

**BORDER MANAGEMENT AND NATIONAL SECURITY: AN ANALYSIS OF
THE IMPLEMENTATION OF BORDER POLICIES IN KENYA**

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DECLARATION

Declaration by the Student

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

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Declaration by the Supervisor

This research project has been submitted for examination with my approval as University Supervisor.

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DEDICATION

To my entire family, Mutinda, for your love and support that gave me the courage to press on when I was almost giving up, to my children, Mueni and Mwendwa for their understanding during this study, to my dear mothers, Anne and Rose, who believed in me and prayed for me when times were tough, to my late father, Patrick, who did not live to witness this success, I have made you proud. To my friends and colleagues for their support and that helped me throughout the program at the Institute of Diplomacy and International Studies (IDIS), Nairobi.

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ABSTRACT

The study sought to analyze the challenges facing effective implementation of border management policies in Kenya. In particular the study sought to achieve the following specific objective: To determine the impact of emerging global trends on border management and implementation of border policies in Kenya. From the literature reviewed, there was a need to evaluate the key challenges that face the leading border management agency in Kenya. The areas investigated were, emigration and immigration, regional integration and information technology. The study adopted a survey research method to collect information during a highly structured interview. The study relied on primary data which was collected using questionnaires that were administered to immigration officers and administrative officers within the Department of Immigration and data analyzed qualitatively. The findings of the research show that challenges exist in the effective implementation of border policies and procedures. Emerging trends in the globe were seen as major determinants and challenges to effective border management. To a large extent, integration as a trend has had impact on border management as well as migration. Information Technology has had positive impact on effective management of border policies.

LIST OF ACRONYMS

BCP'S	-	Border Control Points
CEES'	-	Central and Eastern European Countries
COMESA	-	Common Market for East and Central Africa
DDF	-	Departure Declaration Form
EAC	-	East African Community
ECOWAS	-	Economic Community of West African States
EDF	-	Entry Declaration Form
EU	-	European Union
GOK	-	Government of Kenya
ICT	-	Information Communications Technology
ILO	-	International Labor Organization
IOM	-	International Organization for Migration
NAFTA	-	North American Free Trade Agreement
OSBP	-	One Stop Border Post
PISCES	-	Personal Identification Secure Comparative and Evaluation System
Protocol	-	Protocol on the Establishment of the East African Community Common Market
UNDP	-	United Nations Development Programme
UNHCR	-	United Nations High Commissioner for Refugees

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

Towards the end of the 20th century, globalization increased the complexity of managing borders. The international community has witnessed the entrenchment and tightening of border controls triggered largely by cross border crimes and globalization of organized crime syndicates. In the last two decades, movements of people and goods have tremendously increased, calling for the adaptation of immigration and border management structures to better and more efficiently manage people flows and trade. As a consequence, states have been and still are confronted with a common challenge: facilitate movement of legitimate people and goods while maintaining secure borders, to ensure the right balance between open, but at the same time controlled borders.

Borders exist to define and emphasize differences between states, peoples and different concepts of political, economic and social order. Concepts such as “borderlands,” “economic integration,” and indeed, the “free flow of low-risk people and goods” for purposes of mutual benefit emphasize the similarities and complementarities between (or among) nations and between the communities, individuals and other societal interests of which they are composed.¹

Border management includes the procedures applied to persons and objects crossing the border to ensure they comply with laws. It also means how different agencies are

¹ Geoffrey Harle, *In Search of Effective Border Management*, Canadian International Council, 2009.

organized and how they fit into a unified concept of border management.² The turbulences of the world politics (international relations) either stabilizes or destabilizes international borders. The state and its borders remains an important factor in international relations.³ Boundary studies are still in the process of development and their theorization as well as practical meaning for states is emphasized by researches. The border, if on land, separates two countries. Crossing the border means that persons, vehicles, and goods must comply with the laws of the exit country and the entry country. Borders usually, but not always, correspond to geographical separation. They may also be drawn or redrawn along ethnic lines or zones of economic influence. The principle of border delineation notably affects border operations.⁴

1.2 Background to the Study

Border management may be defined as all legal and administrative efforts a sovereign state undertakes to secure, safeguard and enhance the sovereignty, security, safety and integrity of its territory. Border management therefore is key to any national migration policy. In this regard, the Office of the President through a circular number 1/2008 designated the Department of Immigration the as the lead Agency at Immigration Control Border Posts.⁵

² McLinden, Gerald Fanta, Enrique Widdowson, David, , *World Bank Publications, Herndon, USA, 2010.*

³ Anna Moraczewska, *The Changing Interpretation Of Border Functions In International Relations*, Revista Română de Geografie Politică Year XII, no. 2, November 2010, pp. 329-340, Article no. 122111-202.

⁴ McLinden, Gerald Fanta, Enrique Widdowson, David, , *World Bank Publications, Herndon, USA, 2010.*

⁵ Kenya National Migration Policy, 2013.

For the purpose of this paper the term “management of borders” is understood as the processes and procedures associated with border checks, which take place at authorized crossing points, including airports, and border surveillance, which is carried out on the so-called green (land) borders between authorized crossing points as well as along the blue (sea) borders. This definition is largely the same as given by Hills, who however does not include sea borders.⁶ At sea the border is the limit of territorial waters.

Border Control is the effort to restrict territorial access and has been a core state activity.⁷ All states monopolize the right to determine who and what is granted legitimate territorial access.⁸ This is an attempt to practice territorial sovereignty by states. This is done by adopting policies and enacting laws that require international travelers to pass through official ports of entry.⁹ Borders exist to control the movement of people and of physical goods.

Management of borders and movements of people and goods has long been a major political, economic and security issue. A combination of globalization and technological advancement has made the mass migration of people and goods easier and quicker. The economic downturn continues to afflict many countries, again encouraging migration, with the chance that the migrants will include criminals and other high risk individuals.

Crimes of terror frequently have a cross-border dimension. As such, borders are an ever

⁶ Hills, A., *'The rationalities of European Border Security'*, 15 *European Border Security* 1 (1996), 69

⁷ Malcom Anderson, *Frontiers, Territory and state formation in the Modern World*, Cambridge: Polity, 1996.

⁸ Samuel P. Huntington, *"Transnational Organizations in World Politics,"* *World Politics*, Vol. 25, No. 3 (April 1973), pp. 333-368.

⁹ Rey Kolowski, *The Evolution of Border Control As A Mechanism Prevent Illegal Migration*, Migration Policy Institute, 2011.

more important part of the wider challenge of maintaining public security but ‘policing’ them raises ever-greater challenges.

Border management is a multi-faceted activity requiring distinct forces with different backgrounds, skills and training. Consequently, with a view to enhance border efficiency and security the policy advocates for the involvement of all border stakeholders and the strengthening of border management committees to deal with cross-cutting border issues. These include border risks and threats, border security, intelligence, data collection and information management, document forgeries and frauds; refugees, irregular immigrants, trans-national crimes and terrorism.¹⁰

The integrity of physical borders remains critical to effective border management. Even as international travel has increased exponentially, border management systems have had to contend with additional risks associated with these movements. Such risks which include terrorist attacks, human smuggling and illegal immigration have exposed weaknesses in the state’s ability to manage borders effectively. The last decade has seen huge governments’ investments to implement new border management frameworks.¹¹

Currently, global border management is increasingly under threat from increased use of fraudulent travel documents, trans-national crimes, among them, smuggling and trafficking in persons, terrorism, drug trafficking, trafficking in small arms, money laundering and recently piracy. Illegitimate people can now acquire legal documents

¹⁰ Kenya National Migration Policy, 2013.

¹¹ Collett, Elisabeth, *Emerging Transatlantic Security Dilemma in Border Management*, Migration Policy Institute, 2011.

using illegal means. In addition, border porosity, increased refugee cross border movements and weak enforcement remain major border management operational challenges.¹²

Transnational crimes are perpetrated by persons crossing international borders either by air, on land or by sea. Consequently, an effective border management policy should strengthen border management and enhance the capacity to detect and intercept *mala fide* travelers and efficiently facilitate the free movement of *bona fide* travelers. This is a key component to any successful border policy.¹³

There is need, therefore to strengthen and standardize border operations in an attempt to diminish the potential for illegal entry and to counter trans-national crimes. It is worth noting that a state has the right to determine whoever it allows to enter or depart from its territory and under what conditions. A state can deny entry or expel from its territory any person who has no authorization to enter or remain in its territory.¹⁴

Like other flows, whether financial or commercial, flows of ideas or information," notes a 2003 report by the International Organization for Migration (IOM), "the rising tide of people crossing frontiers is among the most reliable indicators of the intensity of

¹² Collett, Elisabeth, *Emerging Transatlantic Security Dilemma in Border Management*, Migration Policy Institute, 2011

¹³ Collett Elisabeth, *Emerging Transatlantic Security Dilemma in Border Management*, Migration Policy Institute, 2011.

¹⁴ Kenya National Migration Policy, 2013.

globalization."¹⁵In the words of David Held and his coauthors, "There is now almost no state or part of the world that is not importing or exporting labor."¹⁶ States that were once countries of emigration have become migration-receiving states, and states that once declared that they were "not countries of immigration" have amended long-standing migration and citizenship policies to adjust to the realities of contemporary migration flows.¹⁷An examination of some basic migration statistics offers an indication of the significance of migration as one component of the larger process of globalization.

According to the IOM, approximately 180 million people live outside their country of birth, up from 80 million three decades ago. The number of people who migrate across national borders in any given year is between 5 and 10 million. One out of every 35 persons in the world is a migrant, or almost 3 percent of the global population. If all migrants formed a single state, it would be the world's fifth most populous country.¹⁸

1.3 Statement of the Problem

The borders connect countries with each other and the effectiveness and smooth operation of these connections are central to the economic and social development of countries. Protection of the border is essential for the protection of state and opening up of borders is also important to a country, but it also presents risks. Human beings are not

¹⁵ International Organization for Migration (IOM), World Migration, 2003: *Managing Migration: Challenges and Responses for People on the Move* (Geneva: IOM, 2003), p.

¹⁶ Held et al., *Global Transformations*, p. 297. See also Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 3d ed. (London: Macmillan, 2003).

¹⁷ Examples of the former include Greece, Ireland, and Italy; and the latter, Germany.

¹⁸ International Organization for Migration (IOM), World Migration, 2003: *Managing Migration: Challenges and Responses for People on the Move* (Geneva: IOM, 2003)

a sedentary species and regularly relocate across national boundaries.¹⁹ Is it possible that there are emerging trends in the world today that are making the task of implementation of border policies and management more complex and difficult? This means that the movement across boundaries may pose some threats to national security especially if the migrations are illegal. The emerging trends include human trafficking, human smuggling, information technology, regional integration and terrorism.

1.4 Scope of the Study

Kenya borders Uganda, Tanzania, Ethiopia, Southern Sudan, and Somalia. The Department of Immigration in Kenya has various border operations within those borders. Border Management operatives of the department are guided by a Border Policy whose objectives are: to facilitate entry into Kenya of travelers who meet entry requirements, to identify and manage the risks to Kenya arising from those travelers who do not meet the entry requirements, to enforce the entry and exit legislation and related regulations, to promote inter-agency and cross border cooperation and coordination in border management.

The study will focus on the Department of Immigration, which is the lead agency charged with border management in Kenya. Other border management bodies include the Kenya Police Service and Kenya National Intelligence Service. Recent global trends in the world have necessitated the Department of Immigration to adopt various policies over

¹⁹ Walsh James, *Navigating Globalisation: Immigration Policy in Canada and Australia, 1945-2007*, Sociological Forum, Volume 23, No.4, Dec 2008,

time to ensure security, to ensure management of entry and exit of persons as well as controlling residency.

1.5 General Objective

To determine the impact of emerging global trends on border management in Kenya.

1.5.1 Specific Objectives

- a) To investigate the impact of migration and immigration on effective implementation of border policies in Kenya
- b) To examine the impact of regional integration on effective implementation of border policies in Kenya
- c) To assess the impact of information technology on effective implementation of border policies in Kenya

1.6 Literature Review

This section reviews various literatures on border management in Europe, America and Mexico. It also views works of scholars in border management such as Ackleson, Newman and Mc Linden. There is scarcity of information regarding scholarly material from Africa and thus most of the work reviewed is from other parts of the world such as Europe with particular emphasis on European Union, The border between Mexico and America, as well as the East African region.

There are more international borders in the world today than ever there were before. This is because recognize the need to have demarcated boundaries to mark their territory as a sign of sovereignty. The proliferation of borders and the many forces that have created and fostered their development, together have drawn scholars to a mutual interest in what happens at borders, frontiers and borderlines and the major forces of change that seem to be sweeping across the globe.²⁰

Managing borders is a complex task. Border management officials are presented with multiple, sometimes contradictory, objectives. Experience has shown that solutions must be tailored to national circumstances. But while there are no universal prescriptions for reform, many successful and promising initiatives are under way around the world. Many examples of good practice can be studied and replicated elsewhere.²¹

More recently, a focus on borders has emerged, somewhat for different reasons. These have not focused on national entities but rather on conglomerations of states with extra national borders²². A common establishment has always been the establishment of easier trading between partner states, with consequently more difficult access to trade for those outside. Most countries have adopted more serious border policies after the attack on America in September 11 2001.

²⁰ Wilson, Thomas M. Donnan, Wiley-Blackwell *Companions to Anthropology, Volume 26: Companion to Border Studies*, Wiley Blackwell, Hoboken USA, 2012.

²¹ Gerard McLinden, *Border Management Modernization. A Practical Guide for Reformers*, The World Bank.

²² James J.F., *Homeland Security, Protecting America's Targets, Volume 1: Borders And Points Of Entry*, Praecier Security International USA, 2006.

1.6.1 Border Management in Europe

In order to achieve a right balance between secure and controlled borders, the EU has developed the concept of Integrated Border Management which is a key element to border management strategy in the programming of border management activities. Integrated Border Management requires that all competent authorities work together in an effective and efficient manner. Cooperation should not be established exclusively within each country, but also across its borders, with relevant agencies of neighboring States. Integrated Border Management seeks to address three levels of cooperation and coordination: intra service cooperation, inter-agency cooperation and international cooperation.²³

There has emerged new forms of border management such as cross border policing in the European Union and bilateral border management in North America and the persistence of more traditional border control efforts in many parts of the globe particularly in the developing world which are generally less technologically driven and often are much less strict as they deal with different security concerns.

In the last six years the European Union has striven to build a strong area of freedom, security and justice. The results are mixed. Some specific achievements are remarkable and need to be acknowledged. Yet, expectations about the level of policy convergence in substantial aspects of migration and asylum are still unmet.²⁴ Harmonization towards a truly Community-wide policy remains unsatisfactory. It appears that national sovereignty

²³ IOM, *Integrated Border Management*, IBM Fact Sheet, 2011

²⁴ Thierry Balzacq, Sergio Carrera, Migration, *Borders And Asylum: Trends And Vulnerabilities In Eu Policy*, Centre for European Policy Studies, Brussels, 2005.

imperatives are pitted against communitarisation factors. Some member states are struggling to keep a monopoly of competence and decision-making in the fields of immigration, borders and asylum. Further, a closer scrutiny of some of the provisions included in the EU's legislative instruments reveals low minimum standards, wide discretion for application by member states and restrictive exceptions even to the core elements and rights. The result is a blurred Community policy.²⁵

The launch of the Lisbon strategy in March 2000 identified as a goal for the next decade that the EU “becomes the most competitive and dynamic knowledge-based economy in the world; capable of sustainable economic growth with more and better jobs and greater social cohesion, a Union where the economic and social aspects of the ageing population become more evident and where the labor market for immigrants and refugees represents a crucial component of the integration process”.²⁶

There seems to be a general consensus that solid policy responses are needed at the transnational level to frame human mobility (migration and asylum) in the common EU territory. An agreement at EU level regarding conditions and rules for the admission of migrants for economic purposes represents a key element for facilitating the actual processes of inclusion of migrants into the labor markets of the member states. Yet to

²⁵ Thierry Balzacq, Sergio Carrera, Migration, *Borders And Asylum: Trends And Vulnerabilities In Eu Policy*, Centre for European Policy Studies, Brussels, 2005.

²⁶ The Lisbon Strategy – *Making change happen*, COM(2002) 14 final, Brussels, 15.1.2002.

date, there has been an unacceptable official reluctance concerning the liberalization and adjustment of immigration policies in order to reflect these realities and needs.²⁷

A first proposal for a directive laying down the basic conditions and rules of admission of migrants for employment purposes was presented by the Commission in 2001.²⁸ It was the impending enlargement however, reinforced by the sharp increase in sub-Saharan migration across the Mediterranean from 2000 onwards and the events of 9/11 that brought borders back on the EU's policy agenda.²⁹ The December 2001 JHA Council meeting agreed on the following four points: to strengthen and standardize European border controls, to assist candidate States in organizing controls at Europe's future external borders, by instituting operational cooperation, to facilitate crisis management with regard to border control and to prevent illegal immigration and other forms of cross-border crime.³⁰

A sub-concept of Integrated Border Management frameworks is the One- Stop-Border-Post (OSBP). Even though a relatively new concept by title, One Stop Border Posts have been implemented in various ways and in many regions, implying a single, shared physical infrastructure in which the neighboring countries' customs/border services

²⁷ H. Schneider, "Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to The Hague" in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Volume II, Forum Maastricht, University of Maastricht, 2005.

²⁸ J. Apap and S. Carrera, *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December 2003.

²⁹ Monar, J., 'Justice and Home Affairs', *Journal of Common Market Studies* (Annual Review 2002/2003), 124. See also De Haas, H., 'The Myth of Invasion: Irregular migration from West Africa to the Maghreb and the European Union' (Oxford, IMI Research Report, October 2007), 15, who links this increase to a major anti-immigrant backlash in Libya in 2000.

³⁰ European Union Council Document 14581/01, 13.

operate side by side. A parallel concept exists called “Coordinated Border Management” (widely recognized by the customs community and the World Customs Organization), with similar objectives to Integrated Border Management, which focuses more on the specifics of enhanced coordination and collaboration between Customs with other non-state actors.³¹

A good example is the Integrated Management in the Western Balkans and Turkey, implemented by IOM and funded by European Commission. It sought to put in place and develop several important aspects of Integrated Border Management doctrine across eight countries. The project conducted an exhaustive assessment for all main interlocutors in all eight countries and the resulting recommendations included the establishment of a forum for Heads of Border Services to exchange information and strategy on the management of their border posts. This was designed to assist in satisfying the international cooperation pillar of Integrated Border Management. Inter-agency cooperation was also developed by the cross-agency training events indicated as priorities by the assessment which included sessions on the principles of Integrated Border Management itself as well as training aimed to equip practitioners to institute Risk Management procedures into the work of the front line entities.³²

Jason Ackleson, examines Mexico border security in both the pre- and post-September 11th, 2001 periods. He argues for and then employs a constructivist approach to better understand the socio-political context in which the United States has formulated policy

³¹IOM, *Integrated Border Management*, IBM Fact Sheet, 2011

³² Ibid

solutions for certain defined threats or risks; namely undocumented migration, drugs, and terrorism. He explains how these phenomena are treated as security issues on the border, a process that involves the rhetoric and symbolism of political projects concerned with identity, power, and order. This analysis is accomplished through an evaluation of both policy changes and public discourse. He contends that, in response to a number of transnational threats, a gradual merging of societal and state security has occurred in both periods.³³

EU asylum and immigration policies are characterized by a competition between two partly conflicting policy frames: the realist frame of internal security, which emphasizes the need to tighten up territorial borders and to fight illegal immigration, and the liberal frame of humanitarianism, which incorporates the human rights-based notions of freedom of movement and refugee protection. Whereas recent developments under the Amsterdam Treaty point at the attempt to revalidate liberal elements against a realist drift, this article shows that the extension of asylum and immigration policies to the Central and Eastern European countries (CEECs) is dominated by the imperative to secure the new border against unwanted immigration. In the light of the new priority given to these policy fields in the Union, these conflicting requirements are likely to form major obstacles in the process of eastern enlargement.³⁴

³³ Ackleson J, *Constructing security on the U.S.–Mexico border*, 2010.

³⁴ *Journal of European Public Policy, Migration and the EU's new eastern border: between realism and liberalism*, Routledge Volume 8, Issue 1, 2001.

The Schengen Agreement, in existence since 1985, promotes freedom of movement between the participating countries through the removal of systematic border controls without reasonable suspicion. To compensate for this, and to increase the Schengen Member States' internal security, checks at the Schengen external borders are intensified. Cross-border cooperation between national police forces is also stepped up. This cooperation is centered on the Schengen Information System (SIS), a joint electronic database for tracing individuals. The national operational structure behind the SIS is the SIRENE office (Sicherheit in RechnerNEtzen, meaning Security in Computer Networks), which forms part of the fedpol (Federal Office of Police) operations centre.³⁵

The September 11 terrorist attacks brought unprecedented attention to "home-land security"-a once obscure term that has quickly become part of everyday security discourse-and has further inflated domestic anxieties about border security. The immediate response to the attacks included a sharp tightening of border inspections and a rush by politicians from across the political spectrum to emphasize the need for more secure borders.³⁶

Immigration laws also become a favorite (and controversial) new antiterrorism tool for law enforcement authorities, leading to a surge in detentions and deportations of unauthorized immigrants from Arab and Muslim countries. Terrorism has heightened the public's awareness of and fears about porous borders: According to a Zogby public

³⁵ Federal Office For Migration, *Final Report of the Integrated Border Management*, Strategy Group, 2012.

³⁶ Jonathan Peterson and Patrick J. McDonnell, "Tightening Immigration Raises Civil Liberties Flag," Los Angeles Times, September 23, 2001.

opinion survey a few weeks after the terrorist attacks, 72 percent of those polled said better border controls and stricter enforcement of immigration laws would help to prevent terrorism.³⁷ For example, Rep. Tom Tancredo (R-Colo.), chairman of the House Immigration Reform Caucus, emphasized that the defense of the nation begins with the defense of its borders. Similarly, Sen. Byron Dorgan (D-N.D.) argued that "America can't effectively combat terrorism if it doesn't control its borders."³⁸

1.6.2 Border Management in USA and Mexico

Review of border management in USA and Mexico seeks to provide a comprehensive yet accessible look at the state of affairs in border management and the border region, focusing on areas of trade and economic development, and security. It is important to review border management in Europe and America because this is one border where each of the countries benefits from each other economically. Cross-border co-operation and development is a significant phenomenon in the globalizing world today.³⁹

The state of security along the U.S.-Mexico border easily ranks as one of the most highly charged topics of public discussion and debate in both the United States and Mexico during the past several years. Concerns about global terrorism, potential threats posed by those entering the United States illegally, and fears that skyrocketing violence in Mexico

³⁷ Zogby International, "Sound Bites," <http://www.zogby.com/soundbites/ReadClips.dbm?ID=3954>.

³⁸ <http://www.latimes.com/news/printedition/front/la-092301immig.story> Quoted in Bart Jansen, "Bill Aims to Shore Up Northern Border," Portland Press Herald (Maine), October 4, 2001.

³⁹ Kenichi Ohmae, *The End Of The Nation-State: The Rise Of Regional Economies*. New York: Simon and Schuster Inc., 1995. 214 Pp.

might “spillover” into the United States have led to dramatic policy shifts and significant new investments by the U.S. to “secure” the border.

Though more often characterized as a source of security threats and vulnerabilities, the U.S.-Mexico border is also a modern frontier with immense opportunities. The joining together and in many ways overlapping of two great countries and societies has created a region fertile with business opportunities, rich in culture, and full of delicate natural treasures. Many of the unique opportunities presented by the border remain untapped, hidden away from the nations’ financial centers and capitals.⁴⁰

Twelve years after the September 11 tragedy, it is important opportunity to look again at the issue of border security and see how the issue has evolved and changed in that period. While prevention of cross border terrorist threats formally remains the top priority for border agents, secondary issues have come much more to the fore, possibly because real cross-border terrorist threats have not materialized, and partly because other more pressing issues have taken center stage; stopping cross border violence, illegal migration, and drug trafficking. The fact of the matter is that border security agenda has become less about national security and terrorist threats, and more about public safety.

Erik Lee and Eric Olson discuss how concerns about global terrorism, potential threats posed by those entering the United States illegally, and fears that skyrocketing violence

⁴⁰ Christopher Wilson and Erik Lee, *The State of the Border Report, A Comprehensive Analysis of US-Mexico Border*, Wilson Centre, Washington, 2013.

in Mexico might “spill over” into the United States have led to dramatic policy shifts and significant new investments by the United States to “secure” borders.

Andreas and Biersteker, explore the implications of September 11th 2001 and the new war on terrorism for border controls, cross-border relations, and economic integration in North America. They make a unique contribution to important scholarly and policy discussions over the meaning and management of borders in an increasingly borderless (regional and global) economy, and add fuel to broader debates over the changing security dynamics.

The post-September 11, 2001 security environment has reshaped not only the practice of border controls but also the politics of cross-border relations.⁴¹ As substantially define the United States-Mexico and United States-Canada relationships, with Mexico and Canada discovering the perils and vulnerabilities related to asymmetric interdependence. Although all three NAFTA partners benefit from an interdependent regional economy, Mexico and Canada are much more dependent on trade with the United States than the other way around, and are therefore far more vulnerable to security-related border disruptions.

Border functions shrink and are transferred into other zone of cooperation. However, within specific structures, the border starts to perform an integrative function, linking

⁴¹ See Peter Andreas and Thomas J. Biersteker, eds., *The Rebordering of North America: Integration and Exclusion in a New Security Context* (New York: Routledge, 2003).

individual states with common interests, interrelationships and values. While it is spoken about deterritorialization of certain phenomena such as threats, globalization processes also activate reterritorialization that lead to the emergence of not only virtual but physically existing ethnic or religious borders that prevent the homogeneity of the world. Thus a new quality of international relation developed, not within states but within civilization, international organizations, organized crime groups and terrorist groups.

Therefore different kind of border function (separated from political borders) may become important and create dividing lines. They do not match up with a map but they impede flows not between states but between zones. Some inner borders of the European Union are permeable and they are in an integrative function when comparing to the external border of the EU, behind which other countries are excluded. The borderlands of some member states have become the 'dynamic spaces of interaction, subject to continual processes of negotiation involving diverse groups of people who are active agents in the everyday politics of border life'.⁴²

The similar level of economic development or political and social standards let the process of border transformation proceed smoothly. The most interested in border transition to integrative function are transnational and transboundary or non-territorial actors that perceive their self defined benefits in border 'openness'.

⁴² Grundy-Warr C., Schofield C., 'Reflections on the Relevance of Classic Approaches and Contemporary Priorities in Boundary Studies', *Geopolitics* 10/ 2005 p. 4.

Facilitation of regular trans border communication fosters economic development and contribute to poverty reduction. At the same time, borders should be closed for criminal and other activities that jeopardize stability and security in a region. Countries have to fight against organized crime, terrorism, illegal migrations and human trafficking, Challenge of border management versus regional integration come in when countries open borders for trade and movement of persons and must also close borders for all criminal activities.

In a nutshell, scholars have discussed various issues ranging from terrorism, illegal migration, and insecurity. Most states will always want to protect their own territory and sovereignty and thus are most of the times left in a dilemma in regard to remaining open to what is beneficial to them in terms of economic benefit and also monitor closely what poses threats to their national security. Indeed, the scholars bring out the dilemma of states where they are caught in a situation of choosing between secure and economically beneficial borders. Failure to control the threats that come with national security can indeed be a threat to national sovereignty.

1.6.3 Information Technology and Border Management

Information and communications technology (ICT) is central to all aspects of border management reform and modernization. Well designed, built, tested and deployed ICT solutions have been proven to make business processes more effective and improve both control and transparency in border management. Such solutions help block decision leakages and improve efficiency, effectively discourage corruption (by reducing face to

face interaction between users and government officials), and help to reduce arbitrary decision making and increase accountability. But ICT is only a facilitator, an enabler, an efficiency booster. It cannot compensate for lack of discipline, management, and control.⁴³

Jerry Hart argues that technological innovations with effective information and communications technology (ICT) can help achieve business objectives and drive world class border agency performance. However, ICT alone offers no magic modernization solutions. Successful ICT merely enables modernization and improved performance. The most effective modernization programs address policy, process, and people issues and then use ICT as an enabler to achieve the agency's mission and vision. Border management agencies have long been seen as the collective stewards of the nations' trade and borders.

Today, however, these agencies are experiencing unprecedented pressure, with a simultaneous impact on many fronts. Border management agencies are required to perform at the highest levels of efficiency and effectiveness to collect revenues due to the state, to protect the safety of the community, to facilitate legitimate trade, and to encourage economic development.⁴⁴ New legislation and institutional procedures, are bound up with a new culture of border management in which border security is not (just)

⁴³ McLinden, Gerald Fanta, Enrique Widdowson, David, *World Bank Publications*, Herndon, USA, 2010.

⁴⁴ Ibid

conceptualized in terms of territorial sovereignty but in terms of international cooperation, prevention and economic profitability.⁴⁵

In dealing with border management issues, agencies have to confront some challenges. They often face the dilemma of either carrying out checks on huge numbers of travelers, resulting in delays and inconvenience and increasing the cost of resourcing, or scaling down checks and risking letting in travelers who are illegal or pose a threat. The management of watch lists and matching passengers against them is essential, and has no doubt enabled agencies to track more closely the people they know they want to detect at borders, but this does not cover the unknown threats. This is particularly so because the criminals are in tandem with the current ICT systems which may produce documents which look exactly like the genuine documents. Random checking of travelers will only lead to occasional successes, and crude profiling techniques are equally limited and in many cases, more damaging. Profiling requires accurate identification of activities and other factors that are linked to risk a difficult task without tools powerful enough to analyze the data and identify what risk actually looks like and where the risk actually lies.⁴⁶

Information and intelligence about potentially illegal movements of people and cargo can only be exploited effectively if there is a system in place to capture, combine and analyze it within an acceptable timeframe. The challenge here is the need to obtain intelligence

⁴⁵ Hart Jerry, *Secure Borders, Why Technology Is Not Enough*, Migration Policy Institute, 2010.

⁴⁶ Barry R. Chiswick, *Illegal Immigration and Immigration Control*, *The Journal of Economic Perspectives* Vol. 2, No. 3 (Summer, 1988), pp. 101-115 American Economic Association, USA, 1988.

from a variety of agencies and once this is in place, being able to efficiently and accurately analyze and make best use of the data. The management of resources is a constant challenge for border agencies as well. In order to do this securely and efficiently, agencies need to be able to forecast volumes and timings for movements of people or goods and allocate resources accordingly, something that is extremely difficult to achieve with high levels of accuracy.⁴⁷

The proliferation of technological systems in border management is driven by increasing flows of passengers and enhanced security requirements, often in reaction to changes in the mode of operation by criminals or terrorists. Critically, the scenarios demonstrate that an over-reliance on technology may itself be dangerous in the face of increasingly sophisticated and organized international criminal organizations. Furthermore, security investments may become potentially uneconomic if travelling is thereby reduced or indeed collapses.⁴⁸

Much of the effort to manage borders has shifted to technological means: biometric passports and other fast-entry documents; real-time information sharing when a passport is swiped or an iris scan is compared against the so far limited databases; intelligence collected and connected to detect security threats; software to integrate databases into a seamless web of information on any person approaching a border; developing

⁴⁷ Hart Jerry, *Secure Borders, Why Technology Is Not Enough*, Migration Policy Institute, 2011.

⁴⁸ Eu/Frontex, *Futures Of Borders, A Forward Study Of European Border Checks*, December 2011

interoperable hardware and software; risk analyses which depend on having an integrated data-sharing network.⁴⁹

1.7 Justification of the Study

This study is expected to shed light on issues of Border Management. Border studies have become more significant because scholars and policy makers have recognized that most things that are important to the changing conditions of the national and international political economy takes place in borderlines. Until the late 1980's, the scholarly literature had devoted little attention to theories regarding the role of territory and borders in international relations.⁵⁰ Since then, however, a growing body of work on this subject has emerged.

Academic works on immigration and globalization have failed to adequately analyze the nation-states regulatory capacities insisting instead that contemporary patterns of migration jeopardize national sovereignty and territoriality. It is important to recognize that states possess their legitimate authority to control their territorial and membership boundaries. However, border management studies in Africa have not been given much scholarly attention. It is not until 11th September 2011 that states became aware that the borders as they are now constituted provide inadequate protection against global threats to its security.

⁴⁹Otwin Marenin, *Challenges for Integrated Border Management in the European Union*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper – №17 , 2010.

⁵⁰ John C. Rugie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, International Organization, Vol 47, No.1, 9Winter 1993), pp 139-1774

This study will provoke other scholars especially in Africa to research further on the issues of immigration and border management. This is particularly so because borders are becoming more important especially in regard to security of a country but also becoming less relevant in regard to issue of regional integration that opt for opening up of borders. Border management and security are key components in the development of any national migration policy. This is because most migration activity takes place at ports of entry and consequently, it is apparent that border efficiency and effectiveness has direct impact on national security and the socio-economic development. In this regard, the importance of tourism and foreign investment, critical pillars in the Kenyan economy cannot be over emphasized.

Security issues have become increasingly technical, involving border control, migration, justice and cross border crime. There are different types of actors who are contributing to policy making and decision making has grown in tandem. These actors include professional diplomats, technology experts, police officers, military officers, scientists and think-tank researchers.⁵¹ The study will therefore benefit border managers in Kenya and the neighboring countries. It will also provide the creation and refinement of policies by states and regional organizations.

As international travel becomes more common place, border management and protecting a country from multiple threats becomes increasingly challenging. These threats range

⁵¹ Davis Mai'a K, *Security Integration in Europe: How Knowledge Based Networks are Transforming European Union*, University of Michigan Press, Ann Arbor, UAS, 2011.

from individuals seeking to work illegally through to terrorist groups infiltrating a country. Effective border control solutions enable seamless information flow between stakeholders and facilitation of in-bound and out-bound travelers. However, the gap between the goals of national immigration policy and the actual policy outcomes is widening and growing in most countries.

The core requirement is secure and integrated border control technology that facilitates the movement of legitimate travelers while strengthening security. The dilemma of most countries in Africa is that they do not want a super-tight border economically and would also not want to lose the social and cultural values that they share. For instance, most border communities are widespread across neighboring countries for example, the Maasai of Kenya and Tanzania, the Teso of Kenya and Uganda and the Somali of Kenya and Somalia.

1.8 Hypotheses

- a) Emerging issues across the globe are affecting implementation of border policies and border management in Kenya.
- b) Regional Integration impacts on effective implementation of border policies in and border management in Kenya
- c) Information Technology impacts on effective implementation of border policies and border management in Kenya

1.9 Theoretical Framework

Newman notices perceptions of borders may differ according to different images by people and a position in hierarchy or place of living; that of government in the centre or borderland citizens. 'Perceptions which emphasize notions of difference, mutual fear and threat are, more often than not, socially constructed from the centre, with walls and fences constituting the mechanism through which difference is perpetuated'.⁵²

Taking into consideration the perception of state border according to particular paradigms one can see the gradation of its permeability from the line of division into the inner and outer environment, to a porous line, where the border is perceived as an element of the system with a set of numerous entrances and exits. Eventually the border becomes a virtual line, which does not mean its disappearance but a high degree of permeability, due to the occurrence of phenomena and factors, which cannot be controlled without difficulty.

According to the realistic paradigm border is emphasized as a line dividing 'us' from 'them.' It is based on the traditional geographic border discourses and the sociological categorization of binary distinctions between two different entities.⁵³ The key political and social categories such: state, territory, nation, identity and ethnicity are crucial for the governing elite. This policy (usually of both countries) may increase nationalism and even separatism.

⁵² Newman, D., *Borders and Bordering Towards an Interdisciplinary Dialogue*, *European Journal of Social Theory* 9 (2), 2006,

⁵³ See Van Houtum, Henk, *Borders, Strangers, Doors and Bridges*", *Space and Polity* 6(2): 141-6, *The Changing Interpretation of Border Functions in International Relations*, 335

The source of such nationalism might be different political or economic systems, religion or a long-lasting territorial conflict. Such principle of separation represents Palestinian–Israeli border or the contemporary Polish–Belorussian border perceived, especially by Belorussian elite (the president, Alexander Lukashenko), as a barrier of different systems and ideology. It has translated into tense bilateral relations, particularly when Poland joined the European Union (EU) in 2004. From the realistic paradigm there are territorial borders of states and superimposed lines of separation between people.⁵⁴

Realist paradigm as a school of thought explains international relations in terms of power. Its foundation is the principle of dominance. In a world of sovereign states and no central government, each state ought to achieve its interests for survival.⁵⁵ It is designed to explain issues of “high politics”, primarily war and peace. Realist view of international relations conceives the state as a unitary and sovereign actor, has been used to explain a wide range of transnational phenomena from international trade, finance and integration. In the realistic paradigm, the state is the most important actor in International Relations. With all the attributes it possesses, it is the border that is of essential significance for the protection of material values such as the territory, raw materials, capital, and population, as well as intangibles such as values, culture, language, state sovereignty and cohesion. The border remains very important for the conservative elite, because it protects state sovereignty and territory and the values and resources within it. The disintegrative function of the border has the objective of protecting state security.

⁵⁴See Van Houtum, Henk, *Borders, Strangers, Doors and Bridges*”, *Space and Polity* 6(2): 141-6, *The Changing Interpretation of Border Functions in International Relations*, 335

⁵⁵ Goldstein J, *International Relations*, Sixth Ed, Longman Publishers, New York, 2008.

The conservative political elite strives to isolate and increase the symbolic value of its territory, stresses the importance of the border and its fundamental functions, that of the barrier. The only acceptable instrument that slightly changes the functioning of state borders in international relations is the bilateral agreement. For example, the Israeli-Palestinian border is very important for governments of these countries and peoples and not stable because these two nations value the territory and places of religion cult very much. The conflict is much more complicated and it may be observed through long-lasting tense bilateral relations of these countries.

The realistic paradigm refers to traditional approach to border seen as ‘the physical and static outcome of a political decision-making process,’⁵⁶ characteristic at the first half of the twentieth century. However, as Newman states, the fear of the neighbor that is different in religion, economic status or social group, etc. is timeless, and makes the desire to protect oneself from the threat in the same sense as to protect the state territorial integrity and sovereignty.⁵⁷

In a world of sovereign states, governments are under constant pressure to adopt and enforce rules and laws affecting the entry and residence of foreign nationals. It is assumed by the realists that foreigners have no rights other than those accorded to them by sovereign states and therefore, it follows that levels of immigration should conform to the dictates of the policy. The realist logic follows that if states do not succeed

⁵⁶ Newman, D., *Borders and Bordering Towards an Interdisciplinary Dialogue*, *European Journal of Social Theory* 9 (2), 2006, p. 175.

⁵⁷ *Ibid*, pp.177-178.

adequately in controlling their borders, it is due to lack of political will on their government or because their immigration policies have been flawed in design or inadequately implemented. In the absence of a fully institutionalized regime or organization to manage and structure the movement of people (whether refugees, economic migrants or skilled professionals,) the rules of entry of nation-states themselves continue to prevail.⁵⁸

The basic assumption of realist paradigm would lead us to expect sovereign states to act according to their self-interests and thus control immigration.⁵⁹ National interests could be a desire to control population growth, regulate the supply of and demand for labor, improve the human capital or maintain the cultural or ethnic balance of society as well as protect the country from external attacks of terror.

Protection of borders therefore is an attempt by states to protect their sovereignty and promote its interests. Border control, the effort to restrict territorial access-has long been a core state activity.⁶⁰ As territorially demarcated institutions, states have always imposed entry barriers, whether to deter armies, tax trade and protect domestic producers, or keep out perceived "undesirables." All states monopolize the right to determine who and what

⁵⁸ Wayne Armstrong Cornelius, Philip L. Martin, James F. Hollifield, *Controlling immigration: A Global Perspective*, Stanford University Press, California, 1994.

⁵⁹ Ibid

⁶⁰ Malcolm Anderson, *Frontiers: Territory and State Formation in the Modern World* (Cambridge: Pol- ity, 1996).

is granted legitimate territorial access.⁶¹ All this is done in the core interests of the state and hence adding emphasis to the notion of realism.

The realist paradigm is important in studying and explaining border management because the term border management has a connotation of protection, which means that states in their pursuit for self interests and protection, states strive to manage borders in order to ensure security and well being of their citizens. States and international organizations recognize migration as a trend whose positive impact in development terms can be substantial provided that appropriate policies are in place. By influencing the volume, mix and terms of migration, migration policies may have an impact on those factors commonly assessed to be relevant for development including human capital formation, remittances (size and value), trade flows, foreign direct investment and skills transfer. These factors may be more or less amenable to the influence of migration policies. The Government nevertheless recognizes the fact that, for the most part the policy is crafted to serve national interests.⁶²

1.10 Methodology

Research refers to systematic planning, inquiring, acquiring, analyzing and disseminating data, information and insight to guide decision making.⁶³ Research methodology

⁶¹ Samuel P. Huntington, "*Transnational Organizations in World Politics*," *World Politics*, Vol. 25, No. 3 (April 1973), pp. 333-368.

⁶² Kenya Migration Policy, 2013.

⁶³ Cooper, R. and Schindler, P, *Business research Methods*. New Delhi. Tata McGraw Hill., 2003

describes the procedure that has been followed in conducting a study.⁶⁴ This chapter discusses the following: research design, population, sampling frame, sampling design, data collection methods and data analysis. The study seeks to interview immigration officers within various stations in Kenya.

1.10.1 Research Design

Research design is the plan and structure of investigation so conceived as to obtain answers to research questions.⁶⁵ It is said to be the structure of research or the glue that holds all elements in a research project together.⁶⁶ This study will adopt a descriptive research design. Descriptive study portrays an accurate profile of persons, events or situation. It is one of the best for conducting research in human context because of portraying accurate current facts through data collection for testing hypothesis or answering questions to conclude the study.⁶⁷

The study will adopt a survey research method. A survey is a measurement process used to collect information during a highly structured interview –sometimes with a human interviewer and other times without. Questions are carefully chosen or crafted, sequenced and precisely asked for each participant. The goal of survey is to derive comparable data across subsets of the chosen sample so that similarities and differences can be found.

⁶⁴ Mugenda, M. O. and Mugenda, G., *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Laba Graphics Services, (2003).

⁶⁵ Robson C., *Real World Research* (2nd Ed.). Oxford : Blacwell, (2002)

⁶⁶ Kombo and Tromp Kombo, D. K. and Tromp, L. A. (2006). *Proposal and Thesis writing*. Nairobi; Pauline publications, 2006).

⁶⁷ Robson C., *Real World Research* (2nd Ed.). Oxford : Blacwell, (2002)

When combined with statistical probability sampling for selecting participants, survey findings and conclusions are projectable to large and diverse populations ⁶⁸

1.10.2 Target Population

A population is an entire group of individuals, events or objects having common characteristics that conform to a given specification. It is the full set of cases from which a sample is taken.⁶⁹ In this study the target population is all the regional border controls in Kenya but the population of study will be specific border controls in a region. The total number of border controls in Kenya is approximately 24. The subjects of the study will be the personnel working in Immigration at the specific border controls. The choice of these staff is that they are the key personnel who are directly involved and have knowledge of border management.

1.10.3 Sampling Frame

A sample frame is a list that includes every member of the population from which a sample is to be taken. This is the listing of the accessible population from which the researcher draws the sample⁷⁰ In this study the sampling frame comprised individuals working in Kenya as immigration officers, those that are directly charged with control of entry and exit of persons and control of residency as well. It will also involve those in the administrative structure of the department which is charged with decision making in matters of policy.

⁶⁸Cooper, R. and Schindler, P, *Business research Methods*. New Delhi. Tata McGraw Hill, 2003

⁶⁹ Mugenda, M. O. and Mugenda, G., *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Laba Graphics Services, (2003).

⁷⁰ Cooper, R. and Schindler, P, *Business research Methods*. New Delhi. Tata McGraw Hill, 2003

1.10.4 Sampling Design

Sampling is the process of selecting a number of individuals for a study in such a way that the individuals selected represent the large group from which they are selected⁷¹. It is a systematic process of individuals for a study to represent the larger group from which they are selected.⁷² In this study the purposive sampling techniques is adopted to identify the regions to be studied which will include 25 border points, namely, Malaba, Lokichoggio, Moyale, Mandera, Liboi, Kiunga, Malindi, Busia, Suam, Lwakhaha, Lunga Lunga, Taveta, Namanga, Isebania, Loitoktok, Taveta, Kilindini, Lamu, Malindi, Shimoni, Mombasa International Airport, Kilindini, Muhuru Bay, Nadapal, and Jomo Kenyatta International Airport. Purposive sampling is for participants who have the necessary knowledge and conceptual generalisability of the issues being investigated.

In applying purposive sampling, the researcher decides who should be included in the sample, it is used to collect focused information, typical and useful cases are selected. Purposive sampling is used when the investigator wants to locate the units of observation that have the required characteristics.⁷³ In this study, some border controls fall in one region and thus sampling will be done to get a representative sample.

While Emory, argues that samples of ten percent and above of its population is normally considered representative,⁷⁴ Patton, argues that a sample size depends on what one wants

⁷¹ Mugenda, M.' O. and Mugenda, G., *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Laba Graphics Services, (2003).

⁷² Cooper, R. and Schindler, P, *Business research Methods..* McGraw Hill, New Delhi, 2003.

⁷³ Ibid

⁷⁴ Emory, C., W.,. *Business Research Methods* (3rd ed.). Irwin Homewood, Illinois, 1995.

to know, the purpose of the inquiry, what is at stake, what will be useful, what will have credibility and what can be done with available time and resource. A sample of 30 respondents will be selected using stratified sampling method where three respondents at managerial, supervisory and junior staff will selected from the department, which will include immigration officers and ICT personnel. The respondents of this study will be expected to be knowledgeable on how borders are run and managed.

1.10.5 Data collection Instruments

Instruments are data collecting methods which include questionnaires, observation, interviews, mail and telephone survey⁷⁵. The data collection instrument to be used in this study is questionnaires. Questionnaires are a form of survey that gives a scientific reassurance ring of confidence.⁷⁶ The questionnaires will be appropriate when addressing sensitive issues and also in this study due to the busy schedules of Immigration officers that will form the subjects of this study. The questionnaire will be made up of six sections. The first will capture the general information on the subjects. The next four sections will capture information on the independent variables while the sixth will have questions regarding the dependent variable.

1.10.6 Data Collection Procedures

This study will adopt questionnaire as the principal instrument for data collection. The questionnaire will have close ended questions, sought to gather demographic information

⁷⁵ Cooper, R. and Schindler, P, *Business research Methods*. New Delhi. Tata McGraw Hill, 2003.

⁷⁶ Robson C., *Real World Research* (2nd Ed.). Oxford : Blacwell, (2002)

and other statistical data and with open –ended questions sought to establish opinion from the respondents and gather more of qualitative data.

1.10.7 Data Analysis

The data collected from the field will be organized in a systematic form this will entail identification and correction of errors in the data, coding the data and storing it in an appropriate form. Data analysis is the process of bringing order, structure and meaning to the mass of information collected.⁷⁷

1.10 Chapter Outline

Chapter One contains the introduction, background information, statement of the problem, scope, objectives, literature review, justification, hypothesis, theoretical framework, and methodology.

Chapter Two discusses International Migration and National Security where issues such as Illegal and legal migration such as and human smuggling and Management of Refugees are discussed.

Chapter Three discusses Border Management and Integration with focus on East African Community.

⁷⁷Mugenda, M.' O. and Mugenda, G., *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Laba Graphics Services, (2003).

Chapter Four is on Implementation of Border Policies in Kenya where various policies and their implementation have been discussed after conducting interviews on the ground.

Data analysis will be conducted in this chapter.

Chapter Five summarizes the findings from the research as well as drawing conclusions.

CHAPTER TWO

INTERNATIONAL MIGRATION AND NATIONAL SECURITY

2.1 Introduction

This chapter seeks to explain international migration and national security. The term security refers to a condition where individuals, groups, communities and states as a whole are free from armed or unarmed threat to physical, social, psychological, material and political well being and possess adequate resources to deal with threats whenever they occur.⁷⁸ Migration refers to any movement of humans from one area to another. Immigration refers to such movements by humans when they involve crossing established state boundaries and are regulated by the governments of the territories they involve. So immigration really exists only under the modern state system.⁷⁹

All states are not equally able to manage the challenges posed by migration, however, and those with high levels of institutional capacity are in a much better position to adapt to this new environment than are weak or failing states. Two areas in which migration influences state capacity and autonomy are border control and national identity. The ability of states to maintain control over their borders and to formulate a coherent national identity are arguably necessary preconditions for the maintenance of state security in other areas.⁸⁰

⁷⁸ Makumi Mwangi, *African Regional Security in the Age of Globalisation*, Heinrich Boll Foundation, Nairobi, 2004.

⁷⁹ Gina Clayton, *Textbook Immigration and Assylum Law*, 3rd Ed, Oxford University Press, New York, 2008.

⁸⁰ Fiona B. Adamson Crossing Borders: International Migration and National Security Author (s) Source: International Security, Vol. 31, No. 1, <http://www.jstor.org/stable/4137542> .Accessed on 13th June, 2013

For the last few years, the pace of international migration has accelerated. The number of international migrants increased from 154 to 175 million between 1990 and 2000. The consequences for countries of origin and destination have attracted the increased attention of policymakers, scientists and international agencies. The phenomenon is likely to further develop in the coming decades as a part of the world globalization process.⁸¹

Migration is the fastest growing global human activity of the 21st century. It presents opportunities as well as challenges to states and individual migrants. Migration today is driven by a multitude of factors, among them, forces of globalization, changing demographics, education, family unification, poverty, unemployment, poor governance, climatic change, political instability, community marginalization, wage differentials, among others. Migration may be voluntary or forced, documented or undocumented. All states are affected by migration in one way or another.⁸²

International migration has moved to the top of the international security agenda. Increasingly, policy-makers in the United States, Europe, and around the world are making links between migration policy and national security. Much of this discussion has focused on migration flows as a conduit for international terrorism. For example, the ability of nineteen hijackers from overseas to enter, live, and train in the United States in preparation for carrying out attacks on the World Trade Center and the Pentagon could not but raise concerns regarding the relationship between the cross-border mobility of

⁸¹ United Nations Report (2002),

⁸² Kenya National Migration Policy, 2013.

people and international terrorism.⁸³ Even before the September 11 attacks, however, interest in the relationship between globalization, migration, and security had emerged both in the policy world and in some areas of the security studies field.⁸⁴ Migration was high on the European security agenda throughout the 1990s.⁸⁵

All states make claims for survival in the international or regional system on the basis of a grand strategy, which is both a vision and a blue print about how the state intends to protect its interests and survive in a volatile environment.⁸⁶ Soon after the September 11 attack, a department of Homeland Security was created. In Kenya, the context on national security is taken a different context which reflects on internal as well as regional threats to stability.

Traditionally, security has been seen as closely related to the threat or use of violence, and military means are regarded as central to the provision of security. This may once have made sense, when conflicts took place predominantly between different countries, when territorial control was a key objective, and when uniformed soldiers were the combatants. But over the last several decades, this type of conflict has become more the

⁸³ Fiona B. Adamson, Crossing Borders: International Migration and National Security, *International Security*, Vol. 31, No. 1 (Summer, 2006), pp. 165-199, MIT Press Stable URL: <http://www.jstor.org/stable/4137542> .

⁸⁴ Roxanne Lynn Doty, "Immigration and the Politics of Security," *Security Studies*, Vol. 8, Nos. 2/3 (Winter 1998/99-Spring 1999), pp. 71-93; Myron Weiner, e d., *International Migration and Security* (Boulder, Colo. Westview, 1993); and Myron Weiner, e d., *The Global Migration Crisis: Challenges to States and to Human Rights* (New York: HarperCollins, 1995).

⁸⁵ Fiona B. Adamson, "Globalization, International Migration, and Changing Security Interests in Western Europe," paper presented at the Ninety-fifth Annual Meeting of the American Political International Forum.

⁸⁶ Makumi Mwangi, *Cordination of National Security Strategy: Perspectives on Grand Strategy Formulation in Kenya*, NDC Occasional Papers on Security, No. 1 2008

exception than the norm.⁸⁷ New conceptions of security have emerged due to shortcomings in the traditional security policy. The response of the US government to the attacks of September 11 has strongly influenced how Canadians and Americans now review their common borders. It has moved from being an essentially leaner concept to one that is now multifaceted and multidirectional.⁸⁸

Many developed countries struggle with formulating and enforcing their immigration policies, particularly those directed at deterring illegal immigration. Most often, border enforcement constitutes the primary means for restricting illegal immigration. However, greater interdiction is often achieved only at the expense of greater enforcement costs and in the US case, these policies have met with mixed results.⁸⁹

States and international organizations recognize migration as a trend whose positive impact in development terms can be substantial provided that appropriate policies are in place. By influencing the volume, mix and terms of migration, migration policies may have an impact on those factors commonly assessed to be relevant for development including human capital formation, remittances (size and value), trade flows, foreign direct investment and skills transfer. These factors may be more or less amenable to the

⁸⁷ Michael Renner, *Global Security Setting: Rethinking Global Security: An African Perspective?*, Heinrich Böll Foundation, 2006.

⁸⁸ James J.F., *Homeland Security, Protecting America's Targets, Volume 1: Borders And Points Of Entry*, Praecier Security International USA, 2006.

⁸⁹ Mark G. Guzman • Joseph H. Haslag • Pia M. Orrenius, *On the determinants of optimal border enforcement* Received: 24 October 2005 / Revised: 27 September 2006 / Published online: 2 February 2007

influence of migration policies. The Government nevertheless recognizes the fact that, for the most part the migration policy is crafted to serve national interests.⁹⁰

Kenya has a long porous border and coastline that is susceptible to irregular entries of migrants. Along these borders and the coast-line are few immigration check points which are widely spaced with poor infrastructure, inadequate equipment and technology. The policy therefore advocates for enhanced border surveillance by establishing a specialized border patrol unit, the opening of new border posts, improved capacity of existing posts and enhanced use of ICT at all ports of entry.⁹¹

The growing importance of migration in national economies and security can no longer be overlooked. The issue is of interest and concern to all states. The dynamism and number of international migrants in the Kenyan context is increasing rapidly and this trend is likely to persist into the foreseeable future. The root causes of migration are complex and influenced by many forces among them the push and pull factors. International migration affects all countries in one way or another, either as countries of origin, transit or destination. Kenya is no exception to this global phenomenon; hence the need to develop a migration policy that maximizes the opportunities created by migration and at the same time addresses the challenges.⁹²

⁹⁰ Kenya National Migration Policy 2013

⁹¹ Kenya National Migration Policy

⁹² Ibid

2.2 Legal and Illegal Migration

The international community must be prepared to address the challenges raised by the increasing mobility of workers. In particular, the migration of skilled workers (the so-called brain drain) is a major piece of the migration debate. The movement of human resources has undergone extensive scrutiny in developing countries⁹³, but also in industrialized countries such as Canada, the United Kingdom and Germany, where an important fraction of talented natives are working abroad.

Numerous reasons justify the movement of societies thus leading to the different categorizations of the movements. Some movements are legal while others are illegal. Migrations present challenges to the nation state administrative borders. The purported linkage between territory, people and identity has presented dynamics which jeopardize the modern nation state. Since the end of 20th Century, immigration control was the very visible exercise of sovereignty of a nation.⁹⁴ International migration is a much more different issue to address through multilateralism because the costs (in terms of sovereignty and threats to national identity) are much higher and the benefits (greater control over immigration levels, sudden refugee flows) are more difficult to realize.⁹⁵

Kenya started to experience increased immigration flows in the mid 1980s' due to declining economic performance and high levels of unemployment. Major destinations of

⁹³ See IOM (2003) on Africa. The UNDP (2001) notes that, under the new US legislation, about 100,000 software professionals are expected to leave India each year, over the next three years. The emigration of those professionals costs \$2 billion a year for India.

⁹⁴ International Organization for Migration report. 2003.

⁹⁵ Wayne Armstrong Cornelius, Philip L. Martin, James F. Hollifield, *Controlling immigration: A Global Perspective*, Stanford University Press, California, 1994.

Kenya is a member of the EAC Partner States, Northern America, United Kingdom, Europe, South Africa, South Sudan and the Middle East Countries. The key motivation for emigration is employment and education. Highly skilled labor and students travel to the USA, United Kingdom, Canada and Europe, while semi skilled labors move to the Gulf States and African countries.⁹⁶

Major tourist source countries include the UK, Europe, America, Asia and recently China. The country also attracts visitors and business people from the EAC Community Partner States, Central and Eastern Africa and the Gulf region. However, data on numbers, sex, professional skills and remittances is scanty and generally unreliable. The Kenya Community Abroad Association estimates that in 2010, there were three millions Kenyans in the diaspora with males being slightly more than females. According to the Central Bank of Kenya, in the same year; the diaspora remitted Kshs.80 billion. There is no credible data and authority to support these figures. Independent movements are arranged through personal networks while most employment opportunities and student travel are organized by employment and students' placement agencies. Smuggling and trafficking in persons is also arranged by agents. Due to high youth unemployment in the country, Kenya has its share of this global vice. However majority of Kenyans are smuggled as opposed to trafficking.⁹⁷

Tourists' arrival in the country has been rising steadily and in the year 2011 over one million tourists visited the country. This is an important source of employment to the

⁹⁶ International Organization for Migration report, 2010.

⁹⁷ UNHCR Report, 2012

many unemployed youth and an area the Ministry responsible for Youth Affairs and Sports has interest because the sector is labour intensive. It is also an important source of foreign exchange. Measuring the impact of migration at the national level is difficult again due to the paucity of accurate data and the complexity of migration flows. There is also lack of clarity on how migrants contribute meaningfully to national development. In this regard, the issue of brain flows as opposed to brain drain needs to be carefully studied and analyzed. In particular, there is an urgent need to conduct a critical skills inventory in the country and the diaspora.⁹⁸

The UN Population Division estimates that in 2010, Kenya had a migration stock of 817,747. According to the Department of Refugee Affairs, Kenya hosts one of the largest refugees' populations and asylum seekers in the world. The two refugee camps of Dadaab and Kakuma in October 2012 had a population of 650,000 refugees and 450,000 asylum seekers. Political and economic instability in the neighboring countries is contributing to transnational crimes in the country among them terrorism. Majority of the refugees are from the war-torn Somalia and South Sudan and significant numbers from Ethiopia, Eritrea and the Democratic Republic of Congo. The large concentration of humanity in an environmentally fragile eco-system presents both ecological and resource challenges. There is shrinking asylum space resulting into security threats and xenophobia.

There are serious gaps in the number of irregular, smuggled and trafficked persons due to the paucity of data. Some smugglers and traffickers in persons are suspected to be using

⁹⁸ IOM Report 2010.

the refugee camps as staging bases for their operations. The Kenyan unemployed youth seeking employment overseas have fallen victims to smugglers and traffickers. The long porous borders between Kenya and Somalia, Kenya and Ethiopia are vulnerable to the entries of irregular migrants' thus compromising national and regional security. The entry is facilitated mostly by the use of forged or fraudulently acquired travel and identity document which are readily available in the region and at times without any documents.⁹⁹ There is relatively low use of technology in migration management. Technology is deployed at a few ports of entry and stand alone systems at the headquarters, regional and sub regional offices. There is an urgent need to introduce technology in all business operations and connectivity. Connectivity should be extended to all departments under the management of the Board and other relevant agencies. Migration data collection and management processes are inadequate. In addition, there is limited mainstreaming of migration agenda into the national socio-economic development processes. Weak interagency and interstate cooperation on migration issues have hampered migration management. Migration management infrastructures and facilities are inadequate and overstretched particularly in the area of enforcement, border development and management.¹⁰⁰

Kenya hosts a large number of international humanitarian organizations and Non Governmental Organizations, among them, the UNDP, UNHCR, IOM, ILO. These are valuable assets and critical players in migration management in the country.

⁹⁹ United Nations Report, 2011.

¹⁰⁰ IOM Report, 2010.

The EAC Market Protocol on the Free Movement of Persons and Labor and Membership to Regional Economic Commissions and International organization are the important structures in the management and development of regional migration. It is worth noting that presently the country has not ratified the ILO Convention governing the rights of migrant workers and their families. However, the new Constitution, the Immigration Act, the Refugee Act and the EAC Common Market Protocol have provisions that guarantee the rights, freedoms, movement and association of migrants.¹⁰¹

Migration if well managed is beneficial to all countries; sending and receiving states. Benefits include remittances, creation of employment opportunities and acquisition of new knowledge, skills and capital transfer. Labour migration in developing countries plays a significant role in meeting the labour needs of these states especially in the agricultural and hospitality sectors. Developing countries including Kenya, contribute to the labour pool. Unemployment has continued to increase and labor emigration, tourism and foreign investment are critical employment creation migration issues.¹⁰²

Kenya hosts a large number of foreigners and is a major tourist destination. The number of Kenyans traveling out the country is also on the increase. Consequently there is an urgent need to develop a policy to manage these groups of migrants. However, poorly managed migration has potential destabilizing effects on national and regional security such as an increase in transnational crimes, xenophobia and discrimination. Any migration policy will be influenced by the environment inside and outside the country

¹⁰¹ Ibid

¹⁰² Kenya National Migration Policy, 2013

and the two are very much interrelated. Consequently, this policy is not different and sets clear migration goals and objectives for the country within these limitations. ¹⁰³

In this regard, the development of the Kenya National Migration Policy is informed and in tandem with the July 2001 AU/OAU Lusaka Council of Ministers' Decision that laid the foundation for the development of the African Migration Policy Framework by African States. The Framework was adopted by Heads of States and Governments in Banjul, Gambia in July 2006.

It revolves around nine thematic areas including border management, labour migration, irregular migration, and forced displacements, the human rights of migrants, migration data, and interstate cooperation among others. Subsequent resolutions by Regional Economic Commissions (RECs) among them, IGAD and COMESA also support the development of national migration policies. However these provide only guidelines and principles. States are free to choose and pursue areas of interest based on available resources and capacity to implement. ¹⁰⁴

2.2.1 Human Smuggling

As an international phenomenon, by definition, human smuggling knows no boundaries. The criminal gangs involved in this practice are highly organized into international networks, which create the actual platform for illegal immigration. The vast majority of

¹⁰³ Ibid

¹⁰⁴ Mocerquadale et al, *Globalization and Human rights: Human Rights Quartely*, vol 21, 1999. Pp. 735-766

illegal immigrants use the services of international people-smuggling networks to get from their country of origin to their destination. This also applies to those seeking asylum in various countries. Human smugglers help would-be immigrants to cross borders illegally by accompanying them themselves or providing other logistical support. This applies to the external borders at airports as much as to internal borders, which may be crossed at unmanned points, in the countryside or at official checkpoints, in which case the people being smuggled are hidden in vehicles.¹⁰⁵

The human smugglers provide would-be immigrants with forged or falsified travel documents or real papers that either belong to someone else with a similar appearance or have been fraudulently obtained through corruption or deceit. Arrangements may also be made to specifically smuggle in people who can serve as a basis for further immigration through marriage or family reunification. People smugglers can make arrangements for people who have entered a country legally but subsequently overstayed their visa. Human smuggling overlaps with human trafficking in certain cases where criminal gangs or networks smuggle immigrants into a country for a very high price, often under inhumane or dangerous conditions. If the person being smuggled cannot pay the high fee demanded, they are forced to pay off their debt by working in the smuggler's service for years, often in criminal activities.¹⁰⁶

¹⁰⁵ Ibid

¹⁰⁶ Mocerquadales et al, *Globalization and Human rights: Human Rights Quarterly*, vol 21, 1999. Pp. 735-766

2.3 Refugee Management

According to the 1951 Convention Relating to the Status of Refugees and the Convention as amended by the 1967 Protocol, they define a refugee as follows:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."¹⁰⁷

The above definition in itself is a challenge towards implementation of border policies and procedures especially when there is no credible evidence by the person who is claiming to have well founded fear of being prosecuted in their own country.

The Kenya Refugee Act Defines a Refugee as:

“a person shall be a statutory refugee... if such person, owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or

¹⁰⁷ 1951 Refugee Convention

“not having a nationality and being outside the country of his former habitual residence, is unable or owing to a well founded fear of being persecuted for any of the (above) reasons is unwilling to return to it.”¹⁰⁸

The difference between the two definitions, 1951 Convention and the Kenya refugee Act is that the Act has included discrimination based on sex. The two legal documents have defined refugees and have stipulated ways of how refugees should be treated. For example, the principle of Non-Refoulement implies that a refugee cannot be forced to return to their countries of origin regardless of whether the situations that made them flee cease to be. This may cause a serious strain of infrastructure and resources on the hosting country. In immigration matters, this would seem as a opportunity to degrade the Kenyanization policy which aims to protect job and investment opportunities for the Kenyan citizens.

International refugee law is a set of rules and procedures that aims to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments.¹⁰⁹ Its legal framework provides a distinct set of guarantees for these specific groups of persons, although, inevitably, this legal protection overlaps to a certain extent with international human rights law as well as the legal regime applicable to armed conflicts under international humanitarian law.¹¹⁰

¹⁰⁸ Kenya Refugees Act,2006.

¹⁰⁹ www.unhcr.org

¹¹⁰ Goodwin-Gill, G .S. and McAdam, J. *The Refugee in International Law*, 3rd edition, Oxford University Press, 2007.

After entering a foreign country, whether legally or illegally, an asylum seeker has to formally report to the necessary authorities of his presence to make his presence legal. Then he has to make an application for refugee protection. In Kenya, the Refugees Affairs Department is responsible for setting up reception centers where asylum seekers can be received and registered.

To qualify as a refugee, it has to be established that there is genuine fear of persecution or harm if they remained in their home country or country of habitual residence. They face harm or risk of persecution because of their race, religion, nationality, membership to a social group or political opinion. If it proven that these conditions were the reason of seeking asylum, then one is accorded refugee status (OAU Convention).

The other reason is to have genuine and real fear that's makes these persons become unable or unwilling to go back to their country. When there is fear that they would face arrest, torture and even murder the host country would protect them from these challenges by offering them refugee status.

2.3.1 The Refugee as a Challenge to Immigration Department

There are Border policies and perspectives which are contradicting and conflicting with other perspectives and priorities. Kenya is a signatory to the United Nations Convention relating to the status of refugees which was done in Geneva in 1951 and the associated Protocol which was adopted in New York in 1967, and of the 1969 Organization of

African Unity Convention governing the Specific Problems of Refugee Problems in Africa. Kenya also enacted a Refugee law in 2006.

It is necessary to have regard to the Kenya Refugee Law and Kenya's obligations under international conventions when making decisions about whether to refuse entry to a refugee claimant. At the same time, the laws regarding refugees in Kenya contradict immigration laws that advocate for controlling entry of persons as regulated by Citizen and Immigration Act 2011. There is a possibility of people who do not qualify to be granted refugee status to pose as refugees for the purpose of benefitting from being granted refugee status and causing constrains of economic nature due to scarcity of resources in the country.

Millions of people face persecution worldwide often on the account of political or religious beliefs, their race, gender or their nationality. The purpose of refugee law is to protect people in this position. In some countries, while someone is applying for this protection, there are processes and appeal system stages which an asylum seeker goes through in order to establish their claim on refugee status.¹¹¹ Various countries have different legal and political systems of granting asylum.

There have been difficulties in distinguishing between economic and non economic causes of migration as the two may often overlap.¹¹² Some refugees are fleeing from persecution and others are fleeing to improve their economic situation. Whether a person

¹¹¹ Gina Clayton, *Text on Immigration and Asylum Law*, 3rd ed, Oxford University Press, 2008.

¹¹² Session 203-04 *Second Report: Asylum Application*, HC 281 para 42.

gets refugee status is a matter of whether they fit in the legal definition as in accordance with the circumstances that led them to claim for asylum. The 1951 convention gives the guidelines on who qualifies to be a refugee and who does not.

The definition of a refugee indicates that this is a very special category of persons who is not protected and whose basic rights are at stake. A refugee in a foreign country seeking refuge from persecution requires a special form of protection. The international community has agreed through various international instruments the standard form of protection to be afforded to the refugees. This being the case therefore, protection of the refugee should be treated as a right and not a privilege by the specific host country.¹¹³ It is important to note that the right to protection and the basic needs of life goes hand in hand with certain duties placed on the refugee. There is a growing tendency to close doors to asylum seekers due to the influx of aliens and economic emigrants promoting most governments to introduce restrictive measures that hinder access to their territories. This may include; complicated or burdensome visa requirements for nationals of some countries and fines imposed on airlines that carry undocumented aliens.

Secondly, in some cases the minimum standards of treatment of asylum seekers are not respected. Inadequate refugee determination procedures and refoulement at airports and borders cause enormous problems for asylum seekers. Other examples of ill treatment may take the form of detention for extended periods in the process of determining

¹¹³Michael, R, *The protection of Refugees by their State of Asylum* Vienna. (1984.)

whether the persons are genuine or not. Some may feel that the profiling and interrogation procedures as harsh.

According to Waters,¹¹⁴ the nation state continues to retain and exert considerable control in numerous areas. States continue to define policies and rules for those within its jurisdiction but global events and global markets and international agreements and institutions increasingly affect their choices.¹¹⁵ The contemporary world is characterized by the movement of people. The International Organization of Migration has identified the large increase in the movement of people across the world. The IOM notes that there were 191 million immigrants in 2005, making up 3% of the world's population. There is an estimated 40 million refugees, and 26 million internally displaced persons.¹¹⁶

The greatest challenge facing refugees arriving in various countries of the world has traditionally been to convince authorities that they are, in fact, entitled to recognition of their refugee status. The core of the international legal definition of a refugee requires that “owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [the applicant] is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”,¹¹⁷

¹¹⁴ Waters M, *Globalization*, London, Routledge, 1995.

¹¹⁵ Mocerquadales et al, *Globalization and Human rights: Human Rights Quarterly*, vol 21, 1999. Pp. 735-766

¹¹⁶ IOM facts and figure, www.iom.int. accessed on 20th May, 2012.

¹¹⁷ Convention relating to the Status of Refugees, 189 UNTS 2545, done July 28, 1951, entered into force Apr. 22, 1954 (Refugee Convention), supplemented by the Protocol relating to the Status of Refugees, 606 UNTS 8791, done Jan. 31, 1967, entered into force Oct. 4, 1967 (Refugee Protocol).

In conclusion, refugee management in Kenya poses serious challenges to the department of immigration because of the current trend of terrorist using refugee camps as recruiting grounds for terror activities without being recognized by the authorities. This makes the work of border management very hard with the need to give preferential treatment to refugees and at the same time fight war on terror.

CHAPTER THREE

BORDER MANAGEMENT AND REGIONAL INTEGRATION

3.1 Introduction

This chapter discusses the connection between border management and regional integration. It brings forth the issues of the East African Community (EAC) and its policy on opening up of borders vis a vis individual states comprising of the East African Community in their mandate to maintain their sovereignty as separate entities regardless of the interconnectedness that they have together. It will discuss the issues of EAC Treaty and EAC protocol as well as the issues of One Stop Border Post.

Regional co-operations and good neighborly relations are still under the influence of trends in former decades, and the level of political, economical, cultural, judicial and other forms of co-operation are unsatisfactory. Regional Co-operation among neighbors is emphasized in the fields of political dialogue, free trade, freedom of movement of persons, goods and capital freedom of settlement

East African Community is a compound polity combining constituent units currently Kenya, Tanzania, Uganda, Rwanda and Burundi, and later possibly also include Southern Sudan. Each state has a general government, each possessing powers delegated to it by its people through a constitution, each empowered to deal directly with the citizens in the

exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens.”¹¹⁸

The Common Market Protocol guarantees the free movement, within the region, of workers who are the citizens of the member states. It entitles a worker to apply for employment and accept offers of employment actually made; move freely within the territories of the partner states for the purpose of employment; and conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions. It also guarantees the worker to stay in the territory of a partner state for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that partner state; enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host partner state; and enjoy the rights and benefits of social security as accorded to the workers of the host partner state. Article 10 of the CMP also requires the partner states to ensure that workers do not face discrimination in employment, remuneration and other conditions of work because of their citizenship.¹¹⁹

The EAC member states also committed, in Article 11 of the CMP, to mutually recognize academic and professional qualifications granted by the member states. In this context, the member states were to harmonize their curricula, examinations, standards,

¹¹⁸ Ronald L. Watts, ‘Federalism, Federal Political Systems, and Federations’, in *Annual Review of Political Science*, 1998, p. 121.

¹¹⁹ Article 10, Common Market Protocol

certification and accreditation of educational and training institutions. Article 12 of the CMP envisaged the EAC member states to harmonize their labour and employment policies, national laws and programmes so as to facilitate the free movement of labour across the region. This commitment extends to national social security policies, laws and systems in the region.

Further, member countries are required to coordinate and harmonize their social policies so as to promote and protect decent work and improve standards of living of the citizens.¹²⁰ The peoples of East Africa have since time immemorial interacted in various ways through trade. Existing borders were drawn by the former colonial powers in total disregard of the settlement patterns of the day. But these borders have continued to be porous to this day. Indeed, some population groups are oblivious of the existence of such boundaries.¹²¹ Border control can be enhanced by using the latest available information, detection, analysis and communications technology. The more the government knows, the better is its control capacity, if the knowledge is good intelligence and people know how to use it. Tightening the webs of intelligence creates technological curtains around borders.

As part of the framework for cooperation, the member states committed, in Article 5 of the CMP, to ease cross-border movement of persons and eventually adopt an integrated border management system. They were also to remove restrictions on the movement of

¹²⁰ Article 39 of the Common Market Protocol

¹²¹ Thomas Nzioki Kibua and Arne Tostensen, *Fast-tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010*, 2005

labour, harmonize labour policies, programmes, legislations, social services, provide for social security benefits and establish common standards and measures for association of workers and employers. The member states were also to establish employment promotion centers and eventually adopt a common employment policy. Further, the member states were to facilitate the right of residence of the citizens of the EAC.

3.2 Border Management in Kenya

The republic of Kenya is a sovereign state in East Africa. The capital and largest city is Nairobi. Kenya lies on the equator with the Indian Ocean to the south-east, Tanzania to the south, Uganda to the west, South Sudan to the north-west, Ethiopia to the north and Somalia to the north-east. Kenya covers 581,309 km² (224,445 sq mi) and has a population of about 44 million in July 2012.¹²²

The Department of Immigration was administratively carved from the Department of Police in 1950. It has operated without Migration policy but has been guided by various immigration legislations. This is perhaps due to the low number of persons leaving and entering the country and failure to link migration with national security and socio-economic development.¹²³

The immigration law was repealed severally in subsequent years the latest being the enactment of the Kenya Citizenship and Immigration Act of 2011 and Kenya Citizens and Foreign Nationals Management Service Act 2011. However, in spite of the numerous

¹²² Central Intelligence Agency (2012). "Kenya". The World Factbook. Retrieved 28 May 2013.

¹²³ Kenya National Migration Policy, 2013

repeals to the Immigration laws, the government, over the years, operated without an explicit migration policy framework. This may be attributed to historical disinterest in the Government to develop policies and perhaps the low number of migrants and/or the failure to link migration with national security and socio-economic development. Consequently over the period, the role of migration was never mainstreamed into the national development agenda.

The Department of Immigration in Kenya has been mandated to be the lead agency in border management.¹²⁴ They are mandated to secure national borders with an overall objective of promoting national interests and protecting citizens and residents from the adverse effects of irregular migration.¹²⁵

Border management and security are key components in the development of any national migration policy. This is because most migration activity takes place at ports of entry and consequently, it is apparent that border efficiency and effectiveness has direct impact on national security and the socio-economic development. In this regard, the importance of tourism and foreign investment, critical pillars in the Kenyan economy cannot be over emphasized.¹²⁶

Kenya has a long porous border and coastline that is susceptible to irregular entries of migrants. Along these borders and the coast-line are few immigration check points which

¹²⁴Kenya Presidential Circular 1/2008

¹²⁵ Kenya Immigration Border Procedures Manual, 2010.

¹²⁶ Kenya National Migration Policy, 2013

are widely spaced with poor infrastructure, inadequate equipment and technology. The policy therefore advocates for enhanced border surveillance by establishing a specialized border patrol unit, the opening of new border posts, improved capacity of existing posts and enhanced use of ICT at all ports of entry.

The first migration regulatory law in Kenya was introduced in 1906 and over the years the country has operated without a migration policy. Consequently, the absence of a migration policy has hampered migration development, management and coordination in the country. Due to lack of a policy, migration development and management has continued to be managed on adhoc basis. The country has therefore inadequate policy frameworks; capacity and organizational structures to develop, manage and harness fully the benefits of migration while addressing the inherent challenges.¹²⁷

In spite of the many revisions to the immigration legislation in Kenya, the Government neither developed a strategic migration policy nor charted a roadmap to guide migration development in the country apart from the immigration related legislations . The migration policy should advocate for the way to judge who is worthy of lawful entry and stay into the Kenyan society. Factoring migration into plans to achieve the Millennium Development Goals (MDGs) is a matter of concern for both development and migration policy making. On the one hand it means better integrating migration concerns into

¹²⁷ Kenya National Migration Policy

development strategies; on the other hand it requires better understanding of how development policies will affect migration patterns.¹²⁸

The growing importance of migration in the socio- economic development and security of states is paramount. Migration issues are gaining prominence globally as epitomized by the convening of the United Nations High Level Dialogue for Migration and Development in 2006. In recognition of the vital role migration plays in the economic development of AU Member States, the OAU Council of Ministers in Lusaka, Zambia, in 2001 recommended for the development of an African Migration Policy Framework. The Policy was developed and adopted in Banjui, Gambia in 2006. Member States were therefore urged through a resolution to develop national migration policies anchored on the African Migration Policy Framework. The resolution has been adopted by several African states and African Regional Economic Commissions (RECs), among them, IGAD, COMESA and ECOWAS.¹²⁹

Enforcement of migration legislation is a critical migration policy issue. The policy has clear guidelines on enforcement. Of particular concern is the increasing number of irregular migrants, smuggling and trafficking in persons' crimes and the ever rising refugee population. According to the Department of Refugee Affairs, Kenya hosts one of the largest refugee populations in the world. It estimated that in October 2012 the country had a refugee population of 650,000. Majority of the refugees are from the war torn Somalia and Ethiopia. The policy advocates for the management of refugees in line with

¹²⁸ Ibid

¹²⁹ Kenya Migration Policy, 2013.

the Refugee Act of 2006 and other international refugee and asylum seekers' conventions.¹³⁰

One of the greatest challenges of the 21st century will be to ensure that people in every part of the world enjoy security and freedom, security from armed conflict, violence, human rights abuses, poverty and the freedom to realize their personal potential to participate in the governance of their country and to express their individual and collective identity.¹³¹ As a succession of recent refugee emergencies have demonstrated, people who do not enjoy security and freedom may be left with no alternative but to flee from their homeland and seek refuge in another state.

3.3 Border Policies and Border Procedures in Kenya

Effective border management depends on achieving delicate balance between facilitation and control while managing the risks posed by irregular migration. The border policy implementation requires facilitation of entry into Kenya of travelers who meet the requirements, to identify and manage the risks that may arise from the travelers who do not meet the entry requirements, to enforce the entry and exit legislation and related regulations as well as promote inter-agency and cross border cooperation and coordination in border management.¹³²

¹³⁰ UNHCR, *The State Of The World's Refugees*, Oxford University Press. 1995

¹³¹ Ibid.

¹³² Kenya Immigration Border Manual and Procedures, GOK, 2010.

A comprehensive and integrated border management policy is critical to effective border management mechanism. This is in recognition of the fact that one of the core responsibilities of governments is to provide security for citizens and residents which may be easily eroded by ineffective and inefficient border management policies and systems. In this regard, approaches to border management have been and will continue to be influenced by security concerns.¹³³

All personnel engaged at any level in border management should receive appropriate and relevant training including border security, information and computer technology. The development of smarter borders that can distinguish between the legitimate and illegitimate travelers is pertinent. Strengthening the border policy is intended to deter the incidence of illegal immigrants and the entry of international criminals into Kenya.

3.3.1 Visa Policy

A visa is a security screening clearance mechanism for persons intending to travel to a foreign country. States conclude bilateral or multilateral agreements to waive visa requirements for their national traveling to the territory of a party state. The EAC partner States are a typical example. International best practices in Visa administration include centralization of visa issuance processes. In this regard, many States are pushing borders away from the natural borders. It should be noted that the possession of a visa is not the

¹³³ Ibid

final authority to enter Kenya. The final authority lies with the immigration official at the port of entry.¹³⁴

Kenya is a major tourist destination country. The large number of tourists visiting the country yearly, slightly over one million, bears testimony to this. The economic importance of this industry cannot be gainsaid suffice to say that it has overtaken tea and coffee as the largest foreign exchange earner and offers many employment opportunities particularly to the large armies of unemployed youth. Tourists comprise the largest single category of persons visiting Kenya. Consequently any visa policy should be guided by considerations on national security, economic benefits, the ease at which tourist and other visitors may obtain visas and visa issuance locations. However, this window should not compromise national security and all visa application must be thoroughly screened.¹³⁵

Currently, visas may be obtained at all Kenya Missions abroad for nationals of most countries and at all ports of entry into Kenya. Visa applicants at ports of entry are required to appear in person and produce passports or other acceptable travel document with a validity of not less than six months. Online visa application facilities are available at a few Kenyan missions abroad.

Nationals of a few countries continue to apply for visas in advance and obtain approval to travel from the Director before arrival into Kenya. The list of these countries is constantly under review. In deciding to place a country on the referral visa regime, security concerns are paramount. Exemptions from the need to obtain a Kenyan entry visa are available

¹³⁴ Kenya Borders Manual, GOK, 2010

¹³⁵ Ibid

only to nationals/persons covered under agreements entered between the Government of Kenya and other governments and/or international organizations.¹³⁶

The process of making a decision on a visa application is essentially the same whether this is being done in Kenya or at Kenyan Missions abroad. It should be noted that “visa free” entry does not construe unrestricted entry to Kenya. Travelers are still subject to entry requirement such as health, good character, ability for self-sustenance while in the country and not being a security threat to the nation.

While most countries have centralized visa issuance, Kenya has encouraged issuance of visas at ports of entry. The main aim is to promote tourism by making visas conveniently available. This situation may compromise national security. The State therefore needs to address the challenge between encouraging increased flow of tourists and security. The visa regulations stipulate the conditions on which a person may be denied a visa. Any person failing to meet entry criteria may be refused entry irrespective of whether he/she is in possession of a visa or entitled to a free visa travel. A visa does not qualify one to engage in any form of employment or business, whether paid or unpaid. All applicants requiring visas must pay the prescribed fees unless exempted.¹³⁷

Foreigners, who because of the nature of their businesses need to make frequent visits to Kenya, may apply for multiple-entry visas.

¹³⁶ Kenya Visa Regulations, 2010.

¹³⁷ Ibid

A holder of valid visitor's pass issued on entry to Kenya may, subject to entry requirements of a partner state, travel to any of the East African Community Partner States and re-enter Kenya without the necessity of obtaining another visa if the pass granted on entry is still valid. The visa policy shall continue to promote national interests, enhance security, and facilitate efficient entry of tourists and business visitors. In countries where Kenya does not have representation, the Diplomatic Missions of the United Kingdom and other diplomatic missions with which Kenya has existing quasi-consular agreements shall continue to issue visas on behalf of Kenya. This window could be extended to other EAC Partner States. ¹³⁸

3.3.2 Kenya Border Policies

The Kenya border policy is a mix of policies aimed at enhancing national security and promotion of good neighborliness for the achievement of her development objectives.

Sovereignty of any state is a product of its security including security of external attacks which is guaranteed through security of a countries national border and its development defined as the ability of a country to meet its obligations without external assistance. As such every country has its own border policy which is spread in several areas. A countries border policy is a product of the international relations and diplomatic activities of the respective state. Where a country borders a hostile state, its border policy will be shaped to respond to this hostility thus resulting into restrictive immigration policies.

¹³⁸ Kenya Visa Regulations, 2010

The kind of engagements between and among states also help shape a country's border policy, where states major concern is economical their border policies will be shaped to allow economic engagements to thrive such as trade. Countries will therefore come up with policies that reduce trade barriers. It can be argued therefore, that the Kenya border policy is informed by the dictates and the needs of Kenya, such needs as maintained of diplomatic relations, economic benefits, military power and defense, security of the state and protection of its citizens from external influences together with the need to expand its influence through regional integration all coalesce to shape the direction form and shape of Kenya's border policy. The formulation of Kenya's border policy and its implementation is efforts of several state agencies all under the leadership of the executive. These institutions that help in border policy making are the Ministry of Immigration, Foreign Affairs, Ministry of Internal Affairs, Ministry of Regional Cooperation and Office of the President.

3.3.3 Evolution of the Kenya Border Policy

The evolution of the Kenya border policy can be traced to the colonization of Kenya from the 1900. During the scramble for Africa, Kenya as known today was carved and became a British colony under the crown. Kenya's border and therefore the border policy were drawn at the time. More critical was the intentional border survey in 1932¹³⁹ which formally developed the Kenyan borders as they are today. The resultant map of Kenya was subsequently deposited with the UN thus the borders became instruments of

¹³⁹ United Nations Report, 1999

international law¹⁴⁰. Several surveys conducted on the Kenyan borders together with various agreements between Kenya and its neighbors form important part of the Kenya border policy. Such agreements rotated around the exactness of Kenyan borders, seasoning of Kenyan borders, surrender of parts of territory to Kenya like the case of Kenya and Uganda over parts of western region, surrender of the coastal among others. The colonial ordinance of 1945¹⁴¹ on immigration into Kenya and alien control though seeking to structure immigration into Kenya also form an important part to Kenya's border policy. The alien's registration ordinance of 1952¹⁴² seeking to regulate the stay of aliens in Kenya is also important.

These two colonial ordinances were later to be repealed by the Immigration Act Cap 172, the Alien's Registration Act Cap 170, the Civil Registration Act Cap 173 and later the Kenya Refugees Act 2006. These legislations in their legal form are an integral part of the Kenya border policy since they provide a clear guideline on not only matters of immigration but also on matters of admission and exclusion of aliens, control of Kenyan citizens movement and such related matters.

All the above Acts have now been repealed by the Kenya citizenship and Immigration Act 2011¹⁴³, the Kenya Citizenships and Immigration Service Act 2011¹⁴⁴ and the

¹⁴⁰ United Nations Report, 1999.

¹⁴¹ .as quoted in Opon D.,2003: African immigration policies: case study of Kenya 1906-2000. MA thesis.

¹⁴² ibid

¹⁴³ Kenya Citizenship and Immigration Act no 2/2011. Laws of Kenya. Government printer

¹⁴⁴ Kenya Citizenship and Immigration Act 2011. Laws of Kenya. Government printer

Constitution of Kenya 2010¹⁴⁵ especially chapter three, in addition several executive decrees, administrative directives and visa regulations from part of the Kenyan border policy.

It is important to note that Kenya does not have an official immigration nor border policy in terms of a policy. The policy refer to in this study is still in draft form awaiting approval of the cabinet and parliament. This accounts or the contradiction witnessed in Kenya border management today where government agencies all pursue different interests duet to their different mandates. There is need therefore to harmonize the work of border agencies so as to realize a clear, structure, predictable and transparent border policy devoid of misinterpretations.

The following chapter four will endeavor to highlight this Kenya border policy and examine how it is implemented, so as to have one border policy rather than border policies.

¹⁴⁵ Government of Kenya 2010: the Constitution of the republic of Kenya 2010: chapter 3. Government printer

CHAPTER FOUR

IMPLEMENTATION OF KENYA BORDER POLICIES

4.1 Immigration and Emigration Across Borders

This study came across a normal, smooth cyclic movement of people across all selected borders. For instance the sampled border is neglected immigration and emigration per half year as at December 2012 as shown in table 4.1.

Table 4.1: Immigration and Emigration at selected Border Control Points (BCP)

Border	Immigration	Emigration
Namanga	301388	300308
Busia	428,512	438976
Malaba	212900	108767
Isebania	160621	148302
Taveta	129203	98204
Jomo Kenyatta International Airport	6022701	6102340
Moi International Airport	2567080	2314589

Source: Researcher, (2013)

The data in 4.1 above shows a smooth and vibrant movement, such movement and flows are facilitated by appropriate open and facilitative border policies that encourage immigration and emigration rather than restricting it. This shows that the kind of immigration policies have a significant impact on the free movement of persons across

borders influenced by the manner and intention including the circumstances of time such policies are developed and implemented.

The Kenya border policies can therefore be said to be open and facilitative thus allow for smooth flow of people as shown by the table above. Emerging issues though affect this movement thus influences the policy in place. Issues like transnational crime such as terrorism, human smuggling and human trafficking, illegal money transfers and the recent wave in ivory trade in East Africa have made states to adopt some restrictive border policies to contain them.

This continues to influence the existence of border control points and the several check points at various borders. This also influences the policy on various checks done at borders such as emigration checks, customs checks, police checks and surveillance.

4.2 Border Procedures

The Kenya border policy document and the citizenship and immigration Act 2011 provide for the procedure at border control point (BCP). A border procedure is described as the events or activities one (travelers) who is either citizen or non citizen goes through at BCP in order to emigrate or immigrate any given country.

In Kenya, the traveler undergoes various systematic steps that all amount to passenger / traveler screening. This procedure is:

(a) Declaration of intent to immigrate or emigrate. This is done by filing EDF OR DDF. This is in accordance to section 48(1)(c) of the Citizenship and Immigration Act, 2011.

Subject to and for the purposes of this Act an immigration officer shall have the power to:-

require any person seeking to enter or leave Kenya other than a refugee or any asylum seeker, to produce to him a valid passport or a valid travel document and any form of declaration that may be prescribed;¹⁴⁶

b) Presentation of self (travelers) together with identifies documents and travel documents before an immigration officer. The traveler submits his DDF or EDF form to the immigration officer at the port of entry or exit. This physical presentation allows the Immigration officer to physically examine the details of the traveler in the passport and those in the DDF or EDF.

(c) Profiling of the travelers by the immigration officers. This involves communication between the officer and the traveler. After greetings, a set of standard questions that immigration officers can draw from, depending on the circumstances. Depending on the responses to the above questions, an immigration officer may ask additional questions to obtain more detailed information or to cross check information already provided.¹⁴⁷

(d) Capturing of details of travelers in Pisces system. This is a computerized database which has the ability to identify and intercept known and documented criminals and terrorists, as well as capacity to investigate and track suspicious travelers.¹⁴⁸The system collects and stores information on all incoming and outgoing passengers and stores in the data base.

¹⁴⁶ Citizenship And Immigration Act, 2011, Laws of Kenya.

¹⁴⁷ Kenya Immigration Border Manual, 2010.

¹⁴⁸ Ibid

(e) Taking of biometric data of the travelers. The information stored in PISCES is derived from a traveler's passport. If the paper has a machine readable zone,(MRZ), a passport reader scans the information into the system automatically. If a passport is not machine readable, the information has to be put in manually. In addition, it stores the travelers' fingerprints which are captured on arrival and departure.¹⁴⁹

(f) Verification of the data by comparing it to existing data. The PISCES system is able to produce various kinds of reports, which will be of interest to immigration and other law enforcing agencies, as well as information about individuals, including their travel history.¹⁵⁰

(g) Traveler search and comparison against stored wanted list. An important feature of PISCES is the alert or the Prohibited Immigrant List which contains information on people and documents of immigration, law enforcement or security interest. When a person's details are entered into the system, at either arrival or departure, the system automatically checks against the Alert List for a possible match.¹⁵¹

(h) The passengers is cleared, he / she is allowed emigration by endorsing the travel document by an immigration stamp. The immigration stamp takes the form of a visitors pass. The length of visitors pass depends on the purpose of immigration but ranges from one day to six months. This is endorsed in short term as KVP (Kenya Visitors Pass)

For countries under visa regime, they are issued with a visa either on arrival or have referred visa approvals on arrival.

¹⁴⁹ Kenya Immigration Borders Manual, 2010.

¹⁵⁰ Ibid

¹⁵¹ Ibid

4.3 National Treatment

Citizens of Kenya are accorded preferential treatment when they re-enter Kenya. For instance special counters are provided for them at all airports and some border stations. The process of screening Kenya citizens is not lengthy as compared to non-Kenyans. This is because most of their data has been stored in various institutions of the government.

To encourage free movement of East Africans and enhance regional integration, East Africans are given treatment not lesser than Kenyans. They are required to obtain a visitor's pass of up to six months in entry to Kenya which is issued free. The difference is East Africans must produce a travel document for entry to Kenya and those seeking to establish in Kenya or are offered employment in Kenya they must obtain residence or work permits.

However, recent agreements signed by Kenya, Uganda and Rwanda shall allow free movement of persons, particularly upon production of Identity card.¹⁵²

4.4 Implementation Agency

The presidential circular no 1/2008 designated, the department of immigration as the lead agency at all borders. It is the same department that is responsible for the implementation of the Kenya border policy.

The department draws its mandate from chapter three of the constitution of Kenya and the Kenya Citizenship and Immigration Act. These two documents; Constitution and the Immigration Act lay foundation of the Kenya Border Policy.

¹⁵² Interview, Administration Section, 10th September, 2013

4.5 Stated Border Policies And Their Implementation

The purpose of the Kenya border policy is to strengthen and secure national borders of Kenya are prevent entry of undesirable persons and efficiently facilitate entry into, stay and exist from Kenya of bonafide travelers by enhancing the use of technology. Also, the policy aims at strengthening and enforcing national laws regulating migration through the creation of clear transparent admission and expulsion procedures.

The policy is security biased since it attempts to emphasize the security role of the department of immigration. During the research, most of the respondents have no knowledge of existence of such policy. The admission that there is no clear border policy is a result lack of knowledge on the difference between policy and law. The Kenya border policy has been in existence through as the army and police.

Every item of this policy has been discussed at various points in this study. The Kenya border policy provides some of the specific policy issues for implementation as follows:

- a. Strengthen border management structures and processes. Border management in Kenya is the mandate of the department of immigration. That the department is the lead agency at border means that it is tasked in practice shared by several other agencies responsible for security of our national borders such with management of the same borders. Other agencies are customs, police, public health, National Intelligence Services. These agencies meet in border management committees under the secretariat of immigration department to

discuss various issues facing the border. These committees exist at all borders in Kenya and are integral part of border management system.

- b. Continuously evaluate the staffing needs for efficient service delivery at points of entry and increase staffing to optimal levels. These provisions are already implemented. The staffing levels of various selected BCPs is as shown in the table 4.2 below

Table 4.2: table of staffing levels at selected BCPs

Border	Total no of staff	No of shifts
Jomo Kenyatta International Airport	104	4
Moi International Airport	61	3
Namanga	17	3
Busia	15	3
Isebania	10	3
Malaba	12	3

Source: Researcher, (2013)

From the table 4.2, it can be deduced that the number of staff deployed at various BCPs to manage them and therefore by extension implement the Kenya border policy is clearly inadequate given their numbers as reflected in the table. These numbers are not commensurate with the tasks these officers have to undertake on a daily basis. This means either some tasks are never undertaken or if done, consideration of the quality of the work done is lost thus procedures are done for formality purposes other than for

professionalism. This in consequence hinders efficient implementation of border policy and hence poses a threat to national security.

Tasks border surveillance and patrol have ever since been left in the hands of police officers at some border points like in Namanga, Busia¹⁵³ meaning that this task is largely not performed by immigration officers at many BCPs yet this is a core mandate and policy provision by the policy document. Other tasks like carrier inspection, passenger screening is more routinual than on the demands of each traveler. This clearly compromises the security of the country and the best practice that the policy envisages in its attempt to confine and structure immigration practice in Kenya. This study realized that at Namanga, carrier checks are done by a police attached to immigration office who is also expected to be watching the immigration office¹⁵⁴. The security attached to the office is not again supposed to be one checking carriers. This later role is to be performed by immigration officers while the security attached is to provide watch for the office and its occupants. The same practice was witnessed at other borders as well.

These mistakes can be corrected if adequate officers are deployed at each border and their assignment of roles clearly done in consultation with all BCP stakeholders so as to ensure there is no duplication and overlap of roles.

c) Strife to reduce border porosity by opening more border control checkpoints and enhance the efficiency of the existing ones.

The government of Kenya seeks to reduce border porosity so as to curb on instances of illegal entry and crossing of borders at un- gazzetted points which is an offence in the

¹⁵³Interview, 21st July 2013 at Busia Border Control

¹⁵⁴Interview, 1st August 2013 at Namanga Border Control

Citizenship and Immigration Act 2011. This is to be achieved through complementary opening of borders as recommended by the East African community common market protocol¹⁵⁵ and the regulation 5 (b) of the regulations on free movement of persons of the above protocol. These policies have been implemented to some extent. The number of borders has increased with proposals to open new borders underway so as to ensure proper management of Kenya's borders. For instance the borders have been increase from the former 25 BCPs to 29 and additional 16 proposed BCPs some of which are partly operational see appendix 1 map showing entry points to Kenya.

- d) Enhance border surveillance and patrols. To achieve this policy objective, condition envisaged in policy provisions in a, b and c must be fulfilled. This is because this policy depends on the other discussed policies for it to be effectively undertaken. It can thus be said that the policy is being implemented with the implementation of other policy items.
- e) Enhance border management and infrastructural development, connectivity and automation at border control checkpoints.

This policy item is also depended on the other items discussed above. The automation of all BCPs is critical in effective management of Kenyan borders given that the use of ICT forms is a core ingredient in securing Kenyan borders and as a data collection tool thus having a significant impact on the overall immigration policy of Kenya. Most of the borders visited during this interview are already automated thus complying with the policy aim of automation of Kenyan borders. These borders are: all airports of Kenya,

¹⁵⁵ Protocol Establishing The East African Community Common Market

Namanga border, Busia, Malaba, Isebania, Taveta, Lunga Lunga, Loitoktok, Suam, Moyale, Mandera, Garissa Wajir among others. Also prosecution sections of the three regional offices are automated.

There is also a mobile immigration system functioning in northeastern Kenya where a mobile office in a van is used to patrol and do on the spot profiling of suspected immigrants complete with security system which compares these immigrants against a list of internationally and nationally wanted undesirable persons. There is need to set up a fully functioning immigration intelligence unit to help in gathering and prosecution of intelligence information on immigrants and their activities rather than relying on the mainstream intelligence arms of the government that have no capacity and interest in activities of and trends in immigration.

There are many challenges to the use of ICT though some being a product of lack of manpower training, power problems, lack of system connectivity therefore making it difficult to check the persons entry anywhere in Kenya and the lack of own security system like that used which is administered and donated by the US government

Enhancement of regional cooperation with neighbouring countries in the sharing of information, joint operations to prevent of cross-border crime and Promote regional integration by opening exclusively immigration desks for Kenya citizens, citizens of the East African Community Partner States, nationals of COMESA and IGAD member states.

This policy item recognizes the role of immigration in regional integration. Any integration project is dependent of movement of persons or migration as the key pillar for such integration. There can be no economic integration or even political integration without integrating the people. Therefore recognition of the right to free movement of persons and the safeguarding of this right in both global and regional and national laws and regulations is a fundamental undertaking of any government and successful region.

The Protocol of East African Community Common Market is one attempt in this region to regulate and legislate for the free movement of persons. The government of Kenya is in the process of implementing some of the provisions of this Protocol especially provisions on free movement of persons most of which have been implemented thus facilitating east African integration. For instance east Africans are allowed to stay in Kenya for up to six months without applying for residence or work permit in tandem with the provisions of the protocol. They also are required to obtain work permits *gratis* thus reducing legal requirements for acquisition of work or residence permits to east Africans. In consultation with Partner States in the EAC, enhance the free movement of persons and labour through the One Stop Border Posts concept at busy East African Community Partner States ports of entry to promote the EAC Common Market Protocol.

This policy's implementation is already underway in Kenya. For instance the construction of OSBP is already being done at Taveta, Malaba, Namanga. Busia border has close to one stop border in place only procedures waiting to be integrated. The OSBP project is also part of the requirements in the protocol for the opening of complementary borders thus has the potential of deepening integration. This will go together with

harmonization of laws of member states, harmonization of border procedures at all BCPs to make movement across borders as open and free as much as possible, to streamline operations of all the borders to make them efficient for the achievement of the broader development goals of Kenya and by extension the east African region given the role of Kenya as the gateway in the region. These operations cannot be achieved without the use of ICT in making functions efficient and smooth, in data collection and analysis for migration and policy use and as an important tool for ensuring openness and integrity of operations at the borders.

To achieve the larger objective of an integrated region which protects the migration rights of its people and therefore efficient implementation of respective individual state border policies, there is need for a clearly independent east African migration policy that harmonizes all the provisions contained in the east African common market protocol and its regulations and simplifying the provisions in the protocol and treaty. The lack of a regional migration policy can be attributed to lack of individual state migration policy or weak national migration policies and the perception of member states of the region and national governments of the role of migration and effective migration management for national and regional development. The recent awakening of the critical role the Diaspora community plays in the regional economies and in Kenya particularly through their remittances has stirred states to rethink their strategies on migration and thus reshape their policies to cater for this group's interests and to motivate them back home.

From this discussion both strengths and weaknesses in the implementation of Kenya's border policy can be identified and thus need to be addressed. The role of the government as the policy originator and implementer needs to be clearly analyzed and evaluated in terms of the capacity of the government to implement its own policies without losing focus on the real intent of the policy.

What hinders a state from implementing some common integration policies like abolishing permits is because they want to protect their national interests. This is clearly explained in the theoretical framework in this study. States for example, may not cooperate fully when it comes to the matters of regional integration agreements because they may fear losing their sovereignty power to a regional organization.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1. Introduction

This chapter presents a synthesis of the entire study. It contains a summary of research findings, discussion of the findings in accordance with the objectives, conclusions and recommendations made on the basis of the same.

5.2. Summary of Findings

In this chapter, the study identifies the challenges faced in effective implementation of border policies and procedures. The Kenyan borders and sea are highly porous due border control points that are far in between, inadequate equipment and facilities, low financing and weak policy and institutional coordination.

An important aspect of border management is the issuance of travel and identity document which are authentic and ICAO compliant through a transparent system. The provision and use of credible travel and identity documents supports efforts to make cross border movements safer, faster and easier for travelers.

Cooperation with other states and/or relevant national/international organizations will generally enhance border practice and security. The study advocates for the harmonization of border procedures and documentation among the East African Community Partner States.

In addition to the foregoing, the study advocates for greater use of technology, and particularly biometrics for identification purposes where possible, to enhance effectiveness in border management.

5.3 Conclusion and Recommendations

Kenya has been operating without clear border policy. The former constitution failed to capture the territory of Kenya and the borders as well. This has partly constituted to the present contest over borders. Instability in the region has made this worse. The present border policy is a mix of policies from various agencies such as immigration, security policy, foreign affairs and presidential orders.

Emerging issues have stirred interest in the Kenyan borders. Issues of terrorism and human trafficking have brought the attention of many countries to take the task of border protection more seriously. Other issues such as illegal migration and influx of refugees have brought to the limelight the need to have a more coherent border policy that may be able to address the issues that threaten national security without necessarily bringing conflict within the existing legal instruments.

This study sought to analyze the effect of these emerging issues on border policies. In fact, the kind of border policies presently being fronted by Kenya clearly demonstrates the national desire to deal with these emerging issues so as to secure the Kenyan borders, hence territory. It is for that reason that policies are not only facilitating migration but also controlling it. There is a very thin line between facilitation which presupposes open,

flexible outward oriented policies and controlling which presupposes restrictions to migrations.

Issues of illegal migration, influx of refugees, drug trafficking, human smuggling, terrorism, among other vices have necessitated states to adopt a rather restrictive approach to migration, with an intention to contain these trends. This study realized the strong link between the border policies adopted and the emerging issues as a result of globalization. This therefore confirms the hypothesis that emerging issues across the globe are affecting implementation of border policies and border management in Kenya.

It is clear from the study that regional integration is a both a facilitator and a threat to border management especially in scenarios where people move borders instead of borders moving people. It is very hard for countries to allow free movements of persons across the borders and hence the need for immigration checks when individuals are crossing borders regardless of their tribal or cultural orientation. For example, movement of pastoral communities across borders is a challenge to immigration border managers because these communities cross borders in search of green pastures.

The study, therefore advocates for the opening of more border ports, increased budget for border operations and equipment, and the establishment of specialized border patrol unit and the strengthening of institutional coordination. There is also need for the department to lead from the front, as the agency charged with border management. There is laxity and interference from other agencies especially where information sharing is necessary. This calls for team work and cooperation with other agencies as well.

War against terror would require the government to look at immigration as a security issue and make available up to date information technology. Governments in East Africa must also recognize that the use of biometrics needs to be considered as part of a wider border management strategy. That is to say, the use of biometrics must be integrated with other facets of risk management on the border in order to achieve a comprehensive border management strategy that promises high-quality, accurate and timely information in the fight against security threats. Advance passenger biographic data is ideal for identifying threats prior to their arrival at the border, whereas biometric technology is ideal for rapid, secure and reliable identification of individuals at the border. This would be done by enhancing capacity building through training of staff in various areas that touch on documents analysis and effective border management.

There is further room for research by the academia where by scholars can do an analysis of different border management policies for countries within the East African region. Border policies and procedures keep changing from time to time, hence need for scholarly attention.

BIBLIOGRAPHY

- Ackleson J, *Constructing security on the U.S.–Mexico border*, 2010.
- Apap J. and S. Carrera, *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December 2003.
- Adamson, F. B., *Crossing Borders: International Migration and National Security, International Security*, Vol. 31, No. 1 (Summer, 2006), pp. 165-199, MIT Press
Stable URL: <http://www.jstor.org/stable/4137542> .
- Anna Moraczewska, *The Changing Interpretation Of Border Functions In International Relations*, *Revista Română de Geografie Politică* Year XII, no. 2, Nov, 2010, pp. 329- 340, Article no. 122111-202.
- Barry R. Chiswick, *Illegal Immigration and Immigration Control, The Journal of Economic Perspectives* Vol. 2, No. 3 (Summer, 1988), pp. 101-115 American Economic Association, USA, 1988.
- Bart Jansen, "Bill Aims to Shore Up Northern Border," *Portland Press Herald* (Maine), October 4, 2001.
- Christopher Wilson and Erik Lee, *The State of the Border Report, A Comprehensive Analysis of US-Mexico Border*, Wilson Centre, Washington, 2013.
- Cooper, R. and Schindler, P, *Business research Methods*. New Delhi. Tata McGraw Hill, 2003.
- Collett, Elisabeth, *Emerging Transatlantic Security Dilemma in Border Management*, Migration Policy Institute, 2011.
- Davis Mai'a K, *Security Integration in Europe: How Knowledge Based Networks are Transforming European Union*, University of Michigan Press, Ann Arbor, UAS, 2011.
- De Haas, H., 'The Myth of Invasion: Irregular migration from West Africa to the Maghreb and the European Union' (Oxford, IMI Research Report, October 2007), 15.
- Emory, C., W.. *Business Research Methods* (3rd ed.). Irwin Homewood, Illinois, 1995.
Eu/Frontex ,Futures Of Borders, A Forward Study Of European Border Checks, December 2011.
- Federal Office For Migration, *Final Report of the Integrated Border Management*, Strategy Group, 2012.

- Fiona B. Adamson, "Globalization, International Migration, and Changing Security Interests in Western Europe," paper presented at the Ninety-fifth Annual Meeting of the American Political International.
- Geoffrey Harle, *In Search of Effective Border Management*, Canadian International Council, 2009.
- Gina Clayton, *Textbook Immigration and Assylum Law*, 3rd Ed, Oxford University Press, New York, 2008.
- Goldstein J, *International Relations*, Sixth Ed, Longman Publishers, New York, 2008.
- Hart Jerry, *Secure Borders, Why Technology Is Not Enough*, Migration Policy Institute, 2010.
- Hills, A., 'The rationalities of European Border Security', 15 *European Border Security* 1 (1996), 69.
- Heinrich Böll Foundation, *Rethinking Globa Security: An African Perspective?*, WordAlive Publishers Ltd, 2006.
- Huntington, Samuel P. "Transnational Organizations in World Politics," *World Politics*, Vol. 25, No. 3 (April 1973), pp. 333-368.
- IOM, *Intergrated Border Managent*, IBM Fact Sheet, 2011.
- International Organization for Migration(IOM), *World Migration, 2003: Managing Migration: Challenges an d Responses for People on the Move*, Geneva: I OM,2003.
- James J.F., *Homeland Security, Protecting America's Targets, Volume 1: Borders And Points Of Entry*, Praecier Security International USA, 2006
- John C. Rugie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, International Organization, Vol 47, No.1, 9Winter 1993), pp 139-1774
- Jonathan Peterson and Patrick J. McDonnell, "Tightening Immigration Raises Civil Liberties Flag," *Los Angeles Times*, September 23, 2001, *Journal of European Public Policy*, Migration and the EU's new eastern *border*: between *realism* and liberalism, Routledge Volume 8, Issue 1, 2001.
- Keith Krause and Michael C. Williams, e ds., *Critical Security Studies: Concepts and Cases* Minneapolis:University of Minnesota Press, 1997.

- Kenichi Ohmae, *The End Of The Nation-State: The Rise Of Regional Economies*. New York: Simon and Schuster Inc., 1995. 214 Pp.
- Kenya Immigration Border Manual and Procedures, GOK, 2010.
- Kenya National Migration Policy, 2013
- Kolowski, Rey, *The Evolution of Border Control As A Mechanism Prevent Illegal Migration*, Migration Policy Institute, 2011.
- Kombo and Tromp Kombo, D. K. and Tromp, L. A. (2006). *Proposal and Thesis writing*. Nairobi; Pauline publications, 2006).
- Makumi Mwangi, *African Regional Security in the Age of Globalisation*, Heinrich Boll Foundation, Nairobi, 2004.
- Makumi Mwangi, *Cordination of National Security Strategy: Perspectives on Grand Strategy Formulation in Kenya*, NDC Occasional Papers on Security, No. 1 2008
- Malcolm Anderson, *Frontiers, Territory and state formation in the Modern World*, Cambridge: Polity, 1996. Malc
- Mark G. Guzman Joseph H. Haslag Pia M. Orrenius, *On the determinants of optimal border enforcement* , February 2007
- McLinden, Gerald Fanta, Enrique Widdowson, David, , *World Bank Publications, Herndon, USA, 2010.*
- Monar, J., 'Justice and Home Affairs', *Journal of Common Market Studies* (Annual Review 2002/2003), 124.
- Mugenda, M.' O. and Mugenda, G., *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: Laba Graphics Services, (2003). Myron Weiner, " Security, Stability, and International
- Migration, "International Security, Vol. 17, No. 3 (Winter1 992/93), pp. 91-126;
- Myron Weiner, e d., *International Migration and Security* (Boulder, Colo.: Westview, 1993);
- Myron Weiner, e d., *The Global Migration Crisis: Challenges to States and to Human Rights* (New York: HarperCollins, 1995).
- Newman, D., *Borders and Bordering Towards an Interdisciplinary Dialogue*, *European Journal of Social Theory* 9 (2), 2006,

- Newman, D., Borders and Bordering Towards an Interdisciplinary Dialogue, *European Journal of Social Theory* 9 (2), 2006, p. 175.
- Otwin Marenin, *Challenges for Integrated Border Management in the European Union*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper – №17 , 2010.
- Peter Andreas and Thomas J. Biersteker, eds., *The Rebordering of North America: Integration and Exclusion in a New Security Context* (New York: Routledge, 2003).
- Robson C., *Real World Research* (2nd Ed.). Oxford : Blacwell, (2002)
- Roxanne Lynn Doty, "Immigration and the Politics of Security," *Security Studies*, Vol. 8, Nos. 2/3 (Winter 1998/99-Spring 1999), pp. 71-93.
- Samuel P. Huntington, "*Transnational Organizations in World Politics*," *World Politics*, Vol. 25, No. 3 (April 1973), pp. 333-368.
- Stephen Castles and Mark J . Miller, *The Age of Migration: International Population movements in the Modern World*, 3d ed. (London: M acmillan, 2003).
- Schneider H., "Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to The Hague" in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Volume II, Forum Maastricht, University of Maastricht, 2005.
- The Lisbon Strategy – *Making change happen*, COM(2002) 14 final, Brussels, 15.1.2002.
- Thierry Balzacq, Sergio Carrera, *Migration, Borders And Asylum: Trends And Vulnerabilities In Eu Policy*, Centre for European Policy Studies, Brussels, 2005.
- UNHCR, *The State Of The World's Refugees*, Oxford University Press. 1995
United Nations Report (2002)
- Van Houtum, Henk, Borders, *Strangers, Doors and Bridges*", *Space and Polity* 6(2): 141-6, *The Changing Interpretation of Border Functions in International Relations*, 335.
- Wayne Armstrong Cornelius, Philip L. Martin, James F. Hollifield, *Controlling immigration: A Global Perspective*, Stanford University Press, California, 1999.

Walsh James, *Navigating Globalisation: Immigration Policy in Canada and Australia, 1945- 2007*, Sociological Forum, Volume 23, No.4, Dec 2008.

Wayne Armstrong Cornelius, Philip L. Martin, James F. Hollifield, *Controlling immigration: A Global Perspective*, Stanford University Press, California, 1994.

Wilson, Thomas M.Donnan, Wiley-Blackwell *Companions to Anthropology, Volume 26: Companion to Border Studies*, Willey Blackwell, Hoboken USA, 2012.

APPENDICES I: MAP SHOWING BORDERS IN KENYA

KENYA IMMIGRATION EXISTING AND PROPOSED CONTROL POINTS

