting refugees in Kenya.<sup>114</sup> These claims were made by the Human Rights Watch, where the Kenyan government is believed to back the recruitment of refugees to fight for the Somali government army against the Islamist insurgents. The recruiters wooed young teenage boys by promising generous payments and asking them to lie about their ages and join without the knowledge of their parents. They also assured them of the backing of the UN to buy their confidence. This impacted the refugee community in that it involved young underage children to be involved in illegal training.<sup>115</sup>

Resources such as water and health services are over stretched, and there is high likelihood of malnutrition for both children and adults and a high risk of disease outbreaks in

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<sup>112</sup> Ibid

<sup>113</sup> UN *Year Book of the United Nations 2006*, (USA, UN Publications, 2009), 1066

<sup>114</sup> Mogire Edward, *Victims as Security Threats: Refugee Impact on Host State Security in Africa*, England; Ashgate Publishing Company, 2011), 39

<sup>115</sup> Ibid

these camps.<sup>116</sup> Since the arrival of refugees to the Dadaab camp, the host community's already insufficient water supply has been severely affected. The locals argue that their women are forced to travel long distances to find water, resulting in health problems for them, such as back and chest pain. Lack of sufficient water, deforestation, and resultant soil erosion have threatened the food security of the locals, who depend on pasture and water for survival. The huge demands on the scarce local water resources give rise to friction within the local communities.<sup>117</sup>

Moreover, refugees are often viewed as a security threat to the host community. For example, the Turkana tribesmen accuse the Dinka (Sudanese ethnic group) in the Kakuma refugee camp of raping their women and cutting down trees. There have also been numerous cases of cattle rustling. Some locals further argue that they have been attacked during the night and had their cattle stolen. This perceived threat forces the locals to acquire illegal arms and thus sets conditions for terrorist groups to take advantage of the poor conditions at the camp to lure young men into their organizations.

When refugees arrive at a camp, there is often a great demand for timber, wood, and poles for construction and cooking purposes, which puts a great strain on the timber resources of the local community. The Turkana, who host the refugees at Kakuma, are alarmed at the rate at which refugees cause deforestation. This anxiety causes frequent confrontations and fights between the local population and the refugees, because the hosts argue that their livestock largely depend on foraging and the trees that the refugees have cut down.

The combined demand for firewood and building materials from the camps and the host communities is very significant. Collecting firewood and building materials is undertaken by members of the host communities and camp populations alike, and both groups are engaged in buying and selling it. However, firewood harvesters based in the camps are largely responsible

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<sup>116</sup> UN *Year Book of the United Nations 2006*, (USA, UN Publications, 2009), 1066

<sup>117</sup> Menye Solomon, *Socio economic Impact of Refugees on the Areas Neighbouring Camps: A Case Study of Kenya's Refugee Camps*, at [http://usacac.army.mil/cac2/call/docs/12-21/ch\\_6.asp](http://usacac.army.mil/cac2/call/docs/12-21/ch_6.asp)

for commercially providing firewood to the camps. Good quality firewood is difficult to find close to the camps and nearby settlements, leaving only low-quality firewood for collection by women and children in the host communities.<sup>118</sup>

As the distance to good firewood sources increases, the collection process is taken over by men using donkey carts; therefore, it has been commercialized. The demand for energy for household use is growing with the increasing population in the area as a whole. The local collection of firewood is becoming more laborious, and the potential for conflict is ever increasing.<sup>119</sup>

The increasing availability of weapons which has helped drive rising insecurity and crime in Kenya where, guns are commonly used to commit a range of violent acts. They are reportedly large numbers of illegal guns in the capital and high levels of armed crime fuel a high demand for firearm licenses across the country. Three quarters of Kenya is awash with illicit arms according to the country's top firearms officer. Arms proliferation in Kenya has reduced crisis proportions. These small firearms are directly or indirectly linked to refugees. In northern Kenya the presence of guns is strongly felt and is having wide ranging repercussions. In some areas e.g. at the borders guns are so common that they are openly carried. Violent incidents involving firearms appear to be sharply on the rise and high numbers of casualties have been reported in parts of coast province and North Eastern province. There are serious concerns that a huge uncontrolled amounts of firearms could pose a significant threat to the stability of the area and undermine national security. Community leaders in North Western Kenya have stated that their communities will not give up their weapons without a guarantee of protection from armed attacks by rivals, including attacks by neighbouring countries.

Historically, cattle-rustling in Kenya has been defined as a practice in some pastoral communities of using traditional weapons to take livestock from a competing group using

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<sup>118</sup> Op cit  
<sup>119</sup> Op cit

minimum force but recently such incidents have evolved into large scale operation involving theft of hundreds of thousands of cattle even in broad daylight. These days unlike earlier heavy weapons are used the attacks also target humans.<sup>120</sup>

The introduction of sophisticated firearms has led to far reaching effects on communities including social disintegration in some cases and the increasing resort to violence to address long standing conflicts. Gun trade has become an important trade and provides a means for competing groups to assert and expand territorial control of vicious cycle of revenge attacks and escalating arms races between rival communities.<sup>121</sup>

Refugees influence the local economy in a variety of other ways. In general, the increase in population results in an increased demand for products and goods, which raises prices and the cost of living in and around the refugee camp. The influx of refugees also increases job competition. At the Kakuma refugee camp, job competition is intense because NGOs tend to hire refugees, who work for less than the locals. This disparity in employment opportunities causes additional tension between refugees and the host communities.<sup>122</sup>

## 2.6 Conclusion

The 21<sup>st</sup> Century is one that has been marred with many refugee problems; a century dubbed the ‘refugee century’, when many nations recognize the moral and legal obligation to accept people fleeing from persecution, but political asylum applicants in the twenty-first century face restrictive policies and cumbersome procedures.<sup>123</sup> Its experiences have however contributed largely to the dynamism in the meaning of the word ‘refugee’. The presence of refugees is also synonymous with the proliferation of small arms and light weapons in many countries today.

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<sup>120</sup> Hilterman Joost and Rogendoom Ernst, *Playing with Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya*, (New York, Human rights Watch, 2002), 14

<sup>121</sup> Ibid

<sup>122</sup> Gleditsch, Nils. P., Ragnhild Nordås and Idean Salehyan. (2007), "Climate Change" and Grigg-Saito, D., Och, S., Liang, S., Toof, R., & Silka, L. "Building on the strengths of a Cambodian refugee community through community-based outreach." *Health Promotion Practice*, (2008), 415.

<sup>123</sup> Bohmer Carol and Shuman Amy, *Rejecting Refugees; Political Asylum in the 21<sup>st</sup> Century*, (New York, Routledge, 2007), 292

While the above is yet to be critically analyzed in this study, the refugee presence has had positive and negative influences to the host country. Chapter three highlights these influences.

## CHAPTER THREE

### THE IMPACT OF REFUGEES ON SECURITY: A CASE OF KENYA, 1991-2012

#### 3.0 Introduction

Chapter One and Two gives an introduction to Security which is derived from Human Security that falls under the broader concept of security studies. The interrelation of refugees and insecurity is investigated. This is has been done by analyzing various theories of security. In international relations, states are the referent points. Through the conceptualization of security, it is found that the threats to security of a state can emanate from outside its borders and these threats are primarily if not exclusively military in nature. Human Security is founded under framework that values “freedom from fear”.<sup>124</sup> Sources of insecurity can also be found in the political, social, economic and environmental sectors.<sup>125</sup> These two chapters also give an overview on the origin and the dynamism of a refugee over time. It also presents the mechanisms and laws that protect refugees and how they are integrated in to Kenyan system of refugee protection.

Chapter Three as the case study of the project, will present both primary and secondary data collected with regards to insecurity posed by the presence of refugees in Kenya from the years 1991- 2012. This is the chapter that presents the reality of security issues and the sources of insecurity in Kenya as well as the factors behind proliferation of small arms and light weapons. The information given shows either how refugee influx can be a threat to the security of a country and its people or how the refugee issue can be securitized.

#### 3.1 Refugees and insecurity in Kenya: An overview.

While neo-realists content that, the state is the primary focus and guarantor of security, the realists maintain that the state is just one of the referent objects of security, others being

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<sup>124</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011), 19

<sup>125</sup> Ibid

individuals or human security and groups or societal security.<sup>126</sup> Human security is founded upon a framework that values “freedom from fear” as a key component of security. The concept of human security is simply defined as the reduction of perceived threats to society from the macro to micro levels. This therefore, changes the referent object of security from state to individual.<sup>127</sup> Societal security on the other hand is concerned with identity. It is about the sustainability within acceptable conditions for evolution of traditional patterns of language, culture, association; religious, national identity and custom.<sup>128</sup> Refugees present themselves as a group, while the host communities are another form of a group. Sources of insecurity which can be non-military threats, can be found in the political, economic, social and environmental sectors.

Buzan set out the sectors of security analysis as follows,

‘Political security concerns the organizational stability of states, systems of government and ideologies that give them legitimacy. Economic security concerns access to the resources, finance and markets necessary to sustain acceptable levels of welfare and state power. Societal security concerns the sustainability, within acceptable levels conditions of evolution of traditional patterns of language, culture and religious and national identity and custom.’<sup>129</sup>

Kenya has presented refugees as threats to security, economic burden and environmental degraders. To deal with this alleged ‘threat’, Kenya has sanctioned a wide plethora of policies that confine refugees to remote camps and settlement areas severely restricting their freedom of movement and right to work and exposing them to insecurity related to banditry, militia and rebel groups. Most refugees would like to work and earn a living; what limits some of them is inadequate skills, knowledge and the encampment policy, which confines them and limits their freedom to move around and look for jobs.<sup>130</sup>

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<sup>126</sup> Ibid

<sup>127</sup> Macfarlane Neil and Khong Yuen, *Human Security and the UN: A critical History*, (USA, Indiana University Press, 2006), 23

<sup>128</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 19

<sup>129</sup> Buzan Barry et al, *Security: A new Framework for Analysis*, (USA, Lynne Rienner Publishers Inc.1998), 8

<sup>130</sup> Mohamed Hashmi, Interviewed by Evelyn Kiswii, July 27, 2012



The OAU convention of 1969 provides that the presence of armed elements or combatants amongst refugees represent a threat to the safety of refugees and that of a country of asylum. It therefore stated that, where the authorities of the country of asylum discover the presence of armed elements among the refugee population, the authorities should take immediate action to separate and disarm such elements. The role of the UNHCR is to ensure that, this is done in a humane manner and with safety of refugees and local population.<sup>131</sup>

### **3.1.1 Causes of Refugee Influx**

East Africa at large has faced problems of internal and external displacements, although the nature and magnitude has varied significantly from one country to another. Until 1989, Kenya had a small number of displaced persons.<sup>132</sup> In 1990s, Kenya was among the top ten refugee hosting and IDP generating countries in Africa.<sup>133</sup> It registered fewer than 15,000 refugees with no significant internal displacement. Between 1991 and 1993, Kenya generated over 300,000 IDPs.<sup>134</sup> Since this time, the office of UNHCR has been carrying out registration and recognition functions on behalf of the Government. According to UNHCR, the refugee numbers increased from 14,400 in 1991 to 500,000 refugees in 2012.<sup>135</sup>

In the years of 1991-1992, there was a great surge in the number of refugees fleeing from Ethiopia into Kenya. Today, there are still a great number of those remaining, who were joined in 1999 by a new wave of asylum seekers. Although nearly 1,000 were repatriated back into Ethiopia, approximately 20,000 entered due to persecution, alleging charges of Ethiopian government detention and forced conscription.<sup>136</sup> Kedemech Demeke commends his host country Kenya;

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<sup>131</sup> John Burrie and Vanessa Martin Randin (eds), *Disarmament as Humanitarian Action, From Perspective to Practice*, (UNIDIR, 2006).33

<sup>132</sup> Zeleza T. Paul et al (ed), *Human Rights, The Rule of Law and Development in Africa*, (USA, University of Pennsylvania Press, 2004), 238

<sup>133</sup> UNHCR, 1997

<sup>134</sup> Op. Cit

<sup>135</sup> Konzolo Simon and Ayiera Eva, *An overview of the Refugees Act in Refugee Protection in the context of National security*, (Nairobi, Refugee Consortium, 2008), 7

<sup>136</sup> UNHCR, *The Kenyan refugee Crisis*, at <http://www.mtholyoke.edu/~rjdudcza/where.html>

“Kenya has been exemplary in according hospitality to refugees and we feel indebted to them. Most of our people have gone back to Ethiopia after peace was restored. However, some of us were able to start businesses in Kenya. Our relatives who are live abroad contribute in supporting us financially to operate businesses. Our country is now peaceful and once in a while, I visit my family who are there. Most of us, who were living in Kenya, live in Kilimani, Kileleshwa, Dagoretti, Eastleigh and Westlands in Nairobi. The Kenyan government and the civil society have been very supportive to us.”<sup>137</sup>

Due to the protracted conflict, emanating from the civil war in Somalia, many Somalis have fled their country in fear of the conflict entered into Kenya during 1991-1992. The continued instability in the region has prevented about half of these refugees to return to Somalia. The civil war that caused them to flee is still manifest, despite the efforts of the Government of Kenya and the AU Peacekeeping Mission in assisting the Transitional Federal Government in combatting the Al-Shabaab militant group in Somali from 2011-2012.

Refugee numbers in Kenya are on the rise today, despite an effort by the international Community to ensure that there is peace. The situation in Somali has been aggravated by the drought that the Somalis are facing today. More and more refugees of Somali origin are streaming into Kenya in search for food and water.<sup>138</sup>

### **3.1.2 The relationship between refugee influx and insecurity**

Loescher stresses that there is need to not only see refugees as a humanitarian problem but also as a political problem particularly in terms of security. He argues that:

“Too often refugees are perceived as a matter for international charity organizations, and not as a political and security problem yet refugee problems are in fact intensely political. The presence of refugees accelerates existing internal conflicts in the host countries. During the 1980s for example, the proliferation of arms following the influx of three million Afghans contributed to a resurgence of Pathan conquest in Pakistan. Elsewhere, Palestinian refugees upset delicate domestic balances in Lebanon and Jordan.”<sup>139</sup>

Most of literature on forced migration and security examines the empirical relationship between displacement and military threats to security taking refugees as an independent variable

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<sup>137</sup> Kedemeh Demek, interviewed by Evelyn Kiswii, July 10, 2013.

<sup>138</sup> Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>139</sup> Loescher Gil and Loescher A. Dull, *The Global Refugee Crisis*, (London: OUP,1994), 7

in relation to the sources of insecurity. Forced migration is seen through the lens of national security. Stedman and Tanner maintain that refugees and refugee regime have been manipulated as resources of war by both states and non-state actors. To them, refugees have been instrumentally used in conflicts by great powers and by groups in exile. Refugee and asylum seeker's human security is compromised by specific developments such as the increase in irregular migration and reactions to international events like the 11<sup>th</sup> September 2001, events which have served to undermine integrity of asylum seekers on suspicion about their long-term agenda in the host state. Currently there is a growing mix of genuine asylum seekers and persons who while on pretext of being refugees are moving for non-protection reasons.<sup>140</sup>

The presence of refugees in many Third World host states, is further compounded by armed groups actively engaged in warfare with political objectives. Refugee warriors invite military retaliation, complicate relations with other states and threaten the security of other states and that of their citizens, this results to host states unwillingly engaging in conflicts with their neighbours.<sup>141</sup>

In the case of Kenya, there has been no refugees revolting against their states of origin, and this is how Omar Dhadho, an officer in the Department of Refugee Affairs in Nairobi reacts to the question of whether refugees are responsible for the insecurity in the country;

“It was almost impossible for someone who is fleeing from fear of persecution to even think of causing trouble at the only place he /she can seek protection.<sup>142</sup> To refugees, Kenya is safe havens and if at all there is reported rise in insecurity then, refugees cannot be responsible since they are aware that the government of Kenya has their identification details and should they try to cause trouble, they then would be arrested and charged.”<sup>143</sup>

Omar believes that, there is no connection between refugee influx and insecurity, these are two different entities.<sup>144</sup> A refugee having run from fear of persecution on grounds of political or religious ideologies, is one who is seeking an alternative of a peaceful place of

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<sup>140</sup>Betts Alexander, *Forced Migration and global politics*, (United Kingdom, Blackwell Publishing, 2009), 78

<sup>141</sup> Op. cit

<sup>142</sup> Ibid

<sup>143</sup> Rose Kanana, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>144</sup> Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011

refuge. On entry into Kenya, they are vetted or interviewed to determine if they really deserve to be given a refugee status and they are accorded a refugee status if their claim is found genuine. This process which involves taking down all their details concerning their identification after which they are then given identity documents to enable them to move and access services as provided for in the 1951 convention relating to refugees as well as in the Refugee Act of 2006. Just in case these asylum seekers don't prove their claim to be refugees, then the government rejects them they become illegal immigrants who can be arrested and prosecuted in the court of law for being in the country illegally or the government can apply voluntary repatriation for them. The Kenyan security team has never been able to give any tangible evidence of an attack or any illegal businesses operated by refugees who are already registered as refugees and it was concluded that insecurity in Kenya should be blamed on illegal immigrants or other criminals whose intention is to enter the country to cause a stir in the security circles. Kenya has also proved its incapability to completely seal the borders; a reason that renders them porous and unable to hold back illegal immigrants. A refugee, after fleeing from conflict, is one who desperately needs a peaceful environment.<sup>145</sup>

The fear of the state of insecurity in Northeastern province and especially with the influx of refugees, who are feared to be in possession of arms, started with the establishment of Dadaab refugee camps in 1991. This fear was accelerated by memories of the Shifta movement in the 1960s, that waged secessionist wars in northeastern supported by Mogadishu. This was because of Somalia's claim of an expanded Somalia into Kenya's Northeastern province.<sup>146</sup> President Kenyatta, was firm and maintained that, Kenya would not concede any of its territory. To date, Somalis, especially refugees have been viewed with suspicion hoping to seal any possibility of renewed insecurity.

The above view, of perceived threat is supported by Weiner and reiterated by Rudolph, who argue that;

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<sup>145</sup> Ibid

<sup>146</sup> Rono Jona, *Kenya Foreign Policy" Africa Foreign Policies Stephen Wright* (ed.) (Colorado: Westview Press, 1999), 10

“...Perceived threats have a more significant impact on a state’s actions than the real threats. Rudolph, argues that, a state’s threat lies in a Nation’s grand strategy including migration and border policies.”<sup>147</sup>

This concludes that the large numbers of refugees entering into Kenya, present a perceived threat and brings tension in the government security institutions, which triggers their reaction, no wonder, Kenya closed her Somali border in December 2006, following the Islamic insurgency and Al-Shabaab threats.<sup>148</sup>

### **3.1.3 The Effects of Refugees on Security**

Refugee host states face increasing challenges to political stability, policy, governance and security. Chief among these challenges is the threat refugees pose to state security. When refugees cross national borders, particularly in large numbers, militant forces have been known to keep fleeing citizens in the country by force. This means that the border patrols of host countries can be drawn into conflict with neighbouring militant forces. Militant groups have also been known to cross borders and attempt to forcefully bring refugees back to their country of origin.<sup>149</sup> In other instances, refugees are also used to smuggle weapons and drugs across borders into host countries. Another common occurrence is for militant groups residing in refugee camps near state borders, carrying out militant operations and recruiting members from among the refugees. Camps are also known as a breeding ground for the illegal distribution of weapons, use of drugs and the prostitution of women and children.<sup>150</sup>

In contrast to its neighbours, Kenya is seen as a very stable country. However it exhibits some many factors that mark civil strife that are exhibited by many countries in Africa: strong

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<sup>147</sup> UNHCR Refugee Emergency Relief No. 91 (Dec 1992)

<sup>148</sup> Kirui Peter and Mwaruvie John, *The Dilemma of Hosting Refugees: A focus on the Insecurity in North-Eastern Kenya*, International Journal of Business and Social Science, Vol, 3. no. 8, (2012), 165

<sup>149</sup> Loescher Gil and Milner James, (2005), *Protracted Refugee Situations, Domestic and International Security Implications*, (London: IISS), 160

<sup>150</sup> Ibid

ethnic divisions, polarized political issues, political manipulation, socio-economic disparities and a lack of economic opportunity.<sup>151</sup>

Dhadho Omar is of the view that;

“Armed criminals take advantage of the large refugees streaming into the country, fleeing from violence in their home countries, and make their way through the borders disguising as refugees or civilians. When they enter the country, they engage in activities such as trading in illegal arms and even violent activities. The availability of small arms in the country facilitates criminal activities such as, robbery, cattle rustling, burglary and murder. Otherwise, there is a total disconnect between refugees and insecurity.”<sup>152</sup>

The political instability in the Republic of Somalia has resulted to the influx of more than 150,000 refugees, a lot of insecurity in the district is now being experienced. A lot of resources have been diverted to attending refugees and in stemming the problem of insecurity.

Sophisticated weaponry have found their way into North Eastern region, promoting banditry, cattle rustling and general violence in region.<sup>153</sup>

Lately, major security threat to Kenya particularly in Dadaab region of North Eastern is that issued by the Al-Shaabab. Al-shaabab is a terrorist organization alleged to have links with Al Qaeda and has been issuing a litany of threats, ranging from mounting attacks on Kenya soil to imposing Sharia in North Eastern province.<sup>154</sup> Al-Shaabab is a remnant of the Islamic Courts Union, crushed by Ethiopian forces during the 2006 invasion of Somalia.<sup>155</sup> They have severally crossed the border killing Kenyans and accusing the Kenyan government of interfering with Somalia’s affairs.<sup>156</sup> The most recent kidnappings of humanitarian aid workers and tourists by

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<sup>151</sup> Hilterman Joost and Rogendoom Ernst, *Playing with Fire: Weapons Proliferation, Political Violence and Human Rights in Kenya*, ( New York, Human rights Watch, 2002), 1

<sup>152</sup> Dhadho Omar, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>153</sup> Garissa District Development Plan, 1997-2001, Office of the Vice President and Ministry of Planning and National Development, (Nairobi: Government Printer), 59.

<sup>154</sup> Nation Reporter and Agencies, “Security fears stall Dadaab expansion” Daily Nation, April 3, 2011

<sup>155</sup> Lilian Ahianga, “*Our Territory is under attack on Four Fronts and there is Danger it Could get Worse*”, The Standard Sunday May 10, 2009.23

<sup>156</sup> Ibid

the Al-shabaab promoted the Kenya government to declare war on Al-shabaab whom it accuses of a spate of killings and kidnappings in the Kenyan soil.<sup>157</sup>

Besides Al-shaabab threats, the other security threat troubling Kenya and linked to Somalia is the piracy threat.<sup>158</sup> This new tactic of hijacking ships and other sea vessels is threatening business and general voyage particularly in the Indian Ocean. Kenyan government, the International police and other navies from many countries have been trying to combat this emerging sea crime. Somali pirates have been the most linked with these illegal activities though it is possible that the network is larger than it is thought.

Moreover, ever increasing influx of refugees suggest the danger this poses to Kenya since the extremist groups are likely to find their way into Kenya posing as “civilians” or “refugees”.<sup>159</sup> The security issue in North Eastern province is therefore a major problem and the article aimed at establishing whether refugee settlement in the region play a role in propagating various security issues in Kenya. This could be worsened by the fact that fighting in Somalia promotes proliferation of small arms into Kenya.<sup>160</sup> The overwhelming congestion of Dadaab camps presents a humanitarian emergency and threatens health and security crisis that could spill over and affect Kenyan citizens.<sup>161</sup>

#### **3.1.4 The proliferation of small arms and light weapons (SALWs)**

The approach upon which The Government of Kenya uses to address proliferation of Small arms and light Weapons, is founded on the recognition that sustainable, long-term development and prosperity for all Kenyan citizens can only be ensured in a safe and secure environment free from threats of fear.<sup>162</sup> The government believes that to create such a safe environment, its

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<sup>157</sup> Ibid

<sup>158</sup> AFP, “Kenya declares war on Al shabaab”, Daily Nation, Saturday October 15, 2011, 1

<sup>159</sup> Reuters, “Somali pirates seize Panama-flagged vessel as 24 killed in battle” Daily Nation Thursday June 3, 2010, 19

<sup>160</sup> Dominic Wabala, “Fresh Conflict in Somalia Raises Terrorism Fears in the Region”, Daily Nation Wednesday May 27, 2009, 14.

<sup>161</sup> Ibid

<sup>162</sup> Human Rights Watch, Kenya “Bring it on or you’ll Die” : Torture, Rape, and other Serious Human Rights Violations by Kenya Security Forces in the Mandera Triangle, (USA, Human Rights Watch, 2009), 50

necessary to identify, understand and subsequently address all the factors that create, fuel and enable insecurity and conflict in Kenya. Such efforts to address specific security needs and challenges such as the proliferation of small arms and light weapons, its important to address underlying economic, social, cultural and political factors that may cause insecurity.<sup>163</sup>

Ann D. Crosby argues that, human security does not exist in a vacuum, but it is embedded in a conditioning framework, where economic progress and national security are intertwined.<sup>164</sup>

Agathangelou supports Crosby's view that,

“We will never have a conception of human security promoted by a state which does not serve the needs of the state. Moreover, human security will be isolated or marginalized when it no longer serves the purpose”.<sup>165</sup>

The proliferation of small arms and light weapons is an immediate security challenge to individuals, societies, and states around the world and an enormous hurdle to sustainable security and development. Small arms fuel civil wars, organized criminal violence, and terrorist activities. They also undermine development programs and other assistance to fragile states.<sup>166</sup> Much of East Africa and the Horn of Africa are flooded with guns, predominantly small arms and a large number of those weapons spill over into Kenya. Since 1970s, the countries neighbouring Kenya, to the North, (Ethiopia, Somali, Sudan and Uganda), have experienced long periods of unrest and internal conflict.<sup>167</sup>

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<sup>163</sup> Ibid

<sup>164</sup> Jean Sandra et al, *A Decade of Human Security: Global Governance and New Multilateralisms*, (Hampshire, Ashgate Publishing, 2006), 82

<sup>165</sup> Ibid

<sup>166</sup> Rachel Stohl, and Hodendoorn E, *Sustainable Security: Responses to Global Threats*, at <http://sustainablesecurity.org/article/stopping-destructive-spread-small-arms-how-small-arms-and-light-weapons-proliferation-underm>

<sup>167</sup> Hiltermann R. Joost and Ernst Rogendoom, *Playing with Fire: Weapons, Proliferation and Political Violence and Human Rights*, (USA, Human Rights Watch, 2002), 8



The regional and international concern is that easy availability of illicit small arms and light weapons escalate conflicts, undermine political stability and have a devastating impact on peace and security.<sup>168</sup>

The availability of small arms is made possible through the porous border in the North of Kenya. North and North Eastern Kenya include areas like Turkana, Mandera, Moyale, West Pokot. These areas are bordered to the North by Ethiopia, to the North East by Southern Sudan and to the west by Uganda. The communities that live in these areas are pastoralists. Cattle are the main medium of exchange, used in paying dowry, acquiring foodstuff and a show of wealth, so they guard them zealously, the gun being the best tool for this. The adjacent communities in these neighbouring countries are also pastoralists and value their cattle as well.<sup>169</sup>

At the border of Turkana, the residents are the “soldiers” of the region, they guard by providing security to the residents at the border area, as well as guarding their property. The border shared by Somalia and Kenya covers a long distance and without proper distribution of security personnel and resources then it is impossible to manage them. The nomadic tribes in the northern part of Kenya don’t feel secure enough to trust the government security officers to protect their only source of livelihood i.e livestock. This pushes them to attain weapons so as to be assured of security for themselves and for their livestock.<sup>170</sup> This was confirmed by a member of this community in an interview;

“We don’t have security officers at the border area and we cannot take things for granted, we have cattle and people to protect from attack and theft by people from neighbouring countries, who cross the border with the aim of stealing our cattle, and committing other crimes such as raping our women and daughters. For those reasons we cannot do without weapons such as guns, they are our security. If we didn’t have weapons, then it means we are not secure and neither our property, therefore, we would rather vacate and go away”<sup>171</sup>

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<sup>168</sup> Dotinga Han and Barbara Kwiatkowska, *International Organizations and the Law of the Sea*, (The Hague, Kluwer Law International, 2002), 257

<sup>169</sup> Ibid

<sup>170</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011.

<sup>171</sup> Michael Ekur, interviewed by Evelyn Kiswii, June 23, 2013.

The views of Ekur are supported by Morgenthau's concept of security that he argues rests on a subjective or psychological base. The generally professed and most frequent actual motive for armaments is fear of attack: feeling of insecurity.<sup>172</sup> The members of this community believe that, without the gun or weapons, they are at risk of being attacked by other communities, thus a good reason to keep the guns. He confirms on the availability of guns and other weapons;

“Small arms are readily available in the area, and getting them is not difficult. We can purchase them through barter trade in exchange for our animals or by monetary exchange. The women, men and children above ten years of age are trained to handle the weapons. They have to know how to attack the enemy when he strikes in the men's absence. The skills are taught to all including the women bigger children”<sup>173</sup>

When asked about their view on the disarmament exercise by the government, these were Nanok's views;

“The government would not take away our 'lives', they can not live without “the gun”. This is because they are unable to protect us. There are no security services in these areas and those that are available, are tens of Kilometres apart, so their coverage is very small. By keeping the gun, that is the only way we can be assured of security. The roads are poor, and the area is marginalized and seems neglected. Our leaders and administrators leave in secure and developed places, while they live us to stay in these insecure areas all on our own. They don't seem to be giving a lasting solution to insecurity concerns, so, the only thing we would urge them to do is to allow us to keep the weapons.”<sup>174</sup>

In many conflict zones, like the areas neighbouring Kenya to the North, Somali, Sudan and Ethiopia, there is access to small arms and light weapons there are the weapons of choice, the main instrument of death and destruction, and are often used to forcibly displace civilians, impede humanitarian assistance, prevent or delay development projects, and hinder peace-keeping and peace-building efforts. When conflicts end or abate small arms often remain in circulation, which may lead to additional violence and suffering since fighting can resume or conflicts may erupt in neighboring regions. In non-conflict areas such as Nairobi, Mombasa

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<sup>172</sup> Hans Morgenthau, *Politics Among Nations. The Struggle of Power and Peace*, 5<sup>th</sup> edition (New York: Alfred A Knof, Inc., 1972), 402.

<sup>173</sup> Ibid

<sup>174</sup> Nanok Rutere, Interviewed by Evelyn Kiswii, June 23, 2013.

small arms may be used in criminal violence or may be used in homicides, suicides, and accidents.<sup>175</sup>

The Government of Kenya is making an effort in addressing the problem of proliferation of small weapons and light weapons, by the development of better relations with the police and residents of the affected areas. This must also be complemented by broader efforts to address underlying economic, social, cultural or political factors that may cause insecurity or conflict.

This means implementing a broad range of interconnected initiatives on specific security related factors such as SALWs control, community policing and conflict management and peace building.<sup>176</sup>

## **3.2 Perceptions**

### **3.2.1 Refugees**

Palek Dagan, a refugee residing in Westlands, does not support the view that refugees are a threat to security. He argues that in mass movements, where people are fleeing from violence, there will always be an ill-intended, group of people that will take advantage of the vulnerable group to cause harm, for their selfish interests.<sup>177</sup> She recalls when civil war erupted in Sudan, there were many people trading in small arms in Sudan and near the border area. These groups of people were from all walks of life. One could hardly tell where those arms came from, but they were in plenty. The vulnerable group of refugees could not think of participating in violence, for it was violence they wanted so much to flee from.<sup>178</sup> Her view about the responsibility of refugees for crimes is that;

“There are people responsible for criminal activities in Kenya, but it cannot be refugees. Refugees are too weak and devastated by war in the country of origin to think of violence”<sup>179</sup>

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<sup>175</sup> Rachel Stohl, and Hodendoorn E, *Sustainable Security: Responses to Global Threats*, at <http://sustainablesecurity.org/article/stopping-destructive-spread-small-arms-how-small-arms-and-light-weapons-proliferation-underm>

<sup>176</sup> Human Rights Watch, *Kenya, Bring the Gun or Die: Torture, Rape, and other Serious Human Rights violations by Kenyan Security Forces in the Mandera Triangle*, (New York, Human Rights Watch, 2009), 50

<sup>177</sup> Palek Dagan, interviewed by Evelyn Kiswii, November 24, 2012

<sup>178</sup> Ibid

<sup>179</sup> Ibid

Even though host governments often perceive refugees as a threat to their national security, refugees too often accuse host government of exploitation, constant harassment and segregation based on their nationalities. They argue that host government often formulate policies that are unfavourable to the new comers.<sup>180</sup> In employment and other opportunities they feel that they are not treated fairly as compared to other nationalities.

A refugee who has been in Dadaab refugee camp for 14 years, narrates his experiences in the camp;

“I am paid 10 times less than my Kenyan counterparts. It makes me feel abandoned. In fact when I get paid I feel stressed instead of joyful. How can I support myself and my family on so little? Also, ‘incentive staff’ get just 24 days of annual leave, whereas the local Kenyans are given two weeks off every two months. This also makes me feel like the odd one out. I wonder what makes us so different. Are we not human beings like them? Is that an international law specific for the refugees? We are forced to accept these conditions and we have no one to advocate for us.”<sup>181</sup>

Majority of refugees and asylum seekers in Kenya live in designated camps. Some refugees often seek to make their way to urban areas to escape the harsh living conditions in the camps and in search of better opportunities with many refugee-hosting communities living under worse conditions than refugees in camps. This causes open competition for resources between the two groups which, has led to conflict and violence. Given the large and protracted nature of the refugee situation in Kenya support for host communities is critical if healthy relations between the groups are to be fostered.<sup>182</sup>

Refugees help to bring peacekeeping efforts to the forefront of regional and international.<sup>183</sup> The presence of refugees, particularly those in protracted situations, exacerbates security concerns in host countries and will eventually lead to outright conflict between refugees

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<sup>180</sup> Kirui Peter and Mwaruvie John, *The Dilemma of Hosting Refugees: A focus on the Insecurity in North-Eastern Kenya*, International Journal of Business and Social Science, Vol, 3. no. 8, (2012),

<sup>181</sup> Hujale Mouldid, interviewed by IRIN, August 18, 2011

<sup>182</sup> Binaifer Nowrjee and Peter Takirambudde; *Failing the Internally Displaced: The UNDP displaced persons programs in Kenya*, (Washington DC: Human rights watch, 1997) p.138

<sup>183</sup> Nyong'o, P. Anyang' (1998). *Governance, Security and Conflict Resolution in Africa*. *Diogenes*, 46(4), at <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=2380884&site=ehost-live&scope=site>

countries of origin and host countries.<sup>184</sup> This security threat prompts international governments and outside agencies to encourage, and in some case assist with, peace negotiations in conflict hit countries.<sup>185</sup> When these peace negotiations work, the conflict from countries of origin decreases within host countries. By extension, this means that the governments of host countries will experience increased security and stability. Likewise, when peace and stability is achieved in countries of origin and large numbers of refugees that pose security threats to host countries are able to return home, host governments experience decreased political strain between them and the host communities where the refugees resided.<sup>186</sup>

### **3.2.3 Host communities**

The perceptions of host societies are influenced inter alia by the deteriorating economic and sometimes difficult political situation of the states concerned.<sup>187</sup> There is also conflict between the refugees and the host community. In Dadaab for example, the Kenyan Somali's feel the refugees are given special attention than them because they receive assistance from humanitarian organization such UNHCR and other NGO's. Refugees are given food, medical attention, and education among other social services.<sup>188</sup> Majority of Kenyan Somalis cannot afford this and therefore view the refugees (who are also Somalis) as enemies who are taking "Milk and Honey" while they starve in their motherland. The International Refugee Law does not mandate the UNHCR to give aid to any person who is not within the brackets of a refugee, no matter how poor they are.<sup>189</sup>

While refugees receive international aid, the Turkana, who are just as poor, do not. Unfortunately this causes an imbalance that has resulted in the host community feeling hostile and blaming their problems on refugees. It also raises fundamental questions about human rights

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<sup>184</sup> Pont Amy, (2006) *A crisis in the dark the forgotten refugees*. UN Chronicle, 43(3), 38-43, at <http://www.amazon.com/crisis-dark-forgotten-refugees-Chronicle/dp>

<sup>185</sup> Op cit.

<sup>186</sup> Ibid

<sup>187</sup> Moret Joelle et al, *The Path of Somali Refugees into Exile: A comparative Analysis of Secondary*, (Switzerland, SFM, 2006), 128.

<sup>188</sup> Ekur Aukot. "It is better to be a Refugee than a Turkana in Kakuma: Revisiting the Relationship between Hosts and Refugees in Kenya," *Global Movements for Refugees and Migrant Rights*. 21.3(2003), 73

<sup>189</sup> Ibid

and equality since, in this case, the refugees who receive free shelter, food, firewood and healthcare, have better conditions than their hosts.<sup>190</sup>

With the presence of small arms and light weapons in the region, and with the ever-souring relationship between the locals and the refugees, the security of Dadaab and that of Northeastern and Kenya in general is of major concern. Relations between refugees and the surrounding host population often sour with increasing insecurity and environmental degradation being blamed on the refugee influx. The Dagahaley, Hagadera and Ifo camps in Dadaab comprise the largest refugee site in the world. As of 5, July 2009, the site hosted an estimated 284,306 refugees, mainly from Somalia.<sup>191</sup>

Refugees are often perceived as a threat to their resources and to security, specifically through alleged trafficking of arms and drugs, and a strain on both social services and the environment and as recipients of higher levels of assistance than local populations.<sup>192</sup> In urban areas, the negative attitudes contribute to various forms of harassment of refugees by the police. In camp areas, negative perceptions have also led to conflicts between local communities and refugees.<sup>193</sup> Efforts to address concerns of local communities, through environmental rehabilitation programs and projects to supplement sustainable development are not presently adequate to meet needs. These programmes have been established in Dadaab, their purpose being to ensure that local people derive some tangible benefits from the presence of so many refugees. In Dadaab, locals claim that the major source of conflict between them and refugees is overgrazing land and wood resources. Refugees graze their camels, cattle, donkeys and goats in community land since there is no grazing land in the camps. This “refugee affected” programme has helped reduce this type of conflict and acts as compensation to the local population.<sup>194</sup>

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<sup>190</sup> Ibid

<sup>191</sup> Kirui Peter and Mwaruvie John, *The Dilemma of Hosting Refugees: A focus on the Insecurity in North-Eastern Kenya*, International Journal of Business and Social Science, Vol, 3. no. 8, (2012), 165

<sup>192</sup> UNHCR report on strengthening refugee protection, Assistance and support to Host communities, and a comprehensive plan of action for Somali refugees, (2005).

<sup>193</sup> Ibid

<sup>194</sup> Jeff Crisp, *New Issues in Refugee Research*, Working Paper No. 16, A state of insecurity: The Political Economy of Violence in Refugee-populated areas of Kenya, December 1999.

Refugees are perceived as assets to host communities upon entry into their host country. This typically takes the form of material goods they bring from their country of origin and, in some cases, they may be carrying gold.<sup>195</sup> They also help to bring financial funds through international organizations that assist refugee populations. These organizations help to stimulate the economy by “injecting much needed revenue via the tax and customs payments made for the aid and supplies brought into the country” (It is also believed that the infrastructure created by organizations to allow the aid to reach refugees benefits local populations as well. In instances where host communities are resistant to the presence of refugees, UNHCR will give money to build infrastructure in hosts communities in an effort to assist with their needs and increase their willingness to accept refugees. Some of the infrastructure building may include expansion of hospitals, clinics, road networks, and water supply, as well as reforestation to alleviate the environmental degradation of fuel wood reserves. A prime example of this infrastructure support is at the Daadab refugee complex in Kenya where the local community receives money from the camp’s operating budget to support local infrastructure. Additionally, the trading opportunities that are generated between refugees and host communities help to reduce the price of food and commodity and stimulate the market economy for certain goods.<sup>196</sup>

They are perceived as positive contributors of labor, skills and expertise to the host communities. The World Bank cites the Iraq refugees in Amman, Jordan as offering their “well-educated” skills to local universities and hospitals that help the local businesses.<sup>197</sup> This same report also points to the transnational cash flows that refugees receive from their more well to do relatives in other countries such as Canada or the United States. These cash flows help improve housing and water production in refugee communities.<sup>198</sup> In some cases, organizations will hire locals to assist with the refugee populations. These same organizations also provide

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<sup>195</sup> Jacobsen Karen, Can refugees benefit the state? Refugee Resources and African state building. *The Journal of Modern African Studies*, 40(4), pp. 577-596.

<sup>196</sup> World Bank, *Annual Report 2012* at <http://siteresources.worldbank.org>

<sup>197</sup> Ibid

<sup>198</sup> Ibid

transportation and housing for locals, though this is not always apparent because it is usually phased out over the course of several years.<sup>199</sup>

### 3.2.4 Civil Society

The perception of refugees by civil society is that of a people in need of aid. They are in need of humanitarian assistance due to their vulnerable situation. Kenya, being a signatory of the International Refugee instruments of refugee protection, must respect these covenants. The enactment of the Refugee Act in 2006 was seen as a positive move to the right direction towards ensuring protection of refugees.<sup>200</sup> This was a gesture that proved to the world that Kenya is serious in respecting the conventions it willingly signed. The state is bound by these refugee conventions and the Refugee Act 2006.<sup>201</sup> The civil society ensures that refugee rights are respected because they need protection. The Refugee Consortium Kenya is such an organization that works towards provision of legal aid to the refugees and advocacy of refugee rights. The Danish Refugee Council is another organization that caters for refugee needs. Kenya should be accommodative and provide all the necessary protection to the refugees.<sup>202</sup> If peaceful solutions in their countries of origin are sought, then they will be able to return and rebuild their countries.<sup>203</sup>

The civil society in Kenya believes in making refugees better people and providing them with the necessary knowledge to live a better life in the countries they have sought refuge. Most organizations have taken initiatives in provision of basic needs to refugees that are necessary for their daily upkeep. To them, human security in terms of health care, basic education and provision of basic needs and services is of great necessity to refugees. They engage themselves in making refugee lives better and preparing them to face challenges in life. Refugees are people who need protection from any form of harm, they need to be accepted and accommodated so as

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<sup>199</sup> Jacobsen Karen, Can Refugees Benefit the State? Refugee Resources and African state building. *The Journal of Modern African Studies*, 40(4), 585

<sup>200</sup> Simon Konzolo, interviewed by Evelyn Kiswii August 1, 2011.

<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> Ibid



to feel part of the Kenyan society. The civil society advocates for refugee rights, humane treatment, it shuns discrimination of any form to refugees, they advocate for freedom and fairness to all refugees, and they take action against anyone who violates refugee rights and freedoms.<sup>204</sup>

To solve the problem of refugee harassment and breach of the international conventions governing refugee affairs, the civil society in partnership with the government has organized for training of police on rights of refugees and how their issues should be handled. They have also organized for legal assistance and training of refugees on legal matters so that they don't get themselves in trouble with the law enforcers. They assist those who have any complain to the legal authorities, this way the refugees are able to fight for their rights and ensure that they avoid incidences of colliding with authorities.<sup>205</sup>

### **3.3 The Role of the Government of Kenya in handling security issues**

The government's role in refugee affairs is offering security but it has no capacity to manage them. It has mandated the UN agency relating to refugees to manage refugee affairs. The UNHCR vets refugees by interviewing them on entry to Kenya. This process is guided by the guidelines set by the 1951 Convention on refugees and the 1967 protocol of refugee management and that way they are given refugee status if their case of well founded fear of persecution from their countries of origin is proven.<sup>206</sup>

In order to promote security in a country the members of the society should be free from illicit firearms or their easy access. Law enforcement agencies, including the police, play a legitimate and central role in combating and preventing arms trafficking to or through conflict zones. Kenya has been active in taking measures that are geared towards ensuring safety for both refugees and Kenyan citizens.<sup>207</sup>

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<sup>204</sup> Ibid

<sup>205</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011

<sup>206</sup> Rose Kanana, interviewed by Evelyn Kiswii, July 28, 2011

<sup>207</sup> Eric Kiraithe, interviewed by Evelyn Kiswii, July 20, 2011.

A major security threat in Dadaab is that caused by combatants and military groups such as Al-Shabaab posing as refugees. This has threatened the security of Northeastern province and that of Kenya in general. In an effort to combat threats posed by Al-Shabaab Kenyan forces invaded Somalia hoping to end the security threat once and for all. The lawless Somalia had posed a major threat to Kenyan economy through piracy in Indian Ocean and kidnapping of tourists on the Kenyan coast. This has led to recent waves of land mines and grenade attacks planned and executed from Dadaab camps. This is an indication that armed gangs easily sneak into the camps undetected. One of the greatest security issues is that of differentiating genuine refugees from the militants. Besides that, it is generally difficult to distinguish between Kenyan Somalis and Somalis of Somali nationality. There is therefore the need for proper screening of refugees to ensure only those seeking asylum are hosted as refugees.

It is therefore clear that government officials in Africa are caught between their genuine concern for the refugees and their wish to honour international agreements to provide asylum, and the increasingly hostile grassroots response from their own impoverished people in refugee affected areas. In an attempt to promote security, the Kenya government has previously closed down refugee camps near urban centres and stressed on the need of refugees staying within their designated camps. The challenge however is that in both of Kenya's "official" refugee camps, Dadaab and Kakuma over 400,000 Sudanese, Ethiopians, Somalis and central African refugees are subjected to armed violence on a daily basis.

In urban areas, the negative attitudes contribute to various forms of harassment of refugees by the police. In camp areas, negative perceptions have also led to conflicts between local communities and refugees.<sup>208</sup> Efforts to address concerns of local communities, through environmental rehabilitation programmes and projects to supplement sustainable development are not presently adequate to meet needs. In 1991 an encampment policy was written which requires that all refugees should reside in Dadaab camp or in Kakuma camp. The minister for

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<sup>208</sup> Ibid

internal security has been granted the power to enact a policy for requiring aliens to reside and remain within certain places or districts. Under law such a policy may be enacted when a state of war exists or when it appears that an occasion of imminent danger or great emergency has arisen. The parliament has never promulgated laws or regulation to enact the encampment policy. Nevertheless, a camp confinement policy exists and is enforced on a daily basis.<sup>209</sup>

The management of refugees presents some challenges to those mandated to carry out the responsibilities of managing them. Inadequacy in provision of security resources by the government creates loopholes in this area where criminals and illegal immigrants take advantage of the porous borders and the refugee influxes and engage in activities such as carjacking, illegal trade in weapons and banditry. It is unfortunate that these are happening at a time when refugees are streaming in Kenya in plenty and seeking refuge, fleeing from conflict. In this confusion, the people mistaken for these malpractices are the vulnerable groups of refugees, who would not dare jeopardize their peaceful stay in Kenya. That is how the relationship between refugees and insecurity comes about.<sup>210</sup>

The government, through the provincial administration has on several occasions organized disarmament exercises especially in the conflicting communities of North Eastern Kenya. Even though these exercises have not been successful, they have reduced the number of weapons in the hands of citizens. If the people are provided with adequate security against the enemies, then the exercise is bound to succeed, since they will have confidence in the security personnel, and consequently surrender the weapons.<sup>211</sup> The above was confirmed by Eric Kiraithe of Kenya Police.

### **3.4 The role of UNHCR**

UNHCR is the United Nations Refugee Agency (United Nations High Commissioner for Refugees). The agency was created by the UN General Assembly in 1950, but actually began

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<sup>209</sup>Parker Arthur, *Hidden in plain view: Refugees living without protection in Nairobi*, (USA: Human Rights watch Organization 2002), p.146.

<sup>210</sup> Rose Kanana, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>211</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011.

work on 1<sup>st</sup> January 1951. States still recovering from the devastation of the Second World War wanted to make sure that they had a strong and effective organization to look after the interests of – or “protect” – refugees in the countries where they had sought asylum. UNHCR was also charged with helping governments to find “permanent solutions” for refugees.<sup>212</sup>

A refugee is any person who, owing to a well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself for the protection by the country.<sup>213</sup>

Kakuma and Dadaab Refugee Camps are administered by the United Nations High Commissioner for Refugees (UNHCR). The UNHCR is assisted in its duties by a wide range of organizations, including World Food Program (WFP), International Organization for Migration (IOM), Lutheran World Federation (LWF), International Rescue Committee (IRC), Jesuit Refugee Services (JRS), and National Council of Churches of Kenya (NCCCK). The camp falls under the jurisdiction of the Kenyan Government and the Department of Refugee Affairs. Since the adoption of the Kenya Refugee Act in 2007, a Camp Manager has been appointed to oversee camp affairs in liaison with humanitarian agencies. The Act paves the way for the Kenyan Government to eventually assume full management of both Refugee Camps.<sup>214</sup>

Regional instruments in refugees expanded the UN definition. For example, the Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional instrument adopted by the Organization of Africa Unity (O.A.U) in 1969, besides adopting the UN definition expands it to include people fleeing external aggression, internal civil strife, or events seriously disturbing public order in African countries. The definition of who a refugee is therefore, may vary in scope although the 1951 UN convention definition is normally taken as the standard for “genuine” refugee status. Refugees are normally called asylum seekers before

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<sup>212</sup> UNHCR *Protecting Refugees, The role of UNHCR, 2008 – 2009, 17*

<sup>213</sup> The 1951 UN Convention Relating to status of Refugees, 28 July 1958, United Nations Treaty, Vol. 189 No. 2545, 137

<sup>214</sup> Kakuma News reflector, at <http://kanere.org/about-kakuma-refugee-camp/>

they acquire refugee status in the country they have fled to.<sup>215</sup> After their request being considered genuine, they are registered and given the refugee status. This is when they are now officially handed over to UNHCR as mandate refugees.<sup>216</sup>

Currently, the UNHCR and the DRA have responsibility for both urban refugees and the refugee camps (Kakuma and Dadaab). The DRA registers refugees in Nairobi, and the UNHCR coordinates protection services. The DRA and UNHCR are responsible for the overall management of Kakuma and Dadaab camps, with the Lutheran World Federation (LWF) acting as UNHCR's implementing partner for camp management.<sup>217</sup>

### **3.5 The Role of the Refugees**

After entering Kenya, asylum seekers are interviewed by a member of UNHCR's eligibility center staff. The officer reviews the facts after the interview, by doing additional research or crosschecking information he/she either recommend that, UNHCR grant or deny refugee status.<sup>218</sup> The recommendation is received by the senior protection staff who, review the file and makes the final decision on an individual's status.

While some refugees complain of unfair treatment and discrimination against them by the government as well as their hostility from the host communities, Mariam Omar, a migrant refugee living in Eastleigh, Nairobi asked on their role as refugees, had a different view:

“Its our responsibility as refugees to ensure that we are not found on the wrong side of Kenyan law. Despite the discrimination that many of us complain about in the job market, I think on the side of the government, they are prudent with the refugees, since its difficult for them to identify, the genuine refugees and the criminals. This is because of the large numbers that get into Kenya. Instead of complaining, we should appreciate the Kenya government for the effort of housing so many refugees who have fled from violent situations. If I would urge my fellow refugees, I would encourage them to thank God for Kenya, because there is no other country that has accommodated as many refugees especially from Somali like

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<sup>215</sup>Loescher Gil, *Refugee Movements and International Security*, Adelphi Paper 268, (London, Brassey's for IISS, 1992), 6.

<sup>216</sup> Ibid

<sup>217</sup> UNHCR, *Safe Havens; Sheltering Displaced Persons from Gender-Based Violence* (Berkeley University of California, 2013), 20

<sup>218</sup> Human Rights Watch, *Hidden in plain View: Refugees living without Protection in Nairobi and Kampala*, (New York, Human Rights Watch, 2002), 60

Kenya. I would also urge them to comply with the Kenyan law, and stop asking for too much which we can only get in our own country. ”<sup>219</sup>

One of the positive contributions that refugees can make to host countries is skills and knowledge that can be utilized for the benefit of local people. In this regard, the multiple ways in which refugees pursue their livelihoods can make significant contributions to the local economy. For instance in Eastleigh Nairobi there are booming businesses owned by Somali and Ethiopian refugees which is beneficial to the local communities in terms of access to cheap imported goods as well as provision of employment.<sup>220</sup> Another important contribution of refugees to local economies is taxes which is a source of income to the government.<sup>221</sup> Efforts should therefore be made to encourage the refugee to recognize his responsibility to his host government by demonstrating interest and effort in solving his own problems, by becoming a useful member in a society in the country of asylum.<sup>222</sup> Access to labour markets is prohibited for unregistered refugees. Who turn to the informal sectors. Some undertake occasional humanitarian activities in the camps, e.g. food distribution and teaching or volunteer work

### **3.6 The Impact of Refugees on Security in Kenya**

Presently, Kenya hosts more than 500,000 refugees. More than 100,000 arrived between 2008 and 2009, a sign of a huge influx. What is of importance however, is whether their influx, affect the security in the host country, Kenya.<sup>223</sup> It is clear that the large number of refugees and the danger it poses to security are directly proportional. Too often refugees are perceived as a matter of international charity organizations, and not as a political and security problem.<sup>224</sup> Yet refugee

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<sup>219</sup> Mariam Omar , Interviewed by Evelyn Kiswii, June15, 2013

<sup>220</sup> Isaachar Mohammed, interviewed by Evelyn Kiswii, July 29, 2011.

<sup>221</sup> Yassin Hussein, interviewed by Evelyn Kiswii, July 29, 2011.

<sup>222</sup> Thomas Hovet, Jr “Boundary disputes and tensions as a cause of refugees” in Refugee South of the Sahara Hugh C. Brooks and Yassin Elayouty (eds), (Connecticut: Negro Universities Press,1970), 29

<sup>223</sup> Ogosia Kenneth, “*Official Insists there is no State Policy to Deport the Refugees*” , *Daily Nation*, Friday April 10, 2009. 16.

<sup>224</sup> Gil Loescher, *Refugee Movements and International Security*, Adelphi Paper 268, (London: Brassey’s for IISS 1992), 5.

problems are in fact intensely political: mass migration creates domestic instability, generates interstate tension and threatens international security.<sup>225</sup>

Refugee movements can create both conflict between neighbouring states and challenge the integrity of the host state. Refugees and other migrants are frequently perceived by both sending and receiving states as a threat to stability and as a bilateral problem with serious national security implications. In most African countries, refugee hood could be as a result of violent eruption based on political oppression exercised by ethnic groups, religions affiliated or self-imposed elements.<sup>226</sup> This therefore puts the receiving country at a risk of insecurity because of what can be termed as spillover effect. The confidential security report of Garissa District Security Committee of 1992 showed that between January – June 1991, there were 32 banditry incidences reported, 114 incidences in 1992 and 193 incidences in 1993. While it is true that the banditry cases have tended to reduce over the years, security fears remain Kenya's big concern and has continued to freeze a plan to enlarge the world's biggest refugee camp.

Refugees have always been associated with insecurity because they are always perceived to be in possession of illicit firearms or propagate their proliferation. The use of illicit small arms leads to widespread illegal activities that eventually undermine the legitimate authority of the state.<sup>227</sup> The international common borders are often not sufficiently policed and people can and do easily cross the border on either side. Noor Gabow, an administrator at Vigilance House in Nairobi, observes that, the similarity of tribes living near the borders especially the Somali – Kenyan borders creates a challenge of identification of criminals given the limited security services.<sup>228</sup>

Thus, the porous nature of the border makes it easy for the trafficking of illegal arms. Besides, the number of officers deployed by the government is hardly enough for a such

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<sup>225</sup> Ibid

<sup>226</sup> Ibid

<sup>227</sup> Kamenju Jan et al, *Terrorized Citizens: Profiling Small Arms and Insecurity in the North rift Region of Kenya*, 83.

<sup>228</sup> Noor Gabow, Interviewed by Evelyn Kiswii, August 8, 201.

extensive common border.<sup>229</sup> In the case of Kenya-Somali border, the rough terrain and hostile weather make border policing more difficult. Haro and others view the porous Kenya-Somalia border as part of a broader, complex pattern of state failure and communal violence afflicting much of the horn of Africa.<sup>230</sup> It is therefore clear that government officials in Africa are caught between their genuine concern for the refugees and their wish to honour international agreements to provide asylum, and the increasingly hostile grassroots response from their own impoverished people in refugee affected areas.<sup>231</sup> In an attempt to promote security, the Kenyan government has previously closed down refugee camps near urban centres and stressed on the need for refugees staying within their designated camps.<sup>232</sup>

Kiraithe of Kenya Police is of the view that, the major source of insecurity is refugee influx into Kenya. He claims that refugees themselves may not be the direct source, but can be termed as an indirect one. He gives many incidences that criminals have been smoked out of refugee populated areas and cites many times that the refugees have been exposed by security agents housing criminals after thorough raids in their residences, such as Eastleigh.<sup>233</sup> The rise in proliferation and trade in small arms and weapons is a catalyst of violence and banditry activities. Most of those who trade in these arms are of the Somali origin. He points out a major challenge in dealing with insecurity in these areas to be the identity of the Somali. This is because, their language and their physical identity is similar, such that it is difficult to distinguish a genuine refugee from a criminal.<sup>234</sup> Weapons are sneaked from the neighbouring countries into Kenya through the porous borders of northern Kenya. He notes another challenge with the security in Kenya is the resources such as the personnel to position at the border.<sup>235</sup>

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<sup>229</sup> Ibid

<sup>230</sup> Haro, Guyo et al, *Linkages between Community, Environmental and Conflict Management: Experiences from Northern Kenya*. Conference report, Ithaca,(New York: Cornell University,2003), 3.

<sup>231</sup> Harrfelt Bond, *Imposing Aid Emergency Assistance to Refugees*, (Nairobi: Oxford,1986), 15

<sup>232</sup> Ibid

<sup>233</sup> Eric Kiraithe, interviewed by Evelyn Kiswii July 20, 2011

<sup>234</sup> Ibid

<sup>235</sup> Ibid



### 3.7 Conclusion

Insecurity is evident due to refugee influx in Kenya. Proliferation of small and light weapons is on the rise. This is proven by the rising incidences of criminal activities in the refugee camps, along the border of Northern Kenya and the neighbouring countries, and in towns. Many of these criminal activities are linked to protracted Somali conflict, which has caused influx of refugees into Kenya. It is perceived that the cause of insecurity is the large numbers of refugees streaming into the Kenya. According to Murunga, negative perceptions of the (Somali) refugees in Kenya, has been due to criminalization of Somali identity and the rough relationship that have been between Somali and its neighbours.<sup>236</sup> Although states are not obliged to admit refugees in their countries, they cannot return a refugee to a country where he/she is at risk of torture, persecution or death. A signatory to the refugee conventions of 1967 and 1951, of which Kenya is, binds it to examine their status and admit them. Kenya has a duty to protect its people by guaranteeing their security. Therefore, there is need to separate, the refugees and criminals in order to deal with the issues of insecurity successfully.<sup>237</sup>

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<sup>236</sup> Murunga Godwin, *“Refugees at Home? Coping with Somalia Conflict in Nairobi, Kenya”*, *African Studies From Below*. (CODESRIA Book Series, Dakar, 2009), 198- 232.

<sup>237</sup> Eric Kiraithe, interviewed by Evelyn Kiswii, July 28, 2011.

## CHAPTER FOUR

### REFUGEE INFLUX AND (IN)SECURITY: A CRITICAL ANALYSIS

#### 4.0 Introduction

It is believed that, the presence of refugees may threaten ethnic and inter-communal balance or endanger social and economic stability in the host country. Mass influxes of refugees bring with them ‘arms, combatants and ideologies’ that are conducive to violence.<sup>238</sup> Salehyan and Gleditsch identify three ways in which influxes of refugees from neighbouring countries can destabilize host countries; expansion of rebel and social networks and diffusion of violence, facilitation or trans-national spread of arms, combatants and ideologies conducive to conflict and creation of bilateral tensions.<sup>239</sup> However, presence of refugees may not have a significant negative impact on the political and security situation in the host countries.

The case study of the impact of refugee influx on Kenya’s security is given in Chapter Three. The issue of how insecurity relates with refugee influx is investigated taking into consideration that, refugees cannot be sent away upon arrival into a particular country to seek refuge, neither can any state compromise the security of its people. Security of the citizens and respect of international refugee instruments are of great importance to the state, in that, state must respect the international refugee instruments that, it is a signatory to and that bind it, it must also value the security of the nation and its people. Chapter four critically analyzes the impacts of refugee influx on security as studied in chapter three. The emerging issues are also analyzed and from this analysis, a basis of explanation on how refugee influx relates with insecurity and proliferation of small arms and light weapons.

#### 4.2 Emerging issues

The study is investigating the impact of refugee influx to Kenya’s security and the relationship between influx of refugees and the proliferation of small arms and weapons. The main objective

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<sup>238</sup> Jacques Melanie, *Armed Conflict and Displacement*, (New York, Cambridge University Press, 2012), 2

<sup>239</sup> Salehyan, Idean and Kristian Gleditsch, *Refugees and the Spread of Civil War*,“ (International Organization, 2006) 60: 335-366

of the study is to investigate how influx of refugees has contributed to insecurity and proliferation of small arms and light weapons in Kenya, from 1990 - 2012.

Before the analysis of the study, is a brief review of the objectives of the study. The study embarks on investigating the effects of refugee influx to security in Kenya. It is assumed that due to increased refugee flows over the years, crime rates and insecurity have augmented. Many government security organs have the idea that refugees pose a security threat. To examine the contribution of refugees to proliferation of small arms and light weapons is another objective the study wishes to achieve. It is evident that there is proliferation of small arms and light weapons which increases the crime rates in the country. But, are refugees to be blamed for this proliferation of small arms and light weapons? This is one of the mysteries that, the study wishes to unravel in this chapter. The final objective of the study is to critically analyse the role of the government in handling refugee issues vs. security concerns. This study has used the concepts of human security theory, societal security and securitization theories to draw its findings. Human security is the security of individuals while societal security concerns the security of a group. This shifts from the realist's dominant concept of states as the only referent object of security, to include individuals and the society.<sup>240</sup>

The study has collected data that will draw facts about the perception of refugees as far as security is concerned. In the course of the study, several issues have emerged. The study therefore takes them into consideration and analyses them in details as follows;

#### **4.2.1 Securitization of refugee issues in Kenya**

Balzacq, defines securitization as a set of interrelated practices and the processes of their production, diffusion and reception or translation that brings threat into being.<sup>241</sup> Securitization theory elaborates that no issue is essentially a menace.<sup>242</sup>

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<sup>240</sup> Peoples Columba and Williams V. Nick, *Critical Security Studies: An Introduction*, (New York, Routledge, 2010), 4

<sup>241</sup>Balzacq Thiery, *Securitization Theory; How security problems emerge and dissolve*, (ed), ( New York, Routledge, 2011), 1

<sup>242</sup> Ibid

The study has established that, the insecurity situation in Kenya is increasing by the day. The proliferation of small arms and light weapons is on the rise in Kenya, a situation, which has put the country at a threat of armed violence, banditry and increased crime. While this may be true of the security situation in Kenya, the main agents of insecurity are not refugees. It will be running away from reality to blame refugees as the cause of insecurity. To comprehend the meaning of a refugee, as defined in chapter one, is any person who, owing to a well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself for the protection by the country.<sup>243</sup> A refugee flees from violence and it is only logical that out of desperation and devastation from the surrounding circumstances of war, wants to find a place to run to and hide from that devastation.<sup>244</sup> The circumstances surrounding a refugee are filled with fear and a refugee in their right mind will not subject themselves to such circumstances in their host countries, a country they hardly know much about.<sup>245</sup> We have heard and read about countries where refugees participated in coups d'état or in other violent civil wars in their host states, e.g. Pakistan and Chad, but this has never been in Kenya.<sup>246</sup> Konzolo adds to this view, that;

“Refugees are a vulnerable group of human beings, that needs understanding and protection. It would be unfair to purport that a vulnerable devastated person having fled from a warring situation could even want to be suspected on grounds of causing trouble in the only place that he/she has been received with love and care. Let us for a moment put ourselves in their shoes and act humanely and not selfishly”<sup>247</sup>

Konzolo adds that when, the government fails in investigating and getting the perpetrators of crime, they rush quickly in blaming the vulnerable group of people who don't have anyone to argue their case. So trying to securitize the issue of refugees is trying to evade

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<sup>243</sup> The 1951 UN Convention Relating to status of Refugees, 28 July 1958, United Nations Treaty, Vol. 189 No. 2545, 137

<sup>244</sup> Rose Kanana, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>245</sup> Ibid

<sup>246</sup> Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>247</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011

their responsibility of according security to all people in Kenya, including refugees themselves will not solve the problem of insecurity.<sup>248</sup> At the end of the day, someone must be blamed for the increase of insecurity so as to be seen to be performing their duty, but this is dangerous since the problem only grows bigger and more complex since the root cause has not been established and the problem addressed.<sup>249</sup>

To signify refugees as a security problem, lifts it from the ‘normal’ realm to ‘extraordinary’ politics whereby ‘traditionally’ by saying ‘security’ a state representative declares an emergency condition, thus claiming a right to use whatever means are necessary to block a threatening development.<sup>250</sup> Securitization of refugees has therefore led to police raids and harassments of members of the refugee community on many occasions claiming to be doing regular searches of criminals from amongst them.<sup>251</sup>

“I and other young men of the refugee community have been arrested during police swoops in Nairobi on suspicion that we are criminals, especially after the terrorist attack in a bus terminus in March 2012 in the city. On arrival at the police station we have recorded statements that we are refugees and are innocent. We have proceeded to court and having no evidence against us, they have released us. We are not terrorists, we are refugees.”<sup>252</sup>

The fact that terrorists linked to Al-Qaeda claim responsibility of terrorist activities in the country does not give anyone a reason to conclude that these terrorists are of refugee community. The government has the right mechanisms and logistics of conducting investigations to arrive at a conclusion that refugees do not in any way contribute to security, and instead of securitizing the refugee issue, protect the vulnerable refugee and expose the criminal who camouflages in refugee ‘attire’, identity and language.<sup>253</sup>

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<sup>248</sup> Ibid.

<sup>249</sup> Ibid

<sup>250</sup> Shepard J. Laura, *Critical Analysis to Security; An Introduction to Theories and Methods*, (New York, Routledge, 2013), 79

<sup>251</sup> Op.cit

<sup>252</sup> Ibrahim Said, interviewed by Evelyn Kiswii, August 27, 2012.

<sup>253</sup> Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011.

#### 4.2.2 The relationship between refugees and insecurity

It is perceived that there is a relationship between refugees and insecurity. The perception is rife in the government of Kenya's security circles. It is perceived as such because of the suspicious relationship that has been there between the Somalis and Kenya in the 1960s. There are fears due to memories of the 'shifita' movement in the 1960s, that waged secessionist wars in northeastern supported by Mogadishu. This was because of Somalia's claim of an expanded Somalia into Kenya's Northeastern province.<sup>254</sup> President Kenyatta, was firm and maintained that, Kenya would not concede any of its territory. Since then, Somalis, especially refugees have been viewed with suspicion hoping to seal any possibility of renewed insecurity.<sup>255</sup> This perception is generalized for all refugees because of the insecurity situation in Somali and the fact that most of the refugees are of Somali origin. The pirates and terrorists that have been committing criminal activities in Indian Ocean and in Kenya especially in major towns and in North eastern province known as the Al Shabaab, claimed to have links with the Al-Qaeda terrorists, claimed responsibility of the heinous activities.

In October 2011, these Al Shabaab militants claimed responsibility of several abductions of tourists at the Kenyan coast and some abduction of several ships sailing in the Indian Ocean. These activities threatened Kenya's tourism industry which, was already being affected by travel bans from the European countries, due to insecurity. The government of Kenya liaised with the Transitional Federal Government of Somali to wage war on this security-menacing group of insurgents.<sup>256</sup> They joined forces and moved into Somalia with the aim of to crippling the operations of Al Shabaab militants. Looking back at the relationship between Kenya and Somali, origin of most refugees, since the 1960s, it has been getting sour day by day.

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<sup>254</sup>Rono Jona, *Kenya Foreign Policy" Africa Foreign Policies Stephen Wright* (ed.) (Colorado: Westview Press,1999), 10

<sup>255</sup> Ibid

<sup>256</sup> [http://en.wikipedia.org/wiki/The\\_Guardian](http://en.wikipedia.org/wiki/The_Guardian)

It is clear that from the historical analysis above, the relationship of Somali and Kenya since 1960s, has had challenges and that is the reason why Kenyan security forces are threatened by Somalis regardless of whether they are refugees or criminals. That is how the perception of refugees from Somalia as a threat to security came to be. The government of Kenya looks at all Somalis with an eye of scrutiny and suspicion and generalizes them as criminals, and this is where they err. There is need to separate criminals, extremists and pirates from refugees. Refugees are a vulnerable group that are also victims of the insurgents, they too need protection.<sup>257</sup> Refugees are not the perpetrators of insecurity but can be termed as victims. Its time the government took the international refugee protection instruments seriously and stopped victimizing them wrongly, and instead offer support and protection as expected.

Saida Ali, a resident and a business lady affirms that there is need to understand that there are two groups of forced, immigrants into Kenya, the refugees and the criminal groups. She says that criminals are everywhere especially along the northern Kenya border. She adds that, during their flight from Somali some criminals flee amongst the refugees and since the border is not properly sealed, they get an opportunity to get into Kenya. They sneak into Kenya with weapons, which are readily available at the border.<sup>258</sup> She advises that, when the government will realize that, refugees are not the cause of any security threats and tighten their cause in finding out the ones responsible for rise of insecurity, then they will succeed in curbing it, and Kenya will be a safe place even in the presence of refugees.<sup>259</sup>

Gabow supports the view, that the matter of arms proliferation is clearly a problem relating to Kenya's security, the porous borders of Kenya are used as the smuggling routes of these weapons. Large numbers of people cross in and out of the border every day some of whom are conducting illegal businesses. The security points at the border between Kenya and Somalia are not enough to address the problem of these illegal activities. The over 7000 miles stretch of

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<sup>257</sup> Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011.

<sup>258</sup> Saida Ali, interviewed by Evelyn Kiswii, July 15, 2013.

<sup>259</sup> Ibid

Kenya - Somali border is too vast and needs full surveillance for Kenya to win in the fight against crime and illegal businesses.

### **4.3 Other issues:**

In addition to the emerging issues as discussed above there were other issues that were identified from the study;

#### **4.3.1 Host community perceptions**

The host communities are those communities that live near or around where refugees are settled in a host country. They have social or economical interactions with the refugees on daily basis. Refugees will be less able to function in host communities where there is local resentment and antagonism stemming from the host community's perception that refugees have received unfair advantages from humanitarian agencies.<sup>260</sup>

Refugees living in Nairobi's Eastleigh and Westlands areas have had challenges of language barrier due to the fact that they neither speak nor understand the language of the host communities, i.e. Kiswahili and English. But, the refugees who have been settled at Dadaab refugee camps have an advantage because they speak the same language as the host communities.

In Dadaab, the Kenyan Somali's feel the refugees are given special attention because they receive assistance from UNHCR and other NGO's. Refugees are given food, medical attention and education among other social services. While majority of Kenyans are languishing in poverty, they cannot afford the life that they see refugees living. So they see them as enemies who have higher living standards, benefiting more than them in their motherland.<sup>261</sup>

From the study, refugee-host community relations still remain a challenge. The imbalance is clearly pronounced when refugees receive humanitarian assistance, which enables them to supplement their "incomes." This has resulted in scapegoating, which has often

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<sup>260</sup> Jacobsen Karen, *The Economic Life of Refugees*, (USA Kumarian Press, 2005), 106.

<sup>261</sup> Kirui Peter and Mwaruvie John, *The Dilemma of Hosting: A focus on the insecurity in North-Eastern Kenya*, International Journal of Business and Social Science 2012, 164.



portrayed refugees as sources of political, economic, social, and cultural problems.<sup>262</sup> Refugees are blamed for burdening an almost non-existent economy, e.g. through local shopkeepers who complain that their prices are regulated and taxed. In a letter to UNHCR, they wanted refugees to leave the Kakuma area. However, after they left, the hosts followed them to the camp because of lower food prices, leading to a booming business in the camp.<sup>263</sup>

As nomadic pastoralists, the hosts who, together with their cattle, depend on pasture and water for survival claim that in settled areas like Kakuma, Kalobeyei, Letea, and Lopur the land has already been destroyed by soil erosion caused by the presence of refugees.<sup>264</sup>

Michael Ekur, a Turkana pastoralist complained that their woes as a community were worsened by refugees. The Turkana community relies on livestock for survival, since their land is not agriculturally productive. He, expresses his dissatisfaction by the presence of refugees;

“When there were no refugees living around here we had good life, we had plenty of pasture and water to feed our livestock. But now look, we hardly have any pasture because of their livestock, our land has little pasture to accommodate our livestock and theirs. When drought strikes, we lose a lot of livestock. Refugees are straining our resources”.<sup>265</sup>

On the other hand, the refugees have positive contributions to the host community an opinion expressed by Nanok Rutere, who says that, refugees have enabled many young people to get jobs with the NGO’s that work at the camps. At the camps, there are also businesses and commodities there are cheaper than outside the camps. So they have positively contributed to our lives.<sup>266</sup> “Because of refugees, infrastructure has also improved. Our roads are better and this makes transport and communication easier,” added Rutere. This perception makes the host communities look at the other side of the coin of refugees.

Another area of positive contribution that refugees can make to host countries is skills and knowledge that can be utilized for the benefit of local people. In this regard, the multiple

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<sup>262</sup> Ahmed Karadawi, “Constraints and Assistance to Refugees: Some Observations from the Sudan,” *World Development*, 11:6 (1983), 539.

<sup>263</sup> Ekur Aukot. “*It is better to be a Refugee than a Turkana in Kakuma: Revisiting the Relationship between Hosts and Refugees in Kenya*,” *Global Movements for Refugees and Migrant Rights*. 21.3, (2003)

<sup>264</sup> Ibid.

<sup>265</sup> Michael Ekur, interviewed by Evelyn Kiswii, June 23, 2013.

<sup>266</sup> Nanok Rutere, interviewed by Evelyn Kiswii, June 23, 2013.

ways in which refugees pursue their livelihoods can make significant contributions to the local economy. For instance in Eastleigh Nairobi, there are booming businesses owned by Somali and Ethiopian refugees which is beneficial to the local communities in terms of access to cheap imported goods as well as provision of employment.<sup>267</sup> Another important contribution of refugees to local economies is taxes which is a source of income to the government.<sup>268</sup> A study of Somali refugees and remittances explains how cash transfers to refugees have impacts on receiving communities.<sup>269</sup> Individual remittances that often go to displaced families and relatives are used to meet basic livelihood needs. These resources have contributed not only to the improvement of living conditions at the household level, but also to those in refugee camps, especially in terms of housing, water provision, and telephone services. However, it is important to mention that in general remittances can also enhance inequalities since they are unevenly distributed and poorer households may not have relatives in the Diaspora. Notwithstanding the positive contributions that refugees can make to the economy of host countries, such contributions should be viewed in terms of both winners and losers among refugees as well as host populations. This illustrates that when refugees arrive, those among the host population who have access to resources, education, or power are better positioned to benefit from the refugee presence, while those who lack these resources in the local context become further marginalized such is the case of Somali refugees in Kenya.

#### **4.3.2 Camp management vs. mismanagement**

When Somalis arrived in Mombasa town in large numbers in 1991, the Government viewed their presence whether inside or outside the camps as a threat to its valued tourist industry.<sup>270</sup> The tourist industry was flourishing and had become one of the most successful tourist destinations in

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<sup>267</sup> I. Mohammed, 29th July 2011, Eastleigh, Nairobi.

<sup>268</sup> Y. Hussein, 29<sup>th</sup> July 2011, Eastleigh Nairobi.

<sup>269</sup> Ibid.

<sup>270</sup> Tiyambe.P. Zeleza and Cassandra R. Veney, *Leisure in urban Africa*. (Asmara; Africa World Press, Inc.,2003), 34.

Africa.<sup>271</sup> The Government maintained that presence of refugees created insecurity and crime, thus driving tourists away as a result; it designated refugee camps away from the coastal area of Mombasa. Despite all these efforts by the government to keep away refugees, they still settled in urban centres and set up businesses for financial self-sufficiency. Their increasing populace in urban centres instilled fear and insecurity and triggered off the government to conduct annual swoops in urban towns and cities as it shifted its refugee policy to encampment of all refugees. In 1997, the President of Kenya made an announcement about all foreigners and aliens, which prompted security swoops by the police throughout urban centres. The 1998 bombing of the US embassy in Nairobi opened a new terrorist chapter in Kenya's security history and even meant more effort and networking of security enforcement in the country. More swoops were conducted in an effort to force refugees into camps.

The Government's encampment policy has however borne fruit, in the sense that, only refugees who reside in the camps have access to international assistance. The Sudanese refugees were largely settled in Kakuma camp while the Somali refugees were settled in Dadaab. By 1997, all other camps were closed down and only Kakuma and Dadaab were left.

Kakuma is located in Turkana district 95kms from the Kenya Sudan border. Like Dadaab, Turkana is a semi arid region with little vegetation cover and surface water. Due to the harsh climatic conditions the native inhabitants of the region the Turkana, are nomadic pastoralists. The camp was first established to host the Sudanese 'lost boys' and following the massive influx of refugees from the horn of Africa and the great lakes region, it was expanded to serve refugees from Sudan, Somalia, Ethiopia and Burundi and DRC.

In the first eight months of 2012, the Dadaab refugee camp complex at the Kenya-Somalia border registered nearly 6,000 new arrivals from Somalia, bringing the total population of the northeastern camps to 474,000. If the Dadaab complex were a city, it would be Kenya's third largest, after Nairobi and Mombasa. A similar population explosion occurred on the other

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<sup>271</sup> Africa Watch, *US Committee for refugees 1996*, (Africa Watch, 1989).

side of the country, in Kakuma refugee camp in Kenya's northwest. Nearly 13,000 new refugees were registered between January to August 2012, mostly from South Sudan. The total camp population is now over 101,000. By August 2012, the total number of registered refugees and asylum-seekers in Kenya came to over 630,000 with 55,000 of these residing having migrated internally to Nairobi.<sup>272</sup>

Inhabitants of northern Kenya practice nomadic pastoralism. Because of the high poverty levels in the area, the camps have attracted locals from within and outside Dadaab to settle inside or in the periphery of the camps. UNHCR has estimated that 1/3 of the camp occupants are native Kenyans and not refugees.<sup>273</sup> Camps are therefore, overpopulated and ongoing security concerns have led to extreme resource constraints and protection challenges. Due to overpopulation, there have been reported cases of aggression within the camps, including rape and other forms of sexual and gender-based violence.<sup>274</sup>

### 4.3.3 Human rights violations

Chapter four of the constitution of Kenya provides for the respect of the rights and fundamental freedoms of all the people living within the borders of Kenya irrespective of their country of origin.<sup>275</sup> Apart from this, there are other international instruments that provide for protection of refugees. The Refugees Act 2006 Article 16, provides as below;

- “(1) Subject to this Act, every recognized refugee and every member of his family in Kenya
- (a) Shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party;
  - (b) Shall be subject to all laws in force in Kenya.
- (2) The Minister may, by notice in the Gazette, in consultation with the host community, designate places and the areas in Kenya to be;
- (a) Transit centers for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the

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<sup>272</sup> UN High Commissioner for Refugees (UNHCR), “2013 UNHCR Country Operations Profile—Kenya,” <http://www.unhcr.org/pages/49e483a16.html>.

<sup>273</sup> Mogire, Edward, *Victims as Security Threats: Refugee Impact on Host Security in Africa*, (England: Ashgate Publishing Company, 2011)

<sup>274</sup> UNHCR, *Safe Havens; Sheltering Displaced Persons from Gender-Based Violence* (Berkeley University of California, 2013), 5

<sup>275</sup> Chapter four, *The Constitution of Kenya*.

refugees family while their applications for refugee status are being processed; or  
(b) Refugee camps.

- (3) The designated areas provided for in subsection (2) shall be maintained and managed in an environmentally sound manner.
- (4) Subject to this Act, every refugee and member of his family in Kenya, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.<sup>276</sup>

The study has established that, human rights of refugees have been violated on different occasions by Kenyan security forces. This comes due to the perceived threats to security situation in Kenya and due to the bad relations the Somali and Kenya has had since time immemorial, It is assumed that the rise in insecurity is attributed to refugees influx. There is evident poor relationship and historical experiences between the refugees and Kenyan security agents. Since 1960s, there has been a negative perception that the rising insecurity in Kenya is as a result of refugee influx. This perception has been used by the security agents to do operations in the name of raids in search of criminals in the refugee communities. However, the operations have never borne fruit, because, those they have arrested and may be charged in court have never been of the refugee communities but criminals such as the terrorists.

These violations are in form of police harassments as well as city council officers. Operating a legal business in Kenya is accompanied by many challenges in form of business registration and licensing, for refugee communities. For informal businesses, the city council has regulations (city council by-laws) that should be followed. They invade businesses that are associated with the refugees in the name of collecting levies and taxes. Eastleigh is an Estate where many refugees living in Nairobi reside. Most of the refugees running these businesses are of Somali origin, others are Kenyan-somalis, the rest Ethiopian origin and Kenyan communities. They have invested in multi-billion businesses, which are flourishing. When one does not have the right legal documents, for their businesses, they risk harassments from the city council

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<sup>276</sup> Article 16, Kenya Refugee Act 2006.

officers. When they are subjected to these harassments, they try very much to avoid being arrested, so they bribe the council officers, and this encourages corruption.

The police on the other side, can decide to do their operations any time, claiming to restore security in the area. These raids are accompanied by arrests, where they may decide to claim that refugees do not possess the right documents to be in the country. They therefore declare them to be illegally in the country. These are not good news for the refugees who have run away to hide in Kenya, so they engage in activities of trying bribery to work their way out of trouble. Security officers take advantage of these occasions and will always carry handcuffs used to try scare the refugees in the hope of getting bribes from the refugee communities.

Mama Saida Ali, a refugee resident of Eastleigh and a business lady, complains of the rampant harassments by the police, and city council officers. She confirms, that the fact that they are refugees is reason enough for the security officers to appear any time and claim to be conducting operations for security purposes. Especially when there has been a terrorist attack, we are harassed day and night.<sup>277</sup> She gives her sentiments on the harassment from the security officers;

“It is here that they ask for identity documents. If they come across people without them, it will always be assumed that most of us are in Kenya illegally even when we have documents. It is true that some people from Somali take advantage of the homogeneity of the Somali people and hide amongst us, and it difficult to know who is faking identity and who is genuine, because we are many. But, that should not be used to gauge all of us, because most of us are genuinely refugees.”<sup>278</sup>

Since 1990s, the government has used the claims that the Somali population represents a threat to justify a legitimate range of measures. It has used the notion of threat to justify confinement of the refugees to the camps and to deny the refugees who leave the camps access to social services.<sup>279</sup> This form of securitization of Somali population has had significant implications for human security, described as refugee ‘ware housing’ which has been used by the Kenyan government to justify the confinement of refugees to closed camps in highly insecure

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<sup>277</sup> Saida Ali, interviewed by Evelyn Kiswii, July 15, 2013

<sup>278</sup> Ibid

<sup>279</sup> Betts Alexander, *Forced Migration and global politics.*; (United Kingdom: Blackwell Publishing, 2009), 78

borders.<sup>280</sup> The refugees, who have been in Dadaab refugee camp since 1991 have not had an opportunity to earn a livelihood or have freedom of movement, a case, which is different from that of the Sudanese refugee camps like Kakuma camp in the North West of the country. It is however necessary to note that, the language of threat and danger now dominates the refugee discourse where by, refugees seize to be victims of insecurity. At the same time the refugee policies are formulated to protect national security rather than the refugee.<sup>281</sup> Konzolo, views this encampment policy introduced in Kenya in 1990s, as a violation of human rights, in that it restricts refugees from freedom of movement, which is a right provided for all people by the constitution of Kenya. It comes as a form of discriminating against the refugees, which is a violation of human rights.<sup>282</sup>

Saida, expresses the wish of all Somali refugees, to stay in harmony with the authorities for she knows the need for security for everyone in the country. She pleads with the government to put mechanisms of conducting security checks, without harming refugees. She adds that, from a violent background, a refugee wants protection more that suspicions and harassments.<sup>283</sup>

#### **4.4 Conclusion**

Refugee issues as seen from the study, have been securitized in Kenya. The securitization theory developed by the Copenhagen school has been seen to dominate the security circles of Kenya. The data collected, both secondary and primary, has shed light of the reality on the ground concerning the views of many scholars and theorists on refugees as not only subjects of insecurity but as also referent objects of insecurity, a view supported by the antagonists of the realist theory, who refute the view that states are the only referent objects of security. Refugee issues should therefore be handled from the human security approach and societal security since they are a vulnerable homogenous group in need of protection. It is now clear that, while many

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<sup>280</sup> Ibid.

<sup>281</sup> Mogire Edward, *Victims as Insecurity Threats: Refugee Impact on Host State, Security in Africa*, (England; Ashgate Publishing Company, 2011) , 5

<sup>282</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011.

<sup>283</sup> Ibid

in Kenya, may shift blame to refugees for the rise of insecurity and proliferation of arms and light weapons, it has been established that they are not agents of insecurity, consequently, the government of Kenya, NGO's, the civil society of Kenya, host communities and the Kenyan communities at a large have a constructive role to play in the country of Kenya.



## CHAPTER FIVE

### CONCLUSION

#### 5.0 Summary

After a detailed study and analysis of the relationship between refugees and insecurity, and the relationship between refugees and proliferation of small arms and light weapons, several conclusions can be drawn. The study represents an inter play of scholarly concepts; World society view developed by Kant, locates real cohesive power in identity groups, such as refugees. The social system of asylum seekers in their home countries has been unable to provide for the human needs such as food, clothing, development, identity and most importantly security, a problem that has led them to migrate to other countries such as Kenya to seek refuge away from the warring environment.

Societal security concept has been seen where the refugees seek safety and protection as a group. It has also been experienced when the refugee community is working against all odds to make ends meet, by empowering members of the group. A very important role has been played by civil society groups, through educating and creating awareness of their rights as well as the laws of the host country. As implies Wolfers that, security rises or falls with the ability of a nation to deter an attack or defeat it.<sup>284</sup>

Human security theory is seen where, legal instruments have been put up to protect refugees. The national instruments as well as international instruments of protecting refugees play an important role in human security. Human security is also seen in the call for respect of human rights, as emphasized.

Securitization concepts have been seen in play where, all security issues; crime, terrorism, burglary trade and proliferation of small arms and light weapons, are attributed to refugees. This concept was developed by the Copenhagen school, that strongly contends that, if refugee issues are securitized, they shift from the 'normal' realm to 'extraordinary' politics

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<sup>284</sup> Ayoob Mohammed, *The Third World Security Predicament: State Making, Regional Conflict and the International System*, (London: Lynne Rienner Publishers, 1995), 5

whereby ‘traditionally’ by saying ‘security’ a state representative declares an emergency condition, thus claiming a right for the government of Kenya to use whatever means are necessary to block a threatening development.

The historical relationship between Kenya and Somali’s Al Shabaab militants has become sour over the years. The instability in Somali and by virtue of Kenya being its neighbour, including the threats that Kenya has been receiving from Somali have influenced the perception that security of Kenya is at a threat. This according to scholars, is deemed to cause internationalization of conflict. Manifestation of internationalization of conflict is spread of small arms and refugee influxes.<sup>285</sup>

According to the study, the increasing rate of insecurity is not caused by refugee influx in Kenya. It has also been established that, refugees are neither, responsible for proliferation of small arms and light weapons in Kenya. And lastly, the study also found out that the government of Kenya is not doing enough to observe the international laws that protect the refugees but instead uses them as a scapegoat for its failure.

## **5.1 Key findings**

The study explored how influx of refugees has contributed to the rise in insecurity as well as proliferation of small arms and light weapons in Kenya from 1991-2012. While it is true that insecurity has been rising i.e. cases of banditry, cattle rustling, theft, murder and burglary, for many years now, it has been assumed that the perpetrators of these weapons used in these criminal activities, are refugees. Crimes have been attributed to unemployment of young people, poverty and lack of security personnel and equipment to combat and control crime.<sup>286</sup> The study has found that there are groups of criminals that take full advantage of refugee influxes to trade in small arms and hide amongst refugees to camouflage their activities. To their advantage are

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<sup>285</sup> Koech John, “Emerging Challenges of Security in IGAD” in M. Mwagiru (ed), *African Regional Security in the Age of Globalization* (Heinrich Böll Foundation, 2004), 126.

<sup>286</sup> Asman Kamama, interviewed by Mohammed Hussein, July 29, 2013.

the large numbers of the refugees that makes them difficult to be noticed. These groups are the ones that make refugees get mistaken for the rising insecurity.

Refugees have been blamed for insecurity in Kenya because, the country of origin of most refugees, i.e. Somali, has had civil war for decades; The protracted instability has caused internationalization of conflicts or spillover of effects into Kenya. This assumption has drawn reactions from the country's security team. They have severally attacked the refugee community due to the suspicion that, they are behind these activities. This way of making an issue a security issue is what the Copenhagen school describes as securitizing an issue.<sup>287</sup> So in this case, refugee issues have been securitized.

The study has also established that small arms and light weapons are sold across the borders and not by the refugees as assumed. There are illegal markets in the neighbouring countries near the Kenyan borders where criminals or citizens can easily access them into the country, for the purpose of trading in them, committing crime or protecting themselves.<sup>288</sup> The whole of the Northeastern Kenya province is plagued by insecurity that is attributed internally to; banditry, illicit firearms, cattle rustling and inter-clan conflict, poverty and poor governance and externally to; foreign militias and rebels. Refugees are just a group of vulnerable people who need protection. When the criminal groups hide amongst them, the refugees' lives are put at risk and cannot report them to the authorities. Many times we have had the criminal activities targeted at the camps, killing and injuring the helpless refugees. They too need to be protected by the government both inside and outside of the camps.<sup>289</sup>

## **5.2 Recommendations**

Security in Kenya is of paramount importance to the state and to all citizens and non-citizens living in this country. The government has a responsibility to protect its people from insecurity.

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<sup>287</sup> Balzacq Thiery, *Securitization Theory; How security problems emerge and dissolve*, (ed), (New York, Routledge, 2011), 1

<sup>288</sup> Jacob Lealmusia, interviewed by Evelyn Kiswii, August 2, 2013.

<sup>289</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011.

As it is today, the ratio of Police to citizens in Kenya is 1:500 - 1000.<sup>290</sup> This ratio is above the UN standard ratio, which is 1:400.<sup>291</sup> The security situation should be a wake up call to the government to deploy more police officers to manage crimes. The police reforms, which are underway, will increase police motivation and improve the welfare of security personnel and hence reduction of corruption. The strengthening of law enforcement needs to be complimented by strengthening of the judicial capacity to ensure that perpetrators of crime are prosecuted effectively and decisively. It is recommended that this can be achieved through the financial and technical assistance of UNHCR and donors.<sup>292</sup> In addition to strengthening the institutional response to crime, it is recommended that closer coordination between law enforcement personnel and refugee communities must be established in order to develop common strategies to address crime.

To address the problem of illegal immigrants conducting illegal businesses across the Kenya- Somali border, it is recommended that the Government should be provided support by UNHCR and donors in order for it to increase the number of trained security personnel assigned to the Kenya-Somali border. Simply increasing the number of security personnel, however, is not sufficient. The support received should also include the provision of adequate equipment such as telecommunications, transportation and other logistical equipment necessary to fulfil their role in an effective manner. Another alternative to this would be for the government of Kenya to consider opening the Kenya Somali border given the volume of trade that is already taking place across that border, even when it is closed, and the security problems that closed border frontier presents to vulnerable persons. There are clear benefits from re-opening the border and legalizing trade and movements. This would benefit the host communities as well as the refugees

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<sup>290</sup> Zipporah Gatiria, interviewed by Hussein Mohammed, July 29, 2013.

<sup>291</sup> Okafo Nonso, *Reconstructing Law and Justice in a Post-Colony*, (England, Ashgate Publishing Ltd, 2009), 158

<sup>292</sup> UNHCR, Report on Kenya Stakeholder Consultation, *Strengthening Refugee Protection, Assistance and Support to Host Communities in Kenya And Comprehensive Plan of Action for Somali Refugees*, Nairobi, Kenya, 2005, 18

and the government's ability to monitor movements and collect taxes just as across other borders. It does not seem like it would pose an added security threat since the border is opened.

When refugee issues are securitized by the government, it means that they pose danger and threat to the existence of Kenya.<sup>293</sup> This follows that it is not right to securitize all issues, and so these refugee issues should focus on whether the resources allocated to the departments concerned with security are adequate in dealing with the problem and a way forward should be sought.

The Government, UNHCR, NGOs, Civil Society, advocacy groups and the Media should all be encouraged to work in concert to tackle xenophobic and negative perceptions on refugees in Kenyan society. Refugees should be clearly distinguished from other migrant groups to ensure that criminal acts are not automatically or incorrectly imputed.<sup>294</sup>

Under the encampment policy, the government can provide additional space required for housing refugees with the aim of decongesting the camps.<sup>295</sup> This will make security operations in the camps and criminals will not walk free or take advantage of mingling with the innocent people. It is recommended that the government re-evaluates the encampment policy applied in the refugee camps. This policy has not been able to restrain vibrant trade and business development and effectively the camps are open not only towards the host area and the border regions but also to those with intent to the rest of Kenya. The level of commerce within the camps and between the camps and the host area and beyond shows the productive contribution of refugees if it were not for the restrictions placed on them by the encampment policy.

Kenya should put in place programs that aim at expanding social services and infrastructure to support the local integration of refugees in the host countries. Trained professionals in the camps should be integrated and absolved in the market for contribution to

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<sup>293</sup> Simon Konzolo, interviewed by Evelyn Kiswii, August 1, 2011.

<sup>294</sup> Op. Cit

<sup>295</sup> The Republic of Kenya, *Socio-economic and environmental impacts of Dadaab Camps on Host Communities*, Op .Cit

the economy of Kenya. This would enable them to be self-reliant and as well reduce the burden and pressure on resources.<sup>296</sup>

In conclusion, the study, argues that refugee influx does not play a role in increasing insecurity, so it is possible for peaceful co-existence between the refugees and the host country. The refugees deserve to be accorded their rights by the Kenyan people as stipulated by the International Law.

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<sup>296</sup> Noor Gabow, interviewed by Evelyn Kiswii, August 8, 2011.

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### **List of Interviewees**

- Asman Kamama, Chair Parliamentary Security Committee
- Eric kiraithe officer, Kenya Police
- Isaachar Mohammed member of refugee community
- Jacob Lealmusia member of the host community
- Kedemech Demeke member of Ethiopian refugee community
- Mariam Omar member of refugee community
- Michael Ekur member of host community
- Mohammed Hashmi a member of the refugee community
- Nanok Rutere member of host community
- Noor Gabow Adminstrator Vigilance House
- Omar Dhadho officer Department of Refugee
- Palek Dagan member of Sudanese refugee community
- Rose Kanana officer Danish Refugee Council
- Simon Konzolo Refegeee Consortium
- Yassin Hussein member of Somali community
- Zipporah Gatiria Officer, at Kenya Police