

Implementation of International Refugee Law: The Case of Kenya.

By

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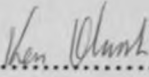
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DECLARATION

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

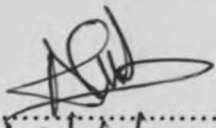
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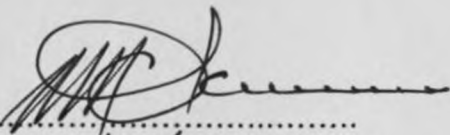
Declaration by Supervisors

This thesis was submitted for examination with our approval as university supervisors, and having successfully been examined approve it as the final copy.

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DEDICATION

This work is dedicated to my parents, Nerea Amayo and Reuben Oluoch for having been fountains of my inspiration. It is also dedicated to all those people who have been forcibly displaced from their homes all over the world.

ACKNOWLEDGEMENT

This work could not have been successful without the contribution of various individuals, institutions and organizations. I appreciate the useful information, materials and support I received during the field study from the United Nations High Commissioner for Refugees (UNHCR) office in Nairobi and at the camp sites at Kakuma and Dadaab, the various service providing agencies at the camps, including International Rescue Committee (IRC) and Lutherans World Federation (LWF). Special thanks go to Moi University for the partial scholarship and study leave during the time I was conducting the research. I cannot forget to thank University of Nairobi's Department of Political Science and Public Administration where I registered for the PhD program leading to the completion of this work. Thanks also to the Higher Education Loans Board (HELB) for advancing me student loan for part of the research.

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ABSTRACT

This study examines how international refugee law is implemented in Kenya. It further examines the challenges faced in the implementation of international refugee law and how the state handles those challenges. As such it seeks to answer the questions: To what extent has Kenya been guided by the provisions of international conventions on refugees in handling refugee issues? What policies have been put in place to address the refugee situation in the country and to what extent do they conform to international refugee law? To what extent do security concerns affect the implementation of international refugee law? The findings of the study are based on documentary sources, field survey and observation. The study uses two theoretical approaches: liberal-idealism and realism.

The central assumptions of the study are that implementation of international refugee law in the national setting is anathema in the absence of corresponding municipal legislation, and that a state security concerns jeopardize the protection of refugee rights. The major findings of the study are first, the way Kenya handles refugees is determined by security concerns. Second, there are numerous obstacles faced in attempts to meet the minimum set standards in implementation of international refugee law in Kenya. These include insufficient resources such as lack of trained manpower, the unprecedented continued influx of refugees as well as lack of viability of durable solutions due to continued conflicts in the principal source countries of refugees in the region, inadequate legislation, lack of comprehensive policy, among other problems. Third, although Kenya plays its part as a responsible member of the international community by giving asylum to hundreds of thousands of refugees, there exist cases of flagrant violations of

international refugee law. These include violation of non-refoulement, police extortions, and discrimination against refugees by not only those who are supposed to give them protection, but by the host populations as well. Fourth, the UN refugee agency to a large extent plays major roles that the state should play in refugee protection. And finally, majority of refugees in Kenya are less likely to benefit from the traditional durable solutions.

Based on the findings, the study makes the following conclusions and recommendations. First, unless the right policies are put in place to address the challenges plaguing the implementation of refugee law in Kenya, attainment of the minimum standards would remain a mirage. Second, policies and practices that violate human rights of refugees worsen their conditions. Therefore, the policies and practices adopted by the host state should be well informed by the provisions of international refugee law. Third, since the traditional durable solutions leave vast majority of refugees in the status quo, alternative measures such as prevention of conflicts should be given priority. And fourth, states violate the law due to security concerns, social, economic and environmental impacts involved in Refugeeism, as well as failure of the international community to make their contribution, thus results into shift of host state's policy from "open-door" to restrictive one, including refouler.

LIST OF ABBREVIATIONS

AMISOM	African Union Mission in Somalia.
CARE	Cooperative for Assistance and Relief Everywhere
CGDK	Coalition Government of Democratic Kampuchea
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.
CPA	Comprehensive Peace Accord
D.Cs	District Commissioners
D.Os	District Officers
DWF	Department of World Federation
EU	European Union
ECOWAS	Economic Commission of West African States
ECA	Economic Commission for Africa
EAC	East African community
FBI	Federal Bureau of Investigations
FIDA	Association of Kenya Women Lawyers
FGM	Female genital mutilation
GDP	Gross Domestic Product
GTZ	German technical Cooperation
HI	Handicap International
HELB	Higher Education Loans Board
ICARA	International Conference on the Assistance of Refugees in Africa
IRC	International Rescue Committee
IGCR	Inter-Governmental Committee on Refugees
IDPs	Internally displaced persons.
INS	Immigrations and Naturalization Services
IMF	International Monetary Fund.
IPTEC	International Primary Teachers' Education Certificate
JRS	Jesuits Refugee services
KRCS	Kenya Red Cross Society
KNEC	Kenya National Examinations Council
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Examinations
KNFP	Kenya National Focal Point
KPU	Kenya People's Union
KDF	Kenyan Defense Forces
LWF/LWD	Lutherans World Federation/Lutherans World Department
MPC	Multi-Purpose Centers
NEMA	National Environmental Management Authority
NCKK	National Council of Churches of Kenya
NGO	A non-governmental organization
OAU	Organization of African Unity
ONLF	Oromo National Liberation Front

OCS	Officer in-charge of the Station	
PEP	Pilot Peace Program	
RCK	Refugee Consortium of Kenya	
RSD	Refugee Status Determination	
SPLA	Sudanese Peoples' Liberation Army	
SALW	Small Arms and Light Weapons	
SADC	Southern African Development Cooperation	
UNHCR	United Nations High Commissioner for Refugees	
UNRRA	UN Relief and Rehabilitation Administration	
UNGA	United Nations General Assembly	
USCR	US committee for refugees	
UDHR	Universal Declaration of Human Rights	
UNLA	Uganda National Liberation Army.	
UNDP	United Nations Development Program	
UNICEF	The United Nations Children's Fund	
USA	United States of America	
UNESCO	United Nations Educational, Scientific and Cultural Organization.	
UIC	Union of Islamic Courts	
WFP	World Food Programme	
WHO	World Health Organization	
WTK	Windle Trust Kenya	
WTI	Windle Trust International	

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

This chapter introduces the study. It provides the background to the study, discusses the problem of the study, justification of the study, and provide the research questions and objectives of the study. Besides, it provides the methodology of the study, definition of concepts and the organization of the study.

1.2 Background to the Study

This study was motivated by the magnitude of the problem of refugees, in both time and space. Refugeeism gained international attention with the outflow of Russian and then Armenian refugees in Europe in the 1920s. It drew the attention of the United Nations and major nation state actors in the post-World War II, a result of both the war itself, and the Nazi-German Holocaust. It is against this background that United Nations Convened the International Convention Relating to Aspects of Refugees. The UN Refugee Convention together with the 1967 Protocol form the basis of International Refugee Law. Besides, in the African context, the OAU Convention on Specific Aspects of Refugee Problems in Africa (1969) also provides important source of refugee international law both at regional and country levels.

Kenya has played host country to refugees for several decades. The Nubians from Sudan, for instance, migrated into the country during the colonial days and settled in Nairobi and other major towns. The late 1960s experienced influx of refugees mainly from Sudan, following the protracted civil war and subsequent military coup. The 1970s influxes on the other hand were mainly from Uganda following Idi Amin's treacherous

rule there. The post-Amin era conflicts led to more refugees from Uganda crossing into Kenya. Many of these refugees were urbanites, a number of whom were professionals who could be absorbed into the job market with ease, considering Kenya's growing economy and the country's need for the qualified manpower. The relatively smaller number of these earlier refugees was not alarming neither to policy makers, nor the host population. Furthermore, they could sustain themselves after getting absorbed into the Kenyan economic sectors.

At the time of International Conference on the Assistance of Refugees in Africa (ICARA II) in 1984, Kenya hosted 6,000 refugees (Gorman, 1987). That number compared to those hosted by countries such as Sudan and Somalia each hosting over 700,000 each was evidently too paltry to draw even the concern of the donor community. However, by 1992 Kenya hosted more than 400,000 refugees, most of whom were escaping from political violence in several countries in the Horn of Africa and the Great Lakes (UNHCR, 1993). Although some cases of repatriation and resettlement have been undertaken, as of 2006 the country still hosted about 250,000 refugees in the camps of Kakuma and Dadaab alone, and other hundreds of thousands in the towns (UNHCR, 2006(b)). It is estimated that by 2000 the city of Nairobi alone hosted between 60,000 and 100,000 refugees (Ndege, et al 2000). Many other major towns in the country such as Mombasa, Kisumu, and Eldoret also host a significant number of refugees.

As pointed out above, Kenya has been a host country for refugees mainly from the Horn of Africa and the Great Lakes region since the 1960s. However, with escalation of violence within the regions in the aftermath of the Cold War, the influx of refugees has reached alarming proportions. However, until the enactment of the Refugee Act 2006,

Kenya lacked a refugee-specific legislation. It is against this background that the study sought to examine how international refugee law has been implemented in the country. International refugee law is derived from a number of international instruments that establish and define the basic standards for the treatment of refugees. The most important refugee specific instruments are the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees. The two form what can rightly be defined as the international bill of rights for refugees. The instruments provide general definition of refugees and set the minimum standard of treatment of refugees, including the basic rights to which they are entitled. A major distinction between the Convention and the Protocol is that the former had time limit for those who were considered as refugees, while the latter has no limit in terms of time of displacement. In Africa's context, the OAU Refugee Convention is an important source of the law.

Other international conventions and declarations that relevant provisions include the 1949 Fourth Geneva Convention Related to the Protection of Civilian Persons in Time of War, the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of the Stateless and 1967 United Nations Declaration on Territorial Asylum. Since international refugee law deals largely with protection of refugee, particularly with regard to their human rights, international conventions and declarations as well as protocols on human rights are also relevant. Such include the Universal Declaration of Human Rights, International Covenant on Political and Civil Rights, as well as International Covenant on Economic, Social and Cultural Rights

among other instruments. At the global level the UN has been quite instrumental in the development of refugee international law and refugee protection.

1.3 Statement of the Problem

The research problem for this study is analyzed from socio-political and intellectual perspective. The socio-political dimension concerns the social and political consequences of refugeeism

Kenya is ranked as one of the leading refugee host countries by the UN refugee agency. As of 2009, the country ranked eighth globally with 320,600 refugees (UNHCR, 2009). Other leading countries in ascending order are: Pakistan (1.8 million), Syria (1.1 million), Iran (980,000), Germany (582,700), Jordan (500,400), Chad (330,500), and Tanzania (321,900). Some of the source countries to Kenya are also among the largest sources of refugees in the world. These include Somalia (561,000), Sudan (419,000) and Democratic Republic of Congo (368,000). These together with Afghanistan (2.8 million), Iraq (1.9 million), and Colombia (374,000) are account for 45 percent of refugees under UNHCR mandate globally (UNHCR, 2009). Continued instability in Somalia has kept the number of refugees hosted by Kenya spiraling. For instance, as of June 2010, the country hosted 325,000 refugees from Somalia alone, while it had 450,000 in the Kakuma and Dadaab camps (HRW, 2010).

Despite repatriation processes, the number of refugees in Kenya has continued rising, today, mainly due to the protracted civil war and instability in Somalia. As such, refugee situation in Kenya continue to take a crisis dimension. The crisis for instance, raises serious security concerns to the government of the host country. For instance,

massive influx of refugees is often associated with proliferation illegal small arms and light weapons as well as influx of arms dealers, potential terrorists, and combatants in guise of refugees, as well as other illicit cross-border activities. Furthermore, refugee situation has the potential of creating diplomatic attrition between the host state and the state of origin of refugees.

Refugee situation, such as in the case of Kenya also puts significant pressure on the limited resources, thus has significant socio-economic impact on the country. Kenya as a signatory to the refugee conventions and being a member of both the African Union and United Nations, and above all, a responsible member of the international community, has the obligation to ensure that the refugees that it hosts are protected according to the provisions of international refugee law. On the other hand, as a sovereign state, Kenya has its national interests that it needs to protect. The study therefore examines how Kenya, as a host state handles problems engendered by refugeeism, while at the same time ensuring that the policies adopted are in line with international refugee law. The study sought to find out the extent to which the handling of refugee issues in the country is guided and/or informed by provisions of the international refugee conventions/protocol. The study thus sought to analyze the strategies that the Kenya government has adopted in its handling of refugee problems, particularly since the early 1990s.

1.4 Justification of Study

This study is significant for both policy and academic reasons. The magnitude of the influx of refugees particularly since the early 1990s has had far reaching demographic, cultural, environmental, social, economic and political implications for Kenya. The influx of over 400,000 refugees from neighboring countries by 1992 created a crisis of some sort. This called for clear policy measures to deal with refugeeism. The study is therefore necessary in so far as it analyzes the policy responses to refugee problems. In doing so it provides useful insights for the policy community which could assist in strengthening or recasting existing policy strategies.

Academically, existing studies have not substantially captured how the provisions of international refugee law are implemented by the countries. The intellectual inquiry into the subject matter is therefore not only timely, but also substantive. This is particularly so in the light of the fact that at the time of conducting this research, Kenya neither had a refugee legislation nor comprehensive refugee policy. The latter is still missing.

The refugee crisis as such is of concern to various actors in international relations. The state for instance has to concern itself with matters pertaining to security, particularly in regard to inflow of small arms, while at the same time formulate policies that are consistent with the international refugee and humanitarian laws, particularly owing to the fact that Kenya is a signatory to those conventions. Existing studies have not substantially captured how those provisions are implemented in the absence of comprehensive refugee policy or refugee legislation in the case of Kenya.

International refugee law has its source in international customary law and international treaty law. As in other branches of international law, the implementation of international refugee law can best be analyzed at state level. In the case of Kenya, this is an area of intellectual inquiry that has not captured sufficient attention among scholars.

1.5 Research Questions

This study was guided by the following research questions:

- a) To what extent has international refugee law guided Kenya in handling refugee affairs?
- b) To what extent does Kenya observe international law on refugee protection?
- c) To what extent do the existing refugee policies conform to international refugee law?
- d) What instruments are put in place to implement international refugee law?
- e) What are the challenges faced in attempting to implement international refugee law?
- f) What are the implications of security concerns on refugee protection by the host state?
- g) What role is played by the various actors in the implementation of international refugee law?

1.6 Objectives of the Study

The overall aim of the study is to examine the extent to which Kenya has observed international refugee law in handling refugees. Specifically, the objectives of the study are:

- a) To find out how Kenya has implemented international refugee law
- b) To find out the extent to which the adopted policies conform to international refugee law

- c) To examine the implications of state security concerns the on implementation of international refugee law
- d) To establish the functional relations between the Kenya government and other actors in implementation of international refugee law at domestic level

1.7 Research Methodology

This section discusses the data collection methods, the research design, data analysis procedures, as well as research limitations. The study used three major sources of data collection, namely documentary sources, the survey method, and observation. Details of the use of the methods in the design of this study are discussed below.

1.7.1 Documentary Sources of Data

The study used secondary data from articles, journals, published surveys, government documentaries, annual reports, newspapers, magazines and other published and unpublished materials. Specifically, the documents used in the study include annual reports and publications of UNHCR that are relevant to the study. The UN agency's various reports and publications deals with issues pertaining to refugee protection, including the legal provisions, procedures and practices in specified countries. The study also used UNHCR briefs and newsletters on Refugeeism. These documentaries are crucial sources of statistical data in relevance to refugee problems and are instrumental in analyzing the subject matter, implementation of international refugee law in Kenya.

Besides UNHCR documents, the study also referred to United Nations publications, particularly those that provide information on refugees and human rights. Further,

reports and other documents such as minutes of meetings at the Department of Refugee affairs, well informed this study. The perusal of meetings' minutes at agencies such as International Rescue Committee (IRC), Association of Kenya Women Lawyers (FIDA), and Refugee Consortium of Kenya (RCK), reveal not only the problems in refugee protection in the country, but also brings to light the roles played by such organizations in protection of refugees in the country. Reports by the Human Rights watch particularly shed light on the violations that are experienced in the implementation of the law.

The newspapers, particularly Daily Nation, Standard, and their sister weekly newspapers, Sunday Nation and Sunday Standard were quite important in providing information on refugees that were significant in this work.

1.7.2 The Survey Method

Apart from examining documents, the study also collected data through interviews, the use of questionnaires and focus group discussion.

The survey concentrated where the refugees actually were; that is Kakuma refugee camp in Turkana District and Dadaab refugee camps at Ifo, Hagadera and Dagahaley in Garissa District. The data collected here included the refugee camps setup with regard to population, bio-data of refugees, as well as provision of social services including education, health services and food rations. These enabled this study to find out some of the problems faced by camp refugees.

Besides the camps, the study was also conducted among urban refugees. The respondents in urban centers were sampled in Nairobi and Eldoret, both of which had significant refugee populations. The inclusion of urban refugees is for comparative

purposes. In urban setting, snow-balling was crucial in accessing the intended population.

As discussed in chapter one, Kenya has been hosting hundreds of thousands of refugees since early 1990s. As such considering the number, the spread of refugees in the country, and enormous time, money and energy required, it would not have been possible to target the entire refugee population in the country in such a study. The study therefore randomly sampled four hundred respondents, one hundred from Kakuma, another hundred from the camps at Dadaab, and a hundred from each of the two urban centers under survey. Their responses were obtained through the use of questionnaire as the instrument of survey.

In focus group discussions and informal interviews with refugees, the study used purposive (non-probability) sampling procedure. Unlike in the use of random (probability) sampling design that any member of the population has equal chance of inclusion, purposive sampling focus on specific categories within the entire population and thus does not afford any basis for estimating the probability that each item in the population has in being included in the sample (Kothari, 2003). In this study such groups included professional refugees, refugee university students, community (national or ethnic) leaders at the camps, refugee entrepreneurs, unemployed urban refugees, and refugee incentive workers. The sampling method was necessary since each of the aforementioned groups had certain specific detailed information that was useful to this study. Two hundred refugees, fifty each from the four locations under survey, were sampled using this procedure.

In urban areas snow-balling was a crucial in both the administration of questionnaires as well in organizing focus group discussions. At the camps focus groups were organized by the camp administrators and included involved among others, community leaders and opinion leaders.

Data collection from the key informants at the various institutions and Kenya government offices was obtained principally through the use of structured or formal interviews. Although the questions were structured, this researcher used them in open ended form at the actual administration. This was aimed at giving the informant the opportunity to come up with as much relevant information as possible. Furthermore, I engaged respective officials in informal interviews. As such, the study involved the use of post-modern method; a method that combines discussions with structured and non-structured interviews.

At the camps, such interviews were conducted with the officials of protection agencies and social service providers that include United Nations High Commission for Refugees (UNHCR), World Food Program and implementing partners such as International Rescue Committee (IRC), Windle Trust (K), CARE (K), and the Lutherans World Federation/Lutherans World Department (LWF/LWD) officials. Similar instruments were used in collecting data from relevant Kenya government officials. These included officials at the Ministry of Immigrations and Registration of Persons, particularly the Department of Refugee Affairs, the provincial administration and police department in the areas of focus regarding security. Officials in the latter included respective District Commissioners (D.Cs) and District Officers (D.Os) as well as the police chiefs. The procedure was also used to get vital data from the UNHCR Branch

Office at Nairobi. The main aims in regard to data collection from key informants at the offices were to get the actual policy in place, the problems faced in their implementation of international refugee law in Kenya, and measures undertaken to counter the problems

1.7.3 The Observation Method

This study also used observation as a data collection instrument. Observation is a classic method of academic inquiry and was critical in getting accurate information about what goes on at the camps and refugee areas of concentration in the urban centers such as Eastleigh in Nairobi, Kapsoya and Pioneer in Eldoret. It is a crucial instrument in getting to know what an individual does than what he says he does. Furthermore, where individuals are unable or hesitate to give information, observation becomes a fundamental method of research. Further, the method is important since the required information is obtained directly rather through reports of others.

However, it is important to point out that observation supplements information received through discussions, interviews, and studies of records. The method become critical particularly in obtaining data on physical attributes of the research.

1.7.4 Data Analysis

Analysis is the computation of certain indices or measures along with searching for patterns of relationships that exist among data groups (Kothari, 2003). It involves estimating the values of unknown parameters of the population and testing of hypotheses for drawing inferences. This study uses both descriptive analysis as well as inferential approach, the latter also known as statistical analysis. The statistics that are represented

by the various tables and diagrams in subsequent chapters are quantitative in nature. However, as in other social sciences, the study is largely analyzed from descriptive, hence qualitative dimension.

1.7.5 Research Limitations

In regard to the methodology, the research for this work encountered a number of problems. First, although I had intended to meet and interview members of parliamentary committee for refugee welfare, this became practically impossible since they were literally unavailable. As such, it was not possible to schedule an appointment with either the chairman or any other member of the committee. It is important to note that data for this study was collected at the peak of Kenya's partisan and electoral politics. The country went through a gruesome political contest over referendum for constitutional review in 2005 and highly contested general elections in 2007. These climaxed in the violence that engulfed the country following the disputed presidential elections in 2008. Due to the limitations here, this researcher had to get as much information as possible from other relevant offices.

The bureaucratic nature of UNHCR was another challenge. This was evident at Nairobi and camp offices. Only a limited number of officers are authorized to give information regarding what goes on at the UN agency. Reaching the persons required following a lot of bureaucratic procedures, this was not only time consuming but also very expensive. Furthermore, even where an officer was available to give information for the study, they became quite reluctant to divulge information that they considered sensitive or classified. At Dadaab, for instance, I met a newly posted Director, who could

not agree to give an interview right away, explaining that the Nairobi office had not communicated with her regarding the study. Besides, I visited the camp when the agency's high commissioner was also visiting the camps in the company of top government officers on refugee affairs. I later had to send a questionnaire electronically to the head of sub-office to obtain the data. Bureaucratic problems were also evident at the government offices. At the Department of Refugee Affairs, nobody could accept to be interviewed unless it was sanctioned by the Director (now commissioner).

Although the use of questionnaire to elicit responses from refugees was very instrumental in this study, it was not without difficulties. The fact that only about half of the targeted number responded suggest obstacles. At the urban areas, the greatest challenge was to build confidence among respondents. Some of them were suspicious about the intentions for carrying out the survey. I also learnt that some of the targeted persons had not been granted refugee status, thus were hesitant to provide information. It's against that background that I had to use assistants who are conversant with who the refugees. This formed the basis for the snow-balling method.

At the camps, the use of questionnaire was equally faced with the problem of suspicion among some refugees. This was particularly due to the fact that both the Somalia and Sudan peace deals had been signed and the implementation of repatriation was being mooted from the various quarters. This researcher found out that a number of respondents suspected that the study was being conducted for purposes of repatriation.

Besides, a number of camp refugees are not able to read and write in English, the language that the questionnaire was structured. I also detected cases where few respondents, either deliberately or due to misunderstanding the questions, or for reasons

best known to the respondents, gave inaccurate answers. In such cases, the use of group leaders and agents whom the refugees are conversant with became crucial.

The use of observation was critical in this study, both at the camps and in towns. However, it's limited by the fact that this researcher could not have access to where all refugee. At the camps for instance, I was warned against going into refugee "villages" without being accompanied by security officers, provincial administration, or other stake holders who are versed with the going-on within the respective camps.

1.8 Definition of Concepts

Refugee: The study adopts the UN Convention Relating to the Status of Refugees (1951) and the 1967 Protocol Relating to the Status of Refugees that define a refugee as one who due to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it (Article 1(2)). It also applies Article 1(2) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which refer to a refugee as a person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Refugeeism: This is a term used in this study to refer to all aspects of refugees including humanitarian, sociological, economic, cultural, environmental and political, particularly in relation to international refugee law.

Encampment: the policy of settling refugees in camps. This is an approach that is preferred by host states in response to massive influxes of refugees.

Spontaneous Settlement: the policy that allow refugees to settle among the local communities without necessarily designating them to settle in specific places.

Humanitarian Assistance: assistance provided by humanitarian organizations for humanitarian purposes, that is, non-political, non-commercial, and non-military purposes.

Refugee Protection: the act of ensuring the refugee's well-being as provided for by international refugee law; include assistance, ensuring their security and promotion and protection of their human rights, as well as finding durable solutions.

Non-Refoulement: Prohibition of expulsion or return of a refugee by a state to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33(1), UN Refugee Convention).

Refouler: non-voluntary repatriation, expulsion of refugees and asylum seekers, or to deny asylum-seekers entry at border point.

Refugee Vulnerability: Weaknesses that expose refugees to susceptibility to various dangers such as poverty, disease, assault, being discriminated against, forcible

conscription into the military. As in the general population, children, women, the elderly, and the disabled become more vulnerable.

Traditional Durable Solutions: the long term solutions to refugee problems as provided for by the UN Refugee Convention, its Protocol, and the UNHCR Statute. These are local integration (assimilation), resettlement, and voluntary repatriation.

1.9 Organization of Study

Chapter one lays the foundation of the study. Besides the background to the study, it also contains the statement of the problem, justification of study, research questions, goals and objectives of the study and hypotheses. Besides, it discusses the methodology used for this study, provides operational definitions for the study and an outline of the organization of the study. The succeeding chapters are organized as follows:

Chapter two on Refugeeism in the theoretical and empirical perspectives essentially reviews the literature on refugees' studies and the relevant theories to the study. The subsequent two chapters analyze the actual findings of the study. Chapter three deal with the dimensions of refugee problem in Kenya. These include the bio-data of refugees, their origin and background, nature, spread, economic status, and details of outflow. The chapter essentially analyzes refugee problem in perspective.

Chapter four on the other hand addresses the policy response and how the international refugee law is implemented in Kenya. The chapter identifies and analyzes the government's policy responses as well as the institutional and legal framework that is put in place to address the refugee issues. It also addresses the role of other major actors such as UNHCR in refugee assistance and protection. An analysis of the implementation

of refugee international law reflects some of the problems that the influx of refugees is associated with. These include security concerns. As such, it analyzes security dimension and how the Kenya government in partnership with other organization addresses the issue. Since security concern raises some human rights issues, the chapter is analyzed in that context. These include the concern regarding inflow of small arms and cross border movement, and the impact of those developments. The chapter also discusses the refugee-host population relations, the impact of the establishment of the camps on assistance to the host populations, and environmental impact.

Chapter five provides summary, conclusion and recommendation of the study. The subsequent pages contain the bibliography and appendices that were used in the study.

CHAPTER TWO

REFUGEEISM IN THEORETICAL AND EMPIRICAL PERSPECTIVE

2.1 Introduction

This chapter analyzes the theoretical framework of the study and reviews existing literature on refugeeism and implementation of international refugee law by various states. The gaps in the existing literature that this study attempts to seal are identified and discussed. Literature is reviewed under various themes and focuses on policies and practices relevant to international refugee law.

2.2 Theoretical Framework

In analysis of theoretical issues of refugee studies in Africa, Kibreab (1983) points out that “the state of research in Africa is lamentably poor”. Such a challenge of course led to some research being carried out on refugee issues; however, this is an area that political scientists traditionally paid little attention to. That was largely due to the interpretation of those migrations to be marginal to the central processes of politics. This study applies the theories of realism and liberal-idealism.

The basis of realism is on how things are. This is closely related to positivism that is based on empiricism and pragmatic approaches to problems facing humanity. Realist theory dominated position in the study of international relations since the end of World War II. It is quite crucial in the study of power politics. Prominent scholars of realism such as Morgenthau (2005) and Waltz (1988) used it to analyze the US-Soviet relations during the cold war. As such international security and power competition were dominant. Although, it was dominant in the study of the cold war, the end of the cold war does not invalidate it as an approach of intellectual inquiry regarding the

contemporary international setting. There are a number of central assumptions that makes the theory relevant in this study.

First, international system is based on nation states as the principal actor. In this study, the relevance of that assumption is applied onto the role played by nation states in protection of refugees. What are some of the attributes and shortcomings of the state as an actor when it comes to such a role? How are the shortcomings overcome? In the latter therefore it becomes necessary to analyze the role of other actors to supplement the role of state as far as refugee protection is concerned.

Second assumption is that international politics is a struggle in anarchic setting in which nation states inevitably relies on their own capacities to ensure their survival. Power here is the key concept particularly as regards this study. Power may be economic or politico-military. The anarchic nature of international system is based on the precept that international system lacks a supranational government, states are horizontally arranged, and there is generally lack of vertical hierarchy. How are the provisions of international refugee law implemented in a system with no world government to enforce compliance? In this case, it is important to point out that realism presumes that national interest is paramount when it comes to state decision-making. Realism presumes that national interest is paramount when it comes to state decision-making. States are rational actors whose decision-making choices are based on maximizing their national interests (Dougherty & Pfaltzgraff 2005). National security is a critical aspect of the realists' national interest. As such the goal of maximizing national interest militates against the implementation of international law if the two are in conflict with one another. States

tend to use pluralist or dualist approach to international law in order to protect their national interests.

The third assumption of the theory is that states exist in condition of legal sovereignty, even though there is gradation of capabilities with greater and lesser state actors. Furthermore, states are presumed to be unitary actors. The concept is analyzed in relevance to the study. According to the theory, national politics can be separated from foreign policy. States are rational actors characterized by decision making process leading to choices based on maximizing national interests (Dougherty & Pfaltzgraff, 2001).

Refugee situation is a classic example of interdependence in international relations, that is, problems that originate in one country have consequences for other countries. Furthermore, various actors, besides the governments of host countries have to play their roles in addressing the plight of refugees. In regard to the implementation of international refugee law in Kenya, the theory of realism for instance enables the study to find out why it has adopted or not adopted certain policies. What are the main reasons for the encampment policy, for instance? Are these meant to serve the national interest or interest of donors and other refugee agencies, or are they meant for refugee protection? To what extent are the objectives of the policy achieved? In regard to gradation of states, the theory is useful in explaining the economic considerations and issues related to Kenya's international standing that the decision makers have to look into before arriving at certain policy decisions.

Although theory of realism is quite necessary for this study, it is not sufficient in itself. As such, it is supplemented by the theory of liberal-idealism. This is a descendant

of the 18th century enlightenment optimism which in the 19th century evolved into liberalism. Liberalism became quite prominent in the study of international relations during and after the First World War. The war led to the theory of balance of power put under scrutiny as a way of ensuring international peace. Critics of liberal-idealism such as Carr preferred to call it “Utopianism”.

The focus of the theory is on the extent to which political behavior and anarchical circumstances can be transformed to condition of world order, that is: how can war be prevented? Although liberalism was initially preoccupied with issues of world peace and security it has tenets, which are quite applicable to this study

First, liberalism emphasizes the significance of international law and state obligation to implement them. As indicated above, international refugee law forms part of international human rights law and thus a component of international law. There are various instruments that provide international treaty laws that are applicable in the case of refugees. Liberalism advocates for the promotion and protection of human rights and the well being of people as a way to maintain world peace, thus becomes significant in understanding Refugeeism.

Second, although the state is a crucial actor in protection of refugees, various other actors come into play; among them are the UN agencies such as UNHCR and UN World Food Program, and international non-governmental organizations. The complimentary and implementing roles played by the various organizations are compatible with the theory's stress on the formation of international organizations as well as international cooperation, as opposed to an international system based solely on state sovereignty. Liberal-idealism emphasizes cooperative approach among the various

international actors in solving the problems that afflict humanity. As such, it is fundamental in analyzing refugee protection.

In the application of liberal internationalism, the monist approach to integration of international law into municipal law applies. Unlike in the dualist/pluralist approach in which international law is applied to suit national conditions and interests, in monism international law becomes part of into municipal law.

The preoccupation of the liberal-idealist theoretical approach with the maintenance of international peace and order is crucial in this study since wars and conflicts are the major causes the influx of refugees. As such ideally the problem of refugees would be well managed with attainment of world peace and security. Liberalism also emphasizes morality among leaders and policy makers. Further, the theory emphasizes that political leadership should be responsive. These are aspects that are crucial in the analysis of the subject under inquiry in order to ensure that refugees are not marginalized or discriminated against. As such, both the realist and liberal-idealism theories are vital in this study.

2.3. International Refugee Law

This subsection discusses what international refugee law entails. Both the provisions of UN Refugee Convention and its Protocol, and the OAU Refugee Convention are significant in this study. This section therefore highlights on the attempt by international community to address refugee plight through international and regional instruments.

The problem of refugees is not new. In modern times, the human tragedy in the aftermath of the Russian Revolution, the Armenian Genocide of 1915, and war in the

Balkan states brought refugee issues to public attention (Ferris, 1993). Following the 1917 Russian Bolshevik Revolution, more than one million Russians fled into neighboring states of Bulgaria, Yugoslavia, Poland, and Finland (Abuya, 2004). Some of those who fled were opposed to the revolution, while others were supporters of the Czarist regime, and therefore feared becoming victims of the revolutionaries. Others were not necessarily politically inclined but simply fled due to the state of insecurity that resulted from the revolution. These were the first major Trans-European refugees.

The persecution of Armenians under the Turkish government, partly due to the former distinct culture and religion, was temporarily halted following the French occupation at the end of World War I. However, it resumed following the withdrawal of the French forces in 1922. Subsequently, a number of them fled to Europe as refugees. These developments led to both Russians and Armenians to be identified as refugees of distinct nationalities by both the League of Nations and the Office of High Commissioner. That is, prior to post-World War II, one had to be from certain designated countries to be accorded refugee status.

The 1926 identity arrangement defined both Russian and Armenian refugees. The 1928 Inter-Governmental conference in Geneva brought within the League's jurisdiction other categories of refugees that had arisen in Europe. These included Assyrians, Assyro-Chaldeans, Kurds, and Turkish (Jennings, 1939). The Nazi German policies of creating a "pure German" state in the 1930s aggravated the refugee situation in the continent. Millions of Jews and other minority groups were subjected to persecution. The Nazi holocaust perpetrated against the Jews led to the creation of another Office of High Commission, specifically to handle the Jewish refugee issue. Furthermore, United

States president, Franklin Roosevelt urged European governments to convene an urgent conference to discuss how German and Austrian refugees in Europe could be assisted. The result of that conference was the creation of Inter-Governmental Committee on Refugees (IGCR) (Ferris, 1993). As such, the refugee issue during this period was essentially an issue affecting only the European states.

The World War II had greater impact in the creation of refugees in a greater scale. Besides the continued persecution and accompanying displacement of the Jews by the Nazi, the war itself displaced some twenty one million people. By 1946, a quarter million Russians, Armenians, Assyrians and Saars, 110,000 Germans and 212,000 Spanish (from Spain) refugees had been created by the impacts of the war (Abuya, 2004). All these remained of great concern not only to IGCR but also to the UN. The UN had in the meantime created UN Relief and Rehabilitation Administration (UNRRA) to repatriate nationals from allied countries. In 1946, the UN General Assembly merged IGCR and UNRRA and created International Refugee Organization (IRO). The IRO constitution defined refugees as:

a) Victims of the Nazi or Fascist regimes or regimes which took part on their side during world war II, or the quislings of similar regimes which assisted united nations (allied powers),

b) People who were considered as refugees before World War II, for reasons of race, religion, nationality, or political opinion.

In essence, refugee protection and rights got embedded in the international instruments after World War II. International refugee issues started taking new dimensions following the growing number of refugees prior to, during and after World

War II. It is against the magnitude of the problem involving not only displacement but also human rights abuses that the UN General Assembly not only created the United Nations High Commission for Refugees (UNHCR) in 1950, through a statute, but also passed a resolution to hold the UN Refugee Convention of 1951.

2.3.1 The Geneva Convention Relating to Aspects of Refugees, 1951.

The Geneva Convention of 1951 is important in understanding the subject matter of this study, implementation of refugee international law. The convention recognized refugees as those who were considered refugees under the arrangements of 1926, 1928, 1933, and 1938, as discussed above. Furthermore, it defined a refugee as one, who due to well founded fear of being persecuted for reasons of race, religion, nationality, and membership of a particular social group, or political opinion, is outside a country of his nationality, and is unable, or owing to such fear, is unwilling, to avail himself to the protection of that country. Or, a refugee is a stateless person who is outside his country of former habitual residence, and unable or unwilling to return for fear of being persecuted (Brownlie & Goodwin-Gill, 1998).

The Convention further lays down the basic minimum standards for the treatment of refugees to be applied by the states in handling refugee issues. It provides that the terms of the convention be applied without discrimination as race, religion, or country of origin. It also provides safeguards against the expulsion of refugees. Such include barring states from forcibly repatriating a refugee, the principle of non-refoulement (UNHCR, 2002). Unlike the previous treaties on refugees that addressed only certain rights of refugees, the 1951 convention provides a comprehensive catalogue of refugee rights. These include the right to recognition refugee legal status and asylum, the right to

recognition by the law of domicile state, artistic rights and judicial property, the rights of association and that of access to courts, as well as the right to engage in gainful employment among others (UN Convention, 1951). Furthermore, while the previous treaties covered only specific categories of refugees, often by nationality, the convention provides a far more general definition of refugees. It also establishes a formal link between its provisions and the international agency charged with the protection of refugees. In essence, the convention makes provisions under which refugees are given protection.

However, the 1951 Refugee Convention had some principal weaknesses. First, although it provided for a more general definition of a refugee, it was Eurocentric in nature, particularly owing to the fact that much of the refugee situation prior to and during the WWII was experienced in Europe. Emphasis on “persecution” as the cause of displacement was informed by European experience. Secondly, the terms of the convention only applied to those displaced prior to January 31, 1951. Third, the conference ignored the refugee producing countries in the drafting of the convention. Fourth, the convention lacked the input of smaller states. For instance, although it had dawned on the member states of the UN that the plight of refugees could not be successfully addressed by a single state or a group of selected states, African states did not make a substantial input to it. Of the four African states that were independent by then (Egypt, Ethiopia, Liberia, and Libya) only Egypt sent a delegation to the conference. Fifth, the convention failed to address the plight of Internally Displaced Persons.

The limited timeframe for one to qualify to be a refugee compounded with the fact that the statute that created UNHCR provided for its winding up in thirteen years

time, are manifestations that the actors had hoped that the refugee problem would subside within a decade or so after the convention came to place. However, the refugee phenomenon exacerbated in other parts of the world, thus making it necessary for the United Nations General Assembly (UNGA) to convene the 1967 Protocol Relating to Refugees. The protocol upheld the provisions of the Geneva Convention, except that it removed the time limit into which one could be considered as a refugee. As such, the Protocol extended the convention's provisions in relevance to the current refugees. Ferris (1993) points out that the convention relating to the status of refugees and its 1967 Protocol remains the single most widely used formulation for determining the status of refugees. The 1951 convention and its 1967 protocol therefore rightly form the "refugee bill of rights".

The effectiveness of the UN definition of a refugee, by emphasizing on persecution, an act of government, is limited in relation to the contemporary needs. It excludes conditions of violence, insecurity and oppression. Persecution focuses on an individual while generalized violence may be directed at a group and individuals may be affected without necessarily having been specifically targeted.

2.3.2 Refugee Law in African Context

In modern Africa, the first recorded cases of refugee influx was in the 1950s following the Algerian war of independence. The number of refugees in the continent continued to swell in the 1960s and 1970s following struggles for independence in various countries, or civil wars and violent regime change in others. The problem of refugees in Africa was first brought before the OAU Heads Assembly in 1964. The

African refugee scenario was not only becoming a matter of concern to the continent's statesmen, it also exhibited some unique characteristics. As such, the OAU Convention on Specific Aspects of Refugee Problems in Africa of 1969 expanded the UN definition of a refugee to include those individuals displaced by generalized conditions of violence. That is, besides those recognized as refugees under the terms of the UN Convention and Protocol, the OAU also defined a refugee as "every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (Article 1, paragraph 2).

The OAU recognized the fact that a number of those fleeing from their countries of nationality in Africa were not only doing so for fear of being targeted for persecution as individuals, but were also vulnerable as groups. Such reflected the reality of Africa's refugee scenario. Although the number of refugees in the continent fluctuated and somewhat stabilized by the late 1980s, the 1990s saw increased political instability and led to massive increase in the number of refugees. The upsurge in the number of refugees in 1990s was not a confine of Africa. At the end of the First Gulf War in 1991, for instance, about 1.8 million Kurds fled from Iraq to bordering countries of Turkey and Iran. Over a quarter a million refugees fled harassment and repression from Myanmar into poverty stricken Bangladesh, while about 280,000 Togolese fled the political upheavals in their country into neighboring Benin and Ghana (UNHCR, 1993).

The provisions of the UN Geneva Convention of 1951 and its 1967 Protocol, as well as the OAU Convention on Refugees provide the foundations on which the implementation of their provisions is handled in Kenya.

International refugee law form important part of international law and in particular. The study is guided by the provisions of the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. Furthermore, the provisions of the 1969 Organization of African Unity (OAU) Convention Relating to Refugees Provide an important basis for the analysis of the implementation of international refugee law in the Kenyan context.

2.4 Causes of Refugee situation

The literature on causes of refugee situation forms an important part in understanding the problem of refugees and how governments respond to the problem. Domestic policy and law makers, and others involved in refugee protection need to understand those causes so as to come up with appropriate laws, policies, and protection mechanisms. Policy makers would be better placed to find out durable solutions for the refugee problem if they are well informed about the refugee problem, hence, the need to analyze causes of refugee situation. Further, an analysis of the causes of refugee situation in other parts of the world is necessary to make comparison with the case under study. That is, is the refugee situation in Kenya unique? Is it measurable to refugee situations elsewhere? These are issues which need to be given attention for the necessary and adequate refugee policies to be put into place.

As indicated above, the major causes of the refugee situation are inter-state and intra-state conflicts as well as persecution of certain population groups. These may be

triggered or exacerbated by environmental change. Such factors are not peculiar to Africa; they have caused displacement and cross border migrations in Central American countries of Guatemala, Honduras, and Nicaragua since the 1980s to present time. A number of Asian countries have also experienced the influx of refugees due to political instability. In Afghanistan, the killing of King Doud and his family members by the revolutionaries in 1978 ended two centuries of Durrani Pushtans dynasty. This was followed by violence, killings and destruction of property. The new regime of Soviet backed Karmal Babrak started Saur revolution that was characterized by radical changes in land laws and traditions (Mayotte, 1992). To him, the principles of Prophet Mohammed were to co-exist with those of "Prophet" Karl Marx in the new Afghan political dispensation. The repressive nature of the new regime compounded with the Soviet invasion of Afghanistan caused thousands of Afghans to flee to Pakistan and Iran. The repressive regime of the Taliban even led to more and more Afghans fleeing into the two countries in the 2000s. There have also been displacements from within and out of the Kashmir region due to protracted and recurring Indo-Pakistani hostilities and secessionist movement.

Cambodia (Kampuchea) on the other hand experienced massive human displacement and cross-border migration under the repressive Khmer-Rouge regime of Pol Pot. Mayotte (1992) gives an account of the reign of terror that characterized Pol Pot's regime. Like in the case of Afghanistan, the trigger point of forced migration was when Cambodia's Communist Khmer Rouge defeated the government of Lon Nol and began radical changes in the countryside and cities. Pol Pot emptied Phnom Penh and forced people to the countryside with the aim of imposing communist ideals on Khmer.

One account points out that "Pol Pot envisioned a return to a distant past...self-sufficient rural society...a Cambodia that would stand on its own. Intercourse with foreigners was banned...he did away with everything...schools, religions, arts, teachers, leisure, etc" (Mayotte, 1992). Furthermore, his regime targeted doctors, teachers, intellectuals, and former soldiers in Lon Nol's army for extermination since they were seen to be obstacles to the Khmer Rouge regime's radical reforms. The rule of law was replaced by the bondage of discipline and terror. Many people were herded in trucks or led into forests by government soldiers never to be seen again. These developments forced hundreds of thousands of Cambodians (Khmer) to flee to neighboring Thailand. The involvement of Vietnam in Cambodia complicated refugee scenario further. The invasion of Cambodia by Vietnam in 1979 and the latter decision to back new regimes (Khmer Rouge) policies led to 500,000 Khmer fleeing for their safety into Thailand (Ferris,1993).

The social and economic transformation that the new regime in Laos embarked on during the same period as those in Cambodia caused fear and suspicion that forced many people to flee from Laos. Between 1975 and 1986 for instance, about 325,000 Lao had left their country of origin (Ferris, 1993).

In Burundi, *Ethnic Conflict and Genocide*, Rene Lemarchand (1994), gives an analysis of how ethnic hatred and confrontations particularly between the Hutus and Tutsis led to outflow of refugees from the country into neighboring countries such as Tanzania and Zaire. He also gives an account of the Rwanda Tutsis who fled to Burundi due to conflicts between them and the majority Hutus. Many of the refugees were forced to move for fear of being persecuted not only by the state, but also by the rival ethnic group.

The definition of a refugee by the 1951 Geneva Convention gives a glimpse as to the cause of forced migration. The Convention as pointed out earlier, defines a refugee as one who “due to well founded fear of being persecuted for reasons of race, religion, nationality, membership of social group, or political opinion is outside his country of nationality and is unable or due to such fear is unwilling to return and avail himself for the protection of that country” (Article 1, (2)). Persecutions based on the provisions of the convention are not the only causes of refugee situation in the case of Africa. The 1969 OAU Convention on Refugees broadens the definition of a refugee and thus, expands the reasons and causes by which one becomes a refugee Africa. These include internal and external disturbance (Article 1, par 2).

Armed conflicts and human rights violations are primary factors for forced migration. However, each country's case has its own specifics. In the case of Cuban refugees fleeing to United States of America for instance, the policies of both the home and host countries play significant roles. Castro's Havana regime adopted a policy of “let people go” as a safety valve for potential dissidents and discontents, while the U.S foreign policy of attempting to overthrow Castro's Marxist regime had a role to play in the case of Cubans seeking refuge in the country. That is, the Cuban case was a social condition that expelled people who had a place to go because of humanitarian and political considerations in the receiving country (Zolberg, et.al. 1989).

Gil Loescher (1992) argues that throughout the third world, refugees have been created by both internal conflicts and foreign and security policies of local states and their local patrons. In the latter case, the cold war era superpowers for instance used arms as a means of exploiting existing hostilities within the developing countries as a means of

pursuing their own rivalries. In the Horn of Africa for instance, both the U.S and Soviet Union supported either rebel groups or governments in activities that led to the generation of refugees in the region. The supports were given in the form of arms or international assistance relief programs. The increased intervention in third world conflicts by the superpowers in the 1980s, either directly or through proxies, intensified internal and regional conflicts, thus leading to increased population displacement with substantial cross-border movement. The support to either government forces or rebel groups also fuelled conflicts that resulted into massive human displacement in countries such as Angola, Mozambique, and Zaire (now Democratic Republic of Congo).

The post-cold war world conflicts were also exacerbated by the growing “clash of civilizations” (Huntington, 1993). This phenomenon can be used to explain ethnic dissent as a source of conflicts as happened in the former Yugoslavia in the 1990s as well as religious fundamentalism, the latter having been evident in the Middle East, India and parts of North Africa. The imposition of Sharia laws in the Sudan for instance, was a manifestation of fundamentalism characterized by religious revivalism that led to the North-South conflict, resulting in massive outflow of Sudanese refugees. However, the theory of clash of civilizations may not accurately explain several local clashes in the African scenario. The case of Somalia that has faced protracted conflicts for decades attests to this since over 90 percent of Somali nationals profess Islamic religion, they belong to one ethnic group and have various similar cultural attributes. The theory may also not adequately explain the Hutu-Tutsi conflicts in the Great Lakes region since the two groups have a lot to share in terms of culture.

Contemporary refugee problem can partly be attributed to failure of governments to build durable structures that can sustain democratic governance and ensure equitable distribution of resources. These are problems that are characterized by official corruption, nepotism and ethnicity, marginalization of minorities, aggravated poverty and general economic underdevelopment, thus contributing to conflicts.

Kagwanja (2002) gives another dimension to conflicts, which essentially has direct bearing on human displacement, and in this case, refugee situation. He points out that, areas of environmental degradations are also centers of armed conflicts. Kagwanja's work is focused on the relationships between environmental degradation and ethnic violence in Kenya in the 1990s. Although his work analyses cause of internally displaced persons (IDPs), it's important in analyzing causes of refugee situation since more often than not, the same would apply among the two categories of forced migration.

In her analysis of the refugee situation in the Horn of Africa, Elizabeth Ferris (1993) points out that the major causes of refugee situation in the region include wars, ethnic rivalries, religious conflicts, secessionist movements, human rights abuses, political repression, and environmental causes such as drought and famine. Many of these factors have occurred simultaneously to cause human displacement leading to refugee situation in the Sudan, Somalia, Ethiopia, Uganda and Eritrea.

The existing literature reveals that the main causes of refugee situation are violent conflicts compounded with serious violation of human rights. Environmental degradation is a contributor to the conflicts. The studies analyzed above include cases of Central America, Afghanistan, South East Asia, and Burundi. The literatures that are analyzed under this subsection are not specifically on what trigger exodus of asylum

seekers, however, they make significant contribution toward the issue. The works of authors such as Ferris and Lemarchand reveal that bad governance is a major cause of human displacement that ends up in refugee situation. These contributions are significant in laying the basis for understanding the Kenya refugee situation.

2.5 Refugee Vulnerability

Robert Chambers (1989) points out that, “The intractable problem of millions of refugees, displaced persons and victims of famine in rural Africa will not go away”. In the “preface” of the same work, Harrell-Bond (1989) argues that, “Refugees are one of the most serious problems of our time.... No one really knows how many people have been uprooted, but one may be very sure the problem in Africa is not going away”. The US committee for refugees (USCR) on its part designates African region as the world’s largest producer of refugees or displaced persons. By 1992 there were 5,340,800 refugees in Africa, compared to Asia’s 6,146,250 and Latin America’s 118,500 (USCR). Today Africa is home to about a third of the world’s refugee population (Opata & Singo, 2004).

The above paragraph provides a bird’s overview of what the refugee situation in Africa is like. Refugees are quite vulnerable people. Since most refugees are a product of conflicts, most of the people who flee from their countries of nationality are also the most vulnerable in the society. The United Nations (1992) points out that 80 percent of the world refugees are women and children. Furthermore refugees are faced with multiple jeopardizes. These arise from the fact that they have been displaced and lost their property. Besides, many of them are also traumatized as a result of war experience,

separation from their families, and other abuses that they are subjected to in the process of being uprooted and movement. The most vulnerable are prone to abuses even once they have settled in the host countries. Many are also discriminated against in the host countries or by policies of potential countries of resettlement.

There are for instance, documented cases of sexual abuse of minors at refugee camps in Sri Lanka when Tsunami struck Southern Asia in 2004. In one case opportunists sexually abused a 17-year old orphan. In another case, a grandfather molested his grandchild (Daily Nation, January, 2005). Such incidences portray the vulnerability of refugees. The perpetrators are not only fellow refugees, but in some cases, reports hold members of the host community responsible, or like in the case of DRC, members of the peace-keeping mission.

There is a correlation between violent conflicts, the driving force behind human displacement, and sexual violence. Widespread existence of sexual violence reflects general breakdown in social norms, a development to which violent conflicts is a major cause. In a number of conflicts in Africa, the rebel groups often recruit and use non-professional soldiers, many of whom are child soldiers. Such soldiers rarely adhere to the Geneva Conventions on the conduct of war. As a means of making the young soldiers loyal to their commanders, they are often put under the influence of drugs. This make them commit atrocities such as sexual violence with the impunity as was in the cases of Sankoh's soldiers during the war in Sierra Leone. The violence is perpetrated not only as a means to satisfy the pleasure of the perpetrators, but also as a weapon of war against the enemies. The overt purposes of sex and gender based violence during period of conflict include torture, initiation and integration into military and paramilitary forces,

punishment of individuals, a strategy of war to terrify, demoralize and destroy family and community cohesion, and in the case where victims are women and girls, to humiliate male members of their community.

In Darfur region of Western Sudan, sexual violence is rampant particularly against women who have walked several kilometers from the camps in search of firewood. The perpetrators here include members of Janjaweed militia, members of the various rebel groups, local government, other men as well as government soldiers and police (Erin Patrick, 2007).

Refugees are also vulnerable to sexual violence due to their being economically disadvantaged. In Uganda, although refugees who live in designated areas practice some farming, this has not helped improve their standards of living since the activity is plagued by various problems (Gottschalk, 2007). The land they cultivate is overused since they lack alternative land to practice crop rotation, thus resulting to low production. Furthermore since refugees cannot access market in towns, they rely on Ugandan middlemen to market their produce. The middlemen quite often exploit the farmers by paying them much less than the market prices for the farm produce. These place the Sudanese refugees in Uganda in situation of extreme poverty. Poverty entices refugee parents to marry away their daughters at very early ages as a survival strategy. Those girls who are married when below eighteen years of age are potential victims of not only sexual violence but also gender based violence by their adult husbands. In Uganda cases of sexual violence that involve rape and incest are aggravated by chronic drunkenness particularly from traditional brews (Gottschalk, 2007). Consumption of cheap illicit brews is often associated with poverty.

Sexual violence targeted at refugee girls in Uganda is also a factor that promotes early and forced child marriage. This is done as a way of avoiding pregnancy outside wedlock and bearing of stigma of having been assaulted, both of which are detrimental when it comes to getting a husband of one's choice.

Poverty is a driving factor for commercial sex work. A number of refugee girls and women in African cities and organized settlements are subjected to prostitution due to their disadvantaged economic status. Prostitution subjects them not only to sexual abuse including rape and other forms of violence that at times result in fatality as well as being at risk of being infected by HIV, the virus that causes AIDS.

Refugee vulnerability is a problem that exists also at the countries of possible resettlement. Harrell-Bond (1989) points out that the mood of industrialized countries towards receiving African refugees is quite restrictive. Although of its 70,000 slots for refugees during the 2004 fiscal year, the US government apportioned 25,000 for Africa (<http://uscis.gov>). This is disproportionate when one considers the magnitude of refugee problem in the continent. In Germany, since 1991, foreigners and primarily refugees and asylum seekers have been targeted for violent attacks not only by the Neo-Nazi and proto-fascists skinheads, but also by the hostility of other German citizens. In the first three months of 1992, six hundred such attacks were reported (Daniel & Knudsen, 1995). These were developments that could partly be explained from economic perspectives following the re-unification of Germany.

The November 2005 riots in France partly had to do with the inability and unwillingness of the French government to help improve the conditions of living of the immigrants, particularly refugees and other foreign nationals. Indeed one of the French

government's responses following the riots was to put about twenty immigrants on deportation list for having masterminded the riots (cnn.com/international, 18th. Nov. 2005). Such an incidence portrays the vulnerability of refugees even in the developed countries.

Restrictions imposed on refugees may also have basis on some domestic law, a treaty between the home and host countries of refugees, or a treaty provision in a regional integration. A 1981 United States-Haiti agreement for instance allowed the U.S coastguards to board Haiti vessels in high seas and send back those whom authorities determined not to have credible basis for asylum. As such of the 24,000 Haitian "boat people" intercepted by the coastguards between 1981 and 1991, only 28 were found by Immigrations and Naturalization Services (INS) to have reasonable asylum claim (UNHCR, 1993). This was in spite of the fact that Haiti had been under repressive rule of Duvalier (Papa Doc) and was at the time under dictatorial regime of his son Jean - Claude (Baby Doc). The regimes were characterized by the kleptocracy, repression of real, potential, and imagined opposition. The rulers maintained presidential security, the "Ton-Ton Macoute" to carry out state atrocities against Haitians (Green & Luehrmann, 2004; Zolberg, 1989). Haiti refugee situation was a classic case of "push" whereby the country's political and economic conditions expelled people from their country and made migration part of popular culture and symbolic of social status (Zolberg, 1989). Based on the human rights record, Haitians had better founded fear of persecution in their own country, than say Cubans.

There were credible reports of political assassinations, lack of due process and highest prison mortality rate in the world among other human rights violations.

However, the Reagan administration's argument against granting Haitians asylum was that they were economic immigrants. Furthermore, it pointed out that the Duvalier's regime in Haiti was not as bad as those of Pol Pot (Cambodia) or Castro (Cuban), and that those who were deported were not persecuted. Despite its historical links with Haiti, France also limited the number of Haitians who were granted refugee status. For instance, by end 1981, of the about 10,000 Haitians who had sought refuge there, only 2,885 were accorded refugee status. Such restrictions in the developed countries forced hundreds of thousand of Haitians to migrate to Bahamas and Dominican Republic where they provided labor under conditions of slavery—being exploited by the host states while the home state extracted pay per émigré.

The Maastricht (European Union) Treaty on the other hand permits signatory states to impose visa restrictions in order to prevent mass influx of people into the region in case of emergency outside the treaty territory (UNHCR, 1993). As such, the number of asylum seekers who are admitted by the member countries under the terms of the 1951 convention is quite limited. In 1991 for instance, Britain granted asylum to only 15 percent of the applicants. The EU general acceptance rate is a paltry 20 percent (UNHCR, 1993, p40). Granting of asylum is the cornerstone of refugee protection. As such arrangements or policies that deny a refugee the granting of that status contradicts the principles of refugee protection. Furthermore refusal to grant asylum can expose refugees to serious danger. It is in considering such dangers that the Universal Declaration of Human Rights provides for the right to asylum in other countries (UDHR, Article 14(1)).

The UN definition of who a refugee is also forms source of refugee vulnerability. According to that definition, emphasis is placed on individual's ability to prove that he is fleeing due to "well founded fear of persecution" by the home state. As such, the provision leaves a lot of discretion to the host country, particularly in the western world, to determine whether an applicant is a refugee or not. Many a times, this is highly influenced by foreign policy of the state to which asylum is being sought. The U.S for instance consistently denied asylum or refugee status to Salvadorians and Guatemalans who were fleeing from generalized violence in 1980s arguing that conditions of war are insufficient grounds for granting refugee status if there was no well founded fear of persecution (Ferris, 1993). A number of applicants from Latin America and Africa are quite often viewed by the country as economic immigrants and not as refugees. However, the political reasons that lead to forced migration are quite often intertwined with, and have basis on economic factors.

The German courts on the other hand for quite sometime maintained that torture of members of militant organizations in Turkey and Sri Lanka did not constitute political persecution since such persons were treated so not because of their political opinion, but out of the desire to protect the integrity of their respective states (Kalin, 1990). However, this position was modified by a 1989 German constitutional court ruling which directed that the treatment of Tamil militants and civilian population could under certain circumstances constitute political persecution.

Regarding livelihood, refugees are disadvantaged, particularly if they have to compete with citizens of the host country in a non-developed economy. Those who live in camps have few opportunities to farm, especially in places like Kakuma and Dadaab

which are desolate wastelands (Nyambura, 2003). This renders them almost entirely dependent on aid. However the aid is not adequate (Gorman, 1987).

In his analysis on the reasons for establishing up refugee settlements in Southern Sudan, Harrell-Bond (1986) points out that the presence of refugees in a host country gives rise to higher rate of crime. This can be explained from the high level of poverty among both the guests and the hosts which leads to competition for scarce resources. In such a situation, refugees would be viewed by the hosts to be responsible for aggravated poverty, thus make them be targeted by the hosts. He also gives an account of how the Sudan authorities rounded up unemployed and destitute refugees in Khartoum

Afghan women refugees in Pakistan on the other hand found themselves caught up in the political machination of their leaders, the leaders of Pakistan, donors with strong Islamic fundamentalist convictions, and the communists who controlled Afghanistan. For instance, they were in no position to question or challenge the restrictions that were imposed on them. They were rigidly confined by the conservative Pakistani officials who feared that their moderate way of life could influence Pakistani women (Mayotte, 1992).

The threat by President Idris to expel Sudanese refugees from Chad following attacks on the country by Chadian rebels based in the Sudan demonstrates how vulnerable refugees can be even at the hands of the government of the host state (Daily Nation, 19 April 2006). It also represents a situation where security concern can guide government's refugee policy to an extent whereby it may violate international refugee law.

Besides the vulnerability that refugees are exposed to in the host countries, quite often they are perceived by governments in their home countries to pose threat to the

securities of those countries. As such, there have been incursions of Ugandan refugees in Southern Sudan and Sudanese refugees in Northern Uganda, for instance, by the government forces of their own countries (Payne, 1998). In Southern Sudan Ugandan refugees were under frequent attacks by soldiers of Uganda National Liberation Army (UNLA). The refugees here were targeted because many of them hailed from the deposed Ugandan president Idi Amin's Kakwa homeland. Some of them had served under the same regime in different capacities. In order to maintain good diplomatic relations with Uganda government, Sudan government turned blind eye to these incursions (Harrell-Bond, *ibid*). The spontaneously settled refugees were most vulnerable in this case.

Vulnerability of refugees can also be attributed to their status. Zia Rizvi (1984) points out that, "Once one has become a refugee, it is as though he has become a member of another human race, some other sub-human group....". There are also stereotypes about refugees. For instance the belief that Lugbaras from Aringa in Uganda are thieves was widely accepted in Southern Sudan due to their specialization in commercial activities (Harriell-Bond, p58). Impeccable source reveals that in Tanzania the locals largely blame refugees from Rwanda and Burundi for environmental degradation. Furthermore, among refugees are some of the most defenseless and quite vulnerable people in a society. These include children, women, the elderly, and the physically challenged. Women and children (under 18 years) constitute about 75 percent of those who flee from their countries of nationality as refugees (UNHCR, 2004). The Sudanese "Lost Boys" who had to flee from the Sudan and Ethiopia in the early 1990s were for instance too young and thus increasing their exposure to vulnerability of various sorts (Oluoch, et.al, 2007).

Daniel and Knudsen (1999) analyze vulnerability from another dimension. They point out that the experience of refugees puts trust on trial. It's not only refugees who mistrust, they are also mistrusted. Refugees mistrust for the hosts, service providers, government officials and even of fellow refugees is based on their experience at the hands of those various groups.

Vulnerability of refugees is exacerbated in situations where a host state is a non-signatory to the convention and its protocol. As such, the host state does not feel bound to oblige by the provisions of those instruments. Thailand for instance settled Khmer refugees at its border with Cambodia, partly to act as a buffer against Vietnamese forces. This policy placed Khmer refugees in a situation whereby the Thai government could not ensure their protection. Furthermore, they were vulnerable to offensives launched by the Vietnamese forces and those of their Cambodian backed government. The UN on its part recognized the Coalition Government of Democratic Kampuchea (CGDK), made up of several factions as the legitimate government of Cambodia. This even placed the Khmer refugees at a worse situation for that effectively put the camps under the control of these factions. The factions, made up of guerrilla groups, diverted assistance meant for refugees and forcibly conscripted them to go and fight in Cambodia. Despite appeals from various quarters, Thailand refused to allow the camps to be moved further away from the border and its forces violently attacked Khmer refugees (Ferris, 1993).

The Thai dark side of treating refugees was not only confined to the Khmer, they pushed Vietnamese "boat people" into the sea. Malaysian government is also on record as having done the same to Vietnamese boat people. In 1979 alone 40,000 Vietnamese were pushed back to the sea by Malaysian government (ibid). It is further estimated that

100,000 Vietnamese died in the sea between 1979 and 1987 due to such acts (Cerquone, 1987).

From the foregoing discussion, this researcher concludes that there are serious violations involved in the implementation of refugee international law by the various countries. The very governments that are supposed to protect refugees have at times put in place policies that deny them the right to asylum, violation of the non-refoulement clause. In places like Uganda where Sudanese refugees are designated to areas where they can do land cultivation, they are often exploited by the middlemen. Furthermore, the very status of refugees exposes them to vulnerability not only from the host communities, but also among other refugees, who for instance sexually molest them, or recruit child soldiers, or assault them. These are issues which raise fundamental refugee human rights questions that policy makers at domestic level do not only need to be aware of but also effectively address.

2.6 Refugee Settlement Policy

Refugee settlement is an important policy area in the implementation of refugee international law. The international convention and its protocol do not specifically provide for residence of refugees in the host countries. In that regard, countries adopt their own policies regarding refugee residence. In the developed countries such as Canada and United States, there are no designated areas for refugee residence (Nanda, 1989). This may partly be attributed to the fact that the governments of these countries have tight border control and to certain extent are able to control the influx particularly from the western hemisphere. Furthermore, refugees from Asia, Africa, and Europe,

often reach there as part of resettlement, thus are admitted when their asylum process is already underway or completed.

In the developing economies, residential policy varies from country to country. However, these can be broadly categorized into organized and spontaneous settlements. In spontaneous settlements, refugees are allowed to settle freely among locals. Such an arrangement allows refugees to involve themselves in economic activities and become integrated (Adelman & Sorenson, 1994). These are self-settled refugees as are found in the cases of Uganda, Sudan and Tanzania. Rwandan refugees in South Western Uganda also live in open settlements as opposed to closed camps (Adelman, p146).

States in collaboration with UNHCR have also established organized settlements, or simply "settlements", for refugees. Many African governments prefer organized settlements for the refugees that they host. Adelman & Sorenson (1994) attribute this to a number of reasons. First, refugees are believed to pose security risk to the states that give them asylum. They for instance, can use the host territory as a launching pad against the home state. Settling them in controlled settlements or camps is therefore a means of controlling and monitoring such a risk. Second, it is easier for the host government to get refugee aid if refugees are settled together. That is, while it is difficult to identify spontaneously settled refugees thus not making it quite possible to identify their needs, camp or settled refugees demonstrate quantifiable burden (Adelman & Sorenson; Harrell-Bond). Furthermore, aid community is able to show its constituents and their needs. In the case of self-settled refugees, there is extreme difficulty in distinguishing the aid provided to refugees from that which is provided to the local population.

Although controlled settlements are favored by a number of African governments for the reasons stated above, they have not been major success. Most refugees in Africa for instance, are spontaneously settled. In his analysis of settlement schemes, Kibreab (1985) argues that non-organized settlements have a chance of developing self-reliance and self-management while avoiding dependency mentality. However, he criticizes emphasis on mechanized agriculture, inadequate provision of land, and failure to consult with intended beneficiaries, in this case, refugees, of the scheme.

Gorman (1987) analyzes the forms of residents in some selected African countries in regard to assistance. Gorman's work is critical to this work since it brings to fore implementation of refugee settlement policy that is significantly different from the one of Kenya. Spontaneous settlements and local integration of policies are common features in Tanzania, Democratic Republic of Congo, Sudan, and Uganda. They are therefore crucial for comparative purposes and particularly in understanding the problems that are associated with encampment in Kenya.

From the African perspective, refugees impose substantial burden on host countries. This could be seen from not only the number of refugees that a country hosted but also from factors such as the declining terms of trade and per capita income among those countries. By the time of International Conference on the Assistance of Refugees in Africa (ICARA) II in 1984, Sudan for instance hosted about 700,000 refugees of which about 200,000 were Ugandans and 465,000 Ethiopians (ibid). The nature of refugee settlement reflects not only the kind of burden imposed but also determines the opportunities for livelihood for the refugees.

Most Ethiopian and Eritrean refugees settled in urban centers or were rural wage earners. About 160,000 refugees from the same country were settled in camps. The urban refugees flooded job markets, strained government capacities to provide social services and put pressure on already scarce water resources. On the contrary spontaneously settled refugees in Sudan made positive contribution to the economic life of the areas that they settled. That notion is reminiscent in the cases of Tanzania, Zaire, and Uganda. In Tanzania, by 1987 about 200,000 refugees had been present for over a decade (ibid). Most of them were living in settlements that were handed to government administrators. In Katumba area for instance, although the refugees formed only 35-40 percent of the population, they contributed 90 percent of agricultural production (ibid). This was a development promoted by the government's policy of improving infrastructure in refugee areas. The establishment of national milling company at the nearby Mwesi even enhanced further agricultural development as the surplus cereals are bought and processed there. Furthermore, the refugees pay taxes to the government As such the refugees here are self-reliant and contribute to national economic development (ibid).

Gorman's analysis is consistent with the argument of this writer that refugees tend to be more of assets than burden to the host countries if the right policies are put into place. In the cases of settled or integrated refugees in Tanzania and Sudan, the policies in place enabled them to fend for themselves. Indeed, assistance to refugees is normally undertaken as a stop-gap measure, thus is suppose to be short term. As such, the above literature is important as the basis for analysis of implementation of international refugee

law in Kenya, particularly with regard to refugee livelihood, economy, assistance and encampment policy.

In Somalia, by late 1980s, the ratio of refugee population to that of the hosts was about 1 to 4. Between 500,000 and 700,000 thousand of these lived in the official refugees' camps while other hundreds of thousands were spontaneously assimilated (Gorman, 1987). Such a huge influx of refugees looked at from the assistance regime, imposed serious strain on the government's capacity to provide social services. This is particularly so when the limited capacity of the country to do so, besides its own population, are taken into consideration. Gorman's conceptualization of the refugee problem is that on the whole it strains rather than benefit the host state. This study on the other hand attempts to point out that when tapped appropriately, refugees can benefit a host state in achieving some developmental goals. That is, refugees should not always be looked at as contributing to economic doldrums, aid dependants, suckers and parasites of host state economies, but can also be instrumental in the development of a host state.

Existing literature on refugee settlements discuss to some detail the reasons for controlled settlements. However, little attention is given to social and cultural rights that are related to the refugee life in these settlements. Such include education, religious affiliation, and cultural background of the refugees. These are areas that this study analyzes from the implementation of international refugee conventions context.

2.7 Refugees in the Security Context

It's imperative to address refugees in the security context since this is a core concept of this work. The refugee equation poses significant security concern for many

developing countries. First, as stated above the host countries are concerned that refugees may use the host country as a launching ground to counter-attack forces from the home country. This may arise in a situation whereby some of the asylum seekers are also members of militia or soldiers from a regime that has been overthrown.

In analysis of Burundi refugee situation, Rene Lemarchand (1995) gives a comprehensive analysis of conflicts and genocide as consequences of ethnic hatred into 1990s. Although the theme of his work is not on refugees, there are a number of facts that he put forward that supports the argument that there are potential security risks posed by refugee. He for instance points out that by 1965, over 50,000 Rwandan Tutsis, uprooted by the Hutus, had found refuge in Burundi. This posed a major security risk since Burundi was itself already experiencing hatred and confrontation between the Hutu majority and Tutsi minority, as well as the Hima. Haunted by the brutality they faced in Rwanda, the Rwanda Tutsi refugee therefore heightened the ethnic tensions that were already in place in Burundi. Furthermore during the Hutu insurrection of 1972, they got the support of Zairian refugees in Burundi in attempt to overthrow Micombero clique. The Hutu at the same time were sympathetic to the Zairian immediate and long term political objectives. The Zairian refugees had themselves fled to Burundi to escape from the repressive regime of Mobutu Sese-seko. Micombero's regime response was aimed at extermination of all the Hutus who had taken part in the rebellion using the Tutsi dominated armed forces and militia. About 200,000 Hutus were killed, while about 150,000 fled to neighboring countries, principally to Tanzania. These developments compounded with Micombero's decision to purge members of his government and dissolve his cabinet led to another Hutu insurrection the same year.

It is important to point out that the Hutu extremists unleashed terror on the Tutsis and moderate Hutus. Furthermore during this time the Hutu refugees in Tanzania and Zaire (Mulelist Hutus) entered Burundi and took part in the slaughter of any Tutsi in sight. Causes of the Burundi conflicts and genocide are complex, however, at different stages both the refugees in Burundi and Burundian refugees in neighboring countries played roles. Although the case of Burundi represent an extreme situation, it informs this work that cross-border movement of people has significant security implications. Those implications, as this writer argues, jeopardize the implementation of international refugee law by refugee host states.

The case of refugees in Asia exhibit real security concern and issues. In the case of Khmer refugees in Thailand, as illustrated earlier in this work, the Thai government settled them at its borders with Cambodia, partly to act as a buffer against Vietnamese attack on its territory (Ferris, 1993). Furthermore, the Khmer refugee population composed of a sizeable military component thus posed significant threat to the Cambodian government. Sri Lankan refugees in India and Burmese refugees in Thailand also has component of insurgents.

The large number of Afghan refugees in Pakistan portrays complexity of refugee issues in terms of security concern and foreign relations. Following the wars and instability of Afghanistan in the 1980s, 3.5 million refugees fled to Pakistan while another 2 million took refuge in Iran and 2 million others were internally displaced (Ferris, 1993). Among the Afghan refugees in Pakistan were members of the resistance forces, guerrilla movements known as mujahideen, who carried out war against the Soviet-backed Afghan government. Pakistan government on its part allowed mujahideen

to live in its territory and to carry out military operations inside Afghanistan from there. This was a policy partly shaped by realities of the Cold War-the fact that the U.S, an ally of Pakistan, supported mujahideen, and partly that majority of the refugees shared same ethnic background with Pakistani Pathan tribe. The creation of large refugee camps at the Pakistan-Afghanistan border for along time has been a major stumbling bloc to the attainment of peace in Afghanistan.

The case of Afghan refugees in Pakistan raises a number of security issues. One, as discussed above, the mujahideen used the territory of the host state to launch offensives against the Soviet backed Kabul regime. Second, the influx of some three million Afghan refugees contributed significantly to the influx of arms in Pakistan and generated active trade in arms. That in turn contributed to resurgence of Pathan unrest in Pakistan (Loescher, 1992). As such, the presence of particularly militant refugees has the potentiality of accelerating existing internal conflicts in the host country. Further, uncontrolled influx was compounded by trade in drugs and contraband goods. These are developments that cause major security concern not only in the host country, but also in the home country. In the latter case, the situation is exacerbated by the fact that organized groups in developing countries quite often advocate for violent regime change in the home country from their country of asylum. In some cases, this leads to complication in relations between the host and home countries to an extent whereby the home country government may retaliate militarily.

The above cases demonstrate situations in which refugees cause political and diplomatic attrition between the host state and the refugee's home country. Literature

reveals that refugees can be threat to national stability not only of the receiving nation but also the sending one.

The African security regime is increasingly becoming incessant with the issue of small arms and light weapons (SALW). As discussed above, the source areas of refugees are most likely to be experiencing or have experienced armed conflicts that caused forced internal displacement or refugee situation. The proliferation of SALW in much of the third world could be attributed to cold war rivalry between the two superpowers and their blocs. The end of the cold war and the collapse of the Soviet Union had far reaching effects in the developing world in regard to further proliferation of such weapons. There was increased supply of such arms particularly from the eastern bloc. Furthermore, the developments in eastern bloc triggered instability particularly in Africa. This led to a new wave of massive influx of refugees particularly in the 1990s in the continent.

The SALW regime gained prominence in the second half of 1990s. The 1997 Report of the Panel of Government Experts on Small Arms revealed that regions shared common problem of arms proliferation. Regional instruments such as Economic Commission of West African States (ECOWAS) Moratorium, Nairobi Declaration, and Southern African Development Cooperation (SADC) Declaration, all of 2001, developed the regime even further (Weiss, 2001). The OAU Convention on SALW of 2000 was the first African convention of its kind. The United Nations Conference on SALW was held in July 2001 and was the first of its kind at the global level.

Some scholars create relationship between the influx of refugees and arms' proliferation. Mogire (2003) for instance, points out that there is a correlation between the influx of refugee and SALW. That school of thought holds it that a number of

refugees are actually combatants or ex-combatants and they are therefore likely to have been in possession of arms at the time of fleeing the battle ground. Some writers even point out that the said categories of refugees are actually still armed with the aim of future reprisal, while others are actually arms dealers (Kamenju, et al. 2003). However, these notions have the potentiality of painting inaccurate picture about the general refugee population, thus being viewed as potential source of insecurity and criminality in the host states. The result of this could be adoption of some policies that do hurt rather than assist refugees cope with their situation.

In an analysis of proliferation of small arms in Africa, Taya Weiss (2001) does not state that refugees are responsible for small arms proliferation. However, when she attributes state failure and cites example of Somalia as a cause of arms proliferation then implicitly, those who cross borders from areas of conflicts and anarchy are agents of arms proliferation. She is however emphatic that the anarchy in Somalia was a demand-side for arms in Somalia. This is contrary to the school of thought that link arms proliferation to refugees in that in the latter case, emphasis is on outflow of refugees, and particularly members of militias from Somalia. Weiss argument is that the proliferation of arms in Somalia was due to high demand for them there, and she adds that "...so long as the demand for arms exist, they will be supplied". As such, her analysis is different from the other school of thought which emphasizes what I would thus term as "supply-side approach" and particularizes it on refugees.

The issue of SALW is of greater concern particularly due to the actual or threat of terrorism in the contemporary world. Terrorists may find such weapons to be of great importance to them. The surface-to-air missile that was used by terrorists in an attempt to

shoot down Israeli jet in Mombasa, Kenya, in 2002, for instance is a type of light weapon (Thusi, 2003). Refugees from Jammu and Kashmir who live in camps in Pakistan supply the bulk of the fighters who cross the line of control to fight India's security forces.

While the fighters call themselves "Mujhadeen" ("God's Warriors), India on the other hand regards them as terrorists (<http://www.fas.org/news/India/1999>).

2.8 Refugee Protection

The concept of refugee protection is central to implementation of refugee international law. The magnitude of the refugee problem, particularly in Europe, following the World War II prompted United Nations to create UNHCR through an enactment of a statute. UNHCR had two principal functions. First, it was to provide protection to refugees falling under the UN scope and mandate. Second, it was to seek permanent solution for the problem of refugees. The latter entails facilitating voluntary repatriation as well as assimilation in consultation with governments and private organizations.

Although the statute failed to define "international protection" of refugees, its inference according to Abuya (2004) entails the following:

- a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervision of their application as well as proposing amendments to the terms of those conventions.
- b) Promoting through special arrangements with governments, the execution of any measures calculated to improve the situation of refugees and reduce the number of those who require protection,

- c) Assisting in efforts to promote voluntary repatriation, assimilation, and resettlement within their new communities, and
- d) To assist refugees obtain their assets especially those that they need for resettlement.

As discussed in section 2.2, the Geneva refugee convention lay down the basis for current international refugee law and policy. It also outlines specific refugee rights and creates corresponding duty upon states regarding refugee protection. Some of the refugee rights include those of movement (article 2), worship (article 4), the right to own property (article 13) and the right of association (article 15). The convention also provide the refugee right of access to courts (article 16), to gainful employment (articles 17-19), housing (article 21), education (article 22), relief assistance (article 23), and labor and social security rights (article 24). Furthermore, the convention also place obligation and responsibility of a refugee to observe the host state law and regulations (article 2) (Brownlie & Goodwin-Gill, 1998). Although the existing literature points out to these rights, there is very scanty documentation as to how these are implemented at individual country level. This study thus analyzes how these rights and obligations are implemented in Kenya.

Durable solutions such as voluntary repatriation and resettlement are quite significant in relieving refugee problem. However, achievements are often faced with numerous challenges. The cases of Cambodian (Khmer) refugees in Thailand and Guatemalan refugees in Mexico are illustrative. In the case of Guatemalans, the Mexican government adopted a policy of self-sufficiency and local integration for those who were relocated. The relocations were mainly from Mexican state of Chiapas (bordering Guatemala) and were done by Mexican government's refugee agency and UNHCR due to

extreme poverty and constant unrest by the indigenous population of Native Americans in Chiapas. Even as a tripartite agreement was reached between Guatemalan and Mexican governments as well as UNHCR on voluntary repatriation of refugees voluntary repatriation still failed to achieve the intended objectives. By 1997 over 27,000 Guatemalans had indicated their intentions to remain in Mexico. This is in addition to the second-generation refugees who automatically become naturalized. Majority of Guatemalans who returned were more politicized elements of the refugee population who were actually involved in the negotiations and intended to play active role in the continuing peace process and the politics of their country generally (UNHCR, 1997/98). Furthermore, local integration is a popular option for refugees in Mexico. However, studies do not give the details as to whether it is the Mexican government's policy of integration, or other local factors such as the level of economic growth, or the situation in Central America, including Guatemala that make integration a popular option.

The largest resettlement in recent history was established for the Vietnamese boat people following the collapse of Saigon regime in 1975 (UNHCR,1997/98). The collapse of the regime resulted into a major protection crisis in Southeast Asia since some asylum countries in the region refused to take in any new refugees and instead pushed them back into the sea. At the same time thousands of refugees were languishing in camps. The result was a major political and humanitarian crisis in the region. An international conference convened to address the refugee crisis resolved that the Vietnamese boat people would be granted temporary asylum by the states within the region, then resettled. Nearly 700,000 such people were resettled mostly in Australia, Canada, France, and the largest number to USA (UNHCR, 1997/98). However by the 1980s, the enthusiasm of

Even the leading resettlement countries to admit refugees and asylum seekers had waned. While those who were resettled in the 1970s through UNHCR assistance averaged 200,000 a year, the number dropped to a paltry 27,000 by 1996 (UNHCR, 1997/98). This was despite the fact that the post cold war era world experienced political upheavals and more human displacement than ever before.

The humanitarian crisis faced in South-East Asia witnessed flagrant violation of the provisions of the Convention regarding refugee protection. First, a number of countries in the region were simply reluctant to take in refugees arguing that they had no role in the wars that caused refugee situation in the region. These were proxy wars to the cold war, yet the international community was reluctant to address the refugee situation. Even developed Asian countries such as Japan were quite hesitant to address the South-East Asian refugee situation. As such, countries like Thailand that had taken in many such refugees felt betrayed and abandoned and decided to turn Vietnamese boat people into the sea.

Second, a number of Asian countries that hosted refugees or were home countries to most refugees in the region were not signatories to the UN refugee convention. Furthermore, unlike in Africa, Middle East, and Latin America, these countries did not develop a regional refugee instrument.

Regarding the Cambodian refugees in Thailand, following the 1991, UNHCR commissioned French organization (spot image) to survey arable land in Cambodia where the returnees could be reintegrated. There were three options for the returnees. One option was that they could be allocated between one and two hectares of land. The second option was for one to be given a small plot of land and a house. The third option

was that each returnee would get cash US\$50 for adults and US\$25 for children. Furthermore, each returnee was to receive a four hundred-day supply of food, utensils and agricultural implements. About 87 percent of the returnees opted for cash grant (UNHCR, 1993). The case of Khmer refugees and returnees was compounded with several challenges.

First, the Cambodian civil strife followed the refugees into the camps in that a number of camps were under the control of factional groups of Cambodia. Three of the camps, site 8, O'Trao and site K, were under the control of Democratic Party of Kampuchea (Khmer Rouge) faction whose repressive regime had actually bred the refugee situation. Two camps, site 2 and Sok Sann were affiliated to Khmer Peoples Liberation Front (KPLF), while site B was under the control of the Silnanoukist faction. As such a number of refugees were forced into becoming combatants supporting the group that was identified with their camp.

Second, due to the lack of real protection at the camps, a number of refugees had no option but to return to Cambodia which itself was insecure. Furthermore, much of the country was infested with the mines. Indeed, even though about 365,000 Cambodians returned within a period of just one year (March 1992 to April 1993), the human rights abuses and instability that trigger refugee situation are still prevalent.

Third, as discussed above, in Thailand refugees were used as a buffer zone to hold the Vietnamese from invading Thailand. At the same time the Chinese assisted the Khmer Rouge. It is important to note that the U.S. had faced humiliation in its war against Vietnam and thus, like China, did not want to adopt a policy that could weaken Cambodia and strengthen Vietnam's position in South East Asia. As Mayotte (1992)

argues, "The world closed its eyes while Khmer Rouge became the strongman of Cambodia's coalition in exile...350,000 people lived in closed camps...behind barbed wire, incommunicado with the rest of the world...". She adds, "Their lives were put on hold in a debilitating dependency on the outside world for food, clothing and shelter".

Fourth, since the camps were under Cambodia's factional groups, the refugees quite often became victims of forced repatriation by these very groups. Furthermore, the history of deep animosity that existed between the Khmer (Cambodians) and Thai, made it difficult to integrate the former locally. To make it worse for the Khmer, Thailand was neither a signatory to the Geneva Convention of 1951 nor to the 1967 Protocol. As such, it was not bound by the terms of the treaties. In 1979 for instance Thai loaded between 43,000 and 45,000 Khmer refugees and forcefully returned them to Cambodia. Tens of thousands of those forcibly returned were killed by the mines or through gunfire (Mayotte, 1992).

This study attempts to find out the durable solutions that are mostly applicable in the case of Kenya and address the challenges faced in their implementation.

2.9 Summary of Literature

The literature reviewed in this work reveals that while there are few cases where implementing states conform to international law on refugees, most of the literature reveals serious violations evident in those implementations. Scholars such as Gorman (1987) and Harrell-Bond (1989) show that African states such as Sudan, Somalia, Tanzania and Uganda have in the past decades adhered to the provision on the right to asylum and hosted hundreds of thousands of refugees from the neighboring states. This

is consistent with the provisions of both the UN and OAU refugee instruments. The practice of spontaneous settlements of refugee in Tanzania as analyzed by Gorman and open settlements in both Uganda and Tanzania (Adelman & Sorenson) conform to international refugee law since they are aimed at empowering refugees economically, particularly in regard to food production.

On the contrary, much of the literature reveals non-conformity to the law by a number of implementing states. A number of states have not put in place adequate policies to ensure protection of refugees. There are hardly policies to protect refugees from sexual violence in states such as Sudan and Uganda. Besides, even in countries such as Uganda where refugees are allowed to till land, there are no measures to protect them from exploitative middlemen, thus they remain in perpetual poverty. Furthermore, some states have come up with policies that deliberately contravene international refugee law. The interception of Haitian refugees at the sea and denial of asylum to many Salvadorians and Guatemalans by United States epitomizes such violations. Existing literature thus reveals a pattern in which policies adopted by industrialized countries are quite restrictive (Harrell-Bond; Daniel & Knudsen).

Analysis of refugeeism in South East and South Asia reveals serious violations of international refugee law. In her work, Ferris (1993) for instance points to the settling of Khmer refugees by Thailand on its borders with Cambodia. These subjected refugees to attacks by the military of the very regime that had forced them out of their country. Mayotte (1992) on the other hand gives account of the Thai practices that included forced return of Cambodian refugees. This contravenes the provision of non-refoulement in international refugee law. Besides, the author analyzes violations of Afghan refugee

women in Pakistan that include confinement. In analysis of refugee situation in Sudan, Harrell-Bond highlights practices such as the rounding up of unemployed and destitute refugees in Khartoum. He further points out that there is correlation between poverty and crime among refugees.

CHAPTER THREE

MAGNITUDE AND SCALE OF REFUGEE PROBLEM IN KENYA

3.1 Introduction

In this chapter, the magnitude of the refugee problem in Kenya is analyzed. In order to understand the extent to which Kenya has observed international refugee law in handling refugees, it is important to analyze the various dimensions of refugee problems. Included in the analysis here are the bio-data of refugees in Kenya. An analysis is done on their background including whether they have lived in another country in the same status, how long they have lived in the country as well as their generation under that status. The chapter also analyzes their economic status as well as their outflow. In the latter case, durable solutions are analyzed in that context.

3.2 Countries of Origin

The influx of refugees into Kenya has been going on for a number of decades. However, prior to 1991, Kenya hosted a relatively small number of refugees. These earlier refugees were mainly urban refugees. Initially, the management of refugees in the country was part of a joint effort between the government of Kenya and United Nations Development Program (UNDP). The United Nations High Commissioner on Refugees which had commenced its work in the country in 1969 to assist with the arrival of Sudanese asylum seekers assumed the lead role in 1978.

The next significant group of refugees to arrive in the country arrived in the 1970s to escape the atrocities committed under Amin's regime in Uganda. Due to continued political instability in Uganda in the post-Amin era, more refugees continued arriving

from the country. The massive influxes of refugees into Kenya occurred from the early 1990s.

Following the collapse of communism in the (former) Soviet Union and Eastern Europe in 1989, there occurred impetus for change towards democratization in a number of African countries. This was a development that got backing from the western liberal democracies and some of the multilateral donor institutions such as the World Bank and International Monetary Fund (IMF). The donors generally imposed stringent conditionality on aid recipients. While a number of African countries attained some level of democratization, including legalization of multiparty, in many others democracy failed and instead experienced political violence, thus triggered further population displacement and cross-border movement

In Ethiopia for instance, the Marxist regime of Mengistu Haile Mariam was overthrown by liberation forces. Since Haile Mariam hosted a number of displaced persons from Southern Sudan, the collapse of his regime, followed by civil strife led to migration of both Ethiopian and Sudanese refugees there into Kenya. The Eritrean war of liberation (from Ethiopia) even led to more influx of refugees from Ethiopia. In Sudan, as the civil war intensified, there was more influx of refugees from there directly into Kenya. In Somalia where Siad Barre continued to resist any form of political solution or political compromise in the face of increasing opposition, he was evicted by the military. His forced departure and the civil war that ensued led to collapse of the state (Rimmer, 1993). The collapse of the state of Somalia was even more complicated since the Kenya-Somalia 1,200 km border-stretch became not only volatile but also quite porous, resulting in uncontrolled influx.

The political instability in the Great Lakes region of Africa even polarized the refugee problem further. In Rwanda for instance, the conflicts that ensued following the plane crash that killed President Habyarimana amounted to genocide. In Burundi, the long drawn antagonism between the ethnic Hutu, Tutsis, and Hima, saw the first Hutu elected President Malchior Ndidaye assassinated just a few months in the office (Lemarchand, 1994). This worsened the country's political experience that had been characterized by civil wars and genocide. In the Democratic Republic of Congo, President Laurent Kabila was assassinated after a protracted civil war that involved six African nations. In all these cases, there resulted massive cross border by refugees, with a substantial number reaching Kenya.

The influx of refugees into Kenya during the last one and a half decades is not confined to the above countries as the source. There have been movements from Uganda, Tanzania, Mozambique, and even from the Middle East and other Asian countries. The refugee situation in Kenya after 1990 therefore reached a crisis proportion. This is when viewed not only from the number of refugees but also the upsurge of the influx, the large number of source countries, as well as the diverse backgrounds of the refugee. Furthermore, there is lack of preparedness by host the country to deal with the refugee situation that is in considering its level of economic development and the emergency nature of the influx. Furthermore, a massive influx is likely to further strain the limited resources that the country has. It is important to point out that the spiraling number of refugees has hard placed Kenya in an awkward position to the extent that it has to contribute part of its meager resources to cater for refugees, besides its own population.

The early 1990s therefore saw large influxes of refugees from Sudan, Somalia, and Ethiopia, a situation that was further complicated by influxes from the Great Lakes Region countries of Rwanda, Burundi, and the Democratic Republic of Congo (then Zaire). It is important to single out the existence of conflicts compounded with gross human rights abuses as the major cause for the influx of refugees from countries of the Horn of Africa and the Great Lakes region of Africa.

As of December 1992, over 420,000 refugees were settled in the fifteen refugee camps that had been established in the country in response to the massive influx (UNHCR, 2006(c)). Most of these camps, located at Mombasa, Malindi, Thika, Moyale and Mandera, were later closed and consolidated into two principal camps of Dadaab and Kakuma. Although the number of refugees in Kenya remains high today, it is important to note that it fluctuates. Table 1 below shows the number of camp refugees, by country of origin as of December 2005.

	171,287	205,771
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Table 1: Country of origin

Country	Kakuma	Dadaab	Total
Somalia	12,602	124,357	136,959
Sudan	74,060	486	74,546
Ethiopia	3,570	2,392	5,962
Rwanda	340	21	361
Uganda	475	59	534
Democratic Rep. of Congo	584	22	606
Burundi	186	2	188
Eritrea	65	47	112
Tanzania	1	1	2
Central African Republic	1		1
Total:	91,884	127,387	219,271

Source: UNHCR, 2006.

An updated data for Dadaab, for instance indicates that as of January 2006, the actual refugee population was 138,000, of which Somalis formed 97.5 percent of the population (UNHCR). This higher figure within such a short duration could partly be attributed to the refugee census exercise carried out by UNHCR in collaboration with the Ministry of Immigrations and Registration of Persons between March and November of 2005. Furthermore, due to continued conflicts in Somalia, despite the peace accord signed in 2005, there is increasingly more number of Somalis fleeing conflicts in their country of origin. UNHCR sources indicate that in 2008, 60,000 Somalis sought refuge

at refugee camps of Dadaab, while tens of thousands more traveled to Nairobi (DN 5th 6April, 2009). The problem of continued influx is not peculiar to Dadaab, according to an official of International Rescue Committee (IRC) at Kakuma; the number of Sudanese being registered at the camp is about 600 per month. That source and other impeccable sources based at the camp put the actual refugees at Kakuma camp at 110,000 or more as at March 2006.

The continued influx of Sudanese can be explained from various perspectives. Some of the new arrivals are attracted by the existing educational opportunities that are not available within their villages in Southern Sudan. This research established that many refugees actually left their home country with no basic education, despite the fact that they left when they were actually of school going age. This is a fact established by asking in the questionnaire four fundamental questions, namely, age of the respondent, duration of stay in Kenya, occupation in the country of origin, and level of education attained in the home country. It is important to point out that a significant number of the respondents were from Sudan. Of the 125 respondents who indicated that they originally came from Sudan, 18 stated that their occupation in the home country was that of herds' boys. That is quite a significant proportion, forming 14.4 percent of the respondents from the country. About forty five percent (45%) of the respondents from Sudan indicated that they had not attained any level of education at the time of their arrival in Kenya. Although some of them could have been quite young to attend school, there are certain indicators that show that a significant proportion of them were of school going age but were denied educational opportunity. The questions on whether the respondent lived in another country before moving to Kenya, age of the respondent, and the duration of

staying in Kenya enabled this researcher to arrive at that conclusion. This could be explained by the war as well as neglect of the Southern Sudan by Khartoum government. When asked about the level of education of their parents, a significant number of refugees from Sudan indicated that their parents had no education. If any, then primary education was the highest that most of their parents, particularly the fathers, had attained.

The feelings of Elizabeth Yar, expressed during the Refugees' Day celebration in June 2006 corroborates the fact that lack of educational institutions in her home village of Rumbek in Southern Sudan is still a reality. She points out her dilemma of whether or not to return to Sudan following the peace accord. The forty year old mother of five fears that returning home would result in her children dropping out of school since all the schools in her home village were battered by war (Daily Nation, June 23rd 2006). That sentiment illustrates the fact that social services are still hard to come by in the region.

Although the conflicts in Darfur region of Sudan still generate thousand of refugee from that country, majority of them seek asylum in Chad. As such, the on-going conflict in the region may not be a significant factor to the continued influx from the country into Kenya. Furthermore, many of the respondents from Sudan who specified their region of origin indicated Southern Sudan, specifically Equitoria province as their original homeland.

There are also indications that some of the incoming refugees are actually those who had lived in Kakuma, were voluntarily repatriated, but decided to return to Kakuma. This is a development that can be explained from various dimensions. However, a diminished expectation of the returnees is the underlying factors (see section on durable solutions for details).

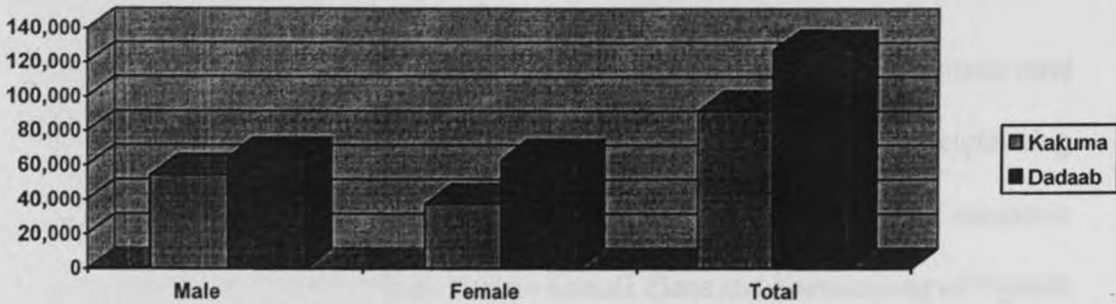
From table 1, it is evident that as of 2006, the refugee camps of Dadaab and that of Kakuma hosted refugees from ten nationalities. Besides Somalia, Sudan and Ethiopia, other refugees at the camps are from DRC, Rwanda, Burundi, Uganda, Tanzania, Eritrea, and the Central African Republic. However, responses from the refugees indicate that Kenya hosts refugees from more countries than these. The varying number of refugees from each of the countries can be explained from their proximity to Kenya, with the countries bordering it having larger number of refugees. However, the level of political instability in the refugee home country is also a key factor in determining those numbers. For instance, although both Tanzania and Somalia border Kenya, the number of camp refugees as represented by the table show that about 137,000 were from Somalia while only two were from Tanzania. Such great variation can be attributed to the continued conflicts in Somalia while Tanzania is relatively politically stable. Uganda, another country neighboring Kenya had less than 600 refugees at the camps.

Although Uganda has faced periodical upheavals, the regime under Yoweri Museveni has managed to attain some level of political tranquility. Furthermore, on assuming power the government of Museveni made arrangements with the government of Moi of Kenya to have most of Ugandan refugees who lived in Kenya by then (1986) repatriated to Uganda. This approach worked since it made it more difficult for asylum seekers from Uganda to be granted refugee status in Kenya. From Kenya's perspective, the yielding to Museveni's demand to repatriate was meant to maintain cordial relations with Uganda, particularly in considering the strained relations between the two countries that had culminated into the collapse of the original East African Community.

3.3. Gender of Refugees

An analysis of the refugee situation in Kenya would be incomplete without an analysis of the gender composition. As of December 2005, female refugee population at Kakuma was 37,347 of the total 91,884. That is, the female refugee population is just over a third of the camp's refugee population. During the same period, the female refugee population at Dadaab camps of Ifo, Dagahaley, and Hagadera, was 63,221 of the 127,387, translating into female to male ratio of 49 to 51 (UNHCR, 2006©). Figure 1 below represents the refugee population at the camps by gender.

Figure 1 : Refugee Population by Gender



Sources: UNHCR, Ministry of Immigrations, 2006

The large range between female and male refugee population at Kakuma camp can partly be attributed to the history of camp. Kakuma refugee camp was established in 1992 following the arrival of some 12,000 Sudanese “lost boys”. These were those young Sudanese who experienced five year odyssey fleeing the civil war in Southern Sudan. That war pitted principally Sudanese Peoples’ Liberation Army (SPLA) against the Sudan government forces. At the same time, there were numerous factional militant groups in the South fighting for supremacy and control of the region. When war erupted

in Ethiopia in the early 1990s that led to the deposition of Mengitsu Haile Miriam's regime in Ethiopia, the "lost boys" returned to Sudan. However, the ensuing war in the Sudan forced them to cross the border into Kenya. The large number of the "lost boys" forms a basis on which the disparity in the gender demography at Kakuma can be explained.

Since the "lost boys" formed the core of the original refugee population at Kakuma, there were higher chances that more of their cohorts who were trapped in the war ravaged Southern Sudan soon followed them. Furthermore, following the collapse of the Ethiopian government, many refugees of both Ethiopian nationality and refugees from Sudan and some from Somalia crossed directly into Kenya, a significant proportion of who were settled at Kakuma.

Generally, an analysis of the African refugee regime reveals that more men (and boys) than women are more likely to cross borders and seek refuge in neighboring countries during political turmoil. This may be explained by the traditional economic activity of a people. Southern Sudanese, some Somali clans and Karamojong of Uganda are traditionally pastoralists. This is mainly a male activity. Due to fluctuation of the rains and subsequently pastures, the activity takes nomadic or quasi-nomadic dimensions. This sets the stage for easy mobility by male components of the society during crisis. That is, the fact that pastoralists cover a wide area in the cause of their economic activity, inculcates into them adventurism. Furthermore, pastoral societies particularly in Eastern Africa quite often clash with each other over pastures and waters. Such usually triggers their movement.

With urbanization in Africa during the colonial days, the traditional role was reflected in the emerging modern economies. Men were more likely to migrate to urban centers to provide manpower in the commercial and industrial sectors. Furthermore, it was mainly men who would migrate from their home districts to go and provide menial labor in the plantations established by the white settler farmers. Such developments act as precursor for male mobility.

Women, among the other vulnerable groups, are more likely to be trapped within the borders of home country during conflicts and wars. This can be best explained by the traditional roles of women in these societies. They perform family chore; take care of children, look after the farms, home, etc. As such, many of them are likely to become internally displaced persons when there is a crisis. A finding of this research in regard to gender is that there are more male than female refugees in Kenya, although the disparity varies from country to country.

The gender disparity was even more glaring during the survey of this work. Only about 21 percent of the respondents to the research questionnaire were women. The lower than the general proportion of the women refugee can be explained from various dimensions. Customs and traditions could have been very significant here. In many of the refugee societies, particularly those from the Horn of Africa, traditional practices such as forced and early marriage and FGM militate against girl-child (female) education. Since the questionnaire was drafted in English, many of those who can't read and comprehend the language were just reluctant to respond to the questions. Indeed language barrier was a major obstacle in getting the intended number of respondents to the questionnaire. I experienced it both at Kakuma and Dadaab. Although this is not a

confine of women, it reflects the gender disparity in terms of literacy within the refugee population.

Secondly, many of the respondents are people who are actively involved in the various activities either within the camps or in urban centers. They include students, refugee group leaders, incentive workers at the camps, etc. As such, since majority of refugee women are locked out by the practices discussed above, neither this researcher nor his assistants could have access to them. This is a situation exacerbated by the fact that women from mainly Somali/Islamic community hold some “special” position that does not allow particularly male “strangers” to have discussions with, or even greeting them. Furthermore, in conducting the field research at the refugee camps, I was advised by those who are versed with the camp situations to avoid going into the refugee “villages” alone for security reasons.

How could the smaller gender margin in the number of refugees at Dadaab be explained? As mentioned above, the vast majority of refugees at Dadaab camps are from Somalia. Majority of these moved to Kenya following the collapse Siad Barre’s regime and the ensuing civil war that pitted various clan warlords against each other. Seventy five percent of Somali refugees at Dadaab are from Juba River Valley and the Gedo region. Another 10 percent are from Kismayu, Mogadishu and Bandera (UNHCR, 2002).

Unlike the case of the Sudanese “lost boys”, a good proportion of Somali refugees arrived as grown ups with their families. This was a development supported by the fact that many of those who fled to Kenya included former civil servants, farmers, traders, and the pastoralists. Furthermore, the tight Somali kinship that exists both at clan and family levels contributed to this marginal gender proportion.

Analysis of gender composition is therefore crucial in formulating appropriate policies in regard to international refugee law.

3.4 Age of respondents.

Another aspect that is important in informing formulation of refugee policy and implementation of international refugee law is the age factor. This researcher could not establish the ages of refugees either through UNHCR or its implementing partners, or even from the Ministry of Immigrations where the refugee docket falls. However, a specific question in the questionnaire asked for the age bracket that a respondent belong.

Table 2 below summarizes the findings

Table 2: Age of Respondents

Age	%
Under 20	18.37
21-25	34.59
26-30	24.86
31-35	12.97
36-40	3.24
41-45	2.16
45-50	1.65
Over 50	2.16
Total	100.00

Source: Field Data, 2006

The above data illustrates that majority of the refugees in Kenya are under thirty five years of age, with 21-25 age bracket having the bulk of the people. These ages are important not only for scholars but also policy makers and implementers in addressing refugeeism. Analysis of the ages of refugees sheds light to their needs, particularly in implementing refugee law with regard to social services, their economy, and in addressing durable solutions.

The study establishes that majority of the respondents have lived in Kenya since the early 1990s. Their influx, as discussed above, was mainly caused by the political crisis that engulfed much of the Horn of Africa and the Great Lakes region. The very few exceptions who indicated that they have lived in Kenya from prior to 1990 originally came from Uganda, Zaire, Rwanda and Burundi. The latter cases be attributed to the long term conflicts in the region, dating back prior to 1980 (Lemarchand, *ibid*)

Table 3 below represents the duration for which the respondents have lived in Kenya.

Table 3: Duration of Stay in Kenya as a refugee

Years	Percentage (%)
0-5	12.29
6-10	41.34
11-15	44.69
16-20	1.12
21-25	0.56
Total	100.00

Source: Field Data, 2006

The low proportion of those who have lived in Kenya since prior to 1990 proves that the refugee issue was not that serious. Due to the low number of the refugees, they

were absorbed into the various sectors of the economy, majority of them serving in the towns.

From the above table, it is important for policy makers to be informed that the problem of refugees is not a short term issue. It is a medium to long term problem that need appropriate long term measures that would effectively help solve their problems. A significant number of those between 21 and 30 years of age, for instance, have actually lived more than half of their lives, and their entire adult lives in Kenya. Such facts are crucial in the policy process.

3.5 Refugees who lived in a second country.

This study further inquired among the refugee respondents if they ever lived in another country after displacement from their home countries as refugees. A significant proportion of those respondents (47.57 percent) were affirmative, while another higher number (52.43 percent) pointed out that they had not. Many of those who had lived in a second country found themselves victims of similar circumstances that forced their initial departure from their countries of origin. A number of respondents from Sudan for instance, who indicated that they had lived in a second country identified Ethiopia as the country. Indeed, majority of the respondents (66.27 percent) indicated that they had lived in Ethiopia. Some of these included those who came from Somalia. Another 24.1 percent identified Uganda as having been their second country of residence as refugees. A significant portion of those who lived in Uganda before moving to Kenya were from the other Great Lakes region countries of Democratic Republic of Congo, Rwanda, and Burundi. However, some of those who transited through Uganda were originally from

Sudan. The table 4 below shows the countries where respondents lived as refugees before moving to Kenya.

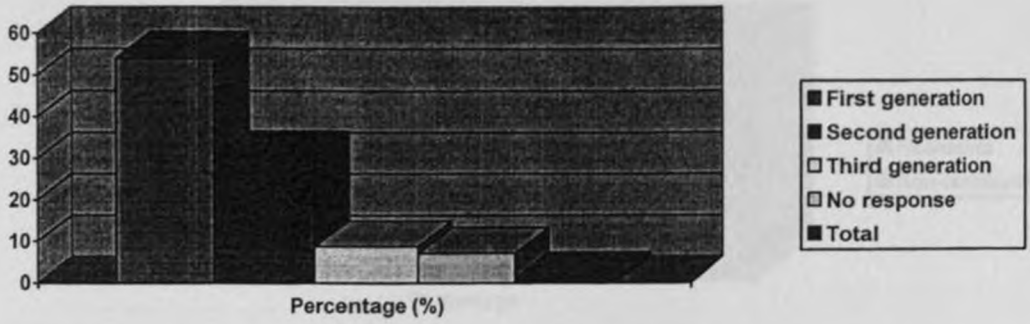
Table 4: Second country as refugee

Country	Percentage
Ethiopia	66.27
Uganda	24.10
Sudan	3.61
Congo	3.61
Tanzania	1.20
Rwanda	1.20
Total	100 %

Source: Field Data, 2006

Although many of those who never lived in a second country may have moved to Kenya directly as asylum seekers from their countries of origin, another significant proportion could have been born in Kenya. This is a fact established by asking the respondents the generation of their refugee status. The result of this is summarized in figure 2 below.

Figure 2: Generation of refugee

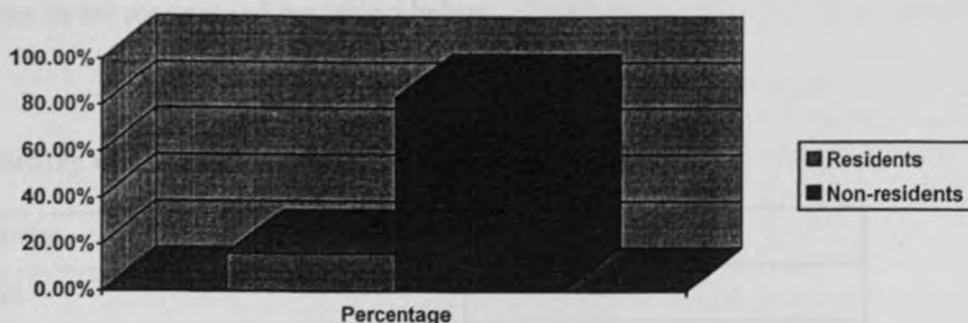


The majority of respondents were first generation refugees. However another significant proportion (38.92 percent) identified themselves as belonging to either second or third generation refugees. It is from this latter group that those refugees who were born in Kenya as refugees can be estimated. Although the latter categories could have been born in some other countries as refugees, the interpretation is that if they have never lived in a second country, then they were most likely born in Kenya. Those who could have been born in Kenya therefore form twenty percent of the respondents. It is not precisely clear why 13 of the respondents (7.03 percent) did not indicate the generation that they belong to. However, it is possible that some of the respondents were really not versed with the terminology used.

3.6 Parents' country of residence

An inquiry about the country of residence is important not only about understanding the background of a refugee, but it also sheds light on certain fundamental policy and legal issues in regard to refugees. Figure 3 below represents the proportion of the respondents whose parents are residents of Kenya.

Figure 3: Refugees whose parents reside in Kenya



Source: Field data

From the diagram, just a paltry 16.3 percent of the respondents indicated that their parents live in Kenya that is as compared to another 83.7 percent who responded to the negative. Although it is possible some of those whose parents now are non-residents were born in Kenya and later the parents voluntarily repatriated. Of concern at this level are those who were born in Kenya. About 80 percent of those whose parents reside in Kenya were themselves born in the country.

A physical survey at both the Kakuma and Dadaab camps establishes that there are so many children of various ages who were actually born there. The way they consider the camps to be their original homes speak for it's self. The workers at the health facilities at both camps indicate that reproductive health is given its due priority at the facilities. An IRC officer at Kakuma observes that, "... there are several off springs from parents of different ethnic and national backgrounds such that the existence of current tribal and national groupings ...may extinct in the future". Although this study could not come up with the exact number of children born to refugees at the health facilities, a fact complicated by the use of the same facilities by the host communities,

they are several. The study establishes that a larger number of respondents parents live in other countries as are represented by table 5 below.

Table 5: Country of parents' residence

Country	Percentage (%)
Sudan	67.42
Ethiopia	6.06
Somalia	3.79
Congo	5.30
Uganda	6.82
Burundi	2.27
Indonesia	1.52
Rwanda	0.76
Israel	0.76
Unknown/ Deceased	5.30
Total	100.00%

Source: Field data

From the data above, most of the respondents (67.42 percent) indicated that their parents live in Sudan. Most of these respondents are from Sudan. This suggests that many of them came to Kenya on their own. This study establishes that throughout the 1990s to the present, several Sudanese refugees came to Kenya as unaccompanied minors. The first phase was during the influx of the Sudanese “lost boys” from both Sudan and Ethiopia. Existing accounts points out that these were Sudanese minors recruited into the Sudanese Peoples’ Liberation Army (SPLA) army and were based in

Ethiopia. During regime change in Ethiopia, they were pursued by the Ethiopian forces, some of whom returned to Sudan and fled to Kenya from there, after being abandoned by SPLA leadership (UNHCR, 1993). Another about three thousand “lost boys” moved to Kenya directly from Ethiopia. However, only about one thousand of the latter arrived and were settled in Kakuma.

The parents of refugees live in countries beyond the traditional home countries of refugees who live in Kenya. The two respondents who indicated that their parents live in Indonesia also claim the country to be their home country, while the one whose parents live in Israel is a refugee from Ethiopia. The latter could be an example of resettled Ethiopian Jews by the Israeli government.

Although those who indicated that they do not know where their parents live or their parents are deceased, percentage-wise (5.30 percent), may look negligible, it is a classic example of some of the nightmares the refugees experience. First, it is important to consider that of the respondents, the actual figure is more than five. That in itself suggests that the actual total number of refugees who would indicate that category would be quite high. That is taken as a percentage of the total number of refugees living in the country would be about 12,500. Second, most of those who indicated that their parents are deceased, pointed to the occurrence in their countries of origin. Furthermore, it results in separation of families. Besides, many of the respondents came to Kenya when they were children. Such situations subject refugees to psycho-social as well as the economic challenges. At a time when they need their parents and elder siblings most, many of them find themselves at the hands of warlords, being forcibly conscripted into factional armies. Many more find themselves simply ‘lost’, mingling with others in the

course of migration. Several of them who moved directly from war-torn regions witnessed some of the worst human rights abuses. And as discussed elsewhere in this work, even life in the camps and elsewhere within the host country is extremely hard to cope with. It is in considering some of these problems which refugees face that international refugee laws were enunciated to help protect them within the host countries.

Another question dealing with parents' residents and relevant in this study is about the immigration status of the parents to refugees who live in Kenya. Among the respondents who indicated that their parents live in Kenya, 90.48 percent of those parents have refugee status. While some of the refugee parents could have joined their children, as with the case of some of the "lost boys" parents, many others simply could not be integrated as Kenyan citizens due to the existing refugee policy (see section on durable solutions elsewhere in this work for details). As such, irrespective of the number of years they live in the country, refugees' status basically remain the same so long as they are still in Kenya.

Only about ten percent of those who indicated that their parents live in Kenya were hesitant to divulge the immigration status of their parents. This could either be due to the fact that they are actually not aware of their parents' status, or due to some fear.

3.7 The spread of Refugees.

In line with Kenya's encampment policy, majority of refugees live in camps. There is also a significant urban refugee population. In the three camps of Dadaab- Ifo, Dagahaley, and Hagadera- some 97.5 percent of entire refugee populations are Somalis. Other nationalities represented at the camp include Ethiopians, Sudanese, Eritrean,

Ugandans, Congolese, Rwandans, Tanzanians, and Burundian Refugees. The minority groups include Anywak from Sudan and Ethiopia, Oromo from Ethiopia, as well as the Acholi from Uganda among others.

A brief overview of the camps is essential in this study. Dadaab is located in a semi-arid area with sparse vegetation and no surface water. It is located about 550km from Nairobi and 80km from Kenya/Somalia border. Due to the predominance of Somalis both among the refugee population and among the local community, Islamic faith is predominant in area. Christianity is mainly practiced by non-Somalis. The three camps cover a total area of 50sq.km, and are within a radius of 18 sq. km from Dadaab town.

Like Dadaab, Kakuma is located in a desolate, semi-arid region of North-Western Kenya. Over seventy percent of the refugees at this camp are of Sudanese origin. The major groups comprise the Dinka, the Nuer, and those from Ekuatoria. The Somalis here form the second largest group (about 18 percent). It is important to note that this figure include those who are classified as the Somali Bantus. Other nationalities represented within the refugee population are from Ethiopian, Ugandan, Rwanda, Burundi, Democratic Republic of Congo, Eritrea and Central African Republic. Unlike the Dadaab case where there are three camps, the Kakuma camp is divided into sites I-IV, each settled by particular nationalities or tribal groups. In 2005, a site V was established for new arrivals.

In the questionnaire, the respondents were asked to classify themselves in terms of their residence; camp, urban, or rural settlement refugees. Over eighty percent indicated that they are camp refugees. About twelve percent indicated that they could be

classified as urban refugees, while another about seven percent indicated that they are rural settlement refugees. Table 6 below summarizes this data.

Table 6: Classification by residence

Residence	Number	Percentage
Camp	149	80.54
Urban	24	12.97
Rural settlement	12	6.49
Total	185	100%

Source: Field data, 2006

The high number of camp residents among the respondents is in line with the national policy of encampment. That is particularly in considering the fact that refugees can only get assistance from UNHCR and its implementing partners if they are settled in the camp (see details on assistance later in this work).

The over ten percent who indicated that they are urban refugees is a significant proportion. Many of the respondents who classified themselves in this category are students who are registered at post-secondary institutions of learning. This researcher however expected to get a higher percentage of response from this category by allocating the questionnaire for two urban centers, namely Nairobi and Eldoret. A significant number of those who responded in Eldoret indicated that they were actually camp refugees residing at Kakuma. They were therefore actually just visiting friends and/or

relatives, or were going through their personal business in the town for some duration. Furthermore, it is possible that there are a much higher number of those who can be correctly classified as urban refugees. Some of these have probably culturally integrated themselves to an extent whereby identifying them for responses in this kind of work would not be very possible, unless one has prior information. Second, potential respondents would probably be hesitant to identify themselves, believing that their immigration status is questionable. In the latter case, the issue of trust comes into play.

Sources at both the UNHCR and Ministry of Immigration and Registrations of Persons indicate that the number of refugees residing in Kenyan towns is not known. However, indications are that the figures are quite high. Some sources estimate the number of urban refugee population to be about 150,000, while some put it at a lower figure. This figure may not be higher than the actual figures. In 2006 for instance, the government of Kenya, through the Ministry declared an amnesty for urban refugees and started the registration in Nairobi. Table 7 below show the registrations at the respective centers in Nairobi.

Table 7: Registered Urban Refugees (by centers)

Kariokor center –	16,385
Pumwani center –	16,672
Eastleigh center -	16,448
Total:	50,592

Source: Ministry of Immigrations, 2006.

One could rightly deduce that this is just but a fraction of the actual number of the refugees who live in Nairobi. Factors such as the time-frame, the location of the three centers within Nairobi, period of stay, expectations from registration, immigration status and options, among other factors would suggest that a large number had not turned up for the registration.

At the planning stage, this researcher was convinced that Eldoret probably has the second highest number urban refugee population. However, as pointed out by the key informants at the Ministry and the Department for Refugees, the government believes that there are probably more refugees living in towns such as Kisumu, Mombasa, and Nakuru. As such, plans are to implement the provisions of the amnesty in those towns before proceeding to Eldoret. Since a significant number of refugees live in urban, implementation of international refugee law to the extent that they are inclusive is therefore crucial.

Those who indicated that they are rural settlement dwellers mainly responded within Eldoret or its environs. Analysis of their responses to further questions reveal that many of them could have just been urban refugees but living in the slum areas or the outskirts of the town. As such, although refugees are not spread evenly in Kenya due to government policy and factors such as urban-pull, they reside in all corners of the country.

3.8 Refugee Economic Status

The study also analyzed refugee economic status which forms a crucial aspect of the magnitude and scope of their problems, besides forming a strong ground of analyzing

implementation of international refugee law. Refugee situation particularly at the camps is not only illustrative of some hardship, it also provide ground for analysis of refugee economic potentiality. Life at camps reflects some substantial hardship that refugees go through. As pointed out above, Kakuma and Dadaab camps are located in semi-arid areas with soaring temperatures. The nature of climate in the two areas is generally hostile to human life. Even the local communities, Turkana and Somalis seem to be having difficulty "getting used to" the climate. These conditions also limit human ability to perform certain economic activities under natural circumstances; farming is virtually absent. The areas are remote and infrastructure is seriously underdeveloped. Although the road from Lodwar to Kakuma and Lokichogio is well carpeted, the section linking Kapenguria and Lodwar via Kainuk is in pathetic condition. Furthermore, the seasonal springs in Turkana are a menace, not only cutting off links, but also lead to loss of both human and livestock life. In the case of Dadaab camps, bus drivers have to create their own "roads" to make it from Garissa town to the camps, several kilometers away. Here also, the flat nature of topography, compounded with occasional seasonal torrents, completely cut off the camps from the rest of the world for land transport users.

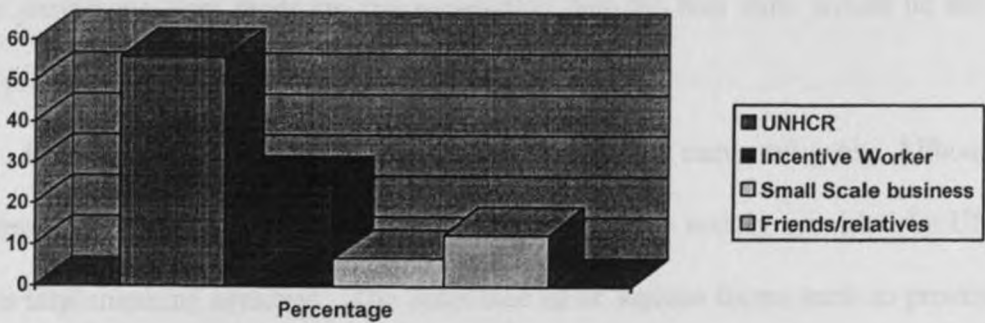
A common characteristic of the parts of the country where the camps are located is sparse population density. The common features as one travels through Turkana District are anthills and shrubs. After about an hour drive is when one would sight a lone male walking by the roadside headed probably to a very far place, far because we had gone for about sixty kilometers without passing-by a shopping center or a manyatta. Such scenarios repeat themselves as one move from Garissa toward Dadaab. The direct implications of these are lack of sufficient trade items, or market. Trade can hardly thrive

where there is insufficient supply of items that are demanded, and also where there is low purchasing power for certain commodities.

It is under such environments that the Kenya camp refugees find themselves in. Furthermore, even though the international refugee law provide for gainful employment, there are restrictions in Kenya to the extent whereby such a right virtually does not exist for refugees. Essentially, they start from a disadvantaged position when looked at from the economic point of view. This study analyzed a number of aspects regarding refugee economic status as discussed below.

When asked on their source of livelihood, the responses were as represented by figure 4 below.

Figure 4: Source of livelihood



Source: Field data, 2006

The results show that over half of the respondents rely solely on assistance from UNHCR for their livelihood. It is important to point out that those who rely on humanitarian assistance are more than the fifty six percent as represented by the table. For instance, both the incentive workers and small-scale business owners also receive assistance by virtue of being camp refugees.

3.8.1. Refugee Humanitarian Assistance

As pointed out above, refugees find themselves at a very disadvantaged economic position, partly due to the nature of their emigration. These are people who left their home countries due to the existing turmoil there. The circumstances under which they flee their countries do not permit even those who have assets and capital to carry them. It is in considering such circumstances that the 1951 Geneva Convention Relating to the Status of Refugees made provision for refugee assistance. Chapter IV of the convention addresses refugee welfare (Brownlie & Goodwin-Gill, 1998). Article 20 under that chapter makes provision for rationing to refugees. It emphasize that refugees should be accorded same treatment as nationals where rationing exists. Article 23 under the same chapter addresses public relief and assistance to refugees, also as given to nationals. These provisions were made on the assumption that the host state would be the main relief provider to the refugees.

In Kenya, humanitarian assistance is given only to camp refugees. Although the government is the major policy maker, such assistance is mainly provided by UNHCR and its implementing agencies. The assistance takes various forms such as provision of food, shelter as well as non-food items. These are meant to make refugees lead a normal life.

The provision of relief food is done by the World Food Program (WFP), which is also a UN agency. The agency relies mainly on the donors for the food that it provides. It is the agency that has actually set the minimum standard regarding the food energy that each refugee is entitled to, that is 2100 kilocalories per day. To the general refugee population the distribution of food ration is done on bi-monthly basis. The distribution is

done at Dadaab by CARE (K), while at Kakuma the Lutheran World Federation (LWF) is responsible. Furthermore, WFP has established school feeding program and supplementary feeding programs for malnourished children below age five, pregnant women as well as lactating mothers.

Although the food ration is an important welfare provision for refugees, it is plagued by numerous problems. As indicated above, WFP rely on donors for the provision of food. The willingness and ability of the donors to provide the food are therefore crucial in ensuring availing it to the agency. The agency has often in the recent past appealed for more food supplying showing its fear that the supplies dwindle. Furthermore, there are competing demands for the agency food ration. The agency's scope goes beyond refugees. It for instance provide relief food to drought stricken areas as well as disaster (e.g. Tsunami, floods) as well as the war-torn parts of the world (e.g. Somalia). Unfortunately the number of the latter situations has been on the increase in the early twenty-first century. As such, the food ration to refugees gets affected adversely. Furthermore, delays both at the port of entrance and on the road due to poor road conditions affect efficient delivery of food and other supplies. The situation is aggravated by banditry and other forms of insecurity along the main roads to the refugee camps.

A full food basket comprise of maize grains, wheat flour, pulses, CBS, and salt. As such, it does not adequately cover micro-nutrients. There are qualitative and quantitative shortages of these. Furthermore, green vegetables are not supplied in the ration, yet the lack of rain water militates against adequate supply of these from the

vegetable gardens at the camps. In reality, the ration is quite often below the minimum standard of 2100 kilocalories per person per day.

This researcher observed the sale of part of the food ration by the refugees so as to get the cash to purchase other foodstuff that are not supplied. This is a situation that arises because a significant proportion of the refugees have no source of income at all. The respondents who indicated that their source of livelihood is UNHCR fall in that category. Although there is insufficient ration, still they have to sell part of it to enable them purchase balance their needs. A number of refugees I spoke to at both Kakuma and Dadaab regarding the food situation decries the insufficient level of what they receive. They were unanimous that the food they receive is just to “keep them alive” and not really sufficient to enable them have full stomachs or ensure that they live a healthy life.

However, a UNHCR officer at Kakuma dismisses refugees’ perception and constant complaint about “not enough of everything, and particularly food”, pointing out that humanitarian assistance is really not aimed satisfying them. He also point out that even those who are employed by various institutions in refugee regime cannot expect to be provided with all that they need. Furthermore, he continues, the camp refugees live far much better lives than the host population (the Turkana), stressing that the “locals live a pathetic life”. This study established that there is a wide disparity between the refugees and the Turkana at Kakuma. It goes to the extent that many locals render services to refugees at the camps just to be given food. Women from the host community render chores to refugee families in order to be provided with food. Towards meal time, their husbands and children hang around waiting to share the food. The food given to one person at times is eaten by seven or eight people.

The officer's sentiment about refugees' complaints does not mean that there is enough food. There is evidence at the camps that the food is inadequate. Health records at Kakuma indicate that about seven percent of live births at the camp are malnourished cases (UNHCR, 2006 b). At the health centers and hospitals, malnourishment is evident not only among the children but also adults. An observation of the health of general refugee population at the camps also reveals that there is actually under- and malnourishment, that is besides other illnesses and problems that afflict them.

Assistance to refugees is illustrative of the difficult economic status that refugees find themselves in. It thus help improve their status, they get shelter and food without themselves having a source of income. Many of them survive without necessarily being involved in any economic activity nor relatives to rely on for support. However, it would be an oversight to argue that assistance improves the economic status of refugees. Those who receive and rely on the assistance cannot plan on it. It discourages innovation and creativity. It can hardly improve ones condition of living, besides ensuring that they continue to live. Assistance can also breed laziness and results into dependency syndrome. Actually, a finding of this study is that the humanitarian assistance that refugees get creates false hopes, very high expectations of the recipients on the service providers and UNHCR. Since the expectations are quite high, failure by these institutions to meet the expectations lead to their poor rating by the refugees.

The study asked respondents to rate the various institutions according to how they help improve the welfare of refugees. There were four provided ratings of which the respondent could choose one for each category. Rating A for excellent, B, C and D for

very good, satisfactory, and for below satisfactory respectively. Table 8 below represents the result of the rating on UNHCR and NGOs/Service providers.

Table 8: Rating the institutions

Institution	Percentages (%)			
	A	B	C	D
UNHCR	16.77	31.61	27.46	23.95
NGOs	7.26	40.58	20.29	31.88

The findings here were unlike what this researcher expected, particularly considering the role that these institutions play in refugee welfare and protection. From the table, less than half the respondents rated the UN agency and implementing partners favorably. Over fifty percent rated these institutions either as performing just satisfactorily or poorly, thus unfavorable rating. It is also important to note that slightly over a quarter of the respondents ranked UNHCR to be performing below satisfactory level while about a third had the same for NGOs. Although each respondent must have had certain details that informed his/her ranking of these institutions, and several factors determined the outcome, their failure to meet certain expected standards by the respondents feature prominently. The dependency syndrome in itself is fostered by prolonged residence in camp among refugees. It creates kind of a welfare mentality and more or less militates against future prospects of self-sustainability on its victims. This breeds a vicious cycle of poverty among the refugee lot, characterized by constant complaints among refugees.

The liberal-idealist theoretical perspective is quite applicable in the refugee assistance regime. The theory emphasizes ethical principles over pursuit of power as shaping interstate relationship. Fundamental concern for human being is a core principle in attempting to alleviate the conditions of refugees. It is concerned with the general welfare and security of all people, hence humanitarian concern (Dougherty & Pfaltzgraff, 2001). The theory also emphasizes international cooperation approach in resolving human problems. Although the advent of the theory was an attempt to find ways and means of preventing wars and conflicts, its main provisions are crucial as instruments of intellectual inquiry in the refugee assistance regime.

The theory emphasizes the creation of international organizations as instruments of achieving international organizations. In assistance regime, inter governmental organizations such as UNHCR, UNICEF, UNDP and WFP, as well as a number of non-governmental international organizations make concerted effort to help alleviate the plight of refugees. The government of Kenya also plays crucial role by dealing with the overall management of refugee program. Furthermore, the role of the governments of the donor countries is also critical here. The approach is quite collaborative with each organization/institution playing its role at a camp setting. For instance, as indicated above, WFP provides food at both the Dadaab and Kakuma camps. The distribution of which is done by LWF at Kakuma while at Dadaab, it is performed by CARE (K). The two organizations are also the main implementing partners at the respective camps.

Refugee assistance goes beyond just the provision of food, non-food items and shelter. It includes provision of water and sanitation, health services, education, environmental protection, community development, as well as provision of security and

legal services. In each of these areas there is at least an NGO that deals with the services at camp level. At Kakuma International Rescue committee is in charge of medical services, nutrition, adult literacy and rehabilitation of the physically and mentally challenged and older persons. At Dadaab the German technical Cooperation (GTZ) provide health services while Handicap International (HI) is in charge of referral cases to Garissa provincial hospital. National Council of Churches of Kenya (NCCCK) on the other hand is responsible for reproductive health, STDs and HIV/AIDS issues, as well as harmful cultural practices such as female genital mutilation (FGM), wife inheritance, and child marriages. At Kakuma NCCCK perform these functions whereas GTZ is concerned with distribution of firewood and environmental conservation, the latter, it does at Dadaab with RESCUE (Rational Energy Supply and Conservation).

A handful of other NGOs such as Windle Trust (K), Jesuits Refugee services (JRS), Kenya Red Cross Society (KRCS), and Don Bosco play a host of roles in regard to refugee welfare. The details of the roles of some of these are discussed at the appropriate sections of this work.

As shown in table 11, although majority of refugees indicated that they depend on humanitarian assistance for their survival, the other aspects shown there also need to be analyzed to understand the real economic status of refugees in Kenya.

3.8.2. Incentive Workers

These are camp refugees who are hired by the various service providers to help perform tasks within those institutions. Incentive workers actually form the bulk of the total workforce of the service providing organizations. For instance, while there were

just eighty seven (87) regular workers at IRC in Kakuma by mid-2006, the organization had 800 incentive workers at that time. The LWF which had about 300 regular workers during the same period had over 3,000 incentive workers. On the average, the number of incentive workers at these organizations is about ten times the number of regular workers. Furthermore, for each management level officer, there is an incentive worker counterpart.

However, there is a vast difference between the remuneration of the incentive workers and the regular workers. In its harmonization policy, the UNHCR set the pay for incentive workers at about three thousand Kenya shillings (Ksh.3000) per month, with the ceiling for those at management level set at five thousand seven hundred shillings (Ksh.5,700). The study established that this is one of the reasons that the majority of the respondents to the questionnaire regarding the rating of institutions ranked UNHCR lowly. Some of those who gave it low rating point out that the agency has failed to adjust those pays since 1990 to respond to the changing economic situations. To them, the agency is therefore less concerned about their welfare.

In the questionnaire I had asked the respondents to indicate their monthly income. Table 9 below summarizes the responses.

Table 9: Monthly income

Amount (Ksh)	Percentage (%)
<2000	68.11
2001-4000	26.49
4001-6000	3.24
6001-8000	0.54
8001-10000	0.00
>10000	1.62
Total	100.00

Source: Field data

A large proportion of (about 30 percent) of those who earn between Ksh.2000 and Ksh.6000 as represented in the above table make their earnings from the incentive work. This is confirmed by another question that asks for the respondents' occupation in Kenya. As represented in table 11, about 25 percent of the respondents indicated that they are incentive workers. Although the amount earned may put them in a better financial position in supplementing their food ration and particularly in comparison to the majority of the refugees who have no income at all, the amount is quite meager to have any significant impact in the workers economic status.

The proportion of the incentive workers who filled out the questionnaires to the total number of respondent is much higher than their actual proportion to that of camp refugees in all. As pointed out earlier, those who responded were literate, and there was high probability of finding the incentive workers disproportionately represented among the respondents. This raises the question of who gets appointed as an incentive worker.

Each establishment spells out the qualifications that they need for the performance of the various tasks. The Teachers Service Commission, for instance, does not post teachers to the camps' schools. As such, most of the teachers at the refugee camp schools are actually incentive workers. Others are employed as physiotherapists, counselors, psychologists, nurse aid, social workers, field clerks, child development workers, orthopedic technicians, program assistants, etc. Most of those who are hired to fill these positions have some academic qualifications with some being professionals. Some of them had trained in their home countries while many others have completed their high school or college education in Kenya. At the same time, there are some kinds of training specifically for refugees that are undertaken at the camps.

Table 10 below represents the highest level of education attained by the respondents.

Table 10: Level of Education.

Level	Percentage (%)
Primary	10.81
Secondary	67.57
A-Level	2.70
College	8.11
University	9.73
No Response	1.08
Total	100.00

Source: Field data

From table 10 it is evident that there is actually potential manpower that can perform the various tasks that are undertaken by the various organizations at the camps. About 5 percent of respondents indicated that they had belonged to some profession in their home countries. These included medical doctors, engineers, teachers and accountants among others. This category forms another potential group of qualified manpower.

3.8.3 Small-Scale Businesses

About seven percent of the respondents indicated that they operate some form of business for income generation. A visit to the camps reveals that the businesses vary in size. At Kakuma for instance, there is a thriving business along “Addis-Ababa” street. This is in the Ethiopian section of the camp where retail shops are the predominant with a few large scale shops. Besides, there are a few tourist-resort kind of clubs at the section.

The Somali section of the camp is known for advanced technology, thus thrive in telecommunication. This is where some individual businessmen have even installed satellites, and have movies and video shows. The same also become important venues for entertainment, including watching football. Others have installed computers and internet services. However, the section also has illicit business such as prostitution.

At the Dadaab camps the retails shopkeepers sell numerous goods that fetch market among the refugee population. These include household goods, and consumer goods. The sale of miraa (khat) is also a thriving business.

A number of camp based NGOs play significant role in the economic empowerment of refugees, particularly in regard to promotion of business. At Kakuma

for instance, IRC established four multi-purpose centers (MPC). These projects deal with carpentry, carpet and loom fabric weaving, and tailoring. The NGO trains refugees on these activities, thus providing them with the skills to venture into productive activities. It eventually handed over these projects to the refugees to run. Don Bosco is another organization that is concerned with the provision of skills such as carpentry, tailoring, and masonry to refugees. Furthermore, the IRC provide loan to refugees to start some business.

As such, the income generating activities that some of the refugees are involved in form an important aspect of the refugee economic status. Indeed, economically, there is a wide disparity between those refugees who have thriving businesses and the majority who rely exclusively on food ration.

Although significant level of commercial activities goes on at the refugee camps, there are no financial institutions within their vicinity. This study established that refugees are actually not allowed to open bank accounts. This is based partly on the presumption that refugees are poor and therefore do not have the kind of finances that may require banking. This is exacerbated by the fact that the Kenya law does not allow refugees to hold paying jobs. However, some of the well established businesses generate huge amounts of money every day. Due to lack of financial institutions in these areas, it turns out that those businesses play key role in major financial transactions at the camps.

They conduct transactions that run into millions of shilling. This is particularly so in situations where the transaction involves those who have resettled in United States. For instance some of the Sudanese young men who had resettled in United States and often pay bride price through such institutions if the bride and her family are still at the

camp. In situations where there is more than one potential groom, the highest bidder marries the lady, thus in massive transactions.

Conducting major financial transactions outside the established financial institutions is likely to create some problems. The fact that it is done in such a traditional manner makes it possible for used exchange rate to deviate from the actual. This may adversely affect either party that is involved in the transaction. Second, in situations where foreign currencies are involved, the authenticity of such currencies may be a problem. Third, it may be a conduit for money laundering. Money laundering has been proven to be linked to other forms of illegal activities such as drug trafficking. Generally, cases where there are contraventions of foreign exchange regulations may occur.

3.8.4. Support from Friends/Relatives.

Over twelve percent of the respondents indicated that they get support from either friend or relatives for their survival. Many of those who belong to this category are urban refugees. As pointed out above, in Kenya, refugees can only qualify for UNHCR and it's implementing partners' assistance if they live in the camps.

A significant number of those who indicated that they depend on friends and relatives are students, pursuing tertiary or university education. Some of these also get sponsorship from individuals or organizations. Although, the support is important in enabling them pursue their education and the general upkeep, it would be inaccurate to consider their economic status to be better off. A survey of some of their residence reveals overcrowding. In some cases, it is possible to find as many as eight adults

sharing a two-bedroom apartment, with everyone else depending on just one person to foot their bills. This in essence does not only create hardship on the provider, but also makes it hard for the dependants to live comfortably and in privacy. However, the fact that a number of urban refugees live in such a large number is itself important for psychological support. Furthermore, it is important since they share the same culture. It also reveals the kind of cohesion that exists among refugees who share the same background.

Significant support from friends and relatives is in the form of remittance. This applies to the ones whose loved ones have resettled in the industrial countries. In cases where such remittance is reliable, the recipients can accurately be said to be better off economically. However, this forms just a small fraction of refugees who live in Kenya.

The fact that refugees practically cannot secure gainful employment in the country and have to rely on assistance, and the fact that there are generally limited opportunities for them to progress, place majority of refugees in an awkward economic position. Those who indicated that they held professional jobs in their home countries but have to contend with the assistance that they receive at the camps or incentive work are definitely in a worse economic status than before they migrated. Their refugee status essentially disrupted their lives and probably impacted on them negatively not only economically, but also socially and psychologically.

The main reason why refugees are not allowed to engage in gainful employment in Kenya is the country's economic reality. The level of unemployment among the young Kenyans is itself very high. Experts identify high level of unemployment among the Kenyan youth as a major contributor to the disputed presidential elections of 2007.

Besides, if one were to compare the status of refugees to the local population, the latter are worse off in some cases. The high level of poverty among the Turkana is not confined to Kakuma area. In Lodwar, the major town in the region, there is such a high number of destitute and street families among children and adults, pregnant children, children mothers, and crazy people, all indicators of poverty.

A comparison between Turkana and Somalis of Dadaab area show a striking difference. Although the climatic conditions of the two areas are both semi-arid, the Somalis are involved in various commercial activities and are much better economically. Garissa town is itself having thriving business, mostly owned by the locals. Most businesses in Lodwar to the contrary are owned and operated by people from other parts of Kenya.

3.9 Refugees in Development Context

Refugees are often perceived as a burden to the host country, thus led to African states to appeal to the United Nations to address ways and means by which the international community could contribute to their assistance. From the African states' perspective, the international community was not playing its rightful role as required by refugee international law in giving them assistance to cope with the burden of hosting refugees. By the 1980s, the large number of refugees that African states hosted overwhelmed them to adequately respond. They were spending a great deal of time and resources in coping with the large influxes. The need for refugee assistance had been emphasized by the 1967 Conference on Legal, Economic and Social Aspects of African Refugee Problem, organized under the auspices of Economic Commission for Africa

(ECA), OAU, UNHCR and Sweden's Dag Hammarskjöld Foundation. The conference concluded that refugee needs should not be entirely a responsibility of the host state. The ICARA I (1980) convened through the UN General Assembly's resolution on its part resolved to increase international attention to African refugees as well as to mobilize resources to refugee relief and assistance (Gorman, 1987).

However, even after ICARA-I Africans states still felt short-changed since many developed countries did not fulfill their pledges. Furthermore, much of the assistance that was given neglected developmental aspects. It was due to these that ICARA II was convened in 1984 to assess the impact of its predecessor conference. Various actors at the conference concluded that refugees impose special burden on host countries, thus the justification for more assistance to those countries.

The focus of this subsection is on the impact of refugees in terms of development. Development here is considered in its broad context and therefore includes economic development, infrastructure, human resource development, as well as environmental impact. Particular attention is given to the positive aspects of the developments. These are analyzed both from the contribution of refugees as well as the existing refugee policies.

3.9.1. Environmental Impact

The environmental impact of refugees can be assessed from the national policy of settling refugees. As indicated above, the Government of Kenya settles refugees in camps. The camps at Kakuma and Dadaab are situated in the Northern Frontier Districts that experience prolonged drought, and are generally in arid areas. The environmental

conditions at both Kakuma and Dadaab areas are characterized by fragility, whether viewed from climatic conditions or vegetation type.

The massive influx of refugees into the areas, particularly following the closure of the several camps and their consolidation into Kakuma and Dadaab areas therefore causes environmental concerns, particularly considering that the refugees have joined the locals in exploiting the resources that may sustain the ecological balance in the areas. The activities include cutting down trees for firewood. Furthermore, since the locals have limited economic ventures, the arrival of refugees acted as a blessing in away; a blessing since there is large and ready market for both firewood and charcoal. The environmental destruction is therefore accelerated, thus exacerbates the already fragile ecology.

At Dadaab, the situation has not been made better with the continued influx particularly of Somali refugees following the resurgence of war between the Transitional Government, later supported by Ethiopian forces, and the Union of Islamic Courts forces. The conflicts pushed the number of refugees at the Dadaab camps to about 170,000 by the end of 2006 (UNHCR, 2006 a). The continued conflicts in Somalia later between the al-Shabaab militia group and TFG forces led to more influxes from Somalia that pushed Dadaab refugee population to 450,000 by September 2011 (UNHCR, 2011). Kakuma also experienced new influxes besides resettling a large number of refugees from Dadaab as a means to decongest the latter. The durable solutions of voluntary repatriation, local integration and resettlement to third countries have not achieved much, thus adversely affects the environment. As National Environmental Management Authority (NEMA), the state agency that handles environmental problems notes, there is serious soil erosion

in the eastern parts of Garissa and southern parts of Wajir districts that border Dadaab (Daily Nation, 17.10.2006).

It would be an overstatement to claim that it is refugees who cause environmental degradation in the camp areas. Since they were suddenly settled in large numbers in areas with fragile environmental conditions, they have contributed to environmental degradation there. Both nomadic pastoralism and overstocking have been common practices among the locals. As such, their activities significantly contributed to the climatic conditions there. The arid conditions compounded with the economic activities in turn influenced the type of vegetation cover and the resultant soil erosion. In the camp areas, the erosion has in many occasions resulted into drenching gullies. These together with erosion of river banks posed major environmental management problems particularly around Kakuma camp.

Environmental conditions of a place have significant impact on the health of people. In the case of the camp counties, the existing conditions make farming almost an impossible venture. Generally, the environmental conditions limit the variety of economic activities that the inhabitants get engaged in. Such a scenario has far reaching implications for the people in the areas. For instance it is characterized by lack of balanced diet and recurrent food shortage. These result in starvation and malnutrition among both children and adults. The soaring temperatures make people generally worn out and inactive, and look weary and old at early ages. Besides, the conditions essentially have bearing on poverty among both the locals and refugees. Among the Turkana, poverty for instance is partly responsible for prostitution and the existence of significant proportion of child mothers. At Lodwar, it is not uncommon to find groups of street girls

aged 12-16 roaming between hotels and bars with their babies, begging for money and food. This places them even at a more vulnerable situation of rape, prostitution and sexual exploitation by adults. Furthermore, such behavior makes them vulnerable to exposure to sexually transmitted diseases, including HIV/AIDS. There are also chances that they would get pregnant again under the very harsh conditions that they are exposed to, thus placing them and their offspring in perpetual poverty.

The environment and its resultant conditions also affect mental health. In Lodwar again, the mentally challenged people is evidently disproportionately high. Like the aforementioned child-mothers, they roam between shops, bars and hotels begging for money and/or food.

In its 2006 report on Human Development Index in Kenya, UNDP places Turkana (index 0.172) at the bottom of all the districts (now counties) in the country in terms of development. This is followed by Wajir (0.256) and Garissa (0.267) (Daily Nation, 28.2.2007). The report points that the development index is based on seven realms of human security namely economic, health, food, community, political, personal, and environmental. It is evident from the report that the two districts where refugee camps are located are among the worst to reside in the country. Although underdevelopment in the areas under consideration here can be attributed to several factors, the emphasis in this section is environmental factors. Furthermore, as discussed above the environmental conditions at the camp districts also have adverse health implications on the residents.

The influx of refugees has direct health consequences at the camps. Overcrowding at the camps creates healthy conditions for spread of communicable diseases. Furthermore, overcrowding and lack of enough sanitation often results in fast

spread of diseases such as dysentery and cholera. Furthermore, sexual promiscuity, prostitution and rape, which evidently exist at the camps, place many refugees at the vulnerability of contracting sexually transmitted diseases, including HIV/AIDS. Since the health sectors of refugee home areas have collapsed, incoming refugees can be vectors of some of the diseases from those countries. For instance, the first case of polio in Kenya in twenty two years was detected among those fleeing from Somalia in the late 2006. Prior to that, the disease had been diagnosed in a three year old girl at Dadaab in 1984. Polio had been reported in Sudan, Eritrea, Ethiopia and thirty kilometers in Somalia from the Kenya border by the WHO. UNICEF for instance had appealed for Ksh. 720 million to help contain the disease in Somalia in early 2006. Considering that the virus that causes the disease can be transmitted through contact of an infected child, the influx of refugees has the potent of spreading it in the country. It is due to that concern that the Ministry of Health, in collaboration with UNHCR and WHO embarked on anti-polio drive that aimed at vaccinating not only refugee children but also targeted local children under 14 particularly in the districts affected by the influx. Despite the effort at containing the disease, there have been reports of the disease spreading beyond the camp districts.

A study on environmental baseline of Kakuma correctly observes that one major environmental problem in settled areas such as Kakuma camp is solid waste disposal (Moi University Center for Refugee Studies, 1998). Solid and liquid wastes are major environmental problem at the refugee camps. Some of the major sources of these wastes include food kiosks, shops, UNHCR restaurants, guest houses, markets, slaughter houses, dump sites, pit latrines and soak pits, as well as hospitals. At Kakuma for instance, the

main categories of wastes include food waste, sewage, medical and hospital wastes, and recyclable materials such as paper, carton, tin, glass and plastics (CRS, 1998).

A lot of solid wastes are disposed in open dump sites in residential areas thus causes environmental pollution and pose the risk of spreading communicable diseases among the residents. Liquid wastes also pollute ground water posing health risks. They generally pollute the environment of the camp areas.

What steps have been taken to improve environment in the camp areas? Attempts to reclaim the environment through such programs such as afforestation, although arise from concerns regarding environmental degradation can be rightly said to be a direct impact of the establishment of the camps. Without the camps, probably no meaningful attempts would have been undertaken in those areas.

At both Kakuma and Dadaab, the GTZ has taken the center stage in the environmental conservation programs. At Kakuma for instance, the organization had established three tree nurseries by 2006. It planted 95,344 trees in 2004. As such, its effort towards afforestation has led to establishment of 77.11 hectares of greenbelt at the camp. Efforts have also been initiated that by 2005 had resulted in the regeneration of 91 hectares of natural vegetation in the camp area. The organization involves both refugees and locals in such initiatives, of whom those who are involved in are paid as incentive workers or provided with extra firewood.

The organization has also established a vegetable nursery where both refugees and locals do benefit from by getting the seedlings. The planting of trees is expected to modify the micro-climate of the area and conserve the top soil. The latter would be vital in experimental farming in the area, and thus lead to production of food supplement

particularly by refugees. The agency has also initiated such programs at the Dadaab camps. Environmental degradation to the extent of desertification is usually a long term process, thus require along time to reverse. Although it is still early to realize the full impact of the conservation processes in place, they are definitely steps in the right direction. As such, here are cases where areas whose environment had been devastated are actually being reclaimed.

The German agency's roles in providing refugees with a portion of firewood and the measures to develop energy saving stoves also have impact on conservation of the natural vegetation. By 2004, 4,588 stoves had been produced and distributed at Kakuma. As of 2005, forty (40) percent of refugee households were using energy saving devices. At Dadaab, as indicated above, fifty (50) percent of energy needs were met through solar cookers and energy saving devices. In its environmental conservation efforts, GTZ work with Environment Working Group that enforces environmental regulations. The group comprises local and refugee leaders, government officials, other NGOs and UNHCR.

3.9.2 Support to the Refugee Host Communities

An analysis of the impact of refugees on development would require a close look at development with regard to the host population. In this subsection, the focus is on the host populations in the camp areas. As pointed out by the UNDP report, human development is an important indicator of development of any given area. The human development index in both Turkana and Garissa counties are very low, making them among the poorest places in the country. As such, the host populations in the camp areas are generally extremely poor. However, the very existence of the camps has seen some

measures being undertaken by UNHCR and its implementing and operational partners such as UNICEF, WFP, CARE, LWF, GTZ, IRC, NCKK, World Vision Kenya, JRS, and Handicap International to raise the standard of living among the locals of those areas.

Assistance to host population is not a primary role of the agencies, however, the realization that these people are in no better position than refugees influence the policy of assisting them. If anything the agencies' humanitarian role fits in the host population situations just as it does in the case of refugees. As in the case of refugees, these organizations' support to the hosts comes in the form of humanitarian and development assistance. In the latter, they have initiated development projects at the local levels. Specifically, the assistance is aimed at ensuring the wellbeing of the host communities as well as to limit intellectual, psychological and social imbalances between the local and refugee communities. The support to the local communities is also away of preventing or reducing their hostility towards both refugees and the agencies.

UNHCR in a number of cases support community based development projects as a means of empowering the people and help alleviate their problems. As of 2005, the agency and its partners had injected US\$21,077,487 directly and indirectly in support of host communities. Such funds go towards provision of clean water, sanitation, health services, improvement of nutrition, development of infrastructure, provision of education, security, and improvement of the environment. In Dadaab camps, UNHCR invested US\$ 2.9 million for the same. These are fundamental areas to be considered in human development.

Such efforts had seen the establishment of over forty boreholes in North Eastern Province that were primarily established to provide water to the local communities.

UNICEF has a policy of funding development of water resources for those living within a radius of 100-150 km from Kakuma and Dadaab camps. It is due to the need to provide locals with water that the agency rehabilitated forty nine wells in Turkana district. On the other hand, six out of the seven boreholes at Kakuma are used by both the locals and refugees. In Dadaab, there are twenty nine boreholes that are used by both the local community and refugees.

Children of the local communities have access to education that is provided at the camp schools. About 7,000 students from the local communities were enrolled in these schools by end of 2005. At Kakuma, one primary school is exclusively meant for the local community. At the same time, through the lobby by UNHCR, Pokotom Primary School in the area secured support from the Japanese government. Further, over 5,000 pupils from host communities benefit from school feeding programs. The latter is crucial considering the scarce food situation in the areas. It actually relieves the beneficiaries from short term hunger, encourages more locals to register in schools as opposed to looking after cattle, and also improves their attendance.

The health sector is another area in which the local communities have benefited. They have access to free treatment, vaccination and medication from the camp hospitals and health centers. This reduces pressure on government dispensaries in the area. The hospitals also provide supplementary feeding programs to those who are severely malnourished. Camp hospitals have bed capacity of about 355. Although there are shortfalls particularly considering the demands by both local and refugee patients, these are meaningful when considering the few government dispensaries in the areas, and how under-staffed they are and insufficient equipments they have.

In 1995, UNHCR funded the establishment of maternity ward in Liboi. This is significant since it is the major entrance point for refugees from Somalia. However, the locals benefit much from it since the incoming refugees do not stay at the center for long. The Dadaab and Kakuma Health Centers that were established by the UN agency help the local communities with their health needs. The same applies in the case of Garissa Provincial Hospital and Lodwar Hospital, both of which get the support of the UN agency. In Dadaab, UNHCR spends Ksh. 11,100,000 (US\$140,506) annually in free medical services for the local community.

Prior to being designated as refugee camps, both Kakuma and Dadaab were small centers with scarce infrastructure. They were actually more or less cut off from the rest of the country due to both accessibility and security problems. The development of infrastructure in the areas following the establishment of the camps is quite of a benefit to the locals. Actually, they have in a way opened up areas. The tarmac road that links Lokichogio with Lodwar via Kakuma for instance is a major infrastructural development in opening up the Turkana area. Although the road is mostly used by the agencies that work at the camp, refugees, and visitors to the area, its benefits to the local community cannot be underestimated. The remoteness of the camp areas and the fact that at times floods cut them off, as well as the problem of insecurity made it necessary to construct airstrips at the camp areas. Although the primary users of both Dadaab and Kakuma airports are personnel of the refugee agencies, they also benefit the host communities.

Developments such as provision of logistic support for Kenya police, construction of friendship hall at Kakuma, construction of courtrooms, support for women groups by UNHCR are important strides to help improve the local communities. The very

establishment of the UNHCR offices and those of their partner agencies at Dadaab and Kakuma has resulted into emergence of what one provincial administrator calls as “cities in deserts”. The structures established for office space and residential purposes are magnificent compared to the structures within the environs. The establishment of the camps has led to introduction of supply of electricity and installation of air conditioner in the buildings. These are important symbols of development that could not have taken place in those areas by this time if the refugee camps were not established there. The roles of refugee protection and assistance are causes for which the donor community injects funding not only to the government, but also directly to UNHCR and its partners.

Although local communities still remain in desperate situation, the benefits they derive from the establishment of refugee camps in their areas have to certain extent addressed their plight. Furthermore, the opening up of the areas exposes their plight and thus, may receive attention not only from the donors and non-governmental organizations, but also from the Government of Kenya.

3.9.3. Contribution of Refugees to Development

The existing policies particularly with regard to employment make it hard for refugees to make significant economic contribution to the national economy. That is, if a significant number of them were to be absorbed in the national economy, they would have a significant contribution, particularly by way of productivity and taxation. An analysis of the ages of the respondents to this study reveals that there is a significant proportion in the potential labor force. Just a little below twenty (18.37) percent of them were under twenty. These were sixteen years and above and therefore legally form a pool

of potential labor force. At the other end, just more than two percent (2.16) percent are above fifty years of age. All the respondents actually belong to an age where if given opportunity, could be economically productive. Taking into account the university or college going age and those who are above twenty five, even if they were still pursuing university education, should be in the labor age. About half of the respondents actually belong to the latter category.

The level of education of refugees is another important factor to consider when discussing about the potential manpower. Over sixty (67.57) percent have attained secondary education, while another 2.7 have Advanced level certificate. About twenty percent of the respondents (17.84) percent have either middle college level or university education. Those who have secondary or high school education have attained the necessary education to perform non-professional jobs. At the same time some of them have attained vocational training at the camp institutions and thus have the necessary skills to perform certain tasks. Those with college or university education should be able to perform the jobs in their areas of specialization.

Even though refugees are not absorbed in the national economy, there are ways in which they directly contribute to the national economy. For instance, they form a sizable market for various items and commodities. The urban refugees rent houses and thus pay rent to various landlords. In the case of Eldoret many Sudanese rent privately owned houses at Kapsoya and Pioneer. In both estates, many of the houses they rent go for Ksh. 9,000-15,000 monthly, depending on the size and the age of the house. Refugee factor tend to inflate the rent. From the refugees' perspective, the inflated rent results because the landlords believe that they have enough money to pay for those rates and thus become

exorbitant to them. However, looked at from the economic dimension, the invisible market forces of supply and demand are significant in areas where there are sudden influx of refugees. Housing is therefore one such sector through which refugees contribute to national economic growth.

Financial sector is another important area in analysis on the contribution of refugees to the economy. Institutions that carry business with either western union or money gram services handle substantial transactions from the refugee population. These are mainly remittance from their relatives who have resettled in the western states. The financial institutions that get involved in the transactions benefit instantly from the levy charged per transaction. The remittances enable them to provide local market, thus benefit the local commercial sector of the economy.

The establishment of Kakuma camp gave the impetus to the growth of Kakuma town. The camp attracted the local community to its vicinity, many of whom benefit directly from the services that are provided by UNHCR and its partner agencies. Second, due to prevalent insecurity in the region, many of those who moved to Kakuma considered their safety and security which is revamped in the camp area by the government. Further, the large number of refugees that settled at Kakuma combined with those of the locals, the workers at the camp facilities, and the guests, contributed to the establishment of a chain of business enterprises, including retail shops, guest houses, clubs and bars, as well as hotels. These developments reflect the existence of local market. The infrastructural development of the area provides economies of scale that favor the growth of the commercial sector. Although refugees form the majority of inhabitants at Kakuma, numbering over 100,000, the local population number about

10,000. The latter has grown, understandably from a paltry population to about ten times since the establishment of the camp.

The transport sector, for instance has experienced tremendous development since the establishment of the camp to include modernization of Lodwar-Lokichogio, and construction of Kakuma airstrip, both of which are important in the economic development. A source points out that Kakuma as a whole is a market to an average of 200,000 bottles of soda per month. Assuming that the demand for other consumer goods in the area is also more or less at the same level, then the economic significance of refugees, in this case through the creation of camps, is understood in the right perspective.

As discussed above, some refugees are themselves involved in entrepreneurship. The cases of Somali businessmen at Eastleigh and Ethiopian transport company owners are worth noting. The business enterprises at the refugee camps are also principally owned by refugees. Although the policies in place, such as the one that does not allow refugees to have bank accounts, as well as not recognizing the legal status of urban refugees for along time, make it difficult for the reaps from these enterprises to directly get to the government treasury. However, they contribute to the economic development and growth. The rate at which the Eastleigh business center grows has been quite rapid that some observers point out that the hub of Nairobi business may in the future shift to that place (Verdirame, 1999). The items from Dubai, Somalia, and Yemen are readily available there at lower prices, thus attract more and more consumers. Indeed, the success of business enterprises in the area create some panic among the indigenous entrepreneurs, particularly those based at the central business district (CBD), that they

may soon be driven out of business. This concern has some basis. First, the rent paid at the CBD is quite high and thus affects the profit margin adversely. Second, the cost of production combined with the rent cost drives the prices of commodities quite high. In such circumstance, the consumers would naturally go for commodities of the same value, but costs less.

Although it is not possible to accurately assess the impact of services rendered by the refugee incentive workers at various NGOs mainly because it is largely voluntary and no tax is derived from them to the government, it is imperative to point out that this constitute productive work. As stated above, each level of a worker within the service providing agencies at the camps have their refugee field counterparts. In education sector for instance, there are refugees whose tasks are equivalent to those of the school inspectors. Furthermore, a large proportion of the camp school teachers are members of the refugee community. At IRC on the other hand, the program managers have refugee counterparts. Furthermore, the incentive workers form the bulk of the workforce at these organizations. In some of the organizations, their number is tenfold that of the regular workers. The contribution that these people make to the organizations is worth noting.

In terms of provision of employment, UNHCR and its partner agencies hire a significant number of local to middle level management positions while non-professional levels are almost wholly manned by local manpower. Even foreign personnel who work for these organizations basically operate within the Kenyan economy. Although this study could not establish what the remuneration level each organization pay to the various cadre of manpower, the impression I got was that they are among the best paying in the country. Furthermore, it is important to consider that the donor funding that goes

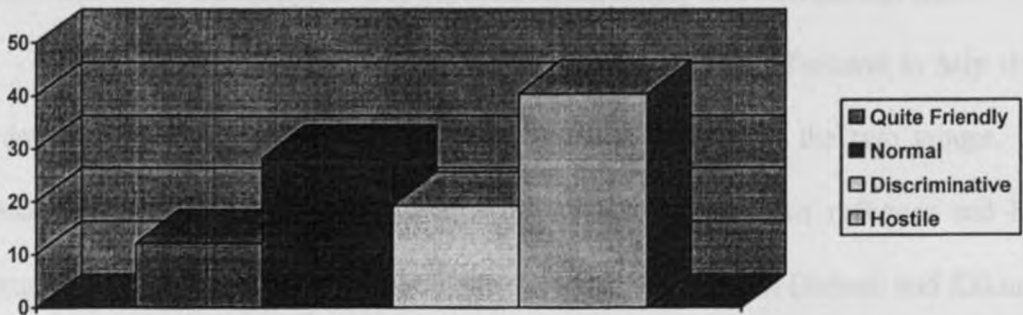
towards refugee programs is fundamentally used in this country's economy. As such, these have significant benefits in the overall national economy.

The positive impacts that are associated with refugees, whether through the existing refugee policies or through the refugees' contribution affects their livelihood as well as those of the hosts. However, the existing public policies have made it impossible to tap the full potentials, particularly of skilled and professional refugees, to realize the actual impact that their contribution can have on the economy of this country. In the next sub-section, the impact of refugees is discussed from security context.

3.10 Refugee-Host Relations

This section examines refugee-host relations. The study reveals that individual refugees have different perceptions as to what they consider to be their relations with their respective host communities. Refugee respondents were asked to evaluate the attitude of the host population towards them. Figure 5 below represents the outcome of their responses which are generally informed by their experience.

Figure 5: The Host Attitude towards Refugees.



Source: Field Data.

3.10.1: Cordial Refugee-Host Relations

Those who indicated that the hosts attitude are quite friendly or normal make forty (40.38) percent. That percentage is significant and can be explained from a number of dimensions. First, it reveals the hospitality that exists among the Kenyan populace. As in the case of many African traditions, Kenyans are welcoming to guests as is evident in the tourist sector. Second, their response was informed by the conditions that led to their fleeing their home countries. That the Kenyans through the government provided them with a sanctuary when they fled from violence prone areas must have influenced their positive response to the hosts' attitude.

Third, there are a number of situations that the refugees interact with the locals. The relations between refugee university students and other members of university community for instance can be said to be very cordial. They attend classes together with the rest of the students, and are not classified as refugees. Besides, members of academic community are less likely to be xenophobic while at the same time they are likely to understand the plight of refugees. The fact that a number of these students are sponsored by Kenyan based institutions would influence them to view the hosts as being friendly and instrumental in ensuring that they advance academically and lead normal life.

At Kakuma, some refugees hire the services of the local Turkana to help them with domestic chores. Such would enhance relationship between the two groups. As Turkana District Commissioner puts it, "The relationship between refugees and host community is generally good". Furthermore, at both the camps of Dadaab and Kakuma, a number of refugees who are employed as incentive workers work hand in hand with service providers, most of whom are Kenyans. It is evident that the relation between

these two groups is very sound. The regular employee and management to a great extent have to rely on refugee workers for their operations. Under such circumstances, they are most likely to relate well with their partners.

Another explanation for the good relations between the refugees and service providers is based on refugee assistance. Although international law provides that the responsibility of providing aid to refugees lay with the international community, naturally the host state being a principal actor in the refugee regime becomes the focal point not only in protection but also in assistance. As such, refugees appreciate the roles the host state plays in such instances. When asked to comment freely, many respondents appreciated Kenya government specifically and Kenyans generally for generously hosting them.

Although international refugee assistance is far from being sufficient and is generally plagued with numerous challenges, it helps alleviate some of the basic problems and help achieve some basic needs of refugees. The aims of assistance are quite noble to the extent that if they could be achieved then refugees' livelihood could be normalized. For instance, aid programs are aimed at helping refugees integrate and become economically self-sufficient to the level which they can be withdrawn. Furthermore, they are aimed at enabling refugees to integrate economically into the economic system of the locality. The long term objective of refugee assistance is concerned with developmental problems in refugee perspective. The over forty percent of the respondents who ranked the hosts favorably can partly be attributed to the fact that service providers at the camps are mostly Kenyans, and because the host state is a crucial player in the refugee regime.

One of the reasons the Kenya government considered when establishing particularly refugee camps at Dadaab was the possibility of adaptability of refugees to their new environment. This was partly considered in terms of the climatic conditions of the refugee from Somalia who form the majority of refugees at those camps. However, consideration of climatic similarities cannot adequately account for the establishment of Kakuma camp since the Southern Sudanese and Ethiopians who once constituted the majority there came from non-arid conditions. Proximity of the camps generally to the majority of refugees' home countries presumably would facilitate adaptability to the new environments.

Linguistic and cultural relations between the refugee communities and the locals of the home districts were also important in determining the location of the camps. These are important when aiming at peaceful co-existence between refugees and the local population. As pointed out earlier, majority of refugees at the Dadaab camps are from Somalia and are Somalis just like the local inhabitants of Garissa District. In the case of Kakuma, the majorities of refugees originate from Southern Sudan and shares a lot in common culturally with the local Turkana. Furthermore, the Toposa from Southern Sudan, Ndogiro from Southern Ethiopia, the Jie of Uganda and Sudan, the Dodos and Karamoja of Uganda who are all represented in the camp population are linguistically and culturally closely related to the local Turkana. Such attributes would partly account for the easy interaction between the refugees and the local inhabitants.

A number of Somali refugees in Nairobi are business inclined. The famous Garissa lodge has booming business. Although many of the consumers here are themselves Somali and Ethiopian refugees, the Nairobians themselves form the bulk of

the customers. The businessman-client arrangement is partly responsible for the cordial relations between refugees and the local inhabitants as is exhibited by the respondents who perceive the locals attitude towards them positively. However, those who responded that the hosts' attitude towards them is discriminatory or out rightly hostile raises fundamental questions regarding the implementation of international refugee law in Kenya.

3.10.2 Hostile Refugee-Host Relations

About forty (40) percent of the respondents indicate that the hosts are hostile to them. Hostility denotes not only extreme negative attitude but also behavior toward refugees, and encompasses not only aggressive but also violent aspects. This is a significant proportion to the extent where one suggests that a number of refugees feel quite unsafe at the hands of their hosts. What constitute hostility in refugee-hosts relations? What causes that hostility, and how is the problem being addressed? These are some of the questions that this section sets to address.

Hostility towards refugees manifests itself in a number of ways. In the camp scenarios there are reports of refugee women who have been victims of sexual assault. Such assaults particularly take place when women refugees go outside the camp to fetch firewood. Quite often, the perpetrators are locals, Somalis in the case of Dadaab, and Turkana in the one of Kakuma. Although, camps are fenced to certain extent, there are cases where rapists intrude in there particularly at night. In certain instances, rape occurs in the process of the various transactions that do take place between refugees and the

local population. This could be at the local commercial centers, charcoal buying places, and other places outside and inside the camps.

Rape of refugee women can be a serious source of conflict (Patrick, 2007). This can be explained from the high esteem in which the cultures of some refugee communities hold their girls and women. Among the Dinka and the Nuer of Southern Sudan for instance, girls are a major source of investment. Among these communities, it is tragic for one to elope with their ladies and their men would be ready to fight in their defense. Members of their communities do understand the cultural norms regarding marrying a lady and therefore are likely to follow the traditional requirements. However, the locals may not understand how jealously they protect those cultural norms.

The customs of the Somalis particularly with regard to their women also require that they are highly protected against intruders. It requires that a Somali woman remains a virgin to marriage. Furthermore, marriage is a family and societal responsibility that has to be pre-arranged and may involve betrothal. Usually a Somali woman would be married to a Somali man. This makes it almost an abomination for someone from a different culture to marry a Somali woman, let alone sexually assaulting her. Violations of such norms by perpetrators quite often results into conflicts.

When asked on what they consider to be the leading source of threat to them, an overwhelming majority of the respondents cited the host population, as shown in the table 11 below.

Table 11: Leading source of threat

Source	Percentage
Other refugees (generally)	7.10
Refugees from same country	14.20
Refugees from other countries	8.88
Host population	62.72
Other	3.55
No response	3.55
Total	100.00

Source: Field Data

From the above table, over sixty percent of the respondents indicated that the host population forms the leading source of threat to them. As discussed above, women refugees are quite vulnerable and some of them have been victims of rape. However, hostility is not only directed at women. Refugees generally experience some form of hostility at the hands of the host society. This may be xenophobia and at times takes the form of violent crime. At Dadaab, refugee safety and security are threatened by the rampant banditry in the area.

Hostility is not experienced by only the camp refugees; urban refugees also face the problem (Verdirame, 1999). In urban centers, refugees have been victims of robbery, assault, rape, insult, and even kidnapping. In a number of situations, they fall victims to those who have positively identified them as refugees. In several cases, those whom the

respondents consider are hostile or a threat to them also happens to be residing in the refugee dominated areas or those who often come into contact with. As such, one should guard against making generalization that Kenyans are unfriendly to refugees.

Other sources of threat to refugees are refugees from the same country, followed by refugees from other countries. Some respondents specifically indicated that the law enforcement personnel form the leading source of threat to them. Details regarding threats from other refugees are discussed under security implications. However, it is important to point out here that some of what refugees consider being hostile attitude towards them from the locals also manifests in their relations with fellow refugees. These include acts such as sexual assault. Furthermore, refugees are settled in the camps according to their nationalities or ethnic groups. The banding together is a means of ensuring societal security. As such, disputes that involve individuals from different groups at times involve entire societies.

What are the causes of hostility towards refugees by the hosts? The major cause of hostility toward refugees by the hosts involves scarcity of resources and the competition for the same between refugees and hosts. As discussed above, the camps are located in areas that are generally dry, desolate and generally lack adequate vegetation cover. Although the GTZ distribute firewood to camp refugees, this is not sufficient for their household needs. At Kakuma for instance, the firewood that is supplied constitute only thirteen (13) percent of the refugee household needs. Competition over scarce firewood is therefore a common cause of refugee-locals disputes. The local firewood is not sufficient even for locals, and thus they feel that the settling of refugees in large numbers at the camps deprive them of their source of fuel. Furthermore, the locals lack

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alternative source of energy for cooking. Refugees are often accused of accelerating the level of environmental degradation in the camp areas through the logging of existing trees for firewood and charcoal burning.

Closely related to resource-based conflict is refugee assistance. At Kakuma, a number of locals feel that while their welfare is largely neglected, much is being done to alleviate the plight of refugees. They largely believe that it is the Kenya government that provides refugee assistance. There is a general misconception among the locals that what they should have been assisted with actually goes to refugees, thus the latter are partly responsible for their situation.

Locals also resent the allocation of many of the jobs at the camps to refugees. There is a general feeling that the locals deserve to be given priority when recruiting incentive workers. Sources at Dadaab reveal that the local Somalis often become agitated when not hired for a job opening by the service providing agencies. Although these agencies do consider hiring locals alongside refugees, there are job requirements and at times the local applicants fail to have the required qualifications. However, under such circumstances the locals feel that they are being discriminated against by the concerned agencies. They feel that refugees are being favored at their expense. This is a source of animosity between the locals on the one hand and refugees and agencies on the other hand.

The sources of conflicts according to the above explanations revolve around the concept of relative deprivation. This is a situation in which one party believes that the other party is favored. In the refugee context, it is the locals at the camp areas who believe that refugees are favored at their expense.

Among refugees particularly from Ethiopia and Somalia are very successful businessmen. Their businesses are not only based at the camps, there are those that are located in towns, particularly Nairobi. Those who operate in the towns at times are envied by their local business rivals, some of whom feel that refugees are driving them out of business. The success in business by some refugees makes some conclude that they are actually not refugees but economic immigrants. That is not a feeling amongst the locals alone, an official with a service providing agency at Kakuma pointed out that about eighty percent of Ethiopian refugees in the country are actually economic immigrants. That sentiment is debatable, particularly considering that many of them fled into the country during conflicts in their home country. However, the source of envy here is due to their success. A number of locals who are living below poverty level cannot comprehend the actual plight that majority of refugees go through. They tend to make generalizations derived from a few cases. Indeed among urban refugees are some who are quite wealthy and the kind of life they lead is generally lavish.

Some commentators wonder whether refugees are really poor, arguing that they operate successful businesses while others some receive regular remittance from relatives in the west. They also consider that refugees spend a lot of money in consumption of luxurious commodities such as beer, cigarettes and khat (miraa). In the latter cases, these observers fail to realize that many refugees are idle since they are not allowed to work, thus have to indulge in self-destructive behaviors such as over-drinking. That they are idle and non-productive is a manifestation of their economically disadvantaged status. That in itself is a sign of poverty. Furthermore, remittances from the relatives only assist them to meet some of their basic financial obligation. It is normally not a successful way

to fight against poverty. In all, some of those whom the refugees consider to be hostile to them simply do not understand their problems, and consider them to be joy-riders. Furthermore, many of them believe that the aid that refugees get is provided by the Government of Kenya, at the expense of the nationals, particularly the unemployed.

Generally, the hostility that refugees experience at the hands of their hosts is itself xenophobia. This mainly arises due to economic hardships that the nationals themselves experience. There is also the cultural dimension. In the latter case for instance, there are cases where some landlords refuse to allow Somali refugees to be their tenants. They give the excuse that it's very expensive to maintain a house in which the tenants are Somalis.

Hostility arises mainly from attitude and therefore it is not a problem that can be eradicated within a short time or through one or two measures. However, some measures have been taken by the various actors to handle the problem of hostility and its consequences towards refugees. Many of those actually deal with the consequences of the bad relations that have been identified.

3.11 Security Implications of Refugees

Studies on refugees in international relations can be approached from various dimensions. These include human rights, international law, public policy, international relations, conflict, and security dimensions. A number of these approaches are used in this work as demonstrated by the foregoing discussions. In this subsection, the subject matter is analyzed from the context of security.

The influx of refugees raises fundamental security concern to the government of the host state. This is particularly due to the fact that refugees are coming from countries that are experiencing violent conflicts including civil wars. As such, these may spill into the country in which they are seeking asylum. In the case of Kenya, the security concerns regarding the influx of refugees have largely affected the state response to the extent that at times it takes measures that may be seen to contravene the international refugee law.

Security concerns and the subsequent responses by Kenya are not confined to the country. It is a phenomenon that has been experienced in several refugee hosting countries in the Great Lakes region and the Horn of Africa (Mogire, 2003). Following the massive influx of refugees from Rwanda into Tanzania during the 1994 Rwanda genocide for instance, it became evident that some of the refugees were actually militants, some of whom had taken part in the killings. The Tanzanian government took tougher measures that included screening the asylum seekers to determine if they were genuine refugees. Eventually, those who were alleged by the authorities to have made fraudulent claims were expelled, 7,000 of whom fled to Uganda (Daily Nation, 29.3.2007). The Tanzanian government measures somehow did not draw the wrath of the international community since the latter could understand the security implications that were involved. Indeed, the international community was involved in assisting Tanzania to fully cope with the Rwandan refugee situation. The security implications that are discussed in this work include the combatant refugees, small arms and light weapons, and terrorism.

The possibility of some of asylum seekers being combatants is of major concern to the state since they may extend the conflicts into the host country particularly in the camps. They may also use the country as a launching pad to attack the opponent groups which is quite often the governments of their home countries. The latter case would jeopardize relations between Kenya and the refugee home country. Furthermore, Article III of the OAU Refugee Convention prohibits the use of host country's territory by refugees to engage in subversive activities against any member state of the organization (Brownlie, 1998).

When asked on the leading source of threat to their security (table 17 above), majority (62.72 percent) of the refugee respondents indicated that the host community is the leading source of that threat. The remaining 38.28 identified other refugees as the source of the threat. Of these, 7.10 percent specified other refugees in general; another 8.88 percent identified refugees from other countries, while 14.2 percent felt that refugees from the same countries with them are the major source of threat. It is the latter categories that are of concern at this juncture.

Although not all forms of threat to refugee security from other refugees come in the form of fear of militancy, this study establishes that it constitutes that form of threat. Among the Sudanese refugees at Kakuma, the Dinka-Nuer rivalry was well established. This is due to the fact that the two ethnic groups belonged to different liberation movements that actually rivaled each other. Sources indicate that at some stage in the Sudanese conflicts, the Khartoum government sought the support of the Nuer against the Dinka dominated SPLA. Furthermore, even within the SPLA, rivalry between the commanders had the impact of pitting the various Dinka clans against each other. The

proximity of Sudan to the camps, the improved means of communication, and the continued influx from the country, combined to filter information of the ongoing among the Sudanese refugees. These essentially had effect in perpetuating conflicts amongst them. The rivalry between the Nuer and the Dinka was so intense to an extent that the camp management had to establish buffer zones of other nationalities between them.

In the case of Dadaab, the various Somalia factional clans have their supporters among the refugee communities. Like in the case of the Sudanese at Kakuma, among the supporters of the various militia groups were actually combatants, some of whom still actively engage in the ongoing conflicts. These do not only perpetrate the conflicts in the refugee source countries into the camps in Kenya, they also use the camps to relax and reorganize themselves and actually return to fight for their respective groups in their countries. These are developments that definitely have to concern the host state. To minimize the possibility of extension of the conflicts at the camps, the Kenya government for instance has intensified the security of the camp areas. Members of militia are not only among those at the camps, even refugee students at institutions of higher learning belong to such groups. A chief executive of a university says of Sudanese students at his institution, "some of them are actually soldiers of SPLA...they disappear at the height of conflicts in Sudan only to resurface at the end of the conflicts".

CHAPTER FOUR

KENYA GOVERNMENT'S RESPONSE TO REFUGEE PROBLEMS

4.1 Introduction

This chapter discusses the Kenya government's response to the refugee problems. It analyzes attempts to implement international refugee law at domestic level. In so doing it examines the policies that are in place with relevance to international refugee law. To what extent do the existing policies and practices adhere to international refugee law? To what extent do these achieve the aim of refugee protection? The chapter essentially focuses on how international refugee law is implemented in the country and the challenges faced in that regard.

An analysis of the government's response to the refugee problems involves policy with regard to establishing administrative and legal structures. However, since refugee issues particularly those of protection and assistance, according to international conventions is responsibilities of the international community, the analysis transcends the government responses and includes the role played by other actors in the refugee regime. Particular attention is given to issues such as asylum processing, judicial status, provision of education, and durable solutions.

The preamble of the Convention Relating to the Status of Refugees makes special notes of the essence of promoting, protecting and exercise of fundamental rights and freedoms of refugees. It starts by recognizing principles of human rights and fundamental rights and freedoms as provided for in the Charter of the United Nations and Universal Declaration of Human Rights (1948). It further points to the need for

international cooperation due to the magnitude of the problem, as well as cooperation of the states with the United Nations High Commissioner for Refugees.

Article 2 of the Protocol Relating to the Status of Refugees (1967) also addresses the Cooperation of national authorities with the United Nations. Article 2(1) states that “The state parties to the present Protocol undertake to cooperate with the office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the applications of the provisions of the present Protocol. In 2(2) it states, “In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of United Nations, the state parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form concerning:

- a) The condition of refugees
- b) The implementation of the present Protocol
- c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

The Convention Governing Specific Aspects of Refugee Problems in Africa in Article 7 make same provision as Article 2(2) of the Protocol except that it makes it in reference to the secretariat of Organization of African Unity. In article 8(1), it further states that “Members states shall cooperate with the Office of United Nations High Commissioner for refugees”.

The provisions of these international and regional instruments place monumental task on states in the implementation of refugee international law. First, the refugee host states have to play a lead role in the implementation of those accords. Second, the states have the obligations of reporting to the relevant international organs on how they handle refugee situation. Kenya is a signatory to the UN refugee Convention and Protocol as well as the OAU Convention. As such, it has the obligation of fulfilling the provisions of those instruments. It is how it goes about managing refugee issues that is the core of this chapter. The chapter furthermore analyzes the challenges faced in managing those issues. The roles of other actors on the issues are also discussed.

4.2 Government Administrative Structures

In principle, the effective implementation of international law at a domestic setting requires the enactment of relevant municipal legislation. This is based on positivism approach that presumes that international law is founded upon the consent of the state. That the state is crucial here gives credence to realism as a theoretical concept in this study. There are two approaches in regard to the relationship between international law and municipal law here. In pluralist or dualist approach, the rules of the systems of international law and municipal law are seen to exist separately and therefore cannot purport to have an effect on, or overrule the other one. In such an approach a state therefore has to come up with the relevant legislation to provisions of international law (Brownlie, 1998).

The monist approach on the other hand presumes that international law is uniform with municipal provisions. As such, a provision of the former is automatically adopted in

a municipal context. The Constitution of Kenya (2010) provides that international treaty that the country ratifies automatically becomes part of the law of Kenya represents the monist approach to international law. However, this study was largely done before the promulgation of the 2010 constitution, or adoption of municipal refugee law.

The state uses administrative structures to implement the provisions on refugee protection. This section analyzes the roles of specific structures, the problems they encounter in the implementation of refugee law.

At the national government level, the administration of refugee affairs was from the time of independence placed under the Refugee Secretariat in the (Office of the Vice-President and) Ministry of Home Affairs. The secretariat's key functions involved refugee registration, documentation and settlement programs. The secretariat was initially envisaged to handle quite a limited number of refugees, had limited personnel, meager resource allocation and had limited mandate. These were challenges that overstretched it following the massive influx of refugees into the country in 1990s.

Due to the many challenges facing the state in the management of refugee affairs, the NARC government upgraded Refugee Secretariat to the Department of Refugee Affairs under the newly created Ministry of State for Immigrations and Registration of Persons, soon after assuming power in 2003. This development reflects the government's recognition of the monumental tasks involved in the refugee protection. The challenges involved in refugee matters have grown in multiples since the early 1990s. The department on its side has a clearly stated mission: To promote and enhance the continuous security and protection of refugees in camps and urban centers. It further

states its vision as, "To offer timely services to refugees as per international and regional legal instruments".

Both the stated mission and vision of the refugee department is indicative that as a matter of principle, the government of Kenya stands to abide by the provisions of international and regional instruments on refugees. Indeed, during the several times that I visited the department's offices, it was evident that it had a bee-hive of activities with refugees streaming in large numbers. Furthermore, the staff also seemed to have been adequately trained on handling their affairs.

The department has a number of duties. First, it maintains an appropriate documentation and registration system of refugees in Kenya. That is not to underestimate the role UNHCR play in regard to refugee documentation as will be discussed later in this chapter. Second, it identifies and registers undocumented refugees in the country. For instance, the on-going amnesty in which unregistered urban refugees are required to register with immigrations officials is part of that role. However, it is the responsibility of an undocumented refugee to avail himself to the authorities, thus the success of registering such refugees to a large extent depends on their cooperation.

Third, the department conducts issuing of identification documents to refugees for purposes of traveling to other countries. It also certifies that beneficiaries of resettlement to third countries are bona fide refugees and advises on matters of safety and security for refugees and international workers. It recommends travel clearance for refugees. In the latter role, it has to coordinate with the embassies and other relevant government organs. Since the department is the key government's unit in handling refugee affairs, it also coordinates programs and activities being carried out by UNHCR and other

implementing agencies. As such, the government role epitomizes the liberal-idealist approach in studying international relations whereby cooperation is undertaken to improve human lives (Dougherty & Pfaltzgraff, 2001).

The administration of refugee affairs is not confined to the Department of Refugees. Provincial Administrators and security personnel also play quite significant roles. The roles of these two categories are quite evident at the camps. The District officers are practically the chief administrators of the camps. The Office of the President, Internal Security and Provincial Administration has a District Officer each for Kakuma and Dadaab camps. Although I was unlucky to have found the Kakuma D.O to be on vacation during my field study there, luck was on my side during my visit to Dadaab. I had first hand information on what the provincial administrators do in regard to refugee protection. Indeed I obtained substantial data on the subject matter with the area D.O, and by extension, the Divisional police chief.

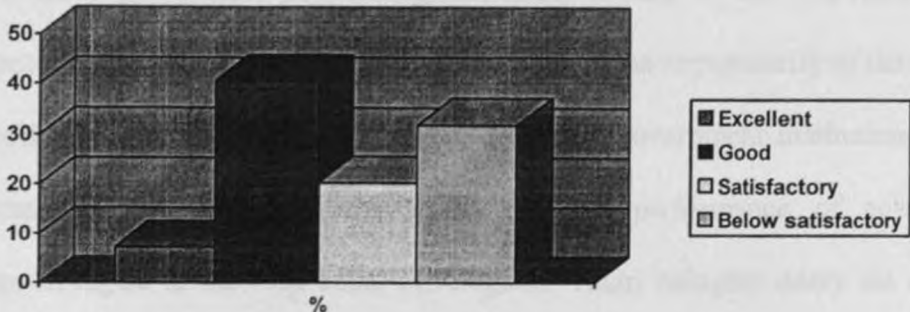
Since the population of the divisions where these camps are located are predominantly refugees, the District officers posted to those stations have a unique role that of handling refugee affairs. First and foremost, they are concerned with the maintenance of law and order. Besides, they ensure the conveyance and implementation of government policies within their jurisdictions, in the case of refugees, policies concerning them. In the maintenance of law and order, the administrations have to ensure harmony, and conflicts management/resolution, not only between refugee groups but also between refugees and the local/host populations.

The district officers are assisted by administration police and regular police in the administration of law and order. The Kenya Government also has law court system to

administer justice in regard to refugee offenders. In Dadaab, the Garissa based court functions on mobile basis between the camps and places such as Liboi. Furthermore, the other high ranking provincial administrators in the refugee districts and provinces also directly address refugee issues. For instance during the massive influx of Somali refugees following the eruption of conflicts between the forces of Union of Islamic Courts and those of the interim government, the North Eastern Provincial Commissioner led the team of Kenya government officials in the admission process of the refugees (Daily Nation, September 2006). Besides the admission process, the team also had to vaccinate the incoming groups against measles and other diseases as well as to provide the refugees with food and other urgently required items such as cloths and blankets. Indeed the number of government departments and non-governmental organizations as well as officials of UNHCR that were involved here is a manifestation of cooperation that is involved in handling refugee affairs.

A general question to refugee respondents as to how they rate the government of Kenya regarding their well-being reveals that a significant proportion ranks the government favorably as represented by figure 6 below.

Figure 6: Rating of government institutions



Source: Field data, 2006.

Although the question did not cover the specific aspects of the well-beings, general comments given by the respondents in the questionnaire, discussions and interviews suggests the respondents' view of the government's role. About half of the respondents viewed the government's role very positively. These added to the ones who view its role as being satisfactory leaves just about a third ranking it unfavorably. Each respondent's opinion is likely to be informed by notable aspects and not the entire handling of refugee affairs by the government.

On the positive side, is the open-door policy that Kenya government has implemented over time through granting the prima facie status to those fleeing from conflict. This is a practice in which refugees are admitted en masse and the processing takes place afterwards. This is actually in line with the African tradition of hospitality to guests and the provisions of the African Convention regarding refugees (OAU, 1969).

Secondly, inspite of the various challenges that the government faces in responding to refugee problems, it gives priority to refugee protection. Furthermore, the state as the principal coordinator of refugee issues in the country in many cases play roles that directly benefit the respondents. These include the roles discussed above in this section.

On the negative side, considering that about a third of the respondents rank government institutions unfavorably is a manifestation of the unpopularity of the existing refugee policy as well as the way they perceive that the government institutions handle their matters. Furthermore, it reflects the abysmal performance of government institutions in regard to the well-being of refugees. Many refugees decry the difficult circumstances under which they live. They also abhor restrictions regarding residence,

movement and the lack of economic opportunities that they are subjected to. A significant number of refugees informed this study that they are treated unusually, in many cases they feel being discriminated against by not only the locals and service providers, but also by government officials, particularly security personnel. Many complained of having been victims of extortion, or taken to police cells and eventually released without any charges being preferred against them. Others also pointed out that security personnel particularly in the urban centers deliberately refuse to recognize the identification documents that are issued by UNHCR and subsequently threaten to charge them with being in the country illegally.

A major source of disaffection within the refugee population is the long term staying in the country in uncertainty. This is particularly so for the camp refugees. The camp refugees as discussed later in this chapter live under some unbearable circumstances. However there is no policy that allows for local integration. Integration opens up opportunities to immigrants, including refugees. That the country had no refugee legislation until 2007 made it almost impossible to adopt a policy of integration. This makes many of the refugees to view the government institutions as not concerned about their plight or their future. Such a scenario can breed hopelessness and serious disaffection with the system. Before analyzing some of the specific sector policies and their implementation that directly affect refugees in the country, its important to address the roles of other actors and their interrelations.

4.3 The role of UNHCR

UNHCR plays a crucial role in the implementation of international refugee law in Kenya. Indeed, in some quarters it is seen to have eclipsed or usurped the role of state in refugee matters. Some critics even point out that the state has abdicated many of its responsibilities on matters pertaining to the refugees. However, in Kenya's case it is worth noting that to a large extent the UN agency's role is representative of the role of international community in matters pertaining to refugee protection. Furthermore, the sudden influx of refugees in Kenya since the early 1990s requires the intervention by many players with the agency playing its rightful role. This is partly due to the host country's economic status and partly due to political reasons.

UNHCR operations in Kenya dates back to 1969 when it was called upon to assist with the arrival of Sudanese asylum seekers in the country. It is the agency mandated by the international community to collaborate with the host governments in providing refugees with protection, assistance, and durable solutions. These are the core areas in refugeeism.

In Kenya, the agency has its Nairobi branch office and Kakuma and Dadaab sub-offices. The Nairobi branch office is concerned with the overall oversight of refugee program in the country. In undertaking such task, it liaises with the government of Kenya, its police department and Ministry of Immigrations, as well as the donor community and other partners. In so doing, the UN agency enhances the effectiveness of refugee assistance. Furthermore, like in other countries it also promotes adherence to refugee rights. In the latter case, the agency therefore monitors host states' refugee policies and municipal refugee legislations.

As of 2006, the Nairobi branch office had ninety six (96) staff, while its Dadaab sub-office that manages the operations at the camps of Ifo, Dagahaley and Hagadera had fifty four (54) staff while the Kakuma one had staff of forty nine (49). Considering the magnitude of the refugees and what is expected of the agency in the country, these are quite low numbers. The influxes of about 30,000 new refugees from Somalia within a year following the resurgence of conflicts in that country even make the situation more complicated. The continued influxes led to the Kenya government, in collaboration with UNHCR to open up Kambioos as the fourth camp of Dadaab in 2011 (UNHCR, 2011). Besides, in order to better serve southern Dadaab UNHCR plans to upgrade Alinjugar field office to sub-office in 2012.

4.4 Refugee Status Determination

The refugee status determination (RSD) is a crucial stage in the refugee admission process. Ideally, the rules governing the determination process are laid down by the government of the host state and admission of refugees is supposedly a responsibility of the government. In Kenya, UNHCR plays a crucial role in this process. The agency solely handles this on behalf of the government of Kenya.

In the cases of refugees arriving from Sudan and Somalia, the reception and admission of refugees is done at Lokichoggio and Liboi respectively. This is mainly due to continued arrival of refugees in large numbers from those countries. At Lokichoggio, UNHCR put a new system of screening in 2005 in which those who qualify are registered in 'progress' system and are issued with ration cards. They are then taken to Kakuma IV

where reception formalities are affected by partners such as Lutheran World Federation (LWF), World Food Program (WFP), and International Rescue Committee (IRC).

It is important to note that the government policy of encampment requires that those who have sought for asylum are taken to the camps, prior to which, they are issued with movement permit by the respective eligibility centers. Furthermore, besides processing refugee admissions at the border points, status determination officers are also based at the camps to perform the same tasks. Those who seek asylum in Nairobi are issued with slips for refugee status determination for interviews. Due to the high number of applicants, the waiting period for interview is usually long, ranging between six (6) to eight (8) months.

The long period in which asylum seekers have to wait to get their status determined raises fundamental questions regarding human rights of refugees and the concept of refugee protection. During that period, they do not qualify for assistance and remain in the towns without the necessary identification documents that would ensure that they are not harassed by the law enforcement personnel. Refugees who arrive from countries where there are on-going conflicts, as noted above, are usually admitted on prima facie status. As such, minimal detail is required from them as regards the reasons for their departure from the home countries.

Asylum seekers who qualify for refugee status are issued with a mandate refugee certificate by UNHCR. The card includes photos of dependant to the refugee. Those who are found to be ineligible for refugee status are allowed to appeal. However, such an appeal can only be done once with the eligibility center. According to an eligibility officer based at Kakuma, about 30-40 percent of asylum seekers are normally accepted.

Those who are found to be ineligible after appeals are asked to leave camps and regularize their stay with the Ministry of Immigrations. This in itself is outside the scope and mandate of UNHCR.

That percentage is quite low particularly in considering the fact that local integration is more or less in quasi-inexistence. As such it makes it possible to have a large number of illegal immigrants in the country that would have benefited from other durable solutions as well as assistance if they would have been granted refugee status. Such a group is locked out from resettlement for instance. If they stay around without regularizing their stay, they are most likely to be subject to harassment particularly by the law enforcement officers or immigration officials and they are likely to experience hardship of great magnitude. The latter situation, experts argue, has the potentiality of creating hardcore criminals within the lot.

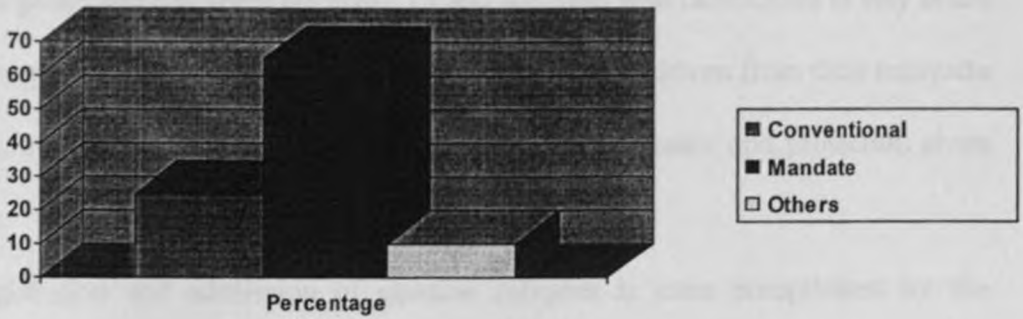
The UN agency therefore play crucial role in regard to the asylum process. Such include admission and reception of asylum seekers as well as their registration. It also conducts Refugee Status Determination (RSD) and establishes a data system for asylum seekers and recognized refugees in Kenya. Furthermore, it deals with issuance of identification documents to refugees under the authority and auspices of the Kenya Government. It is imperative to emphasize that although these are roles which a state party that is signatory to the Convention and protocol should competently handle; they do not necessarily fall exclusively under the state. The UN agency can also handle them under the provisions of the Convention and any other relevant General Assembly resolution. Furthermore, in the case of Kenya, these are tasks that the UN agency performs in close collaboration with the government.

In international law, a refugee may have the legal status of a mandate refugee or conventional refugee. A mandate refugee here refers to a refugee within the competence of the UNHCR according to its statute or according to specific General Assembly Resolution. A conventional refugee on the other hand denotes a refugee within the meaning of the 1951 Convention and or 1967 Protocol. As such, conventional refugee may be recognized so and protected by the host state and must not necessarily get the UN agency's protection. Although the 1951 Convention defines who a refugee is, it is silent about the procedure for determining refugee status. As such the host state in collaboration with UNHCR determines the procedure. In practice, many states accept direct or indirect participation by UNHCR in procedures for determining refugee status.

Status determination procedure is an area in which both domestic politics as well as a country's foreign policy play crucial part. These have in essence informed Kenya's decision to use the prima facie status for asylum seekers from some countries and not others. Viewed at critically, the refugees who flee from their countries into Kenya are fleeing from areas of conflicts and fear of persecution in their home countries. However, today only refugees from Sudan, Somalia as well as those from Eastern Democratic Republic of Congo are admitted on prima facie status. It is also important to note that the UN agency also has a role here- it may determine if the situation at the home country of refugees warrants the cessation of that status.

Respondents to the questionnaire in this study regarding their refugee category, the responses were as represented in Figure 7 below.

Figure 7: Category of refugee



Source: Field data, 2006

From the above data, majority of the refugees are mandate refugees, while less than a third of the respondents indicated that they are conventional refugees. Although, these categorizations overlap, the responses reflect the causes of refugee situation in Africa. That is, the conventional terms emphasize on persecution of an individual, and thus more Eurocentric in definition. In contemporary Africa politics majority of asylum seekers move as a result of conflicts that affects communities, whole tribes or whole regions or an entire nation. They are therefore not likely to have been targeted as individuals for persecution. This is actually in line with the OAU Convention (1969) that extends the definitions of a refugee beyond the 1951 Convention to include those who have fled their home countries due to internal and external conflicts, aggression as well as foreign occupation.

In the absence of a refugee act until recently, Kenya did not have its own Refugee Status Determination (RSD) procedures and thus had to rely on and accept the UNHCR's decisions and procedures regarding refugee admissions. However, this study established that although the procedures used here are successful in ensuring admission of bona fide applicants, it has some flaws. There are cases where some Kenyan nationals disguise as

refugees and are admitted on that category. The district development officer for Turkana for instance points out that there are about 15,000 Kenyans who have opted to stay at the Kakuma camps as refugees. These are people who have been driven from their manyatta by drought, hunger and insecurity and are in need of the assistance and protection given to refugees.

Registration and admission of genuine refugees is even complicated by the cultural and linguistic similarities of some refugee groups and their Kenyan counterparts ('brothers'). At Kakuma for instance, the local Turkana for instance pass out as the Didinga refugees from Sudan due to those similarities. The same happens in the case of Kenyan Somalis who get to Dadaab camps as Somalia Somalis. A UNHCR report established that about 4,400 Kenyans signed up as refugees at Liboi refugee transit and at Dadaab camps, disguising as refugees from Somalia. Their main aim was to get the food ration (Sunday nation, Oct. 29th 2006). The report further revealed that some people who were already registered as refugees pose as new refugees so that they can receive multiple registration cards and more assistance.

Such incidences portray the weaknesses of refugee status determination procedures and processes as well as difficulties of identification. The incidences prompted UNHCR to introduce fingerprinting of new applicants which is cross-checked against its records and those held by the Kenya government. However, this is also a process that is bound to face various challenges. Such include the problems of record keeping, the efficiency of finger printing system, etc.

4.5 Refugee Protection

An assessment of implementation of international refugee law to a significant extent deals with matters of refugee protection. The statute by which UNHCR was formed stated protection as one of the mandates of the body. Although the statute does not define what is meant by protection, it means protecting refugee human rights and also to enable them overcome the numerous challenges that they face. Furthermore, protection involves promoting the conclusion and ratification of international protection of refugees and to supervise the applications of their terms and to propose amendments where necessary. The mandate of protection would also require the UN body to make special arrangements with governments to execute measures that are meant to improve the refugees' situations.

The Kenya branch of UNHCR has protection department which work hand in hand with the government of Kenya and NGOs such as the Refugee Consortium of Kenya (RCK), and Federation of Women Lawyers (FIDA) as well as Amnesty International to address the plight of refugees in the country. Besides, UNHCR and the government partners with International Committee of the Red Cross (ICRC), an independent agency that acts to help victims of war and internal violence and to ensure implementation international humanitarian law.

Refugee protection involves the various stages, ranging from individual status determination to durable solutions. It involves ensuring that the international refugee laws are applied at the national level. Such involve ensuring the application of the principle of non-refoulment. The UN agency is also involved in putting in place conflict resolution at the camps. At Kakuma camp for instance, there are buffer zones created

between rival groups. Conflicts in Southern Sudan between faction groups often spill to the camp. It was therefore decided to settle refugees from DRC and Uganda to act as buffer between the feuding Dinka and Nuer. Furthermore, UNHCR identify cases for resettlement into third countries.

Protection officers also visit police stations in upper Rift valley and Garissa area to monitor the standard of treatment that refugees and asylum seekers are accorded while in custody. They also train refugee community leaders, staff of humanitarian agencies and local authorities in the refugee areas on programs intended to address issues related to sexual and gender based violence. In undertaking their duties, special attention is given to women on matters such as women rights and empowerment particularly as far as decision making is concerned. Furthermore unaccompanied children refugees are also given special care due to their high level of vulnerability. At Kakuma for instance, the unaccompanied children are settled at the same residence where the Sudanese “lost boys” were settled over fifteen years ago. Here they are placed under foster care management. Refugee protection also involves providing legal counseling and ensures that perpetrators of violence and other human rights abuses to the refugee population are prosecuted. Here is a case where UNHCR work closely with the police department, provincial administration and the courts.

The Universal Declaration of Human Rights (1948) provide strong basis for international human rights law, including refugee laws. It states that “Everyone is entitled to all the rights and freedoms set forth in this declaration...such as right to life, protection from arbitrary arrest and torture and freedom of movement, peaceful assembly and association, without distinction of any kind as to race, color, sex, nationality,

religion, or any other status. Refugee status is often a source of discrimination against them. This provision therefore essentially implies that the fundamentals of human rights of everyone have to be upheld irrespective of their status.

The UN charter also provides a basis for refugee rights when it states that it reaffirms the faith of its members in the fundamental human rights as well as to achieve international cooperation in solving international problems of humanitarian character. Refugee problem is humanitarian in nature and as such, the responsibility of solving their problems is placed on the international community by the provision of this charter. Furthermore, it emphasizes on respect for all human rights and for the fundamental freedoms of all, where in the refugees case, the “all” here is inclusive.

The key responsibility of the protection unit/department of UNHCR is therefore to ensure that the basic rights of refugees are safeguarded, while at the same time upholding the laws of Kenya and respecting the traditional practices and beliefs of the people of Kenya. This is indeed quite essential role. Furthermore, the UN refugee agency monitors compliance to international refugee law by the refugee host states. However, the function of protection has not been without challenges.

4.5.1 The Search for the Refugee Legislation

Although Kenya is a signatory to key international and regional refugee conventions and protocols, it did not have domestic refugee legislation until in 2007. The government of Kenya for along time had been relying principally on two existing legislations to handle issues relevant to refugee: the Alien Restrictions Act and the Immigration Act. Immigration Act was enacted to govern migration and deal with

matters incidental to migration. It for instance provide for entry permit for refugees within the framework of the Refugee Convention of 1951. The Alien Restriction Act on the other hand places certain restrictions on aliens arriving or residing in the country. It for instance specifies grounds for which one can be prohibited from entering the country. The Act requires an alien to report to a registration officer within ninety days of arriving in Kenya. It also acknowledges refugee applicants.

However, in considering the dynamics and complexities of refugee issues in the country, neither the Alien Restrictions Act nor the Immigration Act could adequately deal with those issues in line with international refugee law. Neither Act for instance provides guidelines on procedures and requirements on Refugee Status Determination (RSD). Refugee-specific legislation is important since it would provide a clear framework for the protection of refugees. The 2005 draft constitution provided for the legislation of a refugee law. However, the draft was thrown out in the national referendum later that year, and therefore its provision in that regard became mute. The first refugee bill in Kenya was drafted in 1991 and reviewed in 1992 and 1994. However, disagreements between the government and other stakeholders made it fail to make its way to parliament for debate. Following various amendments to the bill, it was eventually introduced in parliament in 2003. It is important to note that the country had just had a change of administration, from KANU to NARC. The NARC administration was elected on reform platform, thus, had to attempt to score points where the previous one had failed. However, even this time, the Bill did not make it beyond debate stage.

The Bill was not enacted due to lapse of the legislative session. One explanation for that lapse was the wrangles involving various political parties in parliament over the

constitutional review process. Furthermore, the Ninth Kenya Parliament had a political culture of effectively discussing and passing very few bills into law per session, thus leaving some crucial bills to lapse. This was partly due to rampant lack of quorum and perpetual absenteeism among front benchers (cabinet ministers and their assistants) that led to deferment of various items on parliamentary agenda, thus squandering into the time into which these bills can be debated. Furthermore, parliament meets for less than twenty hours a week and has numerous recesses.

In regard to the Refugee Bill, these are situations that have been complicated by administrative changes, including shifting the refugee docket from the Ministry of Home Affairs to the new Ministry of State for Immigrations and Registration of Persons. That is a development that was characterized by changes in ministers and key civil servants in the new ministry and the refugee docket. Furthermore such developments also mean changes in the priorities of the new ministry.

Although the Refugee Bill was re-introduced in parliament in August 2006 it was not until at the end of that year that it was legislated and got presidential assent. However there were numerous obstacles that domestication of refugee law faced. Parliament, like in the past sessions was and is still plagued with numerous problems. One, the disintegration of NARC left the government with not enough votes to ensure that government bills sail through. Secondly, following the rejection of draft constitution in the 2005 national referendum, the constitutional issue re-emerged in a parliament that was polarized along partisan lines, thus dominating parliamentary agenda. Besides, at any given stage in the life of the ninth parliament, there were numerous pending bills.

This researcher argues that enacting the Refugee Bill into law for a long time was not a priority to the government. This is partly due to the fact that it would shift a greater burden of managing refugee affairs to the government, and partly because the government has other pressing domestic obligations. Scarcity of resources is a determinant factor here. Furthermore, studies of refugee situations the world over reveals that since the 1920s, policy makers and statesmen have always imagined that the refugee problem would subside. It is against such belief that UNHCR, when established in 1950 was initially given a thirteen year contract. It is also due to that that the Geneva Convention defined refugees with a time limit to those who were displaced to events occurring before January 1st 1951. The Kenya situation may not be exceptional.

The fact that refugees in Kenya do not form a voting entity also militated against the passing of the bill in a timely manner. Parliament is made up principally by politicians, whether in the government side or the opposition side. The reality of politics is that politicians tend to address issues that are likely to maintain their popularity and stand the possibility of being re-elected in the subsequent elections. In this case, they tend to concentrate on matters that are popular with their constituents or their sponsoring political parties. Although their individual beliefs and ideological inclinations also inform their contribution and voting pattern in parliament, they would not want these to be seen to contradict the interests of their constituents. Refugees therefore stand disadvantaged since even the representatives of the areas where they live in large numbers such as camps are in reality not the representatives of their interests. These are situations that are exacerbated by stereotypes that a number of politicians and locals hold

about refugees. Furthermore, in case of conflicts between locals and refugees, for political reasons politicians quite often side with the former.

Besides, the fact that there are numerous stakeholders in refugee affairs was a stumbling block in the timely enactment of the legislation. Each of the key players whether the Kenya government, the UN agency, donor community or an NGO, had its vested interest and had provisions that it wanted included or excluded in the law. As such, at various stages in the development of the legislation, there were contentions that did not only involve partisan politics, but also the government and non governmental actors in the refugee regime.

4.5.2 The Kenya Refugee Act, 2006

As discussed above, it took fifteen years for the refugee bill to be enacted into a law. The initial bill was revised severally and at some stages tabled for debate in the house, however it was the 2006 Refugee Bill that eventually saw the light and was given presidential assent at the end of that year and published in the Kenya Gazette Supplement on January 2nd, 2007. The Act provides that the law becomes operational once the minister in-charge publishes it in the Kenya Gazette. The law came into force on 15 may 2007. Although the bulk of the data in this work was collected before the Act had been legislated, it is worth analyzing certain aspects of the domestic law.

First, the Act provides for the meaning of a refugee (section 3). This is based on both the UN conventional terms as well as that of the OAU Convention. In 3(1 a), the Act defines a refugee as one who owing to well founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or

political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country. This definition is based on that of the UN Convention and Protocol. Section 3(2) brings into context the OAU Convention to define a refugee, which is a prima facie refugee. The Act defines a prima facie refugee as a person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Sections 4 of the Act enumerate five grounds on which one could be disqualified from being a refugee. The grounds include if one has committed a crime against peace, a war crime, or crime against humanity; one who has committed a serious non-political crime outside Kenya prior to arrival and admission as a refugee; one who has committed a serious non-political crime inside Kenya after admission as a refugee; one guilty of acts contrary to the purposes and principles of United Nations or the African Union; or one who having more than one nationality has not availed himself of the protection of one of the countries to which he is a national and has no valid reason, based on well founded fear of persecution.

Section 5 of the Act addresses grounds on which a refugee status could be seceded. A person shall cease to be a refugee if he has re-availed himself for the protection of the country of his nationality, or having lost his nationality voluntarily re-acquires it. One would also cease to be a refugee if he acquires the nationality of another country and enjoys the protection of that country, or if he voluntarily re-establishes himself in the country which he left or which outside which he remained owing to fear of

persecution. The clause also enumerates situation where circumstances that led to the status being accorded to no longer exist as a ground to which one would cease to be a refugee. Furthermore, one would cease to be a refugee if he has committed a serious non-political crime outside Kenya prior to his admission to the country as a refugee.

The clauses on meaning of refugee, disqualification and secession from refugee status directly reflect the provisions of refugee law by the UN Convention and Protocol as well as the OAU Convention on refugees. As such, the 2006 Refugee Act is guided by international refugee law in those regards.

Second, the Act provides for the framework by which refugee affairs would be managed by the government. Section 6 for instance provides for the establishment of the Department of Refugee Affairs. The department is responsible for all administrative matters concerning refugees. It is to coordinate activities and programs on refugee matters. Section 7 of the Act provides for the commissioner who is to be the head of refugee affairs. The commissioner is also to act as secretary to the refugee affairs committee that is provided for by section 8 of the Act. The commissioner, assisted by the committee, has a wide range of responsibilities on refugee affairs. These include coordination of all measures necessary for promoting the welfare and protection of refugees, formulation of policy on refugee matters, liaison with UN agencies and other institutions to ensure provision of adequate facilities and services for the protection, reception and care of refugees within the country. He is also charged with the responsibility of promoting durable solutions for refugees in Kenya, receiving and processing applications for refugee status and registers all refugees, issue refugee identity cards and travel documents. The commissioner is also required to manage refugee camps

and advise the minister on care, welfare and rehabilitation of refugees as well as on soliciting funds for refugee assistance programs.

Section 9 of the Acts provides for the establishment of Refugee Appeals Board which is composed of a chairperson and members that are appointed by the minister. The Board handles appeals by those who are aggrieved by the commissioner's decision regarding their application for refugee status (section 10). Those aggrieved are required to appeal to the board within 30 days of receiving the commissioner's decision. The board affirms or sets aside the commissioner's decision by referring the issue to the commissioner for further investigations and advice, or through its own inquiry and investigations. Any person aggrieved by the board's decision can appeal to the high court within twenty one (21) days.

The provisions for the framework in handling refugee affairs would place the management of refugee affairs in the country directly in the hands of the government. That would be contrary to the contemporary practice where UNHCR practically manages much of the refugee affairs including refugee status determination.

Third, to a certain extent the act is based on what the government of Kenya had been practicing in refugee affairs even before the enactment of the law. As indicated above, the Government of Kenya upgraded the refugee secretariat to department of refugees. The act formally provides for the department. Further, refugees in Kenya have been confined in the camps. The act maintains the status quo by empowering the minister to designate places and areas as transit centers for purposes of temporary accommodation while their applications for refugee status are being processed and as refugee camps (section 16 (2)). Section 25 (f) of the Act provides for a penalty of up to six

months imprisonment and/or a fine of Ksh. 20,000 to those who reside without authority outside designated areas specified in section 16(2).

Fourth, the act makes provision on non-refoulment in line with international refugee law. Section 18 bars expulsion, extradition or returning of a refugee or an asylum seeker to a country where he may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion. This provision is derived from the UN Refugee Convention. In line with the provision of the OAU Refugee Convention, it further provides for the principle of non-refoulment of one to a country where his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of the country.

Fifth, the act makes provision for refugee rights and obligations. It provides for the right to asylum, although the commissioner after considering the request may grant or reject it (section 11(6)). As such, the right to asylum is not guaranteed. The act also states that illegal entry cannot be used as reason to declare one a prohibited immigrant, detained or penalized (section 11(3)) so long as one makes the intention of applying for asylum known by appearing before the commissioner within ninety (90) days of arrival.

Section 23 of the Act provides for the protection and assistance of the vulnerable groups including refugee women and children. The commissioner is to ensure their safety in designated areas. By implication, the commissioner is not obligated to ensure the same for those who are outside those areas. Further, unaccompanied children are supposed to be given appropriate assistance and protection as well as to be helped to trace

their parents for reunification. Where parents cannot be found, a child is to be accorded protection as any other child permanently or temporarily deprived of his family.

The act further grant privileges and rights to members of a refugee family so long as the concerned refugee is permitted to remain in Kenya, provided that such a person is not excluded under section 3 of the law. They are for instance to be issued with refugee identity card (for those who are 18 years and above) and refugee identity pass (for those under 18) and are permitted to stay in Kenya. In case of death, divorce or separation of the refugee, members of his family are permitted to remain in the country (section 15 (3)). Section 16 (1)(a) of the Act states that every recognized refugee and every member of his family in Kenya are entitled and be subject to the obligations contained in the international conventions to which Kenya is a party. Subsection 1(b) of that section subject refugees and their family members to all laws in force in Kenya. The legislation of the refugee law is therefore a milestone in the protection of refugees in Kenya.

However, the Act has some flaws and ambiguities. Section 21 addresses expulsion of a refugee. It provides that “the minister, in consultation with the minister responsible for matters relating to immigration and internal security, may order expulsion from Kenya on ground of national security and public safety”. It however does not specify which minister is given that power of expulsion. Although 21 (2) provides for the due process of the law before the minister order such expulsion, the provision has the potentiality of being flouted.

Section 8 of the Bill creates the Refugee Status Determination (RSD) Committee. Both the mode of appointing the chairman of that committee and its powers is likely to create legal and political problems. Politically, that the chairman is to be appointed by

the minister contradicts the democratic trends that would require that members of such a committee elect their chairman subject to ministerial approval. Otherwise the chairman would not be the effective spokesman of the committee, but that of the appointing minister, a development that is likely to create despondency in the discharge of its duties. Section 9(5) on the other hand provides for unusual term of service for members of Appeals Board. It provides that members of the Appeals Board (seven in number) "shall hold office for three years...and are eligible for reappointment for four years". The differences in the first and renewal terms simply do not make sense. Such are flaws that should not have skipped the attention of the parliamentary committee and the experts at the attorney general's chamber.

A visit to Dadaab refugee camps reveals that the UN agency had built a number of residential houses for civil servants in anticipation of the enactment of Refugee Law. It remains to be seen if the anticipated changes will be effected with the domestic refugee law in place. The absence of national refugee legislation for a long time has been the source of many legal and operational problems. For instance, assimilation or local integration of refugees as a durable solution has been inapplicable in the country mainly due to the absence of refugee legislation. Although the Act empowers the commissioner to find durable solutions, it does not specifically provide for process of integration.

Provision of employment for refugees with professional skills would also require a legislation to be implemented, the absence of which place them at a disadvantaged situation like the unprofessional and unskilled ones. The Act is not likely to make the situation lighter for refugees when it comes to seeking for gainful employment. Section 16 (4) states that every refugee and members of his family in respect of wage earning

employment shall be subject to same restrictions as are imposed on persons who are not citizens of Kenya.

The enactment of the refugee law would result in a government developed refugee status determination procedure. Section 11 for instance provides for the application process. Section 12 spells out conditions under which an asylum applicant whose application has been rejected by the commissioner and the committee can continue to stay in the country while undertaking the appeals process.

Furthermore, developing a comprehensive refugee policy would require a refugee legislation to guide its development. Refugee legislation would be crucial if the state were to develop consistent refugee policy. The long absence of which had the danger of having reactionary policy, mainly based on ad hoc adoption and implementation. It is evident that Kenya's refugee policy has elements of that ad hoc nature. The problem with ad hoc nature of policy is that the various actors who are involved in refugee protection may be unaware of such policy. This arises from inconsistencies that are associated with it and the short durations through which such policies exist.

The Refugee Bill, 2011 which when it becomes an Act of parliament will repeal the 2006 Act, has some significant provisions. It for instance provides for Kenya Citizens and Foreign National Management Service that will also require an Act of Parliament to operationalize it. It further, reorganizes the 2006 Act such that the first part reflects international refugee law, while part two make provisions on the administration of the law in Kenya. Besides, in recognition of a refugee, it replaces "statutory refugee" with "a person shall be recognized as a refugee..." (The Refugee Bill, 2011). In section 8, the

Bill is unambiguous on grounds for removal. These include rejection of appeal, when appeal period has lapsed, or where the appeal is unsuccessful.

4.5.3 Financial Constraints in Refugee Protection

Another major challenge in the refugee protection regime regards funding. The UN generally and UNHCR in particular are increasingly faced with various challenges that involve diversion of funds to some of the new developments. One such major challenge is the issue of internally displaced persons (IDPs). These are people who were not covered under the mandate of the agency. However, due to the dynamics of conflicts today, there are more of those who are displaced internally than those who cross borders. There are more internal conflicts than international conflicts. UNHCR for instance estimates that there are about twenty nine (29) million IDPs worldwide compared to about twenty two (22) million refugees. The plight of IDPs is attracting the concern of international community and particularly the global body. The experience that Kenya had following the bungled 2007 presidential elections is a good pointer. Although since the re-introduction of multi-party politics in 1991, there were cases of electoral violence in 1992 and 1997, the effects in terms of human displacement, loss of lives, destruction of property, none of those were close to the post-2007 violence. About 600,000 people were internally displaced, with some thousands taking refuge in neighboring Uganda, while about 1,500 lost their lives. The Kenya government and humanitarian agencies were therefore hard placed to assist the internally displaced.

In the case of Darfur crisis, of the about 2.5 million persons who have been displaced since the conflicts there started in 2003, only about 250,000 have taken refuge

in neighboring Chad, while over two million are internally displaced. The Darfur case has been described as the worst humanitarian disaster today. That would call for diversion of the UN refugee agency and other humanitarian organizations funding to take care of the internally displaced persons. The efforts of the donor community and the UN in this case are therefore geared toward funding in regard to the protection of IDPs. There is even greater need to fund the measures that could lead to conflict management and resolution in the Sudanese region. Such include funding are necessary for raising and maintenance of peace keeping operations and diplomatic initiatives.

The twenty first century world has also witnessed various calamities that require substantial funding. Such include the 2004 Tsunami that hit countries of East Asia and caused untold destructions, deaths and sufferings. Furthermore, there is also the donor fatigue in terms of providing funds for refugee situations. As such, funding for refugee programs dwindle. The Kenya branch of UNHCR 2004 budget stood at US\$19,519,807. This may be insufficient when the country's refugee population and programs are considered. Furthermore, this amount also includes recurrent expenditure.

Funding to the UN agency is also determined by the policies of the donor countries. United States of America (USA) is understandably more comfortable funding refugee programs through IRC than it would with the UN agency. As such, there is competition for funds by various groups yet, UNHCR is the principal international agency that has the direct mandate of refugee protection. In Kenya, the provision of WFP food ration to refugees faces major competition from relief food from drought stricken and perennially starving districts.

In Kenya, UNHCR projects that by December 2012, there will be about 1.2 million people of which it will give support 735,800. These include refugees, asylum-seekers, refugee and IDP returnees, as well as stateless persons (UNHCR, 2011). This is a manifestation of the expanded role of the UN refugee agency.

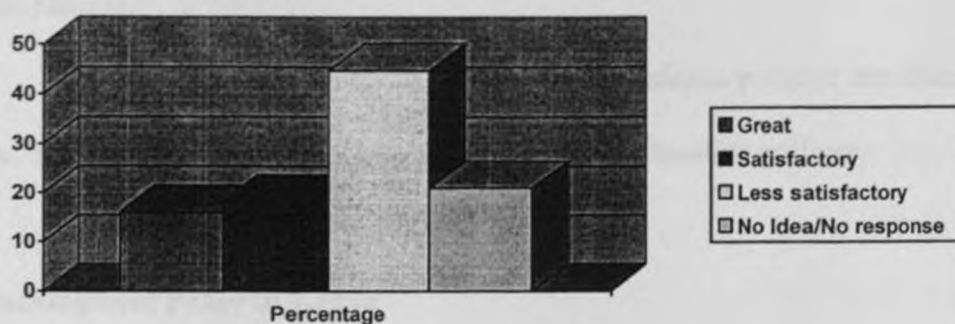
4.5.4 Other Challenges to Refugee Protection.

There are numerous other challenges that plague the protection of refugees. These include the UN agency's operational structure as well as the challenges encountered in attempts to find durable solutions.

The bureaucratic nature of the UN agency for instance makes it literally unreachable and thus becomes inaccessible for its numerous potential clients. As such, the protection officers and other UNHCR personnel have the potentiality of making agency ill informed on the refugee situation on the ground. This study established that there is too much reliance on procedures and there seem to be less concern in handling researchers with a 'human face', except in cases where there are connections through third parties with connection to the officers who matter there. That translated to refugee situation suggests graver problems involved in effective protection with regard to international refugee law.

In the questionnaire the respondents were asked to grade the functions of the protection officers in the camp. Figure 8 below show the results of the response.

Figure 8: Effectiveness of protection officers



Source: Field data, 2006.

From the above data, it is evident that majority of the respondents disprove of the effectiveness of the protection officers in regard to the plight of refugees. Those who consider the officers to be performing quite well are less than 20 percent. That category combined with those who consider their performance to be satisfactory is merely about a third of the total respondents. About half of the total respondents consider their performance to be less than satisfactory. The proportion of those who have no idea about the performance of protection officers, though less than a third of the respondents, confirms the notion that the agency is practically inaccessible to refugees. The large negative responses here may be attributed to some of the problems discussed elsewhere in this work.

Regarding adherence to the principle of non-refoulment, this study established that there are very few cases where refugees have been deported from Kenya. As discussed above, the government has adopted a policy by which it requires foreigners who have not been registered as refugees to regularize their stay in the country. Although the process was undertaken with the threat that those who fail to do so by June 30th 2006 would be deported, the deadline was not upheld and sources at the Department of

Refugees indicate that there are plans to extend the process to other towns in the country besides Nairobi.

In the next subsections, some specific refugee policies are discussed in details. This study focuses on encampment and refugee education policies.

4.6 Encampment Policy in Kenya

The policy of encampment was adopted by the government of Kenya in response to the influx of 420,000 refugees into the country by 1992. Due to that huge influx, the government strictly followed the policy of encampment to accommodate refugees. Fifteen camps were established. These were Mandera, Banissa, El Wak, Walda, Ifo, Hagadera, Dagahaley, Swaley, Nguru, Utange, Marafa, Hatimy, Jomvu, Kakuma, and Thika. The camps in North Eastern and Coast provinces were established principally for Somali refugees. By 1998, these camps were consolidated into Kakuma and the Dadaab camps of Ifo, Hagadera, and Dagahaley.

International refugee instruments do not specify where refugees have to reside in a host country. That leaves individual countries to adopt their own policies in regard to refugee residence. Furthermore, encampment is not peculiar to Kenya. Amin (2003) points out that there are over 170 refugee camps in Africa. The main unique feature about the policy in Kenya is that for quite a while it has been strictly followed to an extent whereby those refugees who are recognized and need UNHCR protection have got to live in the camps. As such, it is mandatory. What is the rationale for encampment policy in Kenya? Why are Kakuma and Dadaab camps specifically located where they are? To what extent does encampment policy achieve the desired goals? What are the

impacts of encampment on refugees' lives and rights? These are some of the questions that this subsection seeks to address.

The government of Kenya had compelling reasons for adopting encampment policy with regard to refugees. First, the influx in the early 1990s was quite sudden to an extent whereby it could not accommodate the refugees in the towns. Urban centers as alternative sites for refugee settlements were themselves not viable since they were already overcrowded. Nairobi city has a population of about four million people (Min. of Planning, 2009). Considering the fact that the city was originally intended for a much smaller number of people would make it difficult to settle hundreds of thousands of refugees there suddenly. Furthermore, like in other major towns in the country, the infrastructure and social services are overwhelmed due to rapid rural-urban migrations that have taken place in the country since independence. As such, allowing the refugees to primarily settle in urban centers would overstretch the capacity of those cities. This a potential cause of conflict between refugees and the locals, the latter feeling interference.

Another alternative would be to allow refugees to live in spontaneous settlements. That would mean that they spread mainly in rural areas and live among the locals. This alternative is viable in a situation where the new arrivals come in small numbers and gradually. It also requires where population density is sparse. However in the case of Kenya it would not have been a viable alternative. First, the agriculturally productive areas are also overpopulated. Second, land is an explosive issue in the country to an extent whereby tensions would be heightened had refugees been allowed to settle spontaneously, particularly in the agricultural areas. As such the government of Kenya had to adopt organized settlement for refugees in the form of camps.

Second, encampment is a necessary policy since refugees need to be assisted (Gorman, 1987). They have to be identified and located; as such the policy makes the service providers to access refugees relatively with ease. It would be difficult to attempt to provide the services required by refugees if they were spread all over the country. Therefore camps serve as important emergency protection and assistance functions. Furthermore the various actors involved with refugee protection and assistance needs to prove to the donors the very existence of their clients. Encampment makes refugees visible and thus keeps their plight in the international community's attention, lest the host government assumes the greatest responsibility.

Third, security dimensions of refugeeism since refugees are fleeing from areas of conflicts. Encampment is an appropriate policy by which the government can monitor and control them. This study establishes that some of those fleeing the war zones are members of warring factions, and may be actually armed, thus cause security concerns. Besides, it is also the government's responsibility to ensure security of refugees, a goal to which the policy is instrumental in its attainment. They are not only to be protected from possible incursions from their home countries, but also from their potential rival refugee groups. Furthermore, refugees are also under potential attacks from sections of the host population.

The government decision to consolidate the several camps into Kakuma and Dadaab camps in 1998 was also done with security consideration. Some of the camps were quite close to Somalia border and there were fears of them being attacked by militia groups from that country. By 1998, some repatriation and resettlement had been undertaken. There was hope among policy makers that the trend would continue and

therefore there was need to reduce the number of the camps. Consolidation was also seen as a cost effective measure in the management of the camps. That was particularly in considering the pressure on resources not only of the government but also of UNHCR and its implementing partners.

As discussed above, land is a crucial issue when deciding on where to settle refugees. Since allowing spontaneous settlements would not have been quite viable, the government had to establish the camps where land is actually available, and is trust land. Such is the cases of Kakuma and Dadaab camps. Turkana County for instance covers an area of 77,000 square kilometers. That is almost the sizes of Nyanza, Western and Central Provinces combined. However, the district's projected population for 1999 was 500,000, which is actually a very low population density of just about 6.5 people per square kilometer, in comparison to highly dense populated parts of the country. Considering that there are pockets of populations in urban centers such as Lodwar and the ones at manyatta clustered, leaves some areas in Turkana virtually uninhabited. The crucial factor here for establishing the camp at Kakuma is availability of land. As a protection officer at Kakuma quipped, "You can imagine of what would have transpired had the government decided to establish this camp in Eldoret". Considering that the local Turkana basically practice nomadic pastoralism, the establishment of the camp at Kakuma would not involve massive human displacement, thus reduces prospects of resentment among the locals. The conditions that led to the establishment of the camp here are more or less reminiscent with that which led to the establishment of Dadaab camps.

There was also consideration of the climatic conditions in the districts where the camps are located and the home areas of majority of the refugees at these camps. The proximity of Dadaab and Kakuma to Somalia and Sudan respectively, would presumably yield some similarities in the climate, and thus, easy adaptability for the refugees. Furthermore, refugee situation was considered to be a temporary situation. As such, putting the camps at the districts bordering the major source countries would make repatriation cost effective. Those from Southern Sudan are repatriated from mainly Kakuma, while those from Somalia and Ethiopia be repatriated from Dadaab. However, this rationale does not justify cases of Somalia or Ethiopian refugees who are at Kakuma or Sudanese refugees at Dadaab, nor does it apply in the case of refugees from the Great lakes region of Africa at these camps.

Policy makers also considered cultural similarities particularly between the Southern Sudanese and the Turkana, as well as those of the Somalis of Somalia and those of Kenya. These similarities are looked at from the security perspective; that refugees peacefully co-exist with the respective host communities thus makes it economical in refugee protection.

To certain extent, encampment policy has achieved the intended goals. However, it has also resulted into undesired consequences and at the same time poses various challenges not only to the refugees but also to those involved in refugee protection.

The establishment of the camps has successfully managed to enable the Kenya government and UNHCR show potential donors and service providers that the refugee situation in the country has reached a crisis proportion. A number of NGOs and other UN agencies have intensified their efforts particularly to provide assistance to the

refugees. Such assistance involves food rations and other basics such as soap and firewood as well as the provision of water, health services, education and some vocational training. It would not have been possible to provide essential services to refugees if they were not organized in camp-like settlements. Indeed it would not be possible to identify refugees and their needs if they were all scattered.

Encampment is also necessary since people from a particular culture are settled at a particular site. This study establishes that some refugees actually favor the policy since it enables them to live together with those whom they share the same cultural practices with. They communicate in the same language, cook their traditional dishes, profess their religion, and have same cultural and historical background. In Kakuma for instance, the policy is to settle members of a particular tribal group or people from the same country together. There are eight nationalities represented at the camp with each having its residential section. The major Sudanese tribes-the Dinka, Nuer, and Equatoria each have their sections. Even among the Dinka the Bor and Bahr-el-Ghazel sub tribes are each more clustered within their residential sections in the camp. The Sudanese tribes, particularly the Dinka and the Nuer are separated at the camp as a way of minimizing the conflicts between them.

The policy of encampment therefore enables refugees cope with their situations since those from the same cultural background are settled together. There are elements of belongingness and societal support not only morally but also psychologically and socially. Such supports are quite essential in controlling the psycho-social problems that refugees do experience not only as a result of their past experience but also of their status. The need for societal support is not confined to camp refugees; it is also evident among

the urban refugees who quite often live in large numbers per household. The urban refugees also tend to settle in large numbers in specific sections of towns, usually according to their nationalities or tribes. In Eldoret, Sudanese refugees tend to live in particular parts of the town in proportionately larger number, mainly at Kapsoya estate and a section of Pioneer estate, while in Nairobi Somali refugees tend to be concentrated in Eastleigh.

The banding together of refugees is also important for security reasons. These are a people who are in a new land and have threats, real and imagined, not only from individuals and groups among the host communities but also from other migrants and perpetrators of violence from their respective home countries. To certain extent the need to provide security to refugees by encampment is accomplished. By their very status and due to xenophobic tendencies, refugees are generally vulnerable to attacks, a trend that is common the world over today. Furthermore, violent crimes, including rape, are common both within and around the camps. As already pointed out, the provincial administration, the administration police as well as the Kenya police and the courts play crucial roles in ensuring not only the implementation of law and order, but also to ensure the safety and security of refugees.

At Dadaab for instance, there are two police posts in each of the three camps as well as the central police station at Dadaab Township. These are essential in the maintenance of law and order. Furthermore, since the region is prone to banditry, these are very essential for escorting not only public transport (buses) but also UNHCR, WFP, and other vehicles belonging to the NGOs that operate there. As a security requirement, all vehicles moving to and from the camps have to get police escort. This is crucial

particularly considering that UN agencies as a rule do not allow armed personnel in their vehicles. Police sources indicate that Dadaab police station ranks top in the number of vehicles in the Republic. There are about thirty vehicles for the police and at any given time there are at least half of these are operational.

Each of the posts at the camp is headed by a police inspector. According to the Dadaab officer in-charge of the station (OCS), the police posts are usually busier than the station. This suggests that there are numerous criminal cases, including petty offenses among the refugee population. It further suggests the existence of potential offenders there to an extent whereby without sufficient law enforcement criminal activities could rise. The law enforcement does not only apprehend criminals after committing crimes but also acts as a deterrent to criminal activities. As such most criminal activities at Dadaab actually take place where refugees are-the camps. It is important to note that those who live in much of Dadaab Township are the local Somalis. That the police station is situated at the township, the fact that the posts have more activities would suggest that there are higher prospects of criminal activities at the camps than among the local population.

Dadaab police station and the posts had about 156 security personnel by mid 2006. This is evidently a high number when compared to the other places in Kenya, particularly those with no refugee camps, or where security situation is much stable. That number combined with the administration police together with availability of vehicles (mainly Toyota Jeeps), fuel, and other equipments such as radios, together with the role of the provincial administration and the judiciary has actually ensured some level of maintenance of law and order within the refugee population. A source within the

provincial administration point out that security situation at Dadaab has improved over time, adding that “many places in North Eastern Province are actually safer than Nairobi”.

In order to deal with crime, security at the camps has been revamped, including deployment and equipping law enforcement personnel and provincial administration. This has had some positive result. Further, in attempt to minimize camp dwellers from invasion and attacks by the locals and bandits, the camps are fenced. The initial camps at Dadaab for instance are fortified with 160 kilometers live thorn fence.

The decision to have GTZ provide refugees at Dadaab with firewood was a response to banditry and rape of refugee women and girls while they went to fetch firewood. Here UNHCR funds thirty (30) percent of refugees’ monthly domestic fuel needs (UNHCR, 2006 a). As pointed out above, the firewood that is provided to refugees at both Kakuma and Dadaab does not meet the domestic requirements. This has resulted in development of alternative means, for instance some of the refugees makes arrangements with the locals to supply them with firewood in exchange for some of their food ration. Second, there is additional firewood that is provided to individuals for the work they have done in environmental conservation. Third, GTZ innovates energy saving devices and distribute them to refugees and local population, the latter done with the dual purpose of efficient energy use as well as environmental conservation. About fifty (50) percent of energy needs of refugees and local population at Dadaab are met through solar cookers and energy saving stoves. These measures have somehow minimized tensions between locals and refugees particularly as caused by competition over firewood.

Elaborate efforts are undertaken not only by UNHCR and service providers, but also the provincial administration in promoting peace education not only among refugees but also the locals. Officials of provincial administration sensitize the locals on the essence of living in peace both among themselves and with refugees. Peace education is an essential effort among communities in the Northern Frontier of Kenya generally. This is because the communities in the region for along time have been engaged in cattle rustling against each other. With the establishment of refugee camps in these districts, tensions obviously became heightened, hence the need to educate the residents in the camp divisions on the essence of living peacefully with the refugees.

At Dadaab, the UNHCR initiated a pilot peace program (PEP) in 1998 that is implemented by NCKK through a structured school program and community based program. As such, peace education is undertaken not only through formal education but also non-formal one. The program entails imparting knowledge, skills, values and attitudes that lead to peaceful behavior and prevention of conflict among the various refugee communities. Peace education among refugees is crucial considering that the main cause of refugee situation in Africa is conflict. Among the refugees are those who were combatants in their home countries. Many such as the lost boys from southern Sudan were conscripted as child soldiers. The experiences of particularly first generation refugees inculcate in them some element of aggressiveness and militancy. Furthermore, refugee camps are fertile grounds for recruiting personnel to go and fight back in their home countries. As such, peace education programs become quite essential there. Although the education is primarily aimed at harmonizing refugee relations, the values

and attitude that result from it is crucial in reducing or eliminating tensions and hostility between refugees and the local population.

At Kakuma, peace education program is implemented by the LWF. This is provided both in schools and at community level, in the latter case traditional structures are instrumental. To strengthen peace education, peace committees are established at zonal and host community levels. These efforts have had some success. For instance eighty (80) percent of conflicts in Kakuma camp and its environs are resolved at community level. However, there are challenges that are faced by peace education programs. First, there is limited staff to focus on host community. Second, there is high turnover of refugee staff that is quite instrumental in the implementation of the program. Third, there are limited funds for peace education workshop. Despite these challenges, significant strides have been made.

UNHCR and service providing agencies have attempted to harmonize the refugee-host relations as well as to minimize host hostility and resentment towards the institutions through humanitarian and development assistance as well as provision of jobs to the locals. Children of the hosts for instance attend schools at the camps. The locals also have access to medical facilities at the camps. However, it is important to point out that these are developments that came after considerable demands by the locals. Attempts are also made to supply locals with firewood and involve them in environmental aggradations such as tree planting. Furthermore, the locals are considered alongside refugees for hiring to positions of support staff by the various service providing agencies at the camps. The Turkana who live nearby Kakuma camps are allowed to draw water from the camp taps. LWF itself has initiated some projects to help improve the lives of

the locals. According to UNHCR protection officer at Kakuma, Zeda Kuzulu, these are efforts that are undertaken to “avoid conflict with the host community”. As discussed earlier in this work, the Turkana in Kakuma area are evidently poorer than an ordinary refugee at the camp. They thus benefit a lot from the projects that have been initiated for refugees there. While the need not to provoke hostility from host populations at the camp areas is considered in giving them assistance, the various refugee agencies are also concerned about the poverty and sufferings that these people are exposed to. Such concerns therefore contribute to the assistance that they receive; that is it’s given on humanitarian ground.

Security of refugees at the Dadaab camps is reinforced by erecting 160kms of live thorn fence around the camps. The security measures that are undertaken at the camps have practically yielded some fruit. Table 12 below represents some of the common serious crimes reported at Dadaab from 2000 to 2004.

Table 12: Crimes at Dadaab

Crime	2000	2001	2002	2003	2004
Rape	82	70	20	20	15
Murder	20	15	5	5	6
Robbery	48	30	15	18	7
Total	150	115	40	43	28

Source: Kenya Police, Dadaab, 2006.

In a period of four years (2000-2004) the three crimes, rape, murder, and robbery, declined both individually and collectively. The overall decline was from 150 to 28. That was quite a substantial decline. Rape declined to less than a fifth the original number while robbery fell to almost one-seventh. Murder on the other hand fell to almost a third. Considering the short duration (four years), these were real achievements. Although developments in the maintenance of law and order definitely made a major contribution, other initiatives such as community policing, community development, guidance and counseling, peace education among the refugee population also contributed to the reduction in crime.

The issue of security at the Kakuma and Dadaab refugee camps reveals close cooperation between the Government of Kenya and UNHCR. The UN agency for instance built the police stations and provides the police vehicles as well as other equipments. The agency also provides fuel for the vehicles. Such are quite different from the numerous police stations that are solely funded by the government. The latter would most likely have only one vehicle while fuel on numerous occasions is obtained on self-help basis. The agency is also understood to provide some motivational allowance to the law enforcement officers and also has a say in their transfer from the station.

The benefits of encampment are not restricted to refugees alone. Local communities also benefit from the policy. UNHCR, its sister agencies such as UNICEF and WFP and implementing partners such as GTZ, CARE, LWF, IRC, Handicap International, World Vision, and JRS provide necessary humanitarian assistance to the local communities at Dadaab and Kakuma. A number of projects are initiated in the areas that do benefit the locals. The aim here is to ensure the well being of host

communities, limit physical, intellectual, psychological and social imbalances between the local and refugee communities. From the words of UNHCR official, such assistance is a way to remove causes of conflicts between refugees and the local communities over resources. Some of the projects that local communities benefit from include water, sanitation, infrastructure, education, nutrition and environmental programs.

However, encampment has its own challenges and weaknesses. These are particularly so in the case of prolonged stay by refugees. In the case of Kenya, majority of the camp refugees have been there since the early 1990s and have therefore been there for about two decades. Encampment would be an ideal policy of helping to preserve the institution of asylum, particularly with regard to prima facie status. As discussed above, the policy is initially intended to assist refugees in the short run while waiting for the durable solutions. However, in the case of Kenya, the durable solutions have not been successfully applied. The average number of refugees that get resettled in third countries is about four thousand per year. Repatriation has not been quite successful in the case of Kenya due to continued conflicts in the refugees' home countries. Even a country such as Democratic Republic of Congo where peace process raised hope among the various stakeholders, the violence that has characterized the national elections in that country leaves a lot to be desired regarding the prospects of peace. Such situations militate against repatriation. The situation in Somalia today does not warrant voluntary repatriation, while both Uganda and Sudan still experience their forms of political violence. Although the Uganda government has initiated peace talks with the rebel Lord Resistance Army, the rebel group's blatant denial to the UN special envoy that they do

not have children soldiers or non-combatants in their army leaves a lot to be desired about the prospects of achieving the peace initiative.

Furthermore, local integration for refugees is non-existent, unless one seeks for that under provisions on naturalization. Since assistance does not exist for refugees outside the camps, and that the state strictly applies encampment policy, many refugees remain in the camp indefinitely. That raises fundamental human rights issues.

The practice of encampment policy curtails refugees' freedom of movement. Historically, camp policies are associated with deprivation of freedom, at times characterized by gross violation of human rights. The colonial history of Kenya is a case where encampment had such consequences and thus made it to be viewed negatively. It is associated with the colonial policies of confining Native Africans into the "reserves". These were areas where large groups of natives were relocated to after being displaced from their fertile lands to pave room for white settler farmers, emerging towns and development of physical infrastructure. Reserves were underdeveloped, remote and desolate, and were as much as possible a way of preventing the natives Africans from making progress as it is known in contemporary terms. Hypothetically, they were meant to keep the inhabitants' customs and tribal units intact. In reality they were created to pave way for the colonists to occupy the productive lands in the country. Furthermore, the indirect systems of administration that were adopted at the reserves would ensure that the inhabitants were hoodwinked to believe that they had their own political systems in place, thus, reduce the chances of resistance to the colonists. In reality the local leaders were acting on behalf of the colonists. The establishment of camps in Kenya during the

Mau-Mau movement further underscores the loss of freedom that is associated with the camp policy.

Encampment policy means that refugees have to be confined at certain specific places in the country—in the case of Kenya today, specifically at Kakuma and Dadaab camps. They are essentially barracked. The refugees are not allowed to leave the camps without valid travel documents. That essentially restricts their freedom of movement in the host country. At Dadaab for instance, I observed how rigorous the police scrutinized identification cards and passes of those who were to board the buses leaving for Garissa and Nairobi. Anyone suspected of having an invalid document or lacking a travel document is forced to disembark. As I traveled from Dadaab to Nairobi via Garissa, there were several police checks at which everyone on board was asked to produce identification card. Although such measures are necessary for security reasons and to ensure that only legitimate refugees are allowed into the cities, as well as to curb illegal immigration, they are inconveniencing at the least. It proves to be a bad measure particularly with regard to Kenya Somalis who share same traits with Somalia refugees. It also proves that the border checks are not tight enough, a fact revealing not only its level of porosity but also possible compromise on the side of those manning the border check points. This is further complicated by the extensively unmanned borders between Kenya and its refugee generating neighboring states.

Furthermore, this study established that the requirement of identification is not only a source of harassment of refugees, but also a source of corruption. Some of the refugees I spoke to in the course of the survey point to the fact that the law enforcement have the tendency of deliberately not recognizing the UNHCR identification cards and

use that as a means to exhort money from refugees. Others narrated of how they would be arrested for not having the valid cards. This is a situation that makes particularly urban refugees in the towns quite vulnerable, since it takes time to have the necessary identification cards renewed at their expiry. To the law enforcement, all refugees are supposed to be at the camps. However, there are situations that lead to legitimize their being in town, for example those who pursue education at institutions of higher learning. Some of these lamented harassment for not having valid documents, or just being harassed due to their refugee status. Some of whom decried having been put in police cells and eventually released without a charge. The practices are manifestations of contravention of international refugee law.

Article 16 of the 1951 refugee Convention for instance provides for free access to courts by refugees (Brownlie & Goodwin-Gill, 1998). It further provides that refugees be accorded same treatment as nationals in the discharge of the judicial process. This is a provision that is even reinforced by the International Covenant on Civil and Political Rights (1966). Article 16 of the instrument states that, "Everyone shall have the right to recognition everywhere as a person before the law". As such, that one may be arrested, placed in custody and not produced before a court of law is in contravention of these provisions. In some cases the suspects are detained in police custody for over twenty four hours and eventually discharged by the police without being produced before a court of law. That act is contrary to the domestic statutes that require that a suspect once apprehended must be produced before a court within a period not exceeding twenty four hours, unless one is charged with a capital offense.

Since encampment curtails the freedom of refugees, it denies them the opportunity to fend for themselves. As a UNHCR official points out, "people need to be free so as to fend for themselves". It essentially places the refugees to rely on assistance for their survival. Reliance on assistance kills individuals' capability to be creative and leads to lack of competition. These are virtues that are essential if refugees were to be productive and improve their personal and general economic well-being. The virtues would also be necessary for one to demonstrate self-esteem. The policy deprives refugees of self-esteem and kills their morale. The camp system of providing incentive jobs is exploitative. In the modern economies, incentive among workers can only be achieved if the remuneration is commensurate to the tasks performed. That refugee incentive workers are paid an average of Ksh.3000.00 makes them less motivated, demoralized, and not being able to achieve maximum productivity. However, in the camp context "incentive" is emphasized in relevance to the jobs in the sense that they are the only source of income for majority of camp refugees with any income.

As such, while encampment may be essential as an emergency short term measure, particularly with regard to provision of refugee aid, in the long term it impoverishes refugees. It creates dependency mentality. To ones who have lived in the camps for along time, they do not see any meaningful future. Life becomes hopeless and miserable and it's like they have hit a rock wall, particularly in considering the little viability of durable solutions. These are developments which have far reaching implications. First, economic well-being is a human rights issue. As such, that the encampment life in Kenya creates impoverishment among majority of camp dwellers raises their issue in that context. Second many young persons at the camps who are not

incentive workers or students, or those involved in other forms of training are virtually idle. Idleness at the camps has numerous negative consequences. At Kakuma for instance, I observed situations where the level of drunkenness is disproportionately high, particularly in Sudanese and Ugandan sections of the camp where some individuals are involved in the making of traditional brews. The consumption is spread among people from various nationalities and even the local Turkana. These in many cases lead to unnecessary violence. Alcohol and drug abuse as well as idleness are major causes crime, whether felony or misdemeanor in nature.

According to reliable sources, sexual promiscuity is alarming and prostitution is real, thus raises the risk of spreading HIV/AIDS and other sexually transmitted diseases at camp settings. Matters are even made worse when considering that both UNHCR workers and service providers are not allowed to stay with their spouses at the camps. The last question in the questionnaire conducted among refugee population asked the respondents to comment freely by giving any additional relevant information in this study. A number of respondents pointed out that there are indeed cases of sexual favors and exploitation linked to service provision at the camps as well as for resettlement purposes. Indeed some of those respondents decried corruption, nepotism and favoritism to be involved in the two areas. They point out that due to corrupt practices some of the resources intended for refugee well-being are diverted into personal use, thus exacerbating the bad conditions under which they live. These actually have been areas of genuine concern. In 2001, resettlement programs from the country were halted for a year due to corruption scam and sex scandal that reportedly dogged the program

locally (RCK, 2003). Such scandals reveal the problems encountered in not only refugee protection, but also in search for viable durable solutions.

The harsh environmental conditions at the camp locations also create difficult situations for the refugees. As pointed out earlier in this work, the climatic conditions at both Kakuma and Dadaab are quite hot and dry for much of the year. However, the killing of a woman, a child and destruction of shelters at the Dadaab camps by the floods is illustrative of some of the negative consequences of encampment policy, particularly with regard to the topographical nature of the camp locations. That the floods swept away shelters of 12,000 people at Ifo and 600 at Dagahaley is evidence that these structures are quite temporary, built with weak materials (Daily Nation, Nov. 14th 2006). Although refugees appreciate the provision of shelters at the camps, many of them are in deplorable conditions. They are small in size, and one may not be wrong to conclude that the planners had imagined that all refugees are short people and thus could enter them with no difficulty. They are overcrowded and very close to one another such that in case of an eventuality of fire outbreak, many residents get affected. The downside aspects of these are not to negate the role the UN agency and its partners play with regard to the provision of shelter to refugees. They play crucial and appreciable role despite the financial constraints that they do experience. However, the actual living conditions at the camps, including the shelters, particularly in the long run are unhealthy and deprive refugees of their potentials, while age also catches up with them.

The attitude of some leaders toward refugees even suggests that life is made deliberately difficult to the camp refugees. In attempting to give rationale for the banning of entry of public transport to the Dadaab camps, the Permanent Secretary for Internal

Security, Mr. Cyrus Gituai argued that, "...they are not in a village to be comfortable...that they can't walk... to the new designated bus stops", in reference to having the bus terminals moved far from the camps (KTN News, Nov.13th, 2006). The PS insinuates that by the fact of their status, refugees should not expect to be treated in a humane manner and they must be ready to be subjected to harsh conditions. The stated objective for such a drastic measure is "... on security grounds", particularly in regard to the continued influx of refugees from Somalia. Indeed it is an example of a reactionary measure taken with security as the main consideration as opposed to being guided by international refugee law. The measure affects hundreds of thousands of people, including the local residents. It is worth to point out that the bus stops at Dadaab have actually been centralized at the edges of the camps. The boarding and disembarking points are actually areas of heavy security presence, mainly next to police station or posts, and next to the DO camp. That is, its not like buses do pass from door to door, or people disembark in areas with no security as the measure presupposes. Considering the sizes of the camps, it means those intending to board the buses actually have to walk for some distance. From personal experience, the sandy nature of the roads at Dadaab would require that one takes along time walking over a very short distance, in scorching sun heat. Furthermore, the roads there are not roads in conventional terms. Bus drivers are quite often forced to create their own roads. And to make it worse, sections simply become impassable when it rains.

4.7 The Human Rights Perspective of Refugees

A question regarding the promotion and protection of refugees' rights in various aspects is even more revealing not only about the camps refugees, but refugees in general. The responses shed some light on matters dealing with protection and promotion of rights. It is important to note that most of the respondents identified themselves as camp refugees. Table 13 below summarizes the response regarding the protection of the various categories of rights.

Table 13: Protection of Refugee Human Rights

Type of Right	Percentage (%)				Total
	A	B	C	D	
Economic Rights	12.92	17.01	35.37	34.70	100
Social Rights	19.08	25.66	38.16	17.11	100
Cultural Rights	20.39	28.94	33.55	17.12	100
Civil & Political	7.33	16.67	26.00	50.00	100

Key:

A- Quite Protected

B- Protected

C- Somehow protected

D- Not Protected

Source: Field Data, 2006

Although human rights issue areas are diverse and specific, the data above have the various issue areas clustered and thus, the respondent's views are informed by their experience as well as those of their cohorts, besides their understanding of the issues. That in each of the cluster the respondents are spread in their responses, ranging from A through D is a manifestation that each of them gave an emphasis to particular aspects of the rights within a cluster. This confirms that not all refugees are or have been exposed to identical circumstances. However, generalizations can be drawn from the data.

If these rights were well protected then in each category majority of the respondents would have indicated A or B. However, this is not the case. Just less than a third of the respondents perceive that their economic rights are protected by indicating the two categories. Over forty percent believe the same with regard to social rights. About half of the respondents believe that their cultural rights are protected. The performance in regard to civil and political rights is even more telling of problems of protection of human rights; only about a quarter of the respondents believe that those rights are protected.

Category C in the data is a manifestation that although there are some attempts to protect the various dimensions of human rights, little has been achieved in protecting those rights to the level required by international refugee law. In all the categories of rights, this is the single choice that takes the chunk of the respondents' perception about the protection of their rights. In economic, social, and cultural rights, a third or more of the respondents have chosen that category. Those who believe that their various rights are not protected are even more revealing when it comes to protection of those rights. A half of the respondents believe that their civil and political rights are not protected, while

over a third says so regarding their economic rights. It is in social rights and cultural rights where less than a fifth of the respondents in each case, believe that those rights are not protected.

The fact that the various rights are not properly protected suggests the weaknesses experienced in the implementation of international refugee law at domestic level, since many of those rights are stipulated in the law. What are the problems experienced in the protection of human rights of refugees in Kenya? This is a question that needs some thorough analysis.

First, for protection of human rights to be realized at a domestic level, there is need for well established instruments and mechanisms to that end. In Kenya, as discussed earlier, the state has established a department for refugee affairs to handle refugee issues. However, for a long time it lacked refugee legislation that would clearly provide for specific refugee rights and obligations. The lack of legislation was therefore a major problem regarding protection of human rights of refugees. Institutions such as UNHCR and Refugee Consortium of Kenya (RCK) play significant role in regard to human rights of refugees, however their role is more of advocacy and training the personnel on what international refugee law provides in those regards. That is, effective implementation of refugee rights would require that the government of the host country has mechanisms in place. The government has to be at the forefront in guaranteeing those protections.

Second, protection of social and economic rights requires enormous resources. Rights such as provision of health services and education require sufficient human and financial among other resources. Although the various implementing agencies play

important role in the provision of these services, they face challenges with regard to the availability of adequate resources. Furthermore, those services are only provided to the camp refugees, leaving the urban refugees uncovered. The latter category could have been assisted by the government or UNHCR if those services were extended to them. It is important to point out that the government of Kenya faces difficulties in providing some of the social services such as clean water, health services, and education or to ensure provision of job opportunities to its own citizens. It therefore does not extend these to refugees, in the latter case serious legal restrictions exist for refugees to get gainful employment.

Third, some of the policies that regulate refugees in the country themselves raise human rights questions. Although some of these are necessary particularly when analyzed from security dimension, they may be in breach of fundamentals of human rights. The policy that curtails unauthorized refugee movement from the camps for instance contravenes the freedom of movement. Encampment is another example of policy which though is necessary for controlling and monitoring refugees, as well as to hasten service delivery, confines refugees. Although the policy is not popular with UNHCR, the agency condones it as a way to avoid antagonizing the government.

Fourth, the promotion and protection of human rights work effectively in a system where not only human rights are customarily integrated in the statute books but also strongly adhered to by both the implementers and the population at large. Kenya has had its dark side on human rights issues particularly during the one party autocracy. Although strides have been taken to address those anomalies, both constitutionally and politically, the relics of human rights violations still exist in certain quarters including

those of refugees. Furthermore, the ordinary citizenry is not quite versed with human rights issues. The general population is also not versed with the international refugee law. This could be a source of violations of refugee rights.

There are also stereotypes about refugees not only among the citizenry, but also the politicians and even senior civil servants. The expression by a permanent secretary for internal security that refugees “are not in their village” underscores this. It reveals existence of xenophobia. There are also those who for some reasons believe that refugees live very lavish life, have a lot of money, and get assistance that make them be much better off economically than the citizens. Some of these beliefs are fallacious. The fact that they cannot get gainful employment places them at a disadvantage. It is for that reason that some refugees whose relatives have resettled abroad have to rely on remittance from those relatives. Reliance on assistance, whether from family members or service providers, does not practically empower refugees economically.

The dependency ratio among the urban refugees is quite high. This reveals that the “bread provider” is himself overwhelmed while the dependants are in a number of cases literally poor. However, individuals who support large number of their relatives are at times forced to rent large houses to accommodate their dependants. A university administrator had wondered why university refugee students in Nairobi prefer renting houses instead of living at the university halls of residence yet the former are quite costly (Oluoch, et.al, 2007). The main reason for that are financial difficulties they face that force them to rent rooms outside and share the cost in relatively larger numbers, thus making it more cost-effective for them.

A prime time news opinion question reveals the peoples' perception about refugees (KTN, Oct.18th 2006). The media broadcasters had put the question, "Should the Kenya government restrict the influx of refugees from Somalia?" This question was posed to the viewers at a time when the influx of refugees from Somalia was reaching an all time high. Forty nine (49) percent of the respondents did to the affirmative while fifty one (51) percent were negative. Almost half of the respondents wanted restrictions, including total ban of any further entry. This is a manifestation that many people do not understand the provisions of international refugee law. They are probably not aware of the principle of the right to asylum as provided for in both the Universal Declaration of Human Rights (1948) and the Geneva Convention on Refugees (1951). Besides, they conceive refugees to contribute to some of the socio-economic problems that the country faces.

Furthermore, they are probably not aware of the principle of non-refoulment as provided for in international refugee statutes. It was evident that the broadcasters on reading the reasons given by the respondents for their responses dwelt on only those given by those who approved of the restrictions, even though they were two points below those who disproved. The media apparently had posed the question not necessarily to gauge public opinion how refugees and asylum seekers, but probably to set precedent to restrictive measures.

As such, in order for the protection and promotion of refugees' rights to be attained to satisfactory level, there is need not only for an informed citizenry, but also political will. There is also need for framework, including legislation to respond to the various refugee rights issues. Refugee rights cannot be addressed adequately only by a refugee

legislation. There is also need for a specific anti-discrimination law. That is because much of what can be rightfully termed as violation of refugee rights, actually emanate from discriminative tendencies. Aspects such as xenophobia can best be addressed by cultural transformation of a people through education, both formal and non-formal, as well as to economically improving the standards of living of the local people.

4.8 Refugee Education at the Camps

Analysis of the subject matter requires understanding of refugee education. Education is a human rights issue and is provided for in the various international instruments. An understanding of education in the refugee context in Kenya therefore requires an overview of the provisions of those instruments. The United Nations, through its charter and conventions shaped international law that informs the necessary policies that are essential in the study of refugee rights, in this case, their education.

Article 3 of the UN charter for instance provides that the member nations "...reaffirm their faith in the fundamental human rights...to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all..."(Shaw, 2003). The preamble of the Universal Declaration of Human Rights (1948) is even more categorical. It enshrines the rights and freedoms irrespective of ones status. Among the specific rights that the declaration provided for is that of education. Although not intended to be a binding document, the declaration forms the legal basis of the various international human rights instruments. It also lays the foundations on which states and other actors are expected to behave with regard to human rights by specifying

that “no state, group or person may engage in activity aimed at destroying, or denying those rights and freedoms” (Shaw, *ibid.*).

The International Covenant on Economic, Social and Cultural Rights (1966) is another important source of rights pertaining to education. Article 13 of the Covenant requires the contracting states to provide free and mandatory elementary education. It further provides that contracting states make post-elementary education to be accessible to all (Brownlie & Goodwin-Gill, 1998). Although these provisions do not specifically address refugee education, they are crucial in understanding provision of education in accordance to international law. The 1951 Convention on Refugees specifically addresses refugee issues including their education. Article 22(1) states that, “The contracting states shall accord refugees the same treatment as it accords its nationals with respect to elementary education”. In article 22(2), the Convention provides that refugees “shall be accorded treatment as favorable as possible...not less than that accorded other aliens...with respect to education rather than elementary education, and in particular as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges, and the award of scholarships” (Brownlie & Godwin-Gill, *ibid.*).

To what extent are these provisions of the Convention implemented in Kenya’s case? What mechanisms are put in place to implement them? What are the challenges encountered in provision of refugees education in Kenya? These are some of the questions that this subsection addresses. Provision of education to refugees in Kenya is quite crucial particularly in considering their demographic composition. In this research, about 80 percent of the refugee respondents were thirty years old or younger, while over

half of the respondents were aged 18 to 25 years. The latter category constitutes high school and college going age. Those between 25 and 30 combine the college or university age and work age and need to be considered in the policies of those respective areas. Even among those who are over thirty, many arrived in Kenya when they were within the school-going age bracket.

Refugee elementary and secondary education in Kenya is primarily provided at camp setting. This is in line with the state encampment policy. That is the provision of refugee education at these levels is principally done by UNHCR and its implementing agencies. At Kakuma, the main implementing agency is Lutheran World Federation (LWF) through Department of World Federation (DWF) while CARE (K) is the principal implementing agency of refugee education at Dadaab. They build schools, hire teachers and education administrative personnel as well as provide educational materials and equipments. However the government's education policy still applies even in the camp schools. The government provided curriculum that is used in public and private schools applies at the refugee schools as well. The structure of education also has to be implemented as per the Ministry of Education's policy. This extends from pre-school programs to secondary school. As such, the refugee students at the camps are theoretically equipped with the same knowledge that students in other schools in the country are given. They for instance have to be taught Kiswahili, while the principal medium of instruction is English.

Furthermore, at the end an education program, the candidates have to take the exams administered by the Kenya National Examinations Council (KNEC), those are Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary

Examinations (KCSE) for primary and Secondary Schools respectively. These are the same exams that candidates pursuing education under the Kenya schools curriculum are examined in. The general principles and policies in regard to education also apply in the case of refugee schools. However, they do not get government grant nor would students there qualify for government bursaries. Education at the refugee schools is free since the students do not have to pay fees. This is actually a step ahead the government education system whereby free education is limited to primary education, while a 2008 education policy provided for subsidized tuition fee in public secondary schools.

At Kakuma, as mentioned above, the day-to-day management of schools is the responsibility of LWF/DWF. There is an overall education coordinator who is in charge of all education programs. The coordinator is assisted by a refugee counterpart who holds the title of director of schools. Theoretically, the director is at par with the coordinator and is suppose to perform the same tasks. However in reality the real authority is with the coordinator. Furthermore, the director is not remunerated and gets just incentive allowance. The organization also has school inspectors who in essence are the field officers. All inspectors are refugees, and like the director, are not entitled to remuneration. They play important role in liaising between the school administrators and the organization. As such, their input is crucial in determining the direction of education at the camp schools.

As of early 2006, 63.7 percent of school age (5 to 25 years) was enrolled at six (6) pre-schools, twenty four (24) primary schools, and five (5) secondary schools at Kakuma camp. The data below shows the actual enrolment for each of those levels of enrolment.

Table 14: School Enrolment at Kakuma

Level	Boys	Girls	Total
Pre-primary	3,231	3,088	6,319
Primary	16,829	6,301	23,130
Secondary	2,379	365	2,744

Source: UNHCR, 2006

The fact that over sixty (60) percent of the school age persons at Kakuma camp actually go to school is a manifestation of a meaningful attempt by the UN agency, its implementing partners, the donor community and the Government of Kenya not only to eradicate illiteracy among the refugee population, but also to enable them acquire some skills through the education. Among those who graduate from primary schools and even secondary schools, some are expected to proceed for vocational training. Those who perform very well at secondary exams may proceed for further education and be equipped with professional skills.

However, refugee education at the camp schools is plagued with myriads of problems. The classrooms are quite congested. The classroom/student ratio is 1:60 in pre-schools, 1:85 in primary schools, and 1:56 at secondary schools. These are much higher than the UNESCO and government recommended ratios of 1:35. Congestion in classrooms results in unfavorable learning environment. This is a situation that is worsened by lack of furniture, shortage of textbooks and other learning materials. In primary schools for instance, about fifty percent of the students sit on dusty floors or

share desks. The desk/student ratio in primary is 1:4, which is higher than the minimum recommended ratio of 1:3.

The teaching staff is another area of problem in refugee education. There is shortage of teachers both in numbers and in training. The teacher/student ratio at Kakuma is 1:50, a ratio higher than the recommended 1:35. Furthermore, since the T.S.C. does not provide teaching staff to the schools, the schools lack qualified teaching staff. These are problems that disadvantage the refugee students as they cannot compete effectively with those in other schools in the country. With the relatively few secondary schools at the camp, it means that many students actually do not make it to secondary. A fundamental cause of these problems is that refugee education at the camp schools rely on donor funding, which have been dwindling.

From the table, gender disparity is quite glaring. Although the overall female/male ratio at the camp is about three-fifth (table 14), this is not proportionately represented when it comes to enrolment in schools. While at pre-primary level the female/male ratio of enrolment is almost at par, at primary schools, this gets to just less than one-third. At secondary level, the ratio even becomes worrying- the number of female students being almost a sixth that of male students. That disproportionate representation can best be attributed to cultural practices such as early marriages for the girls. This study establishes that the dropout rate for girls is quite high right from primary school. Some dropout due to teenage pregnancies and do not resume studies after delivery. Culture plays a role by compelling the girls to get married, as opposed to remaining as their societies' laughing stock. Others are simply forced into early marriage as a means of accumulating wealth by the parents, a practice that is common among the

Sudanese. The lack of sanitary pads for girls for along time discouraged girls from proceeding on with education, or in some cases simply encouraged truancies amongst them, thus resulting into poor academic performance. The failure to perform well in schools is a factor that discourages the girls from proceeding with their education. In many refugee societies, like in a number of African traditions, girl-child education is simply not encouraged.

Although the data reveals attempt to promote education among the camp refugees, that about forty (40) percent of the school age are not registered in the schools is quite revealing. That is a significant proportion to be out of school. Furthermore, the data does not include those who are above twenty five years of age but are illiterate. Considering the disruptions that forced them to flee from their home countries, a significant proportion of those could be illiterate. Evidence at the camp reveals that a significant proportion of the adult refugee population are actually illiterate. This is a scenario not confined to Kakuma but exists at the Dadaab camps as well.

The data below represents school enrolments at the Dadaab camps of Ifo, Dagahaley and Hagadera as of January 2006.

Table 15: School Enrolment at Dadaab Camps

Level	Male	Female	Total
Pre-school	3,107	1,979	5,086
Primary school	14,351	9,273	23,264
Secondary	1,386	255	1,641

Source: UNHCR, 2006.

An analysis of the above data reveals some similarities and differences as well as a pattern when compared to that of Kakuma (table 15). There is evidently gender disparity in enrolment right from pre-school level. That is unlike at Kakuma where there is some parity at pre-school level. At Dadaab, the female/male ratio at pre-school is almost 1:2. At primary school, the female/male enrolment stands at about three-fifth, while at secondary, like in Kakuma, the disparity is more glaring at almost 1:6.

As stated earlier, majority of refugees at Dadaab camps are Somalis followed by Ethiopians. Eight other nationalities are represented at the camp. Overall, the gender composition is almost at par. As at early 2006 for instance, there were 66,550 female Somalia refugees while their male counterpart was 69,002. During the same time, there were 1031 Ethiopian female refugees and 1406 males. The other nationalities are also not disproportionately represented in terms of gender. However, in school enrolment, there is gender disparity that is wider at secondary school enrolment. The combined enrolment ratio for elementary and secondary school is 65 percent for female while it is 97 percent for male. What attributes to such disparity?

As in the case of Kakuma, traditional beliefs could be partly responsible for the low female enrolment. That is practices such as early marriages for girls. Belief that girls are a source of wealth in terms of dowry and bride price among the traditional societies would militate against female education. At Dadaab the predominance of Somalis could also mean that Islamic practices have a bearing on the level of enrolment. Male chauvinism is a reality in the predominantly Muslim communities to an extent whereby men and women do not even share the same worship places despite sharing religious faith. If education is viewed as a source of advancement, then providing education to

both men and women would result in gender equality, a development that would be viewed negatively. The fact that camp schools are mixed schools therefore complicate matters for the girls in that religion require some form of social segregation. Issues such as the wearing of uniform without veils even discourage the girls more. Factors such as lack of sanitary pads run across the board in discouraging the female refugee population from enrolling in high numbers in schools.

Among the Somalis, women do much of the family chores. This leads to the teenage girls spending greater part of their time doing such chores, thus, has the potentiality of affecting their academic performance. As a result, many of them may not be able to effectively compete for and get admitted into the few places that are available at the three secondary schools at Dadaab. The same scenario is likely to be taking place among female refugees from other nationalities.

As in the case of Kakuma problems such as classroom congestion and high teacher/learner ratio exist at the Dadaab schools. The teacher/learner ratio at pre-school is 1:66.7, 1:49.1 at primary school. At secondary school, the ratio is 1:40. These negatively affect learning for the teachers do not get to know their students well and thus cannot effectively attend to their individual academic needs and identify the problems that affect their performance. These are crucial stages of learning whereby there is need for the learner to get the attention of the teacher. There is need for mutual interaction between the two for effective learning to take place. The result of the ratio is that the teacher is overwhelmed. Worse still, majority of the teachers here, as in Kakuma, are not trained and thus, may not have the techniques to diversify their teaching methods to cope

with the diverse needs of their students. The result is that many of the students end up not performing well in national exams.

Furthermore, there is limited space particularly in secondary schools to admit those who would aspire to proceed with their education. As in the case of Kakuma, not all those who would wish to get literacy training are of school going age. Furthermore, some adults who would wish to join schools have to spend significant part of their time fending for their families and such, their schedule do not fit into that of formal schools. In short, not all refugees who would aspire for education can fit into the formal school system

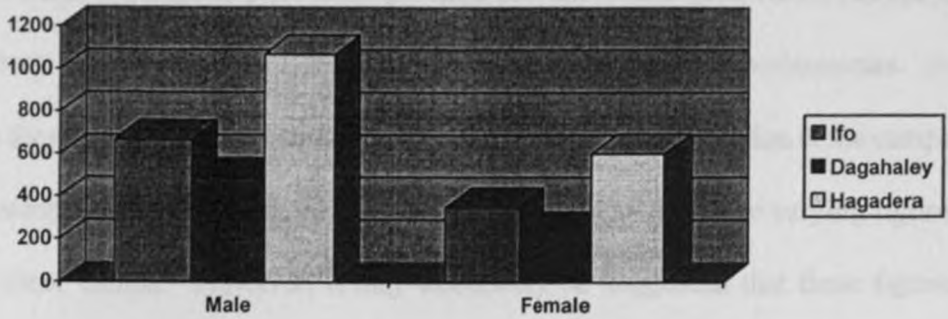
How are such anomalies addressed to promote refugee education? Several steps have been undertaken by the various actors.

The need to expand education to go beyond capturing traditional students has led to initiating special education, vocational education and adult education programs at the camps. At Dadaab CARE provides special education to elementary learners with hearing, visual, mental, physical and other impairments. This program has made some strides in ensuring that some of the less fortunate are actually not left behind in the field of literacy. As of 2006, the program had 925 enrolled male students and 485 female students with a total of thirty five teachers. At Kakuma, LWF/DWF equally runs special education programs with some level of success.

As stated earlier, many refugees come to Kenya without any educational background, yet they are already adults who may not fit into primary education system well. It is against that background that adult education programs were started at the

refugee camps in Kenya. This seems to be a popular program looked at from the number of those who were enrolled at Dadaab in 2006, as shown in figure 9 below.

Figure 9: Adult Literacy Enrolment



Source: UNHCR 2006.

There are a few conclusions that can be drawn from this data. As with the case of formal school enrolment, it shows gender disparity. However, the female/male ratio gap is narrow here, that is, 1:1.8. This in itself shows that the program is a meaningful way by which the adult refugee women get literate. This would be crucial not only for their managing family affairs but also useful in communication, as well as starting and running of small business enterprises. It also inculcates into them the values that education imparts. However, the narrowed gender gap does not mean that the program has been wholly successful. It for instance has not benefited all potential candidates. Cultural dictates is still a problem among the societies where women are viewed to be meant for taking care of children and home.

Furthermore, there is the problem of raising adequate and trained manpower. At Dadaab, there are only thirty adult literacy teachers. This is quite a small number to effectively impart knowledge among the over three thousand students. Precisely the

teacher learner ratio here is 1:113.9. Furthermore, the teachers lack the adequate training and are mainly volunteer workers.

The program has equally not tapped the potential male candidates. Here is also a case where cultural beliefs and pride amongst men prevail. Some men would not enroll for adult literacy classes for fear of being looked down upon by women classmates. As such, despite these attempts, illiteracy still exists within the adult population at the camps.

This study did not establish the exact reasons as to why there are varying figures between the three camps. However, it may accurately be suggested that these figures reflect the refugee population at each camp. As of January 2006, Ifo for instance had 52,334 people. Hagadera had 51,962 while Dagahaley had the smaller number of 34,567. That Hagadera has a higher enrolment than Ifo which has a slightly more total population could suggest the former has more people who require adult literacy program. The different figure for enrolled students may also suggest the aggressiveness and competence of the teachers in promoting the program at the respective centers.

The number of secondary schools at the camps is inadequate to admit those who qualify from the primary schools there. Furthermore, many of those who graduate from primary schools do not have the points that would enable them proceed to secondary schools. There are also quite limited chances outside the camps for those who take primary school certificate. As a way to address such inadequacies, vocational training for the youth is established at the camps. These are critical in equipping them with the necessary skills in trades such as carpentry, weaving, etc. Furthermore, education planners at the camps have also embarked on provision of non-formal education. These

are meant to provide knowledge, skills, values and attitudes that are necessary for the refugee well-being.

A major challenge to the attainment of educational objectives at the camp schools is shortage of qualified manpower. Attempts have been made to alleviate this through manpower training. As stated earlier, at Kakuma, LWF/DWF for instance involved in the training of school inspectors and other education officials with the aim to equip them with the necessary skills for their tasks. This involves some residential training in collaboration with the University of Nairobi. The agency also assists in training those who would become pre-school teachers.

In 2005, UNHCR in collaboration with the Ministry of Education started a primary teacher training program at Kakuma. This program has two main objectives. First is to provide the trained resource personnel to teach at the camp primary school which for along had been mainly manned by untrained teachers. Second, the college was established with a view to train teachers to help in the provision of education to returnees in Southern Sudan. Due to the second reason, the program mainly targeted Sudanese refugees. Applicants were required to have secondary school certificate. The program initially targeted 500 teacher-trainees. This is a two year program that was supposed to wind up with repatriation of Sudanese by 2006. However, due to the realities surrounding repatriation, the program is still on.

The Ministry of Education provides the general policy in regard to the program. It for instance provides that the students take an exam that is administered by the KNEC. To reflect the peculiarities of the program, the exam is a special one called International

Primary Teachers' Education Certificate (IPTEC). The implementation of the program involves the UN refugee agency and its partners such as Windle Trust (K).

The policy of training teachers for the camp schools was quite a noble idea considering that Kakuma alone has about 450 untrained teachers at the 24 primary schools. However, the results for the first batch who sat for the exams in July 2006 suggest that this is another program facing challenges just like the other sectors of education at the camps. Of the 215 candidates who sat for IPTEC, 100 reportedly failed the exams (DN, Nov. 20th 2006). That is 46.5 percent failed the exams; quite a high percentage. Such large percentage of failures may be attributed to problem of the unfamiliarity of the teacher-trainees and their trainers alike with the curriculum, exam requirements, etc. It also reflects lack of adequate preparedness for the program. It was started like an emergency program with the minds set on Southern Sudan. This means that the manpower was not trained for the program, nor were there adequate and necessary facilities to train the candidates. It also suggests that a number of those who were admitted to the program had weak passes at secondary school level, a vicious cycle of problems facing refugee education at the camps. The fact that the focus of the program was on Sudanese students implies that refugees from other African countries who would probably have stronger secondary school certificate passes are left out in favor of those from Sudan. Two hundred and one (201) candidates were from Sudan. Ethiopia and DRC on the other hand had two candidates each, while one candidate was from Rwanda. The results of the exams also reveal the gender disparity among refugee population at post-secondary education. Only nine candidates were female. This may partly be explained from the point of view that only a few female refugees, compared to

their male counterparts, complete secondary school education, thus leaves a very thin pool to recruit the candidates from.

While the program is focused on training primary school teachers, it also incorporates exams for adult education teachers. Sixty two candidates sat for adult education certificate, fifty six of them passed. Five candidates were referred while one candidate failed. Such exams provide adult literacy teachers with the necessary skills and confidence in performing their responsibilities.

In regard to gender disparity in school enrolment, stakeholders have played key role of advocacy and sensitization of the refugee population on the significance of girl-child and female education. Furthermore, the introduction of free sanitary pads by IRC and CARE for instance has yielded some positive results. At Kakuma an upper primary school for girls was constructed by funds from Angelina Jolie. The school was opened in June 2005, and in July of the same year an exclusively girls secondary school was opened at the camp to increase girls' enrolment.

It is important to note that the establishment of schools at the camps has not benefited only refugees. They have also benefited the young persons from the local communities. According to UNHCR, 13-15 percent of those receiving education in refugee camps are from local communities. That is about 7,000 students in total. At Kakuma, one primary school is exclusively established for pupils from the local Turkana community. At Dadaab two additional classrooms were constructed at a secondary school to accommodate increased number of local Somali community. There is also provision of free technical consultancy for the locals. At the refugee camps, thousands of pupils from local communities also benefit from school feeding program. Considering

that availability of food is a problem among the local communities at the camp areas, this does not only relieves short term hunger for them, it also improves attendance.

Having analyzed refugee camp education, it is imperative to focus attention to refugee higher education.

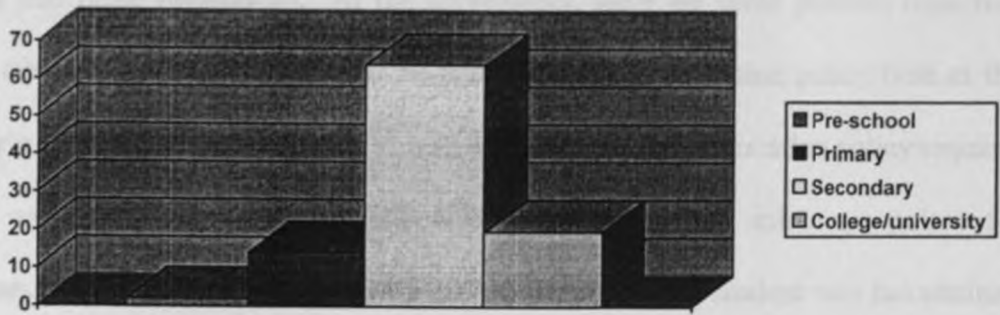
4.8.1 Refugee Higher Education

As discussed above, education at the refugee camps is concerned with primarily pre-school, primary and secondary school education. However, an analysis of refugee education from the policy perspective in Kenya would be incomplete without an analysis of refugee higher education. In this section, the prospects and actual refugee higher education is analyzed.

Asked if they have ever enrolled at an institution of learning in Kenya, 69.61 percent responded to the affirmative, while another 30.39 percent responded to the negative. The latter category are most likely to have migrated to Kenya as grown ups, some of whom were educated in their home countries. From the responses here it is evident that a significant proportion of refugees get their education while enrolled at the various levels of institutions in Kenya. Some of them manage to attain higher education, which according to this study include studies at tertiary institutions and universities. It is in this regard that it is important to analyze the existing policy on higher education from refugee perspective.

The data in figure 10 below represents responses regarding the institutions to which the respondents have been enrolled at.

Figure 10: Educational Institutions Enrolled At



Source: Field Data, 2006.

From the above data, it is evident that majority of the respondents in this study managed to get secondary education. That is over sixty percent attend or attended secondary schools. A number of respondents had indicated that they had registered at pre-school, primary and into secondary schools. Another significant number indicated that they had registered at both primary and secondary schools. However, to avoid double entry, in the tabulation of the data this researcher entered the higher institution to which one was registered.

About twenty percent of the respondents indicated that they are pursuing college/university education in Kenya. Some of those who have completed or are almost completing high school may qualify and be willing to go for further education. The actual number of refugees pursuing college or university education in Kenya is not precisely known. However, in a related study that we conducted at six public and six private universities in the country, it is evident that they are enrolled in all the universities. That implies that refugees' lust for higher education in the country is real, thus, the rationale to assess the existing policy in that context.

A crucial policy area regards admission of refugees to institutions of higher learning into these institutions. At the universities, there are clear policies regarding student admission. However, there is no specific refugee admission policy both at the Ministry's level and at the individual universities. The existing education policy requires that all universities, private or public have to have specific minimum points for admission. This is currently a C+ at KCSE. As such, a refugee student who has attained the required grade from Kenya system of education may apply and be admitted to a university.

The Ministry of Education, through the Commission for Higher Education, vets certificates and diplomas of applicants that are issued under other systems of education. That is a requirement for foreign or international students who have those credentials from other countries. In that regard, refugee student who has attained a foreign certificate or diploma from a foreign country and wish to be admitted to a Kenyan university has to have that credential verified and approved by the commission before such an admission may be effected. This is a requirement that is meant to ensure quality control of education.

At Moi University, the Center for Refugee Studies plays an important role on research on refugee issues. Due to its network with refugee organizations, there are cases where it has played roles that facilitate the admission of refugee students at the university. The significant presence of particularly Sudanese refugee students that are admitted at the university every year is a manifestation of that effort. However, generally at the Kenyan universities, refugee students are neither admitted nor categorized as refugees. In several cases, they are admitted as international or foreign students. Such

categorizations affects them adversely particularly with relevance to the tuition and fees they have to pay.

Refugee conditions are definitely different from those of traditional international students, particularly those who have come to study in Kenya. Furthermore, higher education in Kenya is relatively expensive to those in other countries within the region. As such, categorizing refugees as international students has the potentiality of blocking many of them out of education, particularly for those who do not get adequate sponsorship, or those who are self-sponsored. A German or a French student who registers at a Kenyan university as an international student may not feel the burden of paying tuition and fee as an international student. A son to a Cameroonian cabinet minister or a daughter of a Nigerian bank executive enrolled at say University of Nairobi may not feel the real burden of payment of tuition and fees. These are traditional international students, whom before they decide to enroll for studies at Kenyan Universities must have analyzed the cost-benefit implications. However, categorizing refugee students, some of whose parents are also probably refugees together with the latter two for tuition purposes inevitably creates problems, including undue hardship.

With the introduction of Module II or self-sponsored programs at the various public universities, a number of refugee students are increasingly admitted into the public universities under those categories. As discussed in the previous section, refugee education at the camps faces numerous problems. As such, students from the camp secondary schools find it difficult to compete effectively against candidates from some of the best schools in the national secondary school exams. Some of the top students from the camps therefore fail to secure chances at the universities through regular admissions,

thus opt for Module II or self-sponsored programs, which are much more expensive compared to the regularly admitted students, the latter receive education loan advances from the Higher Education Loans Board (HELB).

A significant proportion of refugee students who pursue university education rely on scholarship. There are numerous organizations that sponsor refugee university education. These include UNHCR, Jesuits Refugee Services (JRS), International Rescue Committee (IRC), Don Bosco, Windle Trust Kenya (WTK), Windle Trust International (WTI), the Lutheran World Federation (LWF), Nardo, World Vision, the Swiss Embassy, and the British Council. These agencies sponsor refugee students on the basis of need and academic performance among other prerequisites. Some sponsor agencies target students from particular nationalities. Such include New Sudan Council of Churches and the Southern Sudanese Peoples' Government that sponsor a handful of students from Southern Sudan. The two refugees who indicated that they are from Indonesia are sponsored by the Church of Taiwan.

The government of Kenya also sponsors students through the disbursement of HELB loan. The beneficiaries of this, like their Kenyan counterparts, are those who are admitted to the public universities by the Joint Admissions Board (JAB). They must have done their secondary school exams at Kenyan schools and excelled. These however are very few students, considering that those admitted to the universities through JAB by 2011 must have secured at least a minimum grade of B+. A couple of students I interacted with and indicated that they are sponsored by the Kenya government happened to have done their secondary school education at schools outside the camp, a factor that increased their chances of better performance in the national exams.

Sponsors of refugee students have policies and guidelines determined by their objectives. In some cases, this determines even the universities to which the recipients get admitted into. They may also determine the area of study that a recipient to scholarship gets into. Religious organizations such as Misio and St. Peters Apostles for instance, require those whom they sponsor to be admitted at Catholic University of Eastern Africa. They should also be those who study theology and/or religious studies. They actually disburse funds through the university.

From the foregoing, Kenya actually implements the international law in regard to refugee higher education. The Ministry of education provides policy guidelines. But the intricacies regarding the implementation of those policies are provided by the institutions themselves. Second, the implementation of higher education policy in refugee context, like in other areas of refugee regime involves several actors. In fact it is another area in which the liberal-idealist theory manifests itself in the analysis of this work. Fundamental human concern for others is demonstrated through financial assistance to refugees in order for them to be able to meet their educational cost. Liberal-idealism asserts that people are capable of mutual aid and collaboration through reason and ethically inspired education. This is evident among the actors in higher education. The theory also emphasize on humanitarian concern and welfare of others. The provision of higher education demonstrates the desire of the actors to ensure that refugees' welfare is advanced. Although the traditional emphasis of the theory was concerned with the preservation and promotion of world peace, its emphasis on the development of international law, and entails legal rights and obligations are quite applicable in the provision of education.

There are challenges encountered in refugee higher education. Public universities usually peg regular admission to bed-capacity. As such, as of 2006 the six universities and a constituent college could only admit about ten thousand students every year. That forces JAB to raise the actual minimum points for admission to much higher level than the stipulated C+. The cut-off point for 2006 admission was for instance raised to a minimum of B+. That leaves over fifty thousand qualified students out. Refugee students are amongst the worst victims, particularly owing to the fact that the camp secondary schools are usually not among the best performing ones in the country.

Another factor affecting refugee access to higher education is that of getting a sponsor. The existing agencies that sponsor refugee higher education can only assist a particular number of students per year. There is very high competition for those resources such that not all eligible students manage to secure funding. Furthermore, the agencies also have to rely on donations by well-wishers, particularly from the developed countries. However, there are indications that the funds are dwindling. In the course of this research, a number of Sudanese students inquired from me if I could help them get sponsors to enable them get admitted to universities in Kenya. They all had good passes at secondary school in Kenya.

Asked about the sufficiency of funding towards their education, all the respondents pointed to deficiency. Sponsors usually pay for tuition and fees. The students in most cases have to meet the expenses for their other needs. Some have to depend on friends and relatives for other financial needs. There are also cases where some sponsors fail to meet their obligations. There are for instance cases where individual sponsors disappear before their students complete their studies. Funding may

also be affected by interruptions of learning particularly at public universities. This is also a phenomenon that characterizes particularly sponsorship by individuals. Some sponsors withdraw their support after specific period, yet repeated abrupt closures are a common feature of Kenya public universities. The closures are prompted by students' or lecturers' strikes, students' fights, and other forms of disorder.

The principle of freedom of education requires that students enroll at the institutions of their choice and select major in areas of study. However, this is not usually the case in Kenyan university systems. At the public universities, the universities themselves decide on where a qualified student gets admitted to and decide on the areas study. Although the students are allowed to request for inter-faculty transfer, this is not always granted. As pointed out earlier, with regard to refugee students, the sponsors also have a role in determining these. Some sponsors prefer particular private universities. At the same time, some of the scholarships available are allocated to only specific major areas of study. Furthermore, the students' also face problem of deciding on the major areas of their choice due to lack of sufficient information regarding the programs prior to their joining the institutions.

University students usually look forward to rewarding careers at the completion of their studies. However, refugee students are disadvantaged in that the Kenya system does not allow refugees to be employed. This results not only in lack of focus, but also that of motivation to complete the programs. Refugee students are required to have student permit. Sources suggest that some of the refugee students slow down their progress toward completion of studies since once they complete then they cannot renew

the permit. Without the permit they are usually victims of the law enforcement harassment in the town.

The problem of non-acceptance of transferred credits by some of the universities also affects refugee students who have undertaken some college education abroad. That means that they have to start as college freshmen despite having spent some time in college. Also disadvantaged are those who pursued their secondary education or college education where English is not the medium of instruction. Such include students from Sudan, Rwanda, DRC, and Burundi among others. They have to spend some time taking English remedial courses and take form of English tests before embarking on academic work. These do take sometime and in the latter case, may disadvantage a student from getting a sponsor who is willing to meet the cost for both language and academic programs.

4.9 Discriminatory Tendencies toward Refugees

This study established that one of the major problems that characterize the implementation of international refugee law is discrimination against refugees. This is a problem that emanates not only from some of the policies in place, but also from the policy implementers, service providers, as well as from the host population.

As shown in table 16, about twenty percent (19.23) of the respondents indicated that the hosts' attitude is discriminative, while an even larger percentage (40.39 percent) indicated that the hosts are hostile. As such, majority of the respondents generally rank the hosts negatively as far as their relations with the refugees are concerned. Like in the cases of those who ranked hosts positively, those who ranked them negatively also did

not consider only the ordinary persons, but also included service providers and government officials. It is important to analyze perspectives which informed the response of the about sixty (59.61) percent of these respondents.

Those who stated that the hosts' attitude towards them is discriminatory may be based on their knowledge of international law with regard to refugees, the existing domestic policies, and their experience with the ordinary citizenry. Various instruments on international human rights implicitly or explicitly prohibit discrimination. The Universal Declaration of Human Rights (1948) for instance provide for respect of the rights of all human beings irrespective of factors such as nationality, race, religion, or sex. In providing grounds for accepting refugees by the host state, the 1951 Convention spells out fear of persecution in the state of nationality based on race, religion, political opinion, or membership to a social group, or nationality. In that regard, when a state grants asylum to a refugee, then it accepts the obligation of protecting not only his physical security and well-being, but all his fundamental rights. As such, where there is infringement on such rights by the hosts, a refugee would feel that he or she is being discriminated against.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provide for the right to life and physical integrity, the latter include protection of women against violence. It also provides for the right to fair trial and due process, access to health care services including reproductive health that addresses elimination of discrimination, female circumcision and trauma treatment and counseling. The instrument further provide for rights to family and private life, equal rights in economic life, and equality before the law. In situations where the national government

does not provide for these rights specifically in regard to refugees, then their women population's rights can rightly be interpreted not to be well protected, thus being discriminated against.

International refugee law provides for the protection of refugees' human rights. These are not limited to fundamental (non-derogable) rights, but also include economic, cultural and social rights. However, some of the existing policies and practices raise questions about the actual protection of these rights that to an extent make refugees believe that they are discriminated against. Encampment policy is an example of those policies that evoke such questions. Although as discussed elsewhere in this work, there are rationales for the policy, it raises fundamental human rights questions. Article 26 of the 1951 Convention for instance provides that contracting state "shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory". The article however also provides the limitation that these are subject to any regulation applicable to aliens generally in the same circumstances. That refugees are confined in barracked environments is a manifestation that their freedom to choose where to reside is curtailed based on the fact that they are not Kenyan nationals, and as such proves that nationality is an important factor here. Furthermore, refugees' movement is restricted to an extent whereby one cannot leave the camp without authorization. Encampment policy is a source of refugee harassment by the law enforcers particularly for the urban refugees and those who leave the camps to visit towns. They have been victims of extortion, arrests and confinement in police cells without trial. This study establishes that there are cases where the law enforcers, either due to ignorance or

just deliberately, refuse to recognize identification documents provided by the UN refugee agency.

Many applicants often have to wait for a considerable period of time before they are granted refugee status. Besides, there are those who get into the country unregistered and thus may be considered to have entered illegally. Both of these categories are quite often subjected to harassment. However, international refugee law protects even those who enter a country illegally with the intention of seeking asylum. Article 31 of the 1951 Convention provides that contracting states shall not impose penalties on account of their illegal entry or presence on refugees coming directly from territory where their life or freedom is threatened, provided they present themselves in good time (Shaw, *ibid*). Furthermore, the article stipulates that the movement of such refugees shall not be restricted until their status is regularized. There have been serious challenges posed to this provision, thus leading to its blatant violation. The provision with regard to illegal entry is well captured in the Kenya Refugee Act (2006). Section 11 (3) of the Act states, “Without prejudice to the provisions of this section, no person claiming to be a refugee within the meaning of section 3(1) shall merely, by reason of illegal entry be declared a prohibited immigrant, detained or penalized in any way save that any person, who after entering Kenya, or who is within Kenya fails to comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a minimum of one month not exceeding six months, or both”.

First, as discussed later in this chapter, security concerns are of significant challenge to upholding such a right. Kenya’s declared war against terrorism and al-

Shabaab in 2011 are illustrative of that. Second, the absence of a refugee legislation for quite along time in the country meant that the “good time” for those considered illegal by the convention were supposed to present themselves was subject to the interpretation of the law enforcers. The Refugee Act (2006) is however specific on the period to be within thirty days. Third, movement of refugees has been subjected to restrictions since the massive influx in the early 1990s. As such, the cases of those who enter illegally or are in the country illegally are least likely to get reprieve from that provision with regard to freedom of movement.

Another policy that makes refugees feel that they are discriminated against regards employment. The Kenya government’s policy is that refugees are not allowed to secure gainful employment. Indeed their being confined in the barracks is one way of ensuring the implementation of this policy. The government’s position is that its citizens are given first priority especially in the midst of spiraling unemployment in the country. A significant proportion of those interviewed and those who filled the questionnaire in this study have the requisite qualifications for securing gainful employment. Many of them would prefer staying in towns to get jobs and fend for themselves instead of being barracked in the camps for indefinite period. In fact, it is the failure of the system to integrate refugees within the economic system that majority of refugees would prefer resettlement into the developed countries where they would benefit from gainful employment. Furthermore, if the system could tap the talents of the refugees, they would prove to be assets to the country’s economy. Otherwise their continued confinement in the camps and dependence on aid make them to be more of liability.

Another source of discrimination is on the 'incentive worker' status that is accorded to the refugees who are employed by the various refugee agencies. Although incentive workers form the bulk of the workforce at the camps, the wide disparity between their pay and that of regular workforce is discriminative.

Policies regarding refugee education are also a source of resentment among refugees. This is particularly so with regard to higher education. As discussed in the previous chapter, primary and secondary schools have been established at the camps and thus are important in the provision of education to camp refugees. However, at the institutions of higher learning, refugees are considered to be international students and thus have to pay higher tuition than the regular students from other schools. Furthermore, they do not qualify for HELB loan and therefore have to get their own sponsors to proceed to those levels. As such, that limits the chances of their acquiring higher education locally.

Refugees often find themselves victims of the law enforcers and others who are suppose to ensure their protection. This is a phenomenon that affects mainly urban refugees. Regular raids to refugee dominated residential areas are characterized by assault and various forms of abuses, intimidation, wrongful arrests and unnecessary search and seizure. A number of refugees who are arrested are detained in police cells for many days without any charges being preferred against them, while others are forced to pay bribe to police officers to secure their release. Among refugee university students in Nairobi, expired student pass (identity card) is often a major cause of such harassments, yet the renewal of those documents upon expiry takes quite long.

During the 2008 political violence that followed disputed presidential elections in Kenya, armed police officers stormed a residence of refugees at Kapsoya in Eldoret and opened fire on unarmed, none provocative occupants, injuring many. Such a behavior on the side of law enforcers reveals refugee vulnerability at the hand of those who are suppose to protect them. Crackdown on refugees in Nairobi and other towns were well documented during both the bombing of Kikembela near Mombasa in 2001, and that of US embassy in Nairobi in 1998 (www.hrw.org). As Alion Parker points out in Human Rights Watch (HRW), “Refugees in Kenya are often at risk because of potential violence from criminal elements. It turns out they are also under threat from state police, who should protect them” (Parker, 1998). In the latter cases, refugees are often used as scapegoats whenever there is threat to security.

It is interesting to note that even the rules governing sports do not allow refugees to exploit their talents and realize self-actualization, and thus to the very least are discriminative. Statutes in the Kenya football rules for instance permit a team to register a maximum of two foreign players. In April 2009, a war of words emerged between Kenya Football League leaders, Sofapaka, and their runners-up Thika United, with the latter insisting that their rivals had enlisted Congolese “refugees” into the team (The Standard, 28th April 2009).

Cultural differences between the various refugee communities and the hosts contribute to what refugees may perceive to be discrimination against them. Some of the cultural practices or behaviors by either side at times look strange to the others. Many refugees particularly from Somalia, Ethiopia and Sudan are not able to speak or understand either English or Kiswahili. Those from the same ethnic groups speak in their

mother tongue even when they are among the hosts. Language barrier makes them be looked down upon by the Kenyans, many of whom would believe that they are illiterate. Language barrier prevents interaction between refugees and the locals. This minimizes socialization between them. From my observation, such refugees would not pay attention to TV news or football that is broadcasted in either of the languages at social places. In several cases, they would continue talking loudly in their languages. Such irritate Kenyan TV audience or football fans. That is, in situations when refugees behave in a manner that to Kenyans is “un-Kenyan”, then they are cultivating a ground to be looked down upon. However, such scenarios, besides being attributed to language barrier may suggest deep rooted psycho-social and economic problems that refugees experience due to their status as well as from their past experience.

A discussion I had with a group of Sudanese students at a university in Kenya reveals what they perceive to be peculiar about their Kenyan counterparts. They believe that the latter are too westernized and “too fast” and thus cannot cope easily with them. The refugee students point out that their Kenyan counterparts, unlike them, do not seem to adhere to their respective cultural norms. Such sentiments as much as they may hold some water, mainly reflect the cultural differences between the two groups. Furthermore, the different lifestyles that the Kenyan youth lead suggest their being advantaged to cultural modernization. Such differences may cause actual or imagined discrimination.

There is evidently some level of discrimination directed against refugees not only from the local population, but also from administrators and politicians. From the local population, this may be due to negative attitude arising from the fact that one is a refugee. I observed these both at Kakuma and Dadaab refugee situations, particularly when it

comes to public transport. At Lodwar bus terminal, a public transport agent is busy yelling at a group of young Sudanese that "...you are just but refugees...why do you have to complain!" In a bus from Dadaab, a local who is fluent in English, in reference to a group of Ethiopian refugees who kept disembarking and embarking when the bus stopped quipped, "...these people should just go back to their country". Such are expressions that represent the sentiment of many locals and reveal the plight that refugees undergo due to their status. It actually suggests that from the perspective of a number of locals, refugees are of lesser status than the nationals. Such perception further raise fundamental issue of refugee rights, particularly that of human dignity.

The administrators and security personnel particularly at the Dadaab camps on the other hand perceive many of the Somali refugees there to be difficult and stubborn. And according to the same sources, refugees must be handled with high handedness to be receptive to authority. In this case the perceived character may be partly attributed to their experience as refugees and partly to their cultural background. The suffering that many of them undergo while being forcibly displaced from their home countries, compounded with the experience they undergo while in refuge to certain extent explains that. A refugee suffers from deep rooted insecurity arising from causes of flight. The violence that they experienced in their country and trauma of separation from family members has the potentiality of inculcating into them some hostile behavior. As such their not trusting anybody acts as a defense mechanism and this can take many forms.

The experience of Somalia itself is a clear representation of violent political culture in Africa. That is a thing that can be attributed to the traditional economic setting of pastoralism, compounded with the fact that much of the country is dry. The various

clans of Somalia have for a long time been waging conflicts against one another over pastures and water resources. The state failed to unify the various clans to the extent whereby they could live peacefully. Instead, the successive post colonial regimes exacerbated clan rivalry by favoring some at the expense of the others. The assassination of the country's president in 1967 and the violent overthrow of Barre in 1991, together with the ever ensuing inter-clan conflicts epitomize that political culture of violence.

Although the concerned officials feel that they have compelling reasons to exercise high handedness, the issue here is that international law requires that refugees' dignity be respected, in this case, by those who are suppose to be protecting them. Furthermore, the high handedness would be completely unjustified where those applying it generalize refugees from a particular country or all refugees to be deserving of the treatment. Besides, generalizations and stereotypes about refugees are not only common among the officials, but are cancerous among the general host populations.

Whenever refugees are treated in a particular derogatory manner mainly because of their status as refugees, then that would amount to discriminatory tendency. The treatment may be in the form of a policy, individual policy implementers or protection agency, or it could be from among the general host population.

4.10 State Response to Refugees in Security Context

This section discusses the response of the state to the problem of refugees in security context. The two main security issues that are analyzed in that dimension are the problems of terrorism and proliferation of illegal weapons.

4.10.1 The Impact of International Terrorism on Response to Refugees

Concerns about terrorist attacks influences implementation of international refugee law. Before analyzing the concept in refugee context, it is important to give some background on the subject matter. A major problem plaguing the study of terrorism is the lack of agreed definition. The State Department of United States for instance for instance emphasize on the political motivation of the terrorists while the Federal Bureau of Investigations (FBI) emphasize on its unlawful nature. Even politicians have viewed it differently, for instance while Palestinian's Yasser Arafat viewed it as a necessary method in the fight for the rights of Palestinians, President Ronald Reagan of United States viewed it as an act of cowards and criminals (Wilkins, 1992). The African Union Plan of Action defines terrorist act as an act which is a violation of the criminal laws of a state party and which may endanger the life, physical integrity or freedom. It is an act that cause serious injury or death to any person, any number of group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to intimidate, put in fear, force, coerce, or induce any government body, institution, the general public and any segment to do or abstain from doing any act, or to abandon a particular standpoint or to act according to certain principles, disrupt any public service and create general insurrection in state (AU Article 1).

Terrorism is thus a form of political violence that is aimed at destabilizing the existing social order by actual or threatened use of violence. The 1990s and the first years of this century have witnessed some of the worst terrorist attacks. These represents changed modes, magnitude of loss of lives and destruction, motives and the arms that are

used (Oluoch, 2007). Furthermore, they portray an upsurge in extremism particularly with regard to Islamic fundamentalism.

Kenya has not been spared terrorist attacks. The bombing of the US embassy in Nairobi in 1998 and the bombing of Israeli hotel and attempted attack on Israeli jetliner in 2002 are a testimony to that. The terrorist attacks in the US in 2001 gave grounds not only to the American government but the international community to coordinate and intensify war on international terrorism. The escalation of terrorism has led to the UN for instance to make it illegal in its entirety. This is unlike in the 1960s-1980s when its various anti-terrorism conventions and protocols dealt with specific aspects of terrorism such as safety of civil aviation. Subsequently the UN General Assembly in its resolution 49/60 (1994) requires members states to review urgently the existing legal provisions on the prevention of terrorism. In its resolution 51/210, the Assembly addressed the need to enhance international cooperation in devising and adopting effective practical measures for the prevention of the acts of terrorism and for the prosecution and punishment of the perpetrators (UN Convention on the Suppression of Terrorism).

The UN Security Council, through resolutions 1267 (1999), 1333 (2000) and 1363 (2001) imposed on the Afghan Taliban regime sanctions for harboring the Al-Qaeda leader Osama bin Laden and the failure of the regime to close down the organization's training camps in its territory. Following the September 11, 2001 bombings in the United States, the Council through resolution 1368 reaffirmed the UN commitment to combat by all means the threat to international peace and security caused by terrorist acts. It further recognized the inherent right of individual or collective self-defense in accordance with

the UN charter with regard to terrorism, and unequivocally condemned in the strongest terms the very acts.

Through resolution 1373 (2001), the Council calls for the prevention and suppression of financing of terrorism. It also calls for greater exchange of operational information needed by the UN member states and drafting of a single omnibus anti-terrorism law by the states (Kathryn, 2002). Further, at an extra ordinary summit of the Assembly in New York in 2005, world leaders urged governments to enact anti-terrorism incitement legislations. The resolutions by both the Assembly and the Council have spurred anti terrorism measures by the various regional organizations. In its Plan of Action for instance, the AU requires state parties to review their national laws and establish criminal offences for acts of terrorism (Article II).

The anti-terrorism measures taken by Kenya needs to be understood from the context that it is a member of both the UN and AU and is thus obliged by the organizations' anti terror measures. Furthermore, as discussed above, the country has been a victim of terrorist attacks that have had far reaching impacts in the socio-economic and political aspects of its life. The failure of the state of Somalia understandably puts Kenya at a vulnerable position of further terrorist attacks. It is in the latter that implementation of refugee law get undermined by the fight against terrorism.

Credible intelligence sources both of Kenya and America indicate that terrorist cells exist in Somalia. These are understood to be affiliated to Al-Qaeda, a fact given credence by Osama's claim that his fighters were involved in the killing of eighteen US troops in Mogadishu in 1993 when their helicopter was shot down (Kiplagat, 2007). Furthermore, intelligence sources indicate that the terrorist attacks of the US embassies in

Nairobi and Dar-es-salaam were carried out by those who were based in Somalia. The collapse of the state of Somalia makes it a fertile ground for terrorist operations. The evidence of Al-Qaeda connections in Somalia was further given by its number two in command, Ayman al-Zawahiri when he urged Islamists to join the fight against the Transitional Government of Somalia and its Ethiopian allies in early 2007. The Al-Ittihaad al-Islami, a fundamental Islamic group responsible for terrorist activities in the Horn of Africa is reported to be functional primarily from Somalia.

The Somalia terrorist scenario became even more complicated when it emerged that the UIC that was in control of a significant part of that country was actually backed by and supported terrorist organizations. In its fight against soldiers of TGS, it was reported that it recruited young Kenyans particularly from North Eastern specifically from Dadaab area. It also emerged that among those who were recruited from Kenya included Somali refugees. The recruitment of both Kenyan and Somalia youths would cause ripples within the Kenyan authorities looked at from terrorist and militia concerns. Further, the Al-Qaeda operatives among Islamists had declared jihad against Ethiopia in October 2006 (Daily Nation, 23.1.2007). Besides, al-Qaeda operatives such as Fazul Abdullah Mohammed, Swaleh Ali Saleh Nabhan, Taha al-Sudani and others whom the FBI suspected to be the masterminds of the terrorist attacks on the US embassies were believed to be operating from Somalia. It is in consideration of such facts that the US bombed the Somalia villages that they were suspected to be hiding in early 2007 (Daily Nation, 11.1.2007). The trio and their cohorts have been on the FBI's "most wanted" list of Al-Qaeda operatives in East Africa and it has a price tag on their heads. To the Kenyan authorities, concerns were even greater when it emerged that some of the terrorist

masterminds in Somalia such as Fazul could be its citizens, considering that they hold Kenyan passports.

Concern about terrorism and possible terrorist attacks has led to the US issuing repeated travel warnings to its citizens, for instance, the warning just before the March 2007 cross-country races in Mombasa. In the latter case, its intelligence sources had established that the terrorist were planning to strike during that international event. The Kenya government on the other hand intensified its crackdown on those fleeing from Somalia including refugees. In January 2007, several Somalis fleeing into the country were arrested in North Eastern and Coast Provinces for being suspected to be financiers of the UIC fighters. Many others were arrested as terrorist suspects. Furthermore, a number of Kenyan youths who were suspected to have been recruited by the Somalia Islamists and fled back when the Islamists were routed out were also arrested (Daily Nation, 17.1.2007). Patrols along the Kenya-Somalia borders have been beefed up since the Kenyan security team met in early 2007 to resolve on the Somalia debacle. Since Kenya declared war on al-Shabaab in 2011, there have been a number of retaliatory terrorist attacks on Kenyan towns that are linked to the Somalia terror group (DN, March 12, 2012)

The concerns about terrorism have far reaching impacts with regard to the implementation of international refugee law. The upsurge of terrorism and associated extremism has led to a number of countries developing stringent measures regarding immigrants. A fundamental challenge experienced in the fight against terrorism is that terrorists cannot easily be identified. Terrorist organizations operate in small cells of three to five persons (Oluoch, 2007). Besides their leaders, the members of the various

cells do not know members of other cells. The illegality and the measures being taken by the international community and various individual states and regional groups make the terrorists to operate with the highest level of secrecy. Members of terrorist organizations are aware of the harsh consequences that they would face should their identities be revealed (Oluoch, 2007). The deportation of a Kenyan terrorist suspect, Abdulmalik Abdul-Jabbar, to be tried by the US at Guantanamo Bay is telling of how states consider their own nationals who are linked to terrorism as societal onanias. That is due to the threat they pose to the very states. The threat of terror-linked groups in Somalia complicates the implementation of international refugee law. States are likely to disregard the laws requiring them to grant asylum and protect those fleeing from violence if there is likelihood that some of them pose such security risk. Because of the difficulty of identifying individual terrorists before they act, the government of Kenya decided to expel or deport those fleeing from Somalia enmass. The response to those fleeing from war in Somalia elicited sharp reactions from the human rights groups, both locally and internationally. According to the New York-based Human Rights Watch, arrest and the secret deportation to Somalia of those arrested at Liboi and Kiunga in North Eastern and Coast provinces respectively, appears to have been a joint rendition operation by Kenya, United States, transitional federal government of Somalia and Ethiopia. The organization's deputy director for Africa, Georgette Gagnon points out that, "each of these governments has played a shameful role in mistreating people fleeing from a war zone" (Sunday Nation, 1.4.2007)

The law requires the state to screen those seeking for asylum and refugee status to genuine ones. By refouling those seeking for refuge, the state therefore acted contrary to

international refugee law. Worse still, it emerged that thirty seven of those who were deported to Somalia were actually Kenyan nationals. Due to the instability that the country faces, Somalia is understood to have taken these deportees to be handled by Ethiopia. Such developments took place due to Kenya's security concerns particularly with regard to refugees and Somalia militants.

It is important to note that the vulnerability of Kenya to terrorist attacks is mainly due to its links with United States and its key allies such as Great Britain and Israel. The main target of terrorist attacks is the US and its facilities, a fact exacerbated by its foreign policy towards the Middle East. The collapse of the former Soviet Union led to a unipolar international system in which United States, particularly under the George W. Bush administration, was seen to impose some unpopular policies on some of its former allies such as Iraq. To those countries, this is a betrayal and thus perpetuated extremism against its foreign policy. The fundamentalists capitalized on the teachings of the Koran to woo sympathy among young Islamists.

In response to Somalia crisis and due to concerns that terrorists based there could be infiltrating into Kenya, the Government of Kenya established new police posts along its border with Somalia into which special security teams were deployed. The government's concern on terrorism is also evident in North Eastern Province where teams of anti-terrorism police unit are deployed, particularly in areas where there are those from Somalia. In the next subsection, the influx and protection of refugees is analyzed from the perspective of small arms and light weapons.

4.10.2 Refugees and Small Arms

The proliferation of small arms and light weapons is one of the biggest problems that shape the implementation of international refugee law in Kenya today. Studies have not revealed the exact or even the approximate number of illegal arms that filter into the country. However, it is a reality that illegal arms get into the country from the war ravaged neighboring states. Furthermore, there is a correlation between the influx of refugees and the proliferation of small arms and light weapons in the country. As such, the issue of SALW is a significant security issue that affects the manner in which refugee issue is handled.

When asked about the extent to which small arms concern them, majority of refugee respondents indicated that it does concern them. Table 16 below represents the outcome of the responses.

Table 16: Concern over small arms

	Percentage
Great extent	38.33
Some concern	30.00
Less concern	21.67
No concern	7.78
No response	2.22
Total	100.00

Source: Field Data

From the table about forty (38.33) percent responded that small arms causes them great concern, while another thirty (30) percent indicated that it causes them some concern. The two categories account for more than two-third (68.33 percent) of the respondents. This is quite a large proportion to which there is significant concern about small arms. Also concerned but to a less extent is a further over twenty (21.67) percent. The three categories of responses account for ninety (90) percent of the respondents. It is therefore accurate to conclude that the issue of small arms causes concern to refugee population in general.

Only about eight (7.78) percent of the respondents indicated that the issue does not cause them concern. It is not quite clear why the 2.22 percent of the respondents chose not to respond to the question. However, the issue of arms is quite sensitive particularly considering the criminal nature in which it is viewed. They may have felt that it is investigative and thus felt safe to avoid responding to it.

Considering the sensitive nature of small arms in the country, this researcher chose not to ask the refugee respondents if they own arms themselves. Such a question asked to people on refugee status would most likely yield inaccurate result for many would most likely jeopardize their legal immigration status, thus decline to reveal that they possess weapons even if they did.

The refugees' concerns about small arms reveal that the arms are actually within their environs. In the case of camp refugee, it is an indication that the arms are actually at the camps. Since urban refugees tend to live in same areas in large numbers, it is also an indicator that arms exists within the refugees' urban environs. The issue of possible presence of small arms at the camps was downplayed by a number of administrators and

service providers I spoke to, however they conceded to the fact that it is linked to refugee movement.

The area around Dadaab and North Eastern Province in general, according to provincial administrators there, has been prone to banditry. Some of the bandits, armed with sophisticated weapons, are reportedly from Somalia. The fact that banditry has been a common phenomenon makes the area be a high demand zone for the arms from Somalia.

Sources at UNHCR country office indicate that security at the camps is almost neglected. Although I would not wholly concur with that sentiment, based on my assessment of security at the camp, it is a pointer to security problems at the camps. Security problems compel refugees to possess small arms and light weapons. That is particularly among the refugees who had access to arms before coming to Kenya. Some of them as discussed above continue to be members of various militia groups in their countries. These are not only likely to keep arms, but are also potential conduits of arms into the country. Furthermore, considering the dangers of being found in possession of arms at the camps, they could also opt to be keeping many arms amongst members of the local community who are sympathetic to their cause. In this case there are three factors that interact to result into proliferation of small arms. First, there is existing market within the camps and their surrounding. Second, there is abundant of arms that are circulating in countries experiencing conflict. Third is the existence of means of delivering the arms by some of the asylum-seekers and refugees who were combatants and members of the various militia groups. The demand-supply-means are crucial factors in the proliferation of small arms and light weapons in the country.

The Kenya National Focal Point (KNFP) on Small Arms and Light Weapons also view the refugee-arms link on the same line. It points out to armed conflicts in the neighboring states to be contributing to both the displacement of refugees and arms trafficking, and that arms may be brought to Kenya by those seeking for refuge. Conflicts between refugees and neighboring communities and inadequate provision of security around refugee camps may further drive the demand for arms. There is also the possibility of the displaced persons who lacked other economic opportunities to be involved in arms black market as a means of generating an income (GoK, 2006).

There is strong belief among political leadership that refugees are largely responsible for the illegal proliferation of SALW in the country. While addressing a public rally in Wajir in North Eastern Province, the then president Daniel Arap Moi pointed out that refugees are responsible for the proliferation of illegal arms in the country (Mogire, 2003). The then vice-president and minister for home affairs and Leader of government Business in his parliamentary answer had this to say: "...there is no doubt that those people (refugees) came with arms. This is a fact, it is nothing against Somalis as a people...some of these people came here with no money or other means of livelihood, and the only thing they could peddle here were the guns. Those guns have gone into the hands of criminals" (Mogire, 2003). Such sentiments, coming from top political leadership of the country, definitely have impact on the policies that are put in place and implemented with regard to refugee protection.

The genesis of the proliferation of arms into Kenya can be traced to political developments in the neighboring states in the decades preceding the massive influx of refugees into the country in 1990s. At the peak of the cold war, both Somalia and

Ethiopia imported arms worth billions of dollars from the protagonist superpowers. The undemocratic systems that existed in the two countries made it necessary for the existing regimes to arm themselves as a means to deter and quell armed rebellions. The same situation applied to Sudan and Uganda that were both experiencing local armed resistance. Furthermore, some of the countries that were involved in massive arms importation were involved in armed conflicts against one another. The example of Somalia and Ethiopia war over Ogaden region is illustrative of that. In the case of Somalia, Barre's regime went to the extent of arming some of the clans loyal to him against their opponents. Faced with economic difficulties, his regime also started selling arms to even gangsters in his country as a means to generate the badly needed revenue.

The initial massive influx of Somalia refugees into Kenya was a result of the ensuing conflicts there and the subsequent collapse of state. Due to continued instability in Somalia, it has remained a major source of the proliferation of illegal arms into the country. In the case of Ethiopia, the ensuing war that resulted into massive influx of refugees into Kenya also resulted in the overthrow of Haile Mariam's government and subsequent influx of thousands of refugees. Such developments accelerated the proliferation of illegal arms into the country.

Following the failed attempts to restore order in Somalia, the UN Security Council imposed an arms embargo in the country. However, this attempt did not yield much since severally it has been violated. According to monitoring group on Somalia that was established by the Council, at least ten states were identified to be supplying arms, equipments and personnel to different parties in the conflicts in that country. The report indicates that the parties have been supplying either the transitional government or

the ICU army (Daily Nation, 20.11.2006). In early 2012, Kenya accused Eritrea before the UN Security Council, of continued military support, including arms supply, in its war against TFG (UN, 2012) The fact that there has been continued arms supply to a country with no stability or government in actual control makes it possible for illegal trade in arms to be carried out from there, including the ones which find their way into the Kenya market.

The fact that Eastleigh in Nairobi has been identified by Kenya's security and intelligence as a hub where illegal arms can be purchased or even hired creates a glaring picture of the connection between the influx of refugees and the proliferation of small weapons. However, one should not make a blanket judgment in that regard. There is evidence that illegal arms dealers, and not genuine refugees, bring the bulk of the arms into the country. Sources also reveal the sale of illegal arms in some of the slum areas of Nairobi. These also happen to be the areas where a number of criminals in the city operate from. In this case, the desperate economic conditions of many criminals act as a driving factor. Acquisition of arms including through hiring is seen as a means of making economic gains. As such, demand, supply, and the means are significant Explanants to the proliferation of illegal arms.

Although sources reveal that illegal arms are found in all provinces in the country, there is evidently higher presence in the rural areas within North Eastern and Eastern Provinces as well as the North Rift region. This is probably a reflection of the predominant economic activity in the regions- cattle keeping. The pastoralist communities face the problem of cattle rustling and they are also involved in the same. Furthermore, there is inadequate security provided to them by the government. The

repeated rustling perpetrated against these communities, particularly from across the neighboring states motivate them to arm themselves in protecting their cattle. Besides, there are also inter-clan or inter-tribal disputes over pasture, water resources, and cattle rustling within these communities. The market forces and available means of delivery also explain the high presence of arms in these areas. The fact that they border the states where the illegal arms mostly arrive from make these be easily available to them through the porous borders.

The concern over illegal possession of small arms and light weapons is due to the various negative consequences that they have on the population in general. The upsurges in violent crimes such as robberies, carjacking, murder, cattle rustling and conflicts that are associated with those arms underscore the need to control their proliferation. In some of the areas with high prevalence of arms, inter-clan and inter-tribal conflicts intensify. It also causes the problem of insecurity as is evident in the ongoing conflicts in Mt. Elgon District, the mungiki menace, conflicts in Tana River District, as well as those in the Northern Frontier Districts of Kenya. Furthermore, the proliferation of such weapons has negative economic consequences on the country. Besides, the problem of terrorist attacks is also relevant in the case of SALW. It is due to such consequences that the government of Kenya has taken some measures to curb the proliferation, use, and possession of such weapons.

The government for instance established the Kenya National Focal Point on small arms and light weapons (KNFP), a committee made up of representatives from various ministries and departments, representatives of civil societies, and international agencies. The committee is charged with the responsibility of coordinating all the action on small

arms in the country. This led to the formulation of National Action Plan (NAP), a blueprint strategy on how to handle arms situation in the country.

Measures such as declaring amnesty for those who own arms in the North Rift so that they surrender them to the authorities, and the burning of repossessed arms, are examples of the strategy. In the latter, Kenya has set a blaze about 20,000 arms between 2005 and 2007. This is much below the estimated over one million arms that are in the wrong hands. Furthermore, the government has proposed a bill that would result in capital punishment for those who possess illegal guns. With regard to refugees, the border controls, their arrest and deportation as discussed above can also be viewed from the perspective of the proliferation of arms.

Concerns with respect to potential terrorists and other militants among those fleeing into the country as well as the issue of small arms, besides the international refugee law, probably helped convince the Kenyan lawmakers in making provisions under which one would not be granted refugee status. Section 4 of the Refugee Act (2006) makes provisions under which prohibition of refugee status would be denied. Section 4 (a) excludes a person who has committed a crime against peace, a war crime, or a crime against humanity as defined in any international instrument to which Kenya is a party and which has been drawn up to make provision in respect of such crime. Section 4 (b) of the Act excludes a person who has committed a serious non-political crime outside Kenya prior to the person's arrival and admission to Kenya as a refugee. Section 4 (c) excludes a person who has committed a serious non-political crime inside Kenya after the arrival and admission into Kenya as a refugee. It is important to note that the latter

ground allows the government to use the commission of a crime as a basis to revoke one's refugee status once it is granted (Refugee Act, 2006).

Section 4 (d) of the Act prohibits one who has been guilty of acts contrary to the purposes and principles of United Nations or African Union. The latter section would particularly affect those who have acted in ways that promote hostility and wars in the region. Section 5 of the same Act provides for grounds on which one would cease to be a refugee. Section 5 (f) makes provision of one who has committed a serious non-political crime outside Kenya prior to his admission to Kenya as a refugee. As discussed above, these provisions also reflect provisions in the UN Convention (Article 1, section 6 (a)) and the OAU Convention regarding grounds on which one would be excluded from or denied refugee status.

The Refugee Bill, 2011 in 4(h) excludes a person who is "a combatant or continues to take part in armed activities" (Refugee Bill, 2011). This underscores the dynamics of refugeeism in Kenya. The legal and administrative measures that are taken by the government of Kenya with regard to refugees can best be explained from the realist theoretical context (Morgenthau & Thompson, 2005). In this regard national interest is a central phenomenon, particularly in regard to maintaining state security and survival.

The concerns of the state with possible infiltration by militia and terrorists masquerading as refugees and asylum seekers, as well as and proliferation of illegal arms, are genuine, for they may not only affect stability, security and sovereignty, of the host-state, but also those of the region. However, these are issues that seriously undermine the core aspects of international refugee law, particularly the right to asylum and the

principle of non-refoulement. The next subsection discusses how particularly Somali and Ethiopian asylum-seekers and refugees are affected in those regards.

4.11 Refouler of Asylum Seekers

International refugee law provides for the right to asylum and prohibits refoulement of a refugee. However, these are areas that this study reveals are not often implemented to the letter. As pointed out above, security concerns of the host state undermine the implementation of the provisions.

Source at UNHCR indicates that the case of influx from Ethiopia, for instance, has security implications. The fighting between the government forces and Oromo National Liberation Front (ONLF) for instance results in major influxes from that country. The rebel group conscript secondary school students from their strongholds to fight against the government. Some of these have in the past sought refuge in Kenya but denied refugee status due to “lack of genuine reason”, as one UNHCR official explains it. However, the main reason for denying them the refugee status is the concern over their militancy and being soldiers of a rebel group that is fighting against the legitimate government of Ethiopia.

In early 2007, the government of Kenya deported about three thousand (3000) asylum seekers from Ethiopia at Moyale. The asylum seekers, mainly from the Gabra community alleged that there were conflicts in their home province and thus were running away for safety. However, the government of Kenya returned them to their country, arguing that order had been restored in the region and therefore their lives were no longer in danger. That position was supported by officials of Ethiopia government,

including the country's ambassador to Kenya. The forcible return of that group from Ethiopia can be viewed not only from both security and foreign relations dimensions. In the former case, the refugees were from a rebel held region thus pitting the Ethiopian government forces against them. As such, there were concerns within the Kenya government circles that some of the asylum seekers could be the rebels themselves. As such, the rebels could use Kenya to stage war with Ethiopia, a country that has a mutual defense pact with Kenya. The reaction was contrary to press reports that indicated that the group comprised mainly of women, children, and the elderly, some of whom were exhausted to stand upright.

The manner in which the Ethiopian asylum seekers were treated calls for a brief analysis of the Kenya-Ethiopian relations. The analysis of the relations between the two countries sheds some light about Kenya's foreign policy, particularly with regard to the neighboring countries. In its 1963 election manifesto, Kenya African National Union (KANU), the party that formed the government at independence that year included the conclusion of defense arrangements with the regional states as one of its objectives. This provision has particularly guided its relations with Ethiopia since independence. The independent state promoted policy of good neighborliness. Geopolitical factors were quite crucial in this aspect. The major concern of the first independent (Kenyatta's) administration within the region was to maintain pre-independence equilibrium. In line with the provisions of the then Organization of African Unity (OAU), Kenya aimed at the preservation of colonial boundaries of the states in the Eastern African region. The foreign policy that Kenya adopted in its relations with the countries in the region was aimed at balancing power within the region (Orwa, 1994). It for instance forged a

military alliance with Ethiopia in 1963 as a means to maintain a balance of power within the Horn of Africa. This was particularly in considering the upsetting of that balance by Sudan and Somalia in their relations with Ethiopia and Kenya.

Kenya-Ethiopia relations were further enhanced by the shifting ideological and military political relations within the region particularly in 1967. Although the three East African countries had just formed the East African community (EAC), Tanzania and Uganda adopted socialist ideological path of development through the Ujamaa (Socialism) and the Common Man's Charter respectively. The socialist policies developed by the two countries were conflicting with Kenya's capitalist approach. At the same time both Sudan and Somalia experienced regime change through coups d'état. The military regimes in the two countries ideologically shifted to ally with the communist Soviet Union. As such regionally, Kenya faced possibility of being isolated due to ideological shifts within the region. Furthermore, the socialist inclined Kenya People's Union (KPU) of Jaramogi Oginga Odinga had just been formed and was posing serious challenge to Kenyatta's government. As such, Kenya had to enhance its relations with Ethiopia, the only other neighboring country that that pursued capitalist and conservative, as opposed to socialist and radical approaches to development.

During the same time Somalia embarked on its policy of creating greater Somalia in which all Somali ethnic groups would be integrated into Somalia. This posed serious threat to both Ethiopia and Kenya which naturally had to ally with each other to ward off the threat from Somalia. Indeed from 1967 to 1970 Kenya was involved in a protracted war against Somalia in an attempt to retain its territorial integrity from the aggressor. Following the 1971 coup in Uganda, Kenya further experienced hostility from a

neighbor, particularly when Idi Amin claimed substantial part of Western Kenya for his country. Although Kenya maintained diplomatic and economic relations with Uganda, politically the two countries' relations were practically strained as was evident in the strong warning that President Kenyatta issued and the demonstrations in Kenyan towns against Uganda's claim, and the role of Kenya in the Israeli military raid of Entebbe Airport in 1975. Strained relations between Kenya and its East African neighbors on the one hand, and those of Uganda and Tanzania on the other hand reached their apex with the collapse of the East African Community in 1977. Such developments heightened cordial relations between Kenya and Ethiopia, a development given impetus by the good relations between President Kenyatta and Emperor Haile Selassie.

Although the 1974 coup in Ethiopia posed the danger of the possibility of the new socialist regime in that country allying with "socialist" Somalia, it was not to be for the two Horn of Africa nations had deeply rooted enmity as was epitomized by the Ogaden War of 1977. The Ethiopia-Somalia traditional rivalry was one of the main reasons that made Ethiopia to develop mutual agreements with Kenya. These started with the signing of the 1963 military agreement. Furthermore, Ethiopia-Sudan relations strained particularly over territorial claims and due to latter support for the Eritrean liberation forces, a number of which operated from within Sudan. Besides, Ethiopia was faced with civil war against secessionist groups such as Oromo National Liberation Front (ONLF), groups whose activities often spill into Kenya. These posed serious threat to the country. As such, Kenya and Ethiopia had to overlook their ideological divergence (following 1974 coup in Ethiopia) to remain one another's key ally in Eastern Africa. With the regime change in Ethiopia following the departure of Haile Mariam in the early 1990s

and with the two countries being key players in IGAD, the relations between them has been lately quite cordial.

It is against such background that the decision by Kenya to deport or return Ethiopian asylum seekers can be understood. The fact that they could have been from the rebel strongholds gives the Kenya government credible reason to expel them, not only because of the possibility of having members of the Ethiopian rebel movements within the group of asylum seekers, but also as a means to safeguard the host national security.

It is also due to concerns regarding the influx of refugees from Somalia being members of the Union of Islamic Courts (UIC) that in the part of 2007 Kenyan security forces returned four hundred asylum seekers from Mandera, closed its border with Somalia, and denied another seven thousand refugees fleeing from the conflicts in that country from entering into the country. Besides, Kenya intensified security patrols and control along its borders with Somalia. The state proceeded to arrest, detain and deport several people who were attempting to seek refuge from Somalia (Daily Nation, 15.3.2007).

The tough measures taken by the government of Kenya demonstrates situations where a state can disregard international refugee law to serve its own interests. The responses can also be analyzed from various perspectives. The continued influx of refugees from Somalia into Kenya following the renewed conflicts between forces loyal to the interim government of Somalia and ICU during the better part of 2006 caused serious concern to the Government of Kenya. This occurred when Kenya was already hosting more than 130,000 of refugees from that country. The influx of additional 30,000 or so during the conflicts in 2006 was therefore of great concern. It was not only

increasing burden of stress on the Kenya's resources but also compounded with health implications. In the latter, Somalia had not had a government for about fifteen years and its health care system had virtually collapsed. Threat of spread of diseases such as polio and measles were thus real and would have significant impact on the country's economy in its attempts to arrest them. It is thus evident that the country was getting fatigued with the Somalia refugee affairs.

Furthermore, there were also political considerations. Kenya had been crucial in the formation of the interim government of Somalia. As such, the fact that the ICU had taken control of Mogadishu and much of Somalia thus undermined Kenya's foreign policy objectives towards that country. In his 2006 New Year address, President Kibaki highlighted that Kenya would give Somalia debacle particular attention, a position it has maintained in its international relations. Ethiopia's government had lent the interim government both political and military support to route out the ICU from the seat of Somalia power. These are developments that must have given Kenya the impetus to act tough on Somalia situation. Besides fear of influx of the fleeing ICU and from 2007 the al-Shabaab militants, the state was also concerned about possible infiltration of terrorists masquerading as refugees. Besides, the region has historically had more small weapons per capita since World War II. Allowing more refugees at this critical time was therefore viewed to be a recipe to instability that could affect areas beyond the region. Such concerns have resulted into changes in Kenya's approach to the Somalia refugee situation.

Reactions such as deporting those who had been processed by UNHCR officials at Mandera and awaiting relocation to Dadaab are in contrast to the country's practiced

open door policy that it previously had on refugees. Arrests and deportations of several asylum seekers in various towns in North Eastern and Coast Provinces as well as in Nairobi manifest the magnitude of the government's reaction. In Nairobi a group of Somalia MPs were among the victims of the vicious swoops by security personnel. As such, a state would be willing to implement international refugee law only if its security and other national interests are not jeopardized by such implementation

Refugees and asylum seekers are often at grave risks of losing their lives. Many flee from real life-threatening dangers. Displacement may subject them to attacks, severe health damage, as well as deprivation of subsistence needs. The faces of the Ethiopian Gabra deported from Moyale revealed hunger, malnutrition, and sufferings experienced by people who had to flee their country, walked for hundreds of kilometers to save their lives. Yet they were bundled in trucks and taken back to their villages without being given a hearing, contrary to both the national and international refugee laws. Although unlike in the initial deportation of Somalis that UNHCR boss Gutierrez and the agency's country director condemned the action, this time round the country agency's office seemed to back the government action. It is not quite clear if the threat to their lives had actually ceased. However, contrasting response by the UN agency was actually to avoid antagonizing the government, particularly considering the stern reaction by the country's minister for foreign affairs following its earlier criticism on the manner in which Somali refugees were deported.

In the case of Somali asylum seekers, the then Kenya's minister for foreign affairs revealed that it was making arrangements with UNHCR that would lead to the establishment of camps in their country. However, such a move would have its own

detriments. First, in their country they would be IDPs who actually are not specifically under the mandate of the UN agency. Second, protection of IDPs is principally the responsibility of the state government and not that of the international community. The paradox in the Somalia case is that practically the interim government is not in control of the country, and despite the deployment of AU peacekeeping force, it was not until 2011 that al-Shabaab forces were routed from Mogadishu. The deployment of Kenyan Defense Forces (KDF), though has made some progress, reveals the difficulties faced in eliminating the militants. At a time when it is struggling to establish itself in control, the interim government therefore cannot adequately protect its IDPs from vicious attacks. The Somali IDPs would therefore be quite vulnerable. This is a situation that is likely to perpetuate the conflicts in that country, since the displaced naturally are likely to join one or the other of the militia groups as a way of protecting themselves. Besides, many of those attempting to cross into Kenya and seek refuge are actually fleeing from known protagonists, either Islamists or the transitional government forces and their Ethiopian supporters. Blocking them from crossing the border and confining them within their borders cannot guarantee their security and well-being and would most likely make them be victims to their perpetrators.

The right to life is provided for by the various international human rights and refugee instruments. In its preamble, the Universal Declaration of Human Rights (1948) recognizes the inherent dignity and of equal and inalienable rights of all members of human family as the foundation of all freedom, justice and peace in the world (Shaw, 1991). The declaration further provides for the right to life. Some mechanisms such as

the Special Rapporteurs on Summary and Arbitrary Execution of the UN Commission on Human Rights focus explicitly upon the right to life (Fitzpatrick, 2002).

A number of human rights treaties protect victims from forced return to a country where there would be at grave risk of potentially life threatening torture. The 1951 UN Convention explicitly prohibits states from expelling or returning (refouling) refugees to their countries of origin when they face the risk of being subjected to persecution. Article 33(1) of the Convention states that, "No contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (Brownlie & Goodwin-Gill, 1998). Furthermore, both the UN Convention and UNHCR Statute provide that where repatriation is to take place, it should be voluntary and not forced on an individual. These provisions apply to all irrespective of their political affiliation in their countries. The deportation of Ethiopian and Somali refugees, according to these provisions is therefore a contravention of the international law. The victims may be subjected to torture, cruel, degrading and inhuman treatments, or outright persecution, in contravention to the relevant international statutes.

Some of Somali asylum seekers including women with children were detained. This also raises fundamental human rights questions that are relevant to refugees and asylum seekers. In the case of the children, the action goes against the provisions of International Convention on the Rights of the Child. Although the prohibition of arbitrary detention is derogable and subject to limitations, the detention of women and children in the guise that they could be supporters of ICU reveals the vulnerability of

refugees even in the countries where they should ideally be protected. The right to asylum is provided for in the various relevant instruments. Article 14 of the Universal Declaration of Human Rights provide for the right. The right to asylum also forms the basis of international refugee law both by the UN Convention and Protocol, and OAU Convention on refugees.

The foregoing discussion reveals the problems of implementing international refugee law in a domestic setting. State is the principal actor as the implementer of international refugee law. Here is a case where the consideration of international law fails to take precedent and instead the interest of the state prevails in decision making. The state interests in this case include ensuring its security, foreign policy objectives, and the economic impacts of massive influx of refugees. The study also reveals provisions of international refugee law that countries are likely to capitalize on in taking actions such as detention, confinement, deportation and turning away asylum seekers at the borders. For instance, Article 33(2) of the UN Convention states that protection from refouler “may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to security of the country in which he is; or having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country” (Brownlie & Goodwin-Gill, 1998). The first part provided the basis for the deportation of Somali and Ethiopian refugees. Although no “final judgment” ever took place, the case of the Somali who were thought to be associates of ICU was proven by neither the Kenyan political establishment nor criminal-justice system, thus amounting to extrajudicial condemnation.

The provisions of the OAU to a large extent were informed by security concern in Africa in relevance to refugees. Article I (5) make provisions on the grounds that would prohibit one the chance of applying for refugee status. These include that one who has committed a crime against peace, a war crime or a crime against humanity; or who has committed serious non-political crime outside the country of refuge; guilty of acts contrary to the purposes and principles of the OAU and those of the UN. The Kenya Refugee, 2006, as discussed above, make similar provisions as grounds to disqualify one from being granted refugee status (section 4). The decision on refouler can be viewed from these perspectives. However, it is important to note that they were not subjected to due process of the law. It is erratic and irrational to associate those fleeing enmass from a conflict zone with militancy. It would be prudent to vet them and separate the genuine refugees from militants.

Contraventions of significant provisions of international law such as the right to asylum and refoulement often provide grounds for tensions between the government on the one hand and UNHCR and human rights groups such as Human Rights Watch on the other. The closure of the Kenya-Somalia border, and refoulement of thousands of Somali refugees and asylum seekers, according to the latter, amount to violation of their basic rights and failure to give them protection as provided for by the law.

The next section analyzes Kenya's foreign policy initiatives with regard to refugees in Eastern Africa

4.12 Foreign Policy Initiative in the Refugee Context

Refugeeism is fundamentally an international relations issue that helps shape foreign policies of host states. Assistance and protection of refugees emanate from international law. States as actors in refugee regime thus derive legitimacy and obligation from the international arrangements. This section focuses on Kenya's peace initiatives in the cases of Somalia and Sudan, a role in which it played a central part in the first half a decade of the twentieth century.

Before analyzing the role the country played in the peace initiatives, it is important to assess the factors that motivated the country to undertake such a task, particularly considering the challenges that it would face. First and foremost was the fact that Kenya was a major host of refugees from the two countries. The impacts of hosting such a large number of refugees were themselves burdensome on the country's economy. This was particularly in considering that Kenya's economic growth was almost minimal at the turn of the century, estimated at less than one percent. As such, hosting such a large number of refugees could be dangerous at domestic political level by arousing discontent among the citizenry. Although assistance to refugees in Kenya has always been provided to a large extent by the international community, through UNHCR and dozens of NGOs, the host state naturally has to contribute in various ways including providing security, land, and other social services. Furthermore, as pointed out earlier, donor funding for the maintenance of refugees in the country has been dwindling. This is not only due to other competing interests on the part of the donors, but also the encroachment of donor fatigue.

Second, refugee situation is ideally considered to be a temporary and short term situation. It is supposed to be approached through the durable solutions. In the case of refugees in Kenya from Somalia and Sudan, apparently none of the three traditional approaches was working effectively. Local integration was not feasible. Resettlement to a third country has been quite limited. As such, repatriation seemed to be the only option that could alleviate refugee problem from the country. However, in both the cases of Sudan and Somalia, this was remote from the reality. In Sudan's case, the war between the government forces and SPLA had raged on for two decades and had no signs of subsiding. In the case of Somalia, the country had no government since the overthrow of Siad Barre in 1989. Attempts had been made thirteen times to come up with a government for the country but each time these failed to work, with various clan militia fighting for political supremacy of the country. As such, to make voluntary repatriation work in the case of refugees from the two countries, efforts had to be made to restore peace in the two countries.

Third, as discussed above, refugee issue has far reaching security implications. One such consequence is that there are possibilities of refugees who are members of the various militant groups in their countries to use the host territory to rest, regroup, reorganize themselves and launch attacks against other home-based militia groups or against their home government from there. Such a development would cause diplomatic attritions between the refugees' home and host countries. Besides, it has the potentiality of spilling the conflicts into the refugee host country. It is against such a consideration that in its Convention on the Specific Aspects of Refugee Problems in Africa, the OAU made provision that refugees abstain from any subversive activities against any member

state of the organization [Article 3(1)]. In Article 3(2), the Convention states that “signatory states shall prohibit refugees residing in their territories from attacking any member state of OAU by arms, through the press or radio”.

Besides, the OAU charter provides for peaceful means of conflict resolution. In response to the numerous conflicts that were widespread in the continent in the 1990s, the continental body established conflict resolution mechanism in 1993 in line with its charter. As a member of AU and IGAD, Kenya has an obligation to undertake peaceful conflict resolutions initiatives in both the Somalia and Sudan. Furthermore, in its initiative, Kenya was guided by its own foreign policy of peaceful co-existence and regional cooperation.

As discussed above, conflict in the source countries is the main cause of the influx of refugees into Kenya. The existence of violent conflicts within Kenya’s neighborhood is dangerous to the country not only politically but also economically. Politically, instability within the neighboring states has potentiality of creating instability in Kenya. Economically, Kenya’s neighbors are potential trading partners, particularly at the regional arrangements level. As such, continued conflicts within those states do not only deprive the very states of their economic growth but they also deny Kenya potential market for her products as well as the necessary raw materials. Sudan is a potential exporter of oil to Kenya. However, this could not take place in situations of turmoil in the southern parts of that country. The collapse of the state of Somalia on the other hand hindered meaningful economic production with a view to export to Kenya. Conflicts in Somalia have in recent times led to Kenya closing its border with the country. That led to for instance loss of millions of shillings for the Kenyan miraa exporters who rely on

Somalia as their main market. Such scenarios disadvantaged not only Kenya but the countries of Eastern Africa particularly in consideration of the international economic trends of regional economic integration and globalization and the benefits that accrue to them.

The geopolitical factors, the hosting of refugees from the two countries, and its cordial relations with the various actors in international refugee regime made the other actors to encourage Kenya to play the lead role in the case of the two countries' peace initiative. The argument here is that the peace initiative that Kenya undertook in relation to the two countries was a direct consequence of the influx of refugees from those countries into Kenya. It was an attempt to find the durable solution to the refugee situation in the Horn of Africa through the restoration of peace in the source countries. A lasting peace in Sudan and Somalia would not only lead to voluntary repatriation of their nationals, but would also check on further exodus from the countries.

The government of Kenya played the lead role in the peace negotiations between the leaders of the warring faction clans of Somalia and between the SPLA and the government of Sudan for the better part of the early 2000s. The Ministry of Foreign Affairs in collaboration with the Office of the President played a significant part in that regard. The country hosted the talks and provided negotiators in both cases. As a matter of fact the Somalia representatives were more or less permanently based in Kenya during the negotiations and had to stay in the country for almost a year after signing the peace deal. With the case of Sudanese negotiators, representatives of SPLA were for the better part in Kenya.

The details of the negotiations are not the objectives of this work. However, it is important to note that the Kenyan initiative yielded some fruits, albeit with difficulties and subsequent challenges. In the Sudan case, a comprehensive peace deal was reached in 2005 that allowed for some power sharing between its government and SPLA, and subsequent independence of Southern Sudan in 2011.

The Somalia peace talks on the other hand culminated into the formation of a parliament among the negotiators and subsequent selection of a president for the country. The selected president in turn appointed a premier who in turn formed a cabinet. It is important to point out that the cabinet was constituted by the leaders of the former antagonizing factions. While the deal somehow resolved conflicts between the former warlords who now belonged to the same interim government, there emerged strong opposition to it from other militia groups that had not been involved in the talks. These are the groups that formed the ICU that for the whole of 2006 was in charge of Mogadishu and significant portion of that country, an indication of inability of the interim government to assert its authority. The continuing conflicts in Somalia can be understood from that background. The intervention of the AU force (AMISOM) and later Kenya Defense Forces has lately enabled the TFG to extend its control in some areas that were earlier under al-Shabaab control. Somaliland and Puntland are practically out of control of TFG

The peace talks and the subsequent deals demonstrated international cooperation. Kenya and other members of the international community were also involved in provision of financial, expertise, political, logistical, and diplomatic support. Such included United Nations, European Union, the Arab League, African Union, IGAD, as

well as United States of America. That level of cooperation was quite evident when representatives of the aforementioned attended the signing of Sudan's comprehensive peace agreement in Nairobi in 2005.

While attending the Arab League meeting in 2007, President Kibaki of Kenya appealed to member states of the League to assist in ending the conflicts in both Sudan and Somalia. Although his appeal was done in his capacity as the chairman of IGAD, as the president of Kenya it demonstrates the country's foreign policy in regard to regional conflict resolution. Other participants still have important role to play. Through its ambassador to Kenya, the US for instance emphasized its commitment to resolve conflicts in Sudan, Somalia, Eritrea and Ethiopia, pointing out that the effort would integrate the fight against proliferation of small arms (Daily Nation, 20.11.2006).

Both liberal-idealist and realist theoretical approaches are applicable in the peace efforts in the Horn of Africa. The realist perspective is represented by individual actors' interests. Kenya for instance is concerned about being surrounded by unstable states and consequences of such instability. Besides, its central role in the talks ranks it high within the international community. Liberal-idealist approach on the other hand is evident in the nature of international cooperation to resolve conflicts and help solve the problem of mass human exodus and the resultant sufferings. The next section analyzes the durable solutions as they apply in the case of Kenya.

4.13 Durable Solutions

International refugee law, as stipulated in the Geneva Convention and UNHCR mandate provide for three fundamental durable solutions namely integration into the first country of asylum, voluntary repatriation, and resettlement into a third country.

In Article 34, the UN Refugee Convention provides that, “the contracting state shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and reduce as much as possible the charge and costs of such proceedings” (UN, 1951). In the case of Kenya, local integration of refugees is not considered as one of the durable solutions. Although immigration laws provide for naturalization of foreigners, based on birth or marriage, there is no provision for integration based on ones refugee status. UN officials attributed this lack of national refugee law for along time. If there was a domestic law that provided for local integration, then there would be no restriction as to the place of residence of refugees. However, even with the Refugee Law in place, the issue of integration is not covered and is subject to jurisprudence interpretation. The law does not provide for integration and further empower the minister in-charge to place refugees in designated places, the camps (GoK, 2007).

In section 10(1&2), The Refugee Bill provides that the commissioner shall be appointed by the Kenya Citizens and Foreign Nationals Management Service, whose Act shall regulate its office. The Bill in 10(3) enumerates functions of the commissioner which include advising the Service on policy issues relating to refugee matters, as well as to promote durable solutions for refugees in Kenya (GoK, 2011). However, local integration is not an option for refugees in Kenya.

The strict enforcement of the policy of encampment in Kenya therefore leaves the other two traditional options as the durable solutions for refugees in Kenya.

Where voluntary repatriation is a viable durable solution to the refugee problem, it results in exit of refugees from the host state. However, it is important to emphasize that Article 33(1) of the Geneva Convention prohibits expulsion or forced return of refugees. It states "No contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (UN, 1951). The OAU Convention on Refugees on its part make provision that, "No person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for reasons set out in Article 1(1, 2)" (OAU, 1969). As such, repatriation according to international refugee law has to be voluntary, no-refoulement.

Voluntary repatriation from Kenya has been an on-going process since the 1990s. For instance, besides resettlement into a third country, it is through voluntary repatriation that the number of camp refugees reduced from 420,000 in 1994 to about 250,000 by 2000. Considering the fact that the influx of refugees has also been a continuous process, it is therefore accurate to conclude that significant number of refugees outflow through the two modes. It is in considering voluntary repatriation as a viable option in regard to refugee problem that the Kenya government took the lead in the peace settlements both in Somalia and in Southern Sudan. It is important to point out that the failure to attain reasonable level of peace particularly in the case of Somalia makes voluntary repatriation

to be a problem. The peace initiatives in Democratic Republic of Congo, Burundi and Rwanda have made it possible for some repatriation to those countries to be undertaken with some success. A recent arrangement between Kenya and Rwanda was aimed at repatriating Rwandan refugees from Kenya.

In July 1999, 1,389 refugees from Dadaab camps were returned to Gode and Jijiga in Ethiopia. In February 2000, 686 persons were repatriated to North West and North East Somalia. In 2001, 3,090 Somali refugees had registered for repatriation to North East area of Hargeisa and North West area of Berbera in Somalia. However, by the end of the year, only 220 of those were repatriated. In May and June 2003, a further 671 were repatriated to North West and North east Somalia (UNHCR, 2006 (a)). The repatriation of refugees is principally undertaken by UNHCR in collaboration with the implementing agencies. That less than ten percent of those who had registered for repatriation were actually repatriated reveals difficulties that are faced in using the method as a durable solution to refugee problem. First, those who had registered had hoped that peace had been restored. However, that has not been the case to date. Here is a case where both the repatriating agencies and potential returnees get to change their plans for repatriation. Second, the technical and logistical requirements associated with repatriation at times hit a snag. Such include the facilities for transport and resettling returnees.

In the case of repatriation of Sudanese refugees, UNHCR started preparations when negotiations for conflict resolution in South of that country started. Between May and July of 2004, registration exercise was conducted for those willing to return. Like in the case of Somalia, this was done under the aegis of UNHCR, supported by all

stakeholders. The comprehensive peace agreement signed between the Khartoum government and SPLM/A in 2005 gave further impetus to the stakeholders on the possibility of voluntary repatriation of Sudanese. In December of that year the UN agency for refugees organized a “Go and see” mission to Bor District and Kapoeta town of Southern Sudan. This comprised of refugees and UNHCR officials who met returnees, officials of Sudanese authorities, and UNHCR officials in Sudan. These “ambassadors” were meant to “come and tell” the Sudanese refugees at Kakuma the actual situation going on particularly in equatorial region of southern Sudan.

Partly as a result of that mission, by December of that year 1,825 refugees in Kakuma indicated that they wished to return (UNHCR, 2006 (b)). Their districts of choice in descending order were North Bor, South Bor, Kapoeta, and Twic. In the same month sixty seven Sudanese families, comprising 131 persons were repatriated to three locations of Kapoeta, Chukudum and Anyindi near Bor town.

Resettlement is a preferred option by the UN agency in situations where refugees cannot repatriate and at the same time are at risk in the country of asylum. In handling cases for resettlement, there are three approaches. One approach is interviewing and assessing individual cases. Second approach is group resettlement for large refugee groups. And three is group profiling. This is a situation where groups are identified based on the level of their vulnerability. In 2004 one hundred twenty three (123) individual cases involving 584 persons were submitted to UNHCR country office in Nairobi for resettlement. In the same year, SOK and BO Nairobi jointly carried UNHCR’s group processing exercise for Somali Madhiban refugees. One hundred

individual cases involving 506 persons were verified. Another 304 profiling interviews were conducted under the Sudanese vulnerable women and girls category.

In 2004, 10,330 refugees departed from Kakuma for resettlement to the US (9,747), Australia (473), Canada (70) and New Zealand (40). In 2002-2003, 12,445 Somali Bantus were relocated to Kakuma refugee camp from Dadaab prior to their departure to United States for resettlement. In 2004 565 Somali cases involving 2,329 individuals were screened at Dadaab by Joint Voluntary Agency (JVA), International Organization and Migration (IOM), and UNHCR. In 2005, 342 Somali refugees departed for resettlement in United States. A further 5,500 persons with disabilities were interviewed from September 2005, and at the time of this research, were still awaiting resettlement. Although these figures are significant, they form a small proportion of the total number of refugees in the country. That compounded with the continued influx ensure a continued high number of refugees in Kenya.

When asked for their individual desired durable solution in this study, table 17 below represents the responses.

Table 17: Desired Durable Solution

Solution	Percentage (%)
Local integration	6.01
Voluntary repatriation	27.32
Resettlement	60.11
Other	4.92
No response	1.64
Total	100

Source: Field data, 2006

From table 17 slightly over 6 percent preferred local integration while over 27 percent preferred voluntary repatriation. Over 60 percent of the respondents indicated that they desired resettlement into a third country. Another about five percent of the respondents indicated that they prefer choices which are outside the prescribed (by international refugee law) solutions. Some of those in this latter category for instance indicated that they would prefer involuntary repatriation. However, that would amount to forced return, thus violate the principle of 'no-refoulment'.

Those who indicated that they prefer local integration have generally lived in Kenya for over ten years, and are over thirty five years. Furthermore, they are among those who when asked on their relationship with the local population rank the relationship quite high. These are very important factors in influencing their preferred durable solution. However, it is worthy to note that the proportion of those who prefer local integration to that of the total number of respondents is quite low. This may be

attributed to the fact that in the case of Kenya, there is no provision for it, thus the respondents considered it meaningless to choose an option that legally does not exist for refugees. Furthermore, their experience as refugees in Kenya is not that fantastic. As discussed above, they cannot access gainful employment, majority of them are quarantined in camps, and overall, they face various obstacles as discussed in detail elsewhere in this work.

Those who indicated that they preferred voluntary repatriation are less than a third of the total number of respondents. This is viewed as a low figure, which can be attributed to continued insecurity and the existence of landmines in the home countries. There is also likelihood of policies both in the country of asylum and the home countries that would affect their property rights. Thus, those who have amassed some wealth may lose it when they repatriate. There are also issues to do with human rights abuses. The latter is particularly evident in regions that experience continued conflicts. Furthermore, there is absence of adequate infrastructure and services. These were either destroyed during the civil wars or just not developed due to gross neglect by the central government. Such are the existing situations in Southern Sudan and parts of Somalia. It is due to such problems that the "go see...come tell" mission to southern Sudan failed to elicit significant excitement among refugees at Kakuma as far as repatriation is concerned.

Resettlement seems to be the option that provides hope for vast majority of refugees. That resettlement programs are mainly to the developed countries make refugees hope of making better living their. There are opportunities including educational, employment, and chances of eventually acquiring citizenship. This is an

option in which many of the respondents are informed of particularly by their former colleagues who have already resettled.

Achieving durable solutions in the country still remains a major challenge. Local integration for instance is not supported by the government or the local people. Although some repatriation has taken place in the past year or so, the pace is very slow. And as pointed out earlier in this work, there is continued influx of refugees principally from Somalia and Sudan. Following the resurgence of conflicts in Somalia, particularly between forces of the Union of Islamic Courts (UIC) and factions of the interim Government of Somalia for instance, it was estimated that in the first nine months of 2006 alone, about 30,000 refugees crossed into Kenya from that country. According to the World Food Program's estimate the influx was projected to reach 80,000 by the end of 2006 (Daily Nation, October 18, 2006).

Resettlement as another durable solution is also done at a very slow rate. This study established that just about 4,000 refugees are resettled from the country each year, principally to USA, Canada, Australia and New Zealand. Resettlement to third countries as a durable solution doesn't seem to be feasible for majority of refugees in the country, their future therefore remains uncertain. That's a scenario, besides other factors discussed in analysis of responses to refugee problems, is likely to inform the respondents' largely negative rating of UNHCR and its protection department as well as the government in their handling refugee issues.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter provides the summary and makes conclusion of the findings as well as making recommendations of the study. In the next section present summary of the findings, specifically with regard to implementation of international refugee law in Kenya.

5.2 Summary of the Study

A study of the implementation of international refugee law brings into focus what the law entails and how the state responds through policy initiatives and putting in place administrative structure as well as the legal mechanisms. Kenya has attempted to implement the law since 1960s; however it was not until the massive influxes of refugees that the refugee crisis drew significant attention from various actors in the refugee regime. As such, the study devoted a chapter to analyze the magnitude and scope of refugee problems which include the problems that affect refugees as well as the socio-economic, political, and environmental impact on the host state. These are important for planning and policy process in relevance to refugee law.

The subject matter of this study broadly speaking involves international refugee protection, which encompasses ensuring protection of refugee human rights, non-refoulement, finding durable solutions, and assistance in processing asylum-seekers, promote and assist find durable solution. International protection thus has a legal basis

and is a mandatory function of the UN refugee agency, a function in which the refugee host states also have a significant role to play.

The refugee camps at Kakuma and Dadaab are homes to refugees from at least ten countries, with those from Sudan and Somalia being the majority. Encampment policy is significant in providing refugees with physical security as well as humanitarian assistance. In spite of those positive attributes, camp areas are prone to conflicts between refugees themselves, and refugees and the local communities, conflicts that are often due to scarcity of resources. Further, the settling of refugees in large numbers in areas that have fragile ecological balance has contributed to further environmental degradation. However, the realization of magnitude of the problems by the various actors in the regime resulted in some measures undertaken to solve them.

The study establishes that the massive influxes of refugees into Kenya have far reaching impacts in the country. The impacts can be viewed from both negative and positive perspectives. These include cultural, social, political, security, as well as economic impacts. From the economic perspective, although massive influx of refugees impose special burden on the country, the response to it by the international community has led to some development. The camp areas have been developed and modernized compared to what they were before the establishment of the camps. Furthermore, the donor funding towards various refugee programs contribute generate revenue locally. Besides, the various refugee service providing agencies and the international organizations that are involved in the refugee regime provide employment to a number of nationals. Refugees on the other hand also have their contribution to the economy by not only being consumers, some of them are also producers. However, their economic and

other contributions are greatly limited by the existing restrictive policies and practices such as those which deny them the opportunity to secure gainful employment.

A study of implementation of international refugee law in Kenya reveals the various challenges and obstacles that are faced in refugee protection. Although protection and assistance of refugee are responsibilities of the international community with the UN agency playing crucial roles, the host state is best placed to play the lead role. One of the challenges that the implementation of international refugee law faced in the country, as in a number of other refugee host countries in the continent, was lack of domestic refugee legislation. Attempts to come up with refugee law faltered for over one and a half decades while refugee crisis continued unabated in the country. The failure to come up with refugee law could be attributed to little priority that the government had for it, lack of political will, disagreements between the government and other key actors in refugee regime on the provisions of successive refugee bills, partisan politics and parliamentary lapse of sessions among other factors. Lack of refugee legislation made it impractical to come up with a comprehensive refugee policy. As such refugee policy became reactionary and ad hoc in nature, incoherent and lacked consistency to the extent whereby implementers were either not versed with the existing policy or could ignore it. A number of practices directed toward refugees individually and collectively by particularly law enforcement personnel were therefore in contravention of international refugee law.

The state had no Refugee Status Determination (RSD) of its own and had to contend with the one that the UN refugee agency developed. Furthermore, the RSD that has been in use is not watertight and is quite often abused. For instance, this study

established that there are thousands of Kenyans who have registered as refugees mainly to benefit from the assistance that refugees get, in violation of the laid down requirements. Furthermore, there are refugees who have registered more than once to boost their chances of benefiting more from the assistance.

Besides, the state also lacked effective administrative framework to deal with the problems of refugees. The secretariat that handled refugee affairs was understaffed, ill equipped and under funded to effectively handle refugee issues at a time when the country was experiencing massive influxes. It was not until 2003 that the government upgraded the secretariat to the Department for Refugees which was later integrated in the 2006 Refugee Act. That was a response to increase its capacity to handle refugee affairs in the face of upsurge in their number. In that regard, it is important to put it in perspective that although the government has put some mechanisms in place in regard to refugee protection, UNHCR and other service providers practically play the central role, a situation that the study finds out was mainly due to lack of refugee legislation. As such, it can rightly be concluded that the state, to some extent has been grappling with the implementation of international refugee law and to some extent abdicated some of its fundamental functions to the UN refugee agency and implementing partners. Although the Refugee Act 2006 became operational in June 2007, the various structures that it provides for have not been created. As such it would be premature to attempt to assess its effectiveness in guiding the management of refugee affairs in the country at this stage.

Another major challenge identified to be militating against the successful implementation of the law is lack of adequate resources. Managing refugee affairs in situations of massive influx require heavy capital outlay on the part of the various actors

in refugee regime. Such is required both for humanitarian and developmental assistance, in this case for the camp refugees. Provision of social services, food ration, shelter and infrastructure are quite costly. These are besides recurrent cost in regard to the manpower that are involved at the various services for refugees and other costs. These are areas where the various actors demonstrate cooperative approach in handling refugee matters. Assistance to refugees is representative of attempts to alleviate the problems faced by refugee and enable them lead a normal life. It is where the theory of liberal-idealism is applicable as an approach in the study of international relations. The various actors such as the host state, the donors, the UN refugee agency and implementing partners epitomizes the face of international community. However, they lack financial and human resources to meet the minimum requirements. Funding is dwindling and as such even basics such as food ration are often inadequate and often fall below minimum standards

Since refugee aid in reality is a long term phenomenon, it gets plagued by donor fatigue. In such circumstances, there is interruption of donor funding and supplies to refugee cause, thus leading to inadequate humanitarian assistance. Continued influx also result in diversion of development funding to humanitarian purposes. Furthermore, a number of emerging global challenges dictate that the limited donor funds are distributed to the various areas where they are urgently needed. Such include new refugee situations, IDPs such as in Darfur since 2003 and Kenya following the post-2007 disputed elections political violence, natural catastrophes, war against international terrorism, and the fight against HIV/AIDS. These are realities that places greater burden on the government of the host state. It is also important to emphasize that long term provision of refugee aid

breeds dependency syndrome amongst refugees. It robs them of self esteem, kills their morale and innovative potentialities. Besides, since refugee aid is not extended to urban refugees, thousands of those who should benefit from it are left uncovered.

On its part, the state lacks adequate trained manpower in the right sectors to effectively implement the international provision of refugees. That handicaps the ability of the state to handle refugee affairs as stipulated by those provisions. Besides, there are stereotype about refugees not only among policy makers and implementers but also the populace. Such do not work in the best interest of refugees and put them at the risk of marginalization. To make it worse, while planning for refugees is usually done on short term basis, refugee phenomenon in the country is actually along term issue, particularly considering that the durable solutions are not quite feasible.

Although camp settings are necessary in monitoring security challenges related refugees as well as to provide them with assistance, the strictness by which the policy is followed raises fundamental human rights questions. First, it is a source of harassment to urban refugees, some of whom have obligations to undertake in the towns, for instance those who pursue higher education. Furthermore, some asylum seekers enter the country as individuals and therefore are not considered under prima facie status. These are also likely to be subjected to harassment by the authorities when they are found in urban centers. However, both international refugee law and municipal one provide that illegal entry should not be used as a basis to deport, arrest, or to harass one.

Encampment denies refugees freedom of movement. The fact that refugees are barracked and cannot travel to outside the camp areas without documented authorization is itself a contravention of international refugee law that provides for freedom of

movement. Here is a situation where the state adopts certain measures that may contravene international refugee law so long as it is in its interest. The interests of the state include the need to prove to the donor community the gravity of the burden imposed by refugees as a means to attract aid. Further, security considerations are at the core here. As such, even though encampment is not a popular policy with the UN refugee agency, it still tolerates it due to the justifications that the government give for it as well as a way to avoid antagonizing the host state. Although encampment's stated objectives are quite noble, to a large extent these have not been achieved particularly in the long run. The policy does not empower refugees economically. If anything it ends up breeding dependency mentality on aid as well as despondency among refugees. Furthermore, prolonged encampment perpetuates impoverishment among refugees.

The settling of refugees in large numbers at the camp areas which already had fragile ecological balance is another costly phenomenon when viewed from environmental perspective. It contributes to environmental degradation of the areas. Besides, considering that Kenya is a developing country with a fast growing population, the massive influx of refugees has therefore had some negative aspects on its economy. However, such influxes have also had their positive contributions.

First, the establishment of the camps has facilitated infrastructural development in the areas. The tarmac road from Lodwar to Lokichogio for instance is a direct consequence of the establishment of the refugee camp at Kakuma and their transit point at Lokichogio. This facilitates transport and has actually opened up the area. The establishment of airstrips at both Kakuma and Dadaab is another example of infrastructural development. Second, to reduce tension between refugees and the locals,

as well as on humanitarian ground, the UN and service providing agencies have made strides that benefit the locals. Those who live within the vicinity of the camps benefit directly from some of the facilities and services that the refugees also enjoy. Third, the establishment of the camps has opened up the areas to the extent whereby the problems of the inhabitants have been brought to the attention of various NGOs. Fourth, the donor community inject substantial amount of money toward refugee protection and assistance. While the primary beneficiaries of the funds are refugees, the Kenyan economy benefit immensely. The funds are primarily spent in the economy of Kenya and thus have direct impact on the economy. Many locals and foreigners are employed by the refugee agencies. Refugees are also employed as incentive workers by these agencies. The provision of employment is an indicator of economic growth.

The study reveals that refugees are quite disadvantaged economically. This is partly due to the manner in which they fled from their home countries- hurried departure fleeing from conflicts, thus they literally left behind their assets, and partly due to the fact that some of them, principally those from Southern Sudan, came from regions that had been completely neglected in terms of development by their respective national governments. Furthermore, the existing administrative and legal obstacles in Kenya make it practically impossible for them to get employed locally. Even those who are employed as incentive workers with the various agencies at the camps are exploitatively remunerated, thus leaves them poor. Furthermore, the conditions at the regions where the camps are situated are generally too harsh for some economic activities to thrive. That is a situation that is complicated by lack of both capital and large markets in the areas. There are few well established businesses at the refugee camps that are owned by

refugees. Most of the existing businesses are small-scale ones that hardly generate any substantial income. Poverty is a common phenomenon among the refugee population in general.

As consumers, refugees contribute directly to the growth of the country's gross domestic product (GDP). The study found out that a number of refugees have established successful businesses. These are not confined to the camps but are also found in the towns. These provide various services and goods to both the refugee population and local consumers. By nationality, Ethiopian and Somali refugees form the bulk of the businessmen. Although there are obstacles that make it difficult to quantify the overall production particularly of the enterprises at the camps, my conclusion is that they contribute immensely to the economic growth.

Refugee population forms a potential pool of human resource for the country's economy. This is when looked at both from their youthful age and their general level of education. Majority of respondents to this study were between 20 and 40 years of age, and had at least high school certificate with another significant proportion having some post high school qualifications. Besides, there are also enterprising individuals within the refugee population. Furthermore, the role that a number of camp refugees play as incentive workers proves that many refugees have the necessary skills to perform in a developing economy. However, their potentiality has not been properly exploited. That is mainly due to the soaring unemployment among the Kenyan youth that forces the government to adopt quite restrictive measures in regard to refugee employment.

Matters are not made better considering that the traditional durable solutions apply to a small proportion of refugees in Kenya. Local integration is virtually non-

existent while just a proportion of refugees manage to get resettled to the west. In the latter case, the western countries that have resettlement programs are increasingly becoming restrictive in admitting refugees not only from Kenya but also from other developing countries. Voluntary repatriation, another durable solution, has been seriously hampered by the continued conflicts in a number of the refugee source countries and several technical hitches.

The restrictive refugee employment policy and the fact that most of them are impoverished, compounded with less viable durable solutions, make aid the main option in attempting to alleviate their problems, and as pointed out above, the provision of aid becomes a long term practice. A significant proportion of refugees, for instance, attained their education while in Kenya.

At the camps education is provided from pre-school to primary and secondary levels. The provision of camp education, both formal and non-formal is an example of refugee development aid. Those who proceed for higher education usually rely on sponsors for the funding of their education. With regard to education, a lot has been done not only to ensure that literacy level is raised among the refugee population but also to provide them with vocational and professional skills. However achievement of universal literacy level is still bogged by a number of problems. Furthermore, opportunities of post school training and education are quite limited to the refugee population.

While the state and other actors in the refugee regime to certain extent uphold the fundamentals of international refugee law, flagrant violations are also rampant. Refugees face multitudes of problems at the time of their departure from the home countries, in the process of flight, and in the countries of asylum. The problems that they commonly

experience at the home countries and during flight include those that are associated with insecurity. Such include torture and persecution, separation from family members and atrocities such as rape, killings of relatives, as well as forced conscription of civilians, including minors. In the countries of asylum, the refugee problems take other dimensions and the case of Kenya is not exceptional.

Granting of asylum is the cornerstone to international refugee law. In accordance with the OAU Refugee Convention, Kenya's officially admits those who are fleeing from generalized violence on prima-facie status. Besides, it also applies the UN Convention's legal definition to admit asylum seekers. The country actually had open door policy in admitting refugees. However, the states adopted more restrictive policy following occupation and consolidation of control by al-Shabaab and near collapse of TFG in Somalia in 2006-2007. These developments had serious security implications that made Kenya to eventually close its border with Somalia besides refouler.

The government's policy in regard to refugees is prominently informed by security concern on a number of issues as opposed to being guided by international refugee law per se. Such include the policy of encampment, amnesty, travel requirements and documentation. This study established that security concerns may compel the state to act contrary to international refugee law in order to protect its interests. Besides citing security concerns, the state at times invoke provisions that exclude persons who are seen to be threat to its security. Although the law requires states to adhere to the provision of non-refoulement and the due process of the law, the manner in which the Ethiopian and Somali asylum seekers were handled in 2006/2007 was in flagrant violation of these provisions. It involved putting in place very restrictive measures that barred asylum

seekers on the basis of nationality. Besides it denied them the right to asylum without recourse to due process. Furthermore, since these were people running away from political turmoil, forcible return was most likely to place their lives at risk. However, the response of the Kenya government could be understood from security concerns and political considerations.

The instability in the refugee source countries influences Kenya's foreign policy. The country for instance played a leading role in the peace initiatives in both the cases of Sudan and Somalia. In such a scenario therefore Kenya attempts to find a durable solution that would entail voluntary repatriation.

These can best be analyzed from the realist approach of inquiry in international relations. In this case, the state actions were guided by its security concerns, as well as its foreign policy objectives, as opposed to international refugee law. As such it is a scenario where concerns for state security take primacy over international refugee law in the host state handling of refugee matters. When asked if the various categories of their human rights are protected, the scores are below standard. The respondents ranked political rights to be abysmally protected, with more than half indicating that they are not protected and another a quarter pointing that it is just somehow protected. As such the reality is that refugees lose substantial political rights due to their status.

5.3 Conclusion of the Study

This study concludes that although steps have been taken by the Government of Kenya, UNHCR and other actors with regard to implementing international refugee law, there are still lots of challenges that need to be overcome to implement the law to the required standards. Ideally, the host state should be at the forefront in managing refugee issues within its territorial boundaries. The state should formulate policies and legislation to that end. Furthermore, the state should put substantial resources in refugee protection and assistance. However, in the case of Kenya, the country is hard placed to come up with resources that would enable it implement particularly some of the socio-economic aspects of refugee international law. That places the UN agency in playing the role, some of which would rightly be performed by the state. Such include asylum processing and RSD. The agency itself is plagued with a number of challenges such as lack of adequate human and financial resources among others. Furthermore, as established by this study, the agency is inaccessible to refugees.

The study, guided by the stated objectives made findings that are highly accurate as demonstrated by the analysis of the work. In the final analysis when condensed based on the hypotheses, the work demonstrates reliability and accuracy. There were four hypotheses that were formulated to guide it. One, it found out that those policies that address human rights of refugees tends to alleviate their plight. Due to their status, refugees are subjected to myriads of economic, psycho-social, cultural and political problems. International refugee law thus provides the basis on which individual states handle these problems. Policies and practices that address their rights indeed help refugees in coping with their situations and to certain extent advance their standard of

living. Refugee development assistance, for instance in the provision of education, is an example of policies that address their social rights. On the other hand, policies and practices that raise human rights questions in refugee context worsen their conditions. Discrimination, xenophobia and hostility against refugees are examples of practices that worsen their conditions and make them live in fear. Besides, policies that are quite restrictive on refugees place them in deplorable conditions.

Second, the handling refugee crisis for quite some time in the absence of domestic refugee legislation was a major stumbling bloc in the implementation of international refugee law. Although the Refugee Act 2006 for instance does not specifically provide for integration, it empower the commissioner to formulate policy on refugee matters in accordance with international standards (section 7(2c). The commissioner is also entrusted with the role of promoting durable solutions for refugees who are granted asylum in the country (section 7(2e). Both provisions are fundamental in international protection and are found in the Refugee Bill, 2011.

Third, the study established that refugee status is a long term phenomenon. A significant proportion of the respondents indicated that they have been in Kenya as refugees since the early 1990s. As such, the traditional durable solutions are not quite effective in solving the refugee problems in the country.

Fourth, protection of refugees is complicated by security concern of the government of the host state. Refugees come from countries that are bogged with conflicts. There are concerns that some of those seeking asylum could be militants who may use their refugee status to further their ambitions against their own country. Furthermore members of rival factions may launch offensives against one another. There

are also concerns about the infiltration of illegal arms from the neighboring war-torn countries as well as the possibility of infiltration of terrorists into the country. Security concern is a major determinant of how the state handles refugee matters to the extent whereby when states feel that their internal security and sovereignty are at risk, they may adopt measures that violate international refugee law. The invocation of UN articles by Kenya in 2011 and subsequent declaration of war against al-Shabaab, had far reaching implications on asylum seekers from Somalia.

Although refugee issue is compounded with genuine security concerns, generalizing refugees to be posing security threat breaches the fundamentals of refugee protection. Massive influx of refugees places special burden on the country, they could make significant economic production if proper policies were put in place to tap their talents. The study reveals that existing policies do not enable refugees to exploit their potentialities. And finally, although the state is a crucial player in the refugee protection, the UN refugee agency has been a key player in refugee protection in Kenya.

Fifth, refugee protection in Kenya demonstrates a regime in which there are numerous actors, each have specific roles to play. The state is increasingly playing the coordination role, an area that for decades was dominated by the UN refugee agency.

5.4 Recommendations of the Study

The recommendations for this study is given a two-prong approach; policy recommendations and recommendations for further research

5.4.1 Policy Recommendations

This subsection makes policy recommendations of the study. These are based on the challenges faced in the implementation of international refugee law in Kenya. Much of this work was done when Kenya lacked refugee legislation. The problem was not confined to Kenya. Many Asian states are not signatories to instruments of international refugee law, yet some of those countries are major generators and hosts of refugees. In Africa, while the AU member states are signatories to the UN Refugee Convention and its Protocol, as well as the Continental Convention, states have been reluctant to come up with corresponding municipal refugee law. This writer initially intended to recommend for the enactment of refugee legislation in Kenya, but since this has finally been realized, I would make modified but relevant recommendations in that direction.

First, since refugee problem persists not only in Africa but globally, those countries that are not signatories to the relevant instruments should be prevailed upon to do so by the various actors of the regime. Some of the Asian countries for instance, have been major generators and hosts of refugees in the world. A starting point for them would therefore be to come up with a regional instrument for the protection of refugees. Second, since as discussed above, lack of municipal refugee law is a major challenge to the implementation of international refugee law, those countries that have not domesticated it, whether in Africa or Asia, should come up with such legislation.

Third, international refugee law is not codified. This results in varying refugee law not only regionally but also among states within the same region, thus varying policies in regard to refugee protection. Furthermore, unlike other human rights law, there is no mechanism for recourse in case of violations. This study therefore recommends for codification of international refugee law by the actors of the regime, not only as a means to harmonize the various states refugee law, but as a means for recourse in cases of violation. Furthermore, the international community should also put in place instruments for seeking recourse by the aggrieved. Otherwise, the current arrangement leaves the host state to be the determinant on major aspects of refugees, thus works against the principle of natural justice in cases where the state is the violator.

As discussed above, after sixteen years of attempts of juggling with various refugee bills, the government of Kenya eventually came up with legislation to that effect. The study thus makes recommendations in regard to the Kenya Refugee Act, 2006. First set of recommendations focuses on some of the weaknesses of the legislation that the parliamentary committee on refugee welfare and the attorney general's office, besides the minister for immigrations and registrations of persons, should focus on. Section 21 of the Act for instance should be specific on the minister who is empowered to expel a refugee. It is confusing because it states that the minister, "in consultation with the minister responsible for matters relating to immigration and internal security". The provision presupposes that the immigrations and internal security is under one ministry which is not the case with the government of Kenya. The current arrangement, for instance, is one where refugee docket falls under the ministry of immigrations. The formation of the grand coalition government following the 2008 National Reconciliation

Accord is a manifestation of fluidity of government ministries and their responsibilities. The loophole can therefore be subject to abuse by say a minister for foreign affairs.

Besides, the provision that chairman of the committee for RSD be appointed by the minister should be amended so as to allow members of that committee to elect their chairman. That is the democratic trend in the world of today. Furthermore, the first and second terms of the appeals board members should be synchronized, either three or four years in both cases.

The refugee committee that is provided for by the Act (section 8) provides for composition by representatives from the various ministries and departments that play significant role in refugee affairs in the country. However, it should also integrate representatives of the agencies that have been involved in refugee protection. It should for instance have a representative from UNHCR, WFP, UNDP and a service providing agency each. That should be on the basis of experience, expertise, and the role that those organizations will continue to play in the refugee matters in the country. They should be ex-officio members of the committee who participate in deliberations but not vote on the pertinent issues.

This study established that discrimination against refugees is anathema that seriously undermines their protection. Discrimination is a matter of attitude and thus needs attitudinal change. This is where the various stakeholders in the refugee regime have roles to play in harmonizing the relations between refugees and the host society. Besides the law should make it clear that discrimination on the basis of factors such as national origin are illegal. This is an area which could have also been specifically captured in the Refugee Act. Besides, legislators need to come up with specific anti-

discrimination and hate-crime laws that would protect not only refugees but other marginalized and vulnerable population groups.

There is need to put into place the administrative organs that are provided for in the legislation to enable the state to be the real implementer of international refugee law. Such include the appointment of the commissioner and the establishment of RSD committee that would undertake the asylum process. Besides, the appeals board should also be established to undertake the responsibilities that are assigned to it.

The Act has a confidentiality clause that deprives committee members, employee or agents from disclosing information acquired under the Act except “in the course of his duties or with consent of the commissioner” (section 24). This is an important aspect of refugee human rights. However it has the potent of being cited by those concerned to the extent whereby they even deny academic researchers the necessary information. The clause should be specific that it is the individuals’ confidentiality that is protected as opposed to placing a blanket shield that may hamper generating academic knowledge.

The study established that the protection of refugee rights is quite elusive and that in some cases, it is those who are suppose to protect them who are the violators. This calls for radical measures which would require that the various actors in refugee protection and service provision actually get trained on municipal and international refugee laws. Such would include organizing regular workshops and conferences, and refresher relevant university courses, not only for protection officers and service providers, but also for immigrations and law enforcement officers who work in refugee areas, as well as judicial officers.

For international refugee law to be implemented effectively at national level, the relevant government organs need to come up with a comprehensive policy in that regard. Only then will the existence of municipal refugee law be implemented in a consistent manner and have real impact in refugee protection.

The donor community should realize that refugee phenomenon is a long term one and thus, should increase the aid. Furthermore, the increased aid should be geared towards development as opposed to being focused mainly on humanitarian assistance. Developmental aid is a means to empower refugees economically and reduce dependency. In relation to that, the government should adopt policies that opens up economic opportunities for professional and skilled refugees alongside its nationals as a means to not only enable refugees become self reliant, but also to contribute towards national development.

As discussed in chapter four, the government is becoming restrictive in handling refugee issues, partly because of the perception that it is burdened by continued hosting of refugees. The concept of burden-sharing should therefore be reviewed with the aim of having the international community play its rightful role. This is so particularly in considering the low level of the country's economy and the myriads of socio-economic and political challenges that it is struggling to solve for its own citizens.

Although encampment policy is important in the short run and particularly in provision of assistance, its downside effects in the long-run would require that individual refugees are given the option of choosing their areas of residence with a view to enable them become self reliant. Furthermore, the commissioner of refugee and other policy

makers should explore local integration as a viable option for refugees after being in the country for certain period of time.

The international community should on the other hand focus on conflict resolution in the refugee home countries as a means to accelerate voluntary repatriation as a durable solution. Besides, African countries should reinvent themselves in terms of governance as a means to remove causes of conflicts that is at the core of human displacement, including refugee phenomenon. Adoption and implementation of democratic ideals is away of improving governance in the various countries in the continent. As such, African states should undertake constitutional and political reforms that would usher democracy and eliminate the sources of conflicts that result in forced migration. Governments in the continent should find means of addressing problems such as tribalism, corruption, disparity in the distribution of national resources, and bad governance as means of conflict prevention. The African Union and sub-regional groupings such as IGAD, SADC and ECOWAS should also develop effective early warning mechanisms to potential conflicts and prevent them from occurring.

In regard to refugee education, the teacher training college at Kakuma and any other that may be established at the camps should be focused on producing teachers for the camp schools and not for schools in the refugee home countries. That is because serious shortages of trained teachers still plague refugee education at the camp schools. Furthermore, the exportation of Kenya trained-refugee teachers may raise the question of their relevance to education systems of those countries. Besides, both the ministry of education and individual institutions of higher learning should come up with policies that recognize refugee students as such as opposed to being classified as international

students. That would enable the institutions and the ministry to address problems that are peculiar to refugee students. As such, there is need to for policy in regard to refugee higher education.

5.4.2 Recommendations for Further Research

This study recommends the following related areas for future research:

- (a) The implementation of international refugee law in Kenya when the Refugee Act shall have been fully operational. This would enable both scholars and policy makers to make comparison in the implementation of international refugee law in the absence of a corresponding municipal law with when municipal law exists. The same kind of studies should also be done with respect to countries such as Zambia, Uganda, and Tanzania that also came up with refugee legislations within the same decade.
- (b) A study on refugee economy. Such a study should focus on refugees in Kenya, or impact of remittance of say Somali, Sudanese, or Mozambican refugees on the economies of their countries as well as on the livelihood of their relatives and dependants.
- (c) The managing of internally displaced persons in Kenya. A study of IDPs would be significant, considering that there is absence of an international convention. Furthermore, the problem of internally displaced persons became a reality following the disputed 2007 elections in Kenya.

- (d) The study also recommends further studies on recurrence of conflicts in Africa and aspects of their resolution, as a way of addressing the problem of influx of refugees.
- (e) The impact of Sudan's Comprehensive Peace Accord (CPA 2005) on the repatriation of Sudanese refugees from Kenya and Uganda. Case studies on repatriation should also focus on other countries in post-conflict scenarios such as Liberia, Sierra Leone, Cote d'Voire, Burundi, and Iraq.
- (f) Reconstruction and resettlement in post-war situations on specific countries
- (g) Studies in democratization in a selected African state, considering that refugees are products of bad governance.

In a nutshell, although policy measures have been undertaken by the state and other implementing agencies in implementing refugee law in Kenya, numerous challenges persist to the extent whereby attaining the minimum standards, particularly in regard to their rights remain elusive.

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1. What is your gender? A. Male B. Female
2. What is your country of origin?
A. Somalia B. Congo C. Rwanda D. Sudan E. Uganda F. Other (specify) _____
3. What is the highest age bracket you belong to?
A. under 20 yrs B. 20-25 yrs C. 26-30 yrs D. 31-35 yrs
E. 36-40 yrs F. 41-45 yrs G. 46-50 yrs H. over 50 yrs
4. How do you describe yourself in terms of political views?
A. conservative B. liberal/moderate C. social/progressive/refugee
5. Did you ever visit a conflict-torn country (not as a refugee) before migrating to
Kenya?
A. Yes B. No
6. If yes (A), which country did you visit? _____
7. What reason(s) did you have?
A. Curiosity B. Medical C. Other (specify) _____
8. How long did you remain in that country?
_____ months
9. What was your relationship to the country of origin? _____
10. What is your current destination? _____
11. If you are employed, what is your name of the employer?

12. Approximately, what is your monthly salary? _____
13. What is the highest level of education that you have attained? _____
14. Before of the survey do you intend to?
A. Find a government job B. Start a business/enterprise

APPENDICES

APPENDIX I

Questionnaire for Refugees

Please answer the questions below by checking the appropriate letter or provide a very brief answer where there are no multiple choices

1. What is your gender? A. Male B. Female
2. Which is your country of origin?
A. Burundi B. Congo. C. Somalia D. Sudan E. Uganda F. Other (specify)

3. Which of the following age brackets do you belong to?
A. under 20 years B. 21-25 yrs. C. 26-30 yrs D 31-35 yrs
E. 36-40 yrs F. 41-45 yrs. G. 46-50 yrs H. over 50 yrs
4. How do you classify yourself in terms of residence?
A. camp refugee B. urban refugee C. rural settlement refugee
5. Did you ever live in another (other) country (ies) as a refugee before migrating to Kenya?
A. Yes B. No
6. If yes (6), which country (ies) did you live in? _____
7. What is your refugee status?
A. Conventional B. Mandate C. Other (specify) _____
8. How long have you lived in Kenya as a refugee?
_____ yrs. _____ months.
9. What was your occupation in your country of origin? _____
10. What is your current occupation? _____
11. If not employed, what is your source of livelihood?

12. Approximately, what is your monthly income? _____
13. What is the highest level of education that you have attained? _____
14. Which of the following do you belong to?
A. First generation refugee B. Second generation refugee

C. Third generation refugee D. Other (specify) _____

15. What is the highest level of education that the following attained?

A. mother _____ B. father _____

16. Do your parents also reside in Kenya?

A. Yes B. No

17. If B in (16), which is their country of residence? _____

18. If A in (16), what is their immigration status? _____

19. Do you get any assistance for your livelihood from any agency?

A. Yes B. No

20. If A in 19, which are the agencies?

21. Have you ever registered in an educational institution in Kenya?

A. Yes B. No

22. If A in 21, what levels of education have you registered in? (Check all the applicable ones)

A. pre-primary B. primary C. secondary D. college/university

23. If you checked C and/or D in 22, who was/is your sponsor?

24. If you specify an external sponsor in 23, would you consider the funding to be adequate for the cost of education?

A. Yes B. No C. N/A

In questions 25-28, please evaluate by indicating against each institution(s) the level to which they assist you as far as your wellbeing is concerned.

A. excellent B. good C. satisfactory D. below satisfactory

25. UNHCR

26. Kenya government

27. NGOs

28. Private companies

In questions 29- 36 below, please rank the availability and sufficiency of the following refugee services at your place of residence as:

A. quite sufficient B. sufficient C. somehow available

D. Below satisfactory E. very inadequate F. No such service exist for refugees

(Indicate letter for the appropriate choice against the service)

29. Proper housing

30. Clean treated water

31. Sanitation

32. Transport

33. Communication

34. Electricity

35. Other sources of energy

36. Health services

37. In your view, to what extent does the encampment policy enhance resident refugees' security?

A. great extent B. somehow C. less extent

38. Do you ever feel your security threatened due to your immigration status?

A. yes B. no C. N/A

39. If A in 38, which of the following do you consider to be the leading source of that threat?

A. other refugees in general B. refugees from the same country as yourself

C. refugees from other countries D. the host population

D. others (specify) _____

40. To what extent does the issue of small arms cause concern in your area of resident?

A. Great extent B. somehow C. less concern D. No concern

41. What is your evaluation of the role of protection officers in regard to your security and safety?

A. great B. satisfactory C. less than satisfactory D. no idea

42. Have you ever applied for permanent residency or asylum in Kenya?

A. yes B. no

43. If A in 43, in your opinion, how do you classify the Kenya's immigration rules regarding acceptance and admission of new immigrants?

A. unnecessarily stringent B. reasonably stringent

C. fair D. quite reasonable and standard

44. Given opportunity, which of the following durable solutions would you give first priority?

A. integration into the Kenyan society

B. voluntary repatriation

C. resettlement into a third country

D. other (specify) _____

In 45-48, below are categories of fundamental human rights. How do you rank each of these as applicable to refugee situation in Kenya? (Indicate the appropriate letter against the category).

A. Quite protected B. Protected C. somehow protected D. Not protected

45. Economic Rights

46. Social Rights

47. Cultural Rights

48. Civil and political rights

49. In your view, what is the attitude of the host population towards you and other refugees? (Check all which apply)

A. quite friendly B. Normal C. Discriminative D. Hostile

50. Please indicate any other relevant information that you would wish that this researcher capture in the study.

APPENDIX II

Questions for Discussion with UNHCR officials

1. What is the approximate number of refugees in Kenya today?
2. Give an account of the influx of refugees into Kenya during the past during the past decade or so.
3. Compare the trends in (2) with those of other countries within the region.
4. What are the specific roles that the agency plays in regard to the following?
 - a) refugee admission
 - b) refugee protection
 - c) refugee assistance
 - d) promotion of the provisions of international conventions and treaties in regard to refugees
5. Identify the institutions that UNHCR work hand in hand with regarding refugee issues.
6. What are the stated objectives of UNHCR in regard to refugees?
7. What challenges does the UN agency experience in achieving its objectives in regard to its work relations with the institutions named in (5)?
8. Does the scope of the agency extend beyond refugee issues, for instance in addressing issues of internally displaced persons (IDP)?
9. Refugee issues raise security concern not only among the host countries, but also from the source countries. What is the validity of that concern particularly with the area under study?
10. How does the concern raised in (9) affect Kenya's relations with other countries within the region?
11. To what extent does the security concern affect policies or measures adopted by the Kenya government?
12. To what extent do measures (in 11) affect the protection of refugees in regard to international law?
13. What are the main challenges posed to the traditional durable measure in the case of Kenya?

14. What role does the agency play in attempting to achieve the durable solutions in the case of Kenya?
15. What options do the UN agency and international community have in place to the traditional durable solutions?
16. How effective does aid help to alleviate the plight of refugees?
17. To what extent is the encampment policy in Kenya effective in achieving its objectives?
18. Is the encampment policy in line with the provisions of international law on refugees?
19. What are the prospects of halving the number of refugees in Kenya and Africa in general by the next decade?
20. To what extent can a state adhere to provisions of international conventions and protocols on refugees without incorporating those provisions into municipal law?

APPENDIX III

Questions for discussion with Government Officials

1. What is the approximate number of refugees that the country hosts today?
2. What is the breakdown of the number (in 1) by countries of origin?
3. Give an account of the influx of refugees into the country.
4. What is the rationale of encampment policy?
5. To what extent does the policy (in 4) achieve the objectives?
6. Which other institutions are major stakeholders in refugee issues?
7. What is the government's position regarding enactment of refugee legislation?
8. Attempts have been made for over two decades now to come up with refugee law. What are the main challenges faced in coming up with such a legislation?
9. What are the major challenges faced by the government that has prevented the formulation of comprehensive refugee policy?
10. Kenya is a signatory to a number of instruments that provide for the protection of refugees. In the absence of both comprehensive policy on refugees and refugee law, how does the government ensure the implementations of those provisions?
11. Specifically, what measures does the government have in place to protect the rights of refugees?
12. To what extent do refugees from different countries pose security threat to one another if they live in the same environments?
13. The influx of refugees into a country raises security concern for the host state. To what extent is such concern applicable in the case of Kenya?
14. Refugee issue is a key international relations issue today. How does the refugee issue affect Kenya's relations with the source countries within the region?
15. What role do the donor and other protection agencies play in helping the state to cope with the refugee situation?

16. To what extent has the donor community applied the provisions of ICARA II regarding refugee assistance in Kenya?
17. Does the practice of assistance work adequately in promoting independence of refugees?
18. What are the major challenges encountered in attempting to solve refugee situation through the traditional modes of resettlement, voluntary repatriation, and integration?
19. What is the procedure used by the government to admit refugees in the country?
20. What problems are experienced by the concerned officers in implementing the procedure (in 19)?
21. How many refugees have applied for asylum or permanent residency in Kenya in the past ten years? (Please give the breakdown of those numbers per year?
22. Have many of the applicants in (21) have been granted the status?
23. Under what circumstances does the municipal immigration allow for involuntary repatriation of a refugee?
24. How many refugees have been deported or involuntarily repatriated in the last ten years?
25. What procedure guides involuntary repatriation or deportation of a refugee?
26. To what extent has the Kenya government implemented the provisions of the 1966 International Covenant on the Economic, Social, and Cultural rights in regard to refugees?
27. To what extent are the provisions of International Covenant on Political and Civil Rights (1966) implemented with regard to refugees?
28. What are the economic impacts of refugees in Kenya?
29. In case of any negative economic impact(s) (in 28), what measures are being undertaken to address the impacts?
30. What are the environmental impacts of the camp refugee activities? What -measures are taken to address those impacts?

APPENDIX IV

Questions for discussion with Officials of NGOs and other service providers

1. What is the structure and composition of this organization?
2. What role is played by the organization regarding the refugee situation?
3. Are the roles (in 2) confined within this country or they extend to other countries?
4. Do you deal with only camp refugees or you extend your services to urban refugees?
5. What problems are peculiar to urban refugees, as opposed to camp refugees? (If applicable).
6. In your view, does the encampment policy achieve the intended objectives?
7. Does encampment policy raise human rights issues as far as you or your organization is concerned?
8. To what extent does the practice of assistance help to alleviate the plight of refugees?
9. What measures need to be taken to make refugees more independent as far as their livelihood is concerned?
10. Xenophobia is a common phenomenon in the world particularly since the demise of the cold war. Do you ever receive reports of discrimination or maltreatment from the refugee population that you deal with?
11. If yes (10), where are the sources of those treatments? What is being done (by your organization) or any other institution to redress those problems?
12. Are there evidence of relations between refugees themselves being determined by the following:
 - a) Country of origin
 - b) religion
 - c) race
 - d) economic status or
 - e) language?
13. Given the fact that conflicts which result in refugee situation result in dislocation of families, how does your organization assist the refugees to adapt to their new environment where possibly there is no family member around?
14. What psycho-social situations do refugees find themselves in Kenya? How are these being addressed by your organization or any other organization?
15. What are the specifics of the relations (in14)?

16. What relationship exists between refugees and the local host population?
17. What contribution do refugees make to this economy? In case of shortfall, what measures are being undertaken to the anomaly?
18. How does the absence of refugee law in Kenya affect the implementation of the provisions of international conventions and protocols in the country?
19. What are the challenges faced by this organization in its attempt to achieve its objectives regarding refugees?
20. What are the prospects of using the traditional durable solutions to solve the refugee situation in Kenya specifically, and Africa in general?