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NATIONAL SECURITY AND LEGAL PROTECTION OF REFUGEES IN HORN OF AFRICA: A CASE STUDY OF KENYA’S DADAAB REFUGEE CAMP

NGANGA JACKLINE

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DECLARATION

Declaration by Candidate

This Research project is my original work to the best of my knowledge and has not been presented for the award of any degree in any other University. No part of this project may be reproduced without the prior written permission of the author and/ or University of Nairobi.

Nganga Jackline. (R50/74117/2014)

Signature:…………………………..       Date:…………………………..

Declaration by Supervisor

This Research Proposal has been submitted to:

NAME: DR. ANITA KIAMBA.

Signature:………………………………       Date:………………………………
DEDICATION & ACKNOWLEDGEMENTS

This work is dedicated to my daughter Janelle Imani for being my strength when life wasn’t meaningful, bringing so much joy into my life, for allowing Mom to go to school amid such a transition period of our lives, I celebrate you.

To my father Richard Kariuki, for loving me, believing in me and encouraging me to reach for the stars.

To my great friend Major Kuntai Ole Tingisha (retired), I dedicate for coming into our lives and being a source of strength and comfort, encouraging me and seeing me through school.
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LIST OF ABBREVIATIONS

AU- African Union
AMISOM - African Union Mission in Somalia
CEDAW- Convention on Elimination of all forms of Discrimination against Women
CRC- Convention on the Rights of the Child
CPST - Community Peace and Security Team
DRA- Department of Refugee Affairs
GDDP- Garissa District Development Plan
GoK- Government of Kenya
ICCPR- International Covenant on Civil and Political Rights
IOM- international organization for Migration
MSF- Médecins Sans Frontières
OAU- Organization of Africa Unity
PEV- Post Election Violence
RAC- Refugee Affairs Committee
RSD- Refugee Status Determination
UDHR - United Nations Declaration on Human Rights
UN- United Nations
UNDP- United Nations Development Program
UNHCR- United Nations High Commission for Refugees
UNICEF- United Nations International Children’s Emergency Fund
CHAPTER ONE
INTRODUCTION

1.0. Background of the study

This chapter will discuss the background of refugees in Kenya. It will focus on who a refugee is and discuss the refugee situation in Horn of Africa. It will go further to discuss the security issues related to refugees and the international legal instruments on refugee protection that Kenya has signed and ratified. Finally, it will lay out the paper's outline and details of each chapter.

Globally, over 38.2 million people are internally displaced, compared to more than 19.5 million refugees. According to the latest UNHCR data, 51% of the global refugee population is children, the highest proportion in over a decade. According to the UN, women and girls represent 50% of the entire refugee population. In many societies, they face specific risks such as discrimination and are less probable to have access to basic rights than the male population\(^1\). In situations of displacement, these risks, particularly discrimination and sexual and gender-based violence, can be exacerbated. Unaccompanied women and girls, women heads of households and pregnant, disabled or older women may face particular challenges.

Towards the end of 1980s, Kenya was reported to be among the leading host of East African origin refugees as a result of an influx of Somali refugees. Since then, Kenya has hosted thousands of refugees from East and Horn of Africa including Southern Sudan, Uganda (during the autocratic rule of Iddi Amin) and Somalia among others\(^2\). Due to the political instability experienced in her neighboring countries such as Djibouti, Somalia and Eritrea, Kenya has become a destination to most of the refugees fleeing their nations. With insurgency of the

militant group, Al-Shabaab, in Somalia, Kenya has been hosting refugees of both genders and age in the camps as they escape unrelenting war in their country. Although the aim of welcoming them was to offer them humanitarian services, security issues have been raised as the authorities think that the camps may harbor those insurgents. Kenya has experienced a spate of attacks believed to have been planned by the terrorist who reside in these camps in disguise.

Section 14\(^2\) of the Refugees Act enacted in the year 2006 spelled out the rights of each of the approximated 12,000 refugees staying in Kenya. They were needed to enjoy the rights to education, settle anywhere within the borders of Kenya, and the right to seek and work in Kenya. The early 90s saw most countries surrounding her experience political instability, Somalia being the hotspot of terror. The result was the migration of the refugees, mostly originating from Somalia into Kenya through the borders to hit the 400,000 people mark in 1992. With over 900 Somali refugees arriving daily, the Government of Kenya (GoK) could barely provide Water, sanitation, food, and healthcare, which contributed to catastrophic death and malnutrition rates. As a result, the GoK could no longer provide humanitarian assistance to the refugees. The early 90s marked the migration of refugees that came to seek refugee from the bordering countries including Sudan and Somalia\(^1\). Kakuma and Dadaab are the two main camps where refugees are hosted in Kenya. The body mandated with the registration of victims of war in other countries is the Ministry of Immigration and Registration of Persons under the Department of Refugee Affairs. They act in collaboration with United Nations High Commission for Refugees (UNHCR).

The onset of the long running conflict in Somalia saw the many refugees land at the Kenyan coast via water in boats. They had to be settled in the camps so as to make humanitarian efforts simple to administer and to monitor them to lower chances of threat as spelled in the refugee act

\(^{1}\) Refugee Consortium of Kenya, *supra* note 13, at 77.
of 2006. However, some were able to somehow settle in Mombasa contrary to the directive. There are those who had capital to establish some business such as electronic shops while some started illegal black markets for sale of counterfeit goods and smuggled items. There was a policy that exempted the Barawan refugee camps from any form of taxation. Any form of business established and run by these Somalia refugees in these camps thrived as they managed to sell their items at lower prices attracting more buyers. However, most of the locals who had their business and were paying taxes developed resentment toward these Somali refugees’ business people. The pressure from the local business people was so much that the Gok had to listen to their concerns. A policy was implemented in 1997 that saw the closure of the camps and all the refugees relocated to Dadaab and Kakuma. Some refugees felt it was unfair and they opted to go back to their country regardless of the tension and uncertainty. The repatriation drastically reduced the numbers of refugees in Kenya to almost half, although the number of internally displaced persons (IDPs) in Somalia went up.

That historical repatriation did not change the fact that Kenya still remains the home to the world’s biggest refugee camp, Dadaab. The presence of the camp has for a long time raised security concerns as the Somalis escape clashes upon the ouster of Said Barre that occurred in 1991. Before 2009, a majority of the Kenyans had no knowledge that a refugee camp like Dadaaab existed. Besides, after the bombing of the US Embassy in 1998 US, approximately 600 refugees originating from Somalia, all residents of Eastleigh, were arrested in connection with the attack. Another search for terrorists happened in 2002 and following that, more than one thousand migrants without permit got arrested. Those arrested were put in custody for questioning following the attack and short-term closure of the Embassy in 2003.

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At the moment, there is a lot of distrust among Kenyans on the Somali refugees as a result of all the historical and high magnitude attacks associated with them. For fear of more attacks, the government of Kenya implemented a policy in 2001 to close the border between Kenya and Somalia. There were allegations that they took advantage of the hospitality to engage in the illegal business and importation of firearms into the country. Most people believe that refugees from Somalia are to blame for the current insecurity in Kenya. As such, the government of Kenya is in a dilemma whether to continue hosting the refugees at the expense of the security of the residents or to withdraw their support. Besides, Kenya has to choose between playing the important humanitarian role of hosting those who flee their countries as result insecurity required internationally and ensuring there are no security threats.

However, the main concern is whether the refugees are a threat to the Kenyan national security. This document aims to establish the effect of the Kenya’s policy to relax the laws that requires close scrutiny of the migrants to Kenya especially those that come from Somalia on the national security. Also, the aim is to explore the impact of the implementation of stringent domestic and international laws on the Kenyan national security.

1.2 Refugees in the Horn of Africa.

The Horn of Africa region constitutes the region containing the following countries, Djibouti, Ethiopia, Somalia and Eritrea. Kenya, being the host of the largest refugee camp in the world, the Dadaab refugee camp, has had to deal with a number of issues including security concerns. For instance, the Dadaab refugee camp, which was founded in 1991 with the aim of hosting Somali

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refugees who had fled the clashes and subsequent civil wars in their country have posed an increasing security threat to Kenya. The Horn of Africa is an important departure point for refugees. Each year tens of thousands of people leave or pass through Somalia and its neighbouring countries, including Yemen, in the hope of finding a safer or brighter future elsewhere as a result of conflict. A number of organizations have established centres and camps to ensure that the migrants have food, shelter and amenities necessary for their survival but little is done to ensure security of the migrants from terrorism attacks, armed conflict and protection of women and children who are abused and their rights violated as they search for safe havens.

Countries in Africa have experienced violent transitions after independence including civil wars and mass killings. This has been as a result of the divisiveness of the original boundary-making processes, the coercive nature of colonial rule and the messy process of independence. Postcolonial states often exhibited the same characteristics as their colonial antecedents due to their creation in haste. Other contributors have been lack of public participation in political settlements, poor governance and natural catastrophes. The civilian population taking no part in the hostilities must be spared and protected. This fundamental principle underlies the whole concept of war, and is the basis of The Hague and the Geneva conventions. It has taken centuries for this principle to be accepted. In all civilizations there has been a chivalrous feeling that man should fight man and that to attack women, children and the elderly is an act of subject cowardice but this feeling no longer applied once the fighting was over. Defeat placed the civilian population at the victor’s mercy. He could enslave them, deport them or put them to death.
Many people have left their homes and sought refuge in other countries in fear of destruction and persecution due to political instability, human rights violations and natural disasters. The majority of refugees and IDPs live in the developing world, which means that they find refuge in countries and among people who already struggle with poverty and hardship\(^7\). Their survival is dependent on the level of assistance provided by local communities and international organizations. There are over 59.5 million people in dire need of protection and assistance as a consequence of forced displacement. They include refugees, internally displaced persons (IDPs), and asylum-seekers.

1.3. Problem statement

Kenya's refugee camps are located in some of the most hostile semi-desert areas of the country. These camps have been designated as safety net in the emergency phase; however, refugees are prevented from enjoying fundamental rights: freedom of movement and employment that would enable them to protect their livelihoods\(^8\). Kenyan migration law prohibits refugees to move out of their designated camps. As a result, refugees tend to be susceptible to police harassment, detention and being charged with unlawful entry if found outside the camps.

There has been widespread acceptance of the multidimensionality of deprivation among refugees that encompasses lack of movement, income, vulnerability, insecurity and voicelessness\(^9\). The refugee situation threatens their self-sufficiency as a result of having left behind most of their assets as they ran away from home. The change of location makes it difficult for them to regain their economic security. However, international humanitarian agencies have over the years been


active in providing assistance to refugees. Therefore, the study will establish social effects of
Somali refugee migration to Kenya.

Kenya has experienced a high magnitude of refugees into Kenya as they escape crashes from the
countries from her neighbors mostly Somalia after the toppling of the government of Somalia in
1991. Following that, Kenya had to set aside land to host the refugees in that year. Various
bodies offer their assistance to the refugees from these camps although those authorities are
faced with various challenges in their effort to offer support. Kenya hast to agree to host refugees
as required by the “Refugee convention of 1951” and the OAU convention of 1969 on refugees.

Despite the efforts to accord the refugees their right as required by the law, the government has
enacted other internal measures to ensure that the migrants do not enjoy right not stipulated in
the signed agreement. A perfect example is the policy demanding all refuges to settle in certain
designated areas set aside for that purpose. Ethically, a camp should be habitable and should
meet the international refugee camps standards, not to forget the duration a refugee should reside
in a camp. However, it raises the question whether habitable refugee camps may deter the
migrants from returning to their own country. These concerns are common with the policy
makers in Kenya and UNHCR, both parties finding it hard to reach an amicable solution.

Although the government of Kenya recognizes the need to host refugees by signing laws meant
to protect them, managing the refugee remains a headache. As a result, this study aims to
investigate the impact of migration of the refugees into Kenya on the security of the country.

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11 Section 18, Refugees Act, 2006.
Economics, 18(5), 405-414.
Publishers.
Focusing on the experience with Dadaab refugee camp, this study will dig into the security threats brought about by the settlements of the migrants mainly from Somalia.

1.4. The objectives of the Study

a). To demonstrate the security gaps in protection of refugees in Kenya vis-a-vis the international obligation to protect.

b). To illustrate the legislative and policy gaps and interrogate the role of international law in ensuring protection of refugees.

c). To investigate the enforcement of international legal instruments that protect refugees.

1.5. Literature Review

This section will focus on who a refugee is; the refugee situation in Horn of Africa; the security issues related to refugees; and the international legal instruments on refugee protection has Kenya signed and ratifies.

1.5.1. Definition of a refugee

A refugee is a person who has been forced to move from their own country due to war and disaster to seek refuge elsewhere. According to the United Nations Convention on Refugees of 1951, article 1A, a refugee is a person who escapes prosecution for racial, religious, nationality, affiliation to a particular social group, or even political opinion out of fear. Mostly the term refugee represents all the individuals displaced from their countries as a result of war and not prosecution and that may not fall in the definition going by the Refugee Convention. The “Convention Governing the Specific Aspects of Refugee Problems in Africa” embraced by the Organization of African Unity In 1969, the organization of African Union OAU, adopted a definition derived from the convention to include not only those who run away as a result of

prosecution, but also for other reasons such as external attacks on a home country, and other skirmishes that affect the day to day activities.

1.5.2 Refugees in the Horn of Africa

Kenya has hosted refugee from the neighboring countries for a long time and now there is also legislation on refugees passed not so long ago. For instance, in 1970s, due to the violence that rocked the country a significant number of Ugandans fled and settled in Kenya. A majority of the migrants were educated and had the skills needed to fit perfectly. The refugees into Kenya were at liberty to settle anywhere in the country, but only until the numbers were too large to manage as more came from even more countries in the horn of Africa. No refugee camps existed at that time until the end of 1980s, but Thika Reception Centre located 40 kilometers away from Nairobi hosted a number of refugees. Additionally, the government’s Eligibility Committee used it to carry out the “Refugee Status Determination (RSD)”. In the early 1990s, the huge inflow of refugees in the early 1990s necessitated the need to establish camps at the Kenyan borders for refugees from Ethiopia, Somalia and Sudan.

Although a majority of refugees from Somalia initially entered and settled in the coastal region, they were later relocated to the main camps in the northern Kenya including Dadaab. Those who came from Ethiopia and Sudan were settled Kakuma located in the north-west of Kenya. All parties, the UNHCR and the government and everyone else concerned expected that the camps would host the refugees for some time until serenity returns in their home countries. According to the authorities, a camp would help make the service delivery efficient as they prepare for repatriation once fighting ceases at home.

The magnitude of the refugee influx, they had challenges addressing the needs of every person leaving the “prima facie” approach. Two camps in Kenya where refugee are settled are Dadaab found in Wajir County and Kakuma, Turkana County. The two camps were left following the closure of other smaller camps in Mombasa, Malindi, Thika, Moyale and Mandera. The responsibility of catering to the basic needs of the refugees is now with the UNHCR, UN and other agencies under UN such as UNICEF and some NGOs. Security and administration and law and order at the camps remain the responsibility of the Kenyan Government

1.5.3. Kenya’s Legislation on Refugees

The Refugee Act was made law in 2006 following advocacy from the UNHCR and the civil society. That enabled the implementation the 1951 United Nations Convention on the Status of Refugees, the 1967 Protocol and the 1969 OAU Convention. According to the Act, refugees fall into two categories; the statutory refugees and prima facie refugees. The act also spells out the conditions for inclusion and withdrawal of either of the refugee status. Those who commit crimes with or without Kenya, those with dual nationality and hence have a right to seek refuge in another country, and those people in positions where they cannot seek refuge, are all covered17. Moreover, the enactment of the Refugee Act helped to establish a Department for Refugee Affairs (DRA) mandated with the responsibility of administering, coordinating, and addressing refugees’ issues. Its functions include coming up with policies, finding long-term solutions, coordination of assistance from international authorizes, and address refugees’ affairs relating to registration, issuance of IDs, sourcing travel documents, and manning the camps.

The DRA has also a committee established under the same act whose responsibility is to advice the Refugees commissioner. Further, the act stipulates that it should bring the host community and the civil society into play. Finally, the act the states the parameters used during the Refugee Status Determination (RSD) affairs as the refugees file their refugees application\textsuperscript{18}. The DRA requires that every asylum-seeker should report at the reception not later than 30 days upon entry into the country\textsuperscript{19}. Once their details are taken, they are immune to arrest because they are issued with a Refugees Certificate. Failure to avail themselves calls for arrest for being in the country illegally. At the same time, they get interviewed to know their reason for being in the country and to ascertain that they are truly refugees. If they are accepted as refugees and granted the status, it allows them to stay in the country, together with their families, until it is safe for them to return home.

If a refugee is not granted the refugee status, they can seek the intervention of an Appeals Board and if it still fails, they can proceed to the High Court. They have no option but to leave the country if none of these alternatives works. Those granted asylum are given a Refugee Identification Pass, which gives them the right to apply for a Convention Travel Document in order to tour other countries without needing a passport. If the DRA is convinced that refugee has reason enough to leave a camp, they offer a Movement Pass\textsuperscript{20}. Kenya still upholds the “open door policy” that allows refugees move into the country without much hassle despite the high numbers. These refugees are according full human rights for some time and the repatriated when

\textsuperscript{18}Record, J. (2003). Bounding the global war on terrorism. ARMY WAR COLL STRATEGIC STUDIES INST CARLISLE BARRACKS PA.
the situation is their countries get normal. That means that they Kenyan policies allow refugees and accepts them without much scrutiny such as the one conducted by other organs including the UN Convention\textsuperscript{21}.

Due to that laxity, the terrorist group, Al Shabaab has been a threat in the horn of Africa and particularly Kenya. Following the threat that the militia continues to pose, it calls for policies that should reduce the freedom of movement and monitor them as they carry out their daily activities\textsuperscript{12}. The reason for calls to revise the policies regarding refugees are well justified and Kenya should advocate for the revision of the international policies so that they can identify safe zone in their countries and keep them secure from there. However, there is little that Kenya can do about this apart from just seeking the intervention of the international community. No refugee should be returned to their country when seeking refugee when their live is in danger as per the international law regardless of the differences\textsuperscript{22}.

The international principle is not fair as it leaves host nations vulnerable to security threat associated with the refugees who misuse the opportunity. The solution remains to institute stringent measures that will keep at bay the threats\textsuperscript{12}. That is to say that at no instance should the security status of a country and that of the refugees be mutually exclusive

\textbf{1.5.4. The Impact of Refugees on National Security}

Refugee camps situated near countries rocked with conflicts can easily be used as dens for recruiting more people to the terror group. Besides, the same people seeking refugee could still face attacks in the same country they have run to either from outside or even from the security


agents and humanitarian workers attending to them in the camps. A perfect example is Dadaab based in Wajir County hosting mainly the refugees from Somalia. Since the insecurity in Somalia is still ongoing, the Kenyan security authorities may fail to differentiate between a real refugee and an insurgent with bad motives. As a result of the porous Kenyan borders with Somalia, cases of fire arms in refugee camps are common and that poses a danger to the security of Kenya\textsuperscript{23}. The security becomes worse when it involves two groups where it leads to destruction of both sides. There is a high possibility that lawlessness and may find an entry into the other country and weapons become readily available, which would only make the situation worse. Weapons used in the grounds of war in Uganda, Somalia, and Sudan are reported to have found their way into Kenya because of the refugees. Kakuma in Turkana and the north-east Kenya (Dadaab'sIfo, Dagahaley, and Hagadera)\textsuperscript{24} are good examples. Community conflicts over cattle in the northern Kenya are commonplace fueled by the readily available trafficked weapons. According to a report by UNHCR, not a single day passes without the camps experience attacks that leaves casualties and others murdered in cold blood. Inside these camps, gun and bullet business goes on as normal. It is customary for people to fight by use of lethal weapons during cattle raids and fight for other community resources\textsuperscript{34}.

It is a worry trending clan elders may be a thing of the past because they are getting replaced by these politically motivated militias belonging to particular clans. Despite the fact that a few surrender their weapons and leave their activities, others are not genuine and look for an opportunity to go back to the camps where they organize more attacks by recruiting more people. These radicalized groups present high levels of threats to the security of the refugees in these

camps as well as the host countries. First, cases of cross-border fights involving the militias and the sending country are common. If a fight between the militants and the various governments ensues, it hurts the sovereignty and interferes with their relations. Secondly, the radical refugees may destabilize the host country very easily. Those who have settled in the refugee camps care unperturbed whenever there is an attack in Kenya as the Gok sent it forces to fight the Alshabaab militants from their bases in Somalia.

The Goma refugee camp based in DRC used to be hiding basis for Interahamwe running away from the Rwandan Patriotic Front in 1994 after lodging an attack. The RPF would hunt for these armed militias from their hiding basis in the camps in Congo. After the man-hunt, the local population was left suffering due to unprecedented attacks, raping, and looting and even loss of innocent lives. The terror gang in the end has to gather and leave with arms to their country of origin.

If the firearms get into the hands of malicious citizens of the host country, they may use them in the quest to destabilize the incumbent government. When that happens, the blame is on the refugee as it will be impossible to distinguish attacks staged by the locals and those of the refugees. As a result, this brings about the notion that the refugees are to blame for the insecurity in the country. An analysis on the security levels will help to understand the details about the effects on refugee movement on the security. A country can face security threat both from within and without.

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External security is a state’s ability to defend itself from external aggression or attacks by use of security forces. Narrowing down to security within the borders, it is the ability of a state to shield itself from any internally initiated threats such as undue pressure from individuals and organizations.

The entry of refugees into a country may threaten both the internal and external security at home and in the countries they have relocated to. The long running fighting in Somalia stills stands as a threat to the security in Kenya as they have settled here. Most probably the camps are filled with militias. A 2008 report on Somalia by the United Nations Monitoring Group shows Alshabaab militants and Hizbul Islam travel freely to Nairobi and back. They reportedly raise funding for their operations, conduct their recruitment and also get of their members wounded in the attacks treated. All these are the results of the “open door policy” embraced in Kenya so as be in line with the international requirements.

1.5.5. The Impact of International Refugee Law on National Security

Host governments should offer refugees the security they need within the confines of the border. Following the Rwandan and Balkan wars, the UN passed a Resolution (1208i) that reemphasized the responsibility of the refugees host nations. They had to ensure that those living there were accorded the humanitarian rights they deserved as stipulated by the international law. In additional, no refugee should be barred from entering a country. Also, a refugee should not be forced back to their country where they escaped prosecution. This principle is binding internationally and no nation can go against that directive.

It is possible for the relations between two or more countries to be affected by the movement of refugees from one country into another. For example, there were claims that Tanzania had allowed rebels from Burundi to stay, and that they trained and armed them to fight their

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government. The Tanzania government responded by confirming that it is a sovereign nation and was acting in accordance with the obligation by international law on refugees’ protection. However, to prevent the outbreak of a standoff with its neighbor, Tanzania had to forcefully repatriate the refugees back to their country, Burundi36.

Forceful repatriation of refugees even before the conditions in their countries are conducive contravenes the international policies on refugees. Kenya once faced attention of the international community after closing their border to approximately 400 Somalis. Hosting of refugees has had negative impacts such as the social evils including robbery with violence and owning arms illegally. Insecurity has affected the operations such as businesses and farming with others being internally displaced. There have been discussions on security status in Kenya. The conflict in the neighboring countries such as Somalia and Rwanda had found their way into the country.

There have been reports of extremist groups at the border doing all manner of illegal activities such as smuggling of goods, trafficking of arms, and recruitment of more militants from the neighboring countries to be used in launching crimes in their own countries. Al-Shabaab and the Oromo Liberation Front of Somalia and Ethiopia respectively are good cases. Following the Alshabaab entry into Kenya, weapons were smuggled in to the country and banditry attacks have been the order of the day. Northern Kenya is one part of the nation that has had to deal with several attacks that the militia claims responsibility28. Moreover, it might take much time for the situation to improve to enable the refugees return home. However, the international community

still maintains that the law on human rights needs adherence despite the fact that that the country strives to ensure security for its residents\textsuperscript{29}.

The Civil Society Organizations dealing with refugees insist that barring refugees from seeking protection from other countries without due consideration will not in any way become a solution to the problem of insecurity\textsuperscript{30}. The assumption that the refugees are a threat to the national security has to blame for the denial of their rights such as restricted movements and worse still, harsh treatment meted on them. Failure for the bodies concerned to advocate for a stop to this violation of human rights has led to the continued sorry conditions in which the refugees find themselves. The security concerns raised by the various bodies believed to have been brought about by the refugees may be genuine, but the stakeholders concerned with the issues of refugees have not fully address their issues.

According to the advocates of human rights, although various governments possess the right to follow up on foreigners who breach the laid down legal procedures when seeking residence, their approaches violate human rights. The governments of Kenya and Tanzania have policies that require confinement of refugees due to due security concerns. The policies simply assume that refugees are criminals or even rebels in their nations and need monitoring at all times.\textsuperscript{31}. These policies go contrary to what the advocates of humanitarian law maintain. The Gok has faced a lot of criticism from various NGOs and other human rights advocates following the settlement of the refugees from Somalia in Dadaab and the rest in the Kakuma camp. By keeping away the

\textsuperscript{29} Black, R., & Sessay, M. (1997). Forced migration, land-use change and political economy in the forest region of Guinea. \textit{African Affairs}, 96(385), 587-605.
refugees far away from the urban centers is a sign of discrimination and curtailing the freedom of movement and socialization.

1.5.6. Interrogating Refugee Protection Capacity

Any refugee staying in urban areas does so without the consent of the authorities and is in breach of the legal procedures concerning refugees. Owing to the limited resources by UNHCR, only those who reside in camps can benefit from the relief. Others living in urban areas do not access this assistance not unless they have provided sufficient reasons as to why they should live away from the camps. No much is known about the refugees living in towns and the population of those who settled in Nairobi or any other part of Kenya is not known either.

Following the withdrawal of the refugee status determination by the Kenyan government in 1993, there is no legislation that addresses the concerns of the refugees. The available legislation do not in any way seek to address the challenges the refugees go through leaving them vulnerable to harsh treatment. Refugees are regarded as aliens who have no right to take part in the formulation and implementation of policies that cater to their needs. They are treated as foreigners who have come to disturb the peace by posing as threats to the security of the nation. They are associated with trafficking of fire arms, drugs, smuggling of goods through the borders and more. Besides, they are believed to bring pressure and unnecessary competition on the available resources. The sentiments are captured in the strategies on poverty reduction and developing in the nation and they leave the refugees out.

Before 1993, the Kenyan Government had a determination procedure for refugees where every convention refugee got registered. Today, the government conducts refugee registration once in every camp and not regularly. Following the termination of the Refugee Status Determination,
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almost half of the refugees currently residing in Kenya are unregistered. As such, the UNHCR has assumed that role.

1.5.7. International Instruments that have been ratified.

The Gok has recognized the 1951 Convention, the protocol of 1967 Protocol, and other important international human rights treaties. However, the country is yet to uphold them\textsuperscript{32}. Moreover, the government agreed to the 1969 OAU Convention, the 1981 Africa (Banjul) Charter on Human Rights and People’s Rights; the 1990 Africa Charter on the Rights and Welfare of the Child and the Optional Protocols to the Convention on the Rights of the Child concerning children in armed conflict and child prostitution and pornography.

The Convention is founded on Article 14 of the 1948 Universal Declaration of Human Rights that grants people the right to solicit asylum against execution in other nations. Aside from the rights that a refugee can enjoy as stated in the Convention, they can enjoy other benefits. Article 33(1) prohibits the expulsion of a foreigner who seeks refugee whereby his life is danger following differences in race, religion, nationality, political opinion or membership of a particular group\textsuperscript{45}.

The rights promulgated by the Convention generally still stand. Some have argued that the complex nature of 21st century refugee relationships calls for a new treaty, which recognizes the evolving nature of the nation-state and modern warfare. Nevertheless, ideas like the principle of non-refoulement are still applied today, with the 1951 Convention being the hallmark of such rights.

1.6. Justification of the Study

Advancing the academic discourse on human rights violations that the refugees and migrants in the region are subjected to and mitigate how we can enhance refugees and migrant’s protection. It will also highlight the importance of a regional focus linking the internal and external determinants that best explain the dynamics of conflict in the Horn of Africa and the security situation as a result of such conflict. To release a “this isn’t working” attitude, leading to a whole new rethinking on several levels in turn, leading to a “something must be done” reaction, which will probably give the next generations of the Horn of Africa a better perspective on their future.

The research endeavours to provoke a debate on the security and protection of refugees living in Kenya. It will explore the policy and legislative gaps in security and protection of refugees in Kenya and seek interventions on how best refugees can be protected in light of national security. It will inform stakeholder forums on engaging parliament and governmental institutions as well as the civil society to ensure that we achieve migrants’ protection in Kenya.

There is need to address seriously the issue of refugees in Kenya, especially the Somali refugees who are mainly in Dadaab and Kakuma. The findings of this study will add value to the management of refugee affairs on the short and long term effects of Kenya government policies on the horn of Africa refugees seeking refuge in Kenya. It will also create awareness amongst the stakeholders on the security threat caused by Somali refugees. In particular, the study will be beneficial to the UNHCR, the international refugee agencies, the Kenya Government and scholars who would be interested in conducting further research.
1.7. Conceptual Framework

This research will be guided by the rational choice theory. The theory recognizes the pervasive influence of influx of refugees as it regards the unit of analysis as an individual contemplating state security where the influx of refugees, capable of producing extraordinary political outputs with relatively few inputs as well\textsuperscript{33}. Theoretically, a refugee camp within the borders of Kenya must follow the laws and customs of Kenya. In practice, however, refugees establish informal justice systems, largely based on Islamic law. State security can be a logical but a rational choice and more tangibly, what meanings can be derived from the action itself with respect to law enforcement, policymaking, and ultimately, prevention. Terrorism is planned, coordinated, and conducted in a logical manner\textsuperscript{13}. Inversely, it is not random, spontaneous, or illogical. By declaring the phenomenon systematic and therefore a rational action and by default terrorists as rational actors, scholars seek to predict terrorists’ preferences and explain why they perpetrate terrorism. But is it better to theorize about how terrorists think or go directly to the source and ask them?

The two respective methodologies in these approaches are Rational Choice Theory and Grounded Theory. Scholars like Bruce Hoffman may be categorized as Rational Choice Theorists due to his definition of state security as “the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.”\textsuperscript{2} Others, such as Brian Jenkins, fall within the same framework\textsuperscript{14}. To paraphrase Jenkins, it is not the people that perpetrate state security, or their motivation, cause or justification, but the act itself.

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1.8 Methodology

This research will mainly use qualitative research design. Information collected will be in the form of recorded responses obtained directly from people interviewed and questionnaires filled as well as responses from focus group discussions thus primary data as well as information available on other written documents as secondary data.

1.8.1 Population sample:

The researcher intends to interview at least 100 people, 15 of whom are humanitarian workers working with international agencies on refugee protection, 50 refugees from Dadaab and Kakuma refugee camps and 10 government officials from the department of Immigration and 25 security personnel from the Military, National Police Service, National Security and Intelligence Service.

1.8.2 Data collection procedures:

The research will use both primary and secondary data. Methods for collecting these data will include:

1. Interview refugees, host communities and government officials

The interviews will be conducted by filling in the questionnaires and having face to face group discussions the sample population.
Tools to be used include: Questionnaires and Focus group discussions.

2. Secondary sources

Books and journals available on the causes of conflict, humanitarian responses and protection of refugees and migrants will be read and reviewed.
Online journals and articles on providing information on the effect of international terrorism on democracy and human rights in Kenya with the subject such as humanitarian reports by various refugee agencies on humanitarian response on the region will be used.

1.8.3 Data Analysis Method

The data collected will be documented thematically and arranged as per the chapter breakdown.

1.9 Chapter Outline

Chapter one will be an introduction and background of the study, it will look at the definition of a refugee and the refugee situation in the horn of Africa. Chapter two will give an account of the post cold war horn of Africa conflict, the security of refugees, the role of refugee agencies and international organizations in conflict resolution and the interventions made by the regional and international organizations in the protection of the migrants and refugees. Chapter 3 will interrogate the international human rights instruments and the role of humanitarian law in protection of the migrants as well as case studies that on how the law and polices have been employed as a means for intervention. It will also seek to identity the legislation and policy gaps. Chapter four will study the future of intrastate conflict in the horn of Africa region. It will seek solutions towards the conflict and the security and of the refugees as well as evaluate case studied on how conflict resolution has been carried out in other jurisdictions and how security and protection of refugees has been realized. Chapter five will form the conclusion of the study and the recommendations.
CHAPTER TWO

POST COLD WAR HORN OF AFRICA AND REFUGEE PROTECTION

2.0. Introduction

This chapter shall give an account of post-cold war conflict in the Horn of Africa. It will discuss various academic works on refugees, refugees’ security and their link to national security in their countries of origin and in the host country. It will also analyze the various local and international interventions have been employed to ensure refugee protection in Kenya by the government and also regional and international organizations/ states/ the UN Security Council and the gaps that still exist in refugee protection. Lastly, it will look at how refugee protection issue in Kenya affected Kenya’s diplomatic relations.

2.1. The Post-Cold War Horn of Africa: The Role of International Organizations in Refugee Protection.

A convention held in 1951 in relation to Refugees, defined a refugee as a person who dwells outside her/his nationality of origin as a result of fear of facing persecution because his/her religion, race, nationality, and membership to a particular social group, political opinion and is unwilling or unable to avail herself/himself to the protection of the home country for fear of being persecuted. African Union (AU) convention in charge of Monitoring the Specific Aspects of Refugee Challenges in Africa adopted in 1969, added to the definition to include a person forced to flee his/her country due to pressure external aggression, foreign domination, occupation or events seriously disturbing public cohesion in either his/her country of nationality or country of origin.

A colloquium convened by Latin American government representatives in 1984, distinguished jurists that embraced the Cartagena Declaration. Like the African Union convention, the
Declaration added to the definition of the 1951 convention of refugees to include people who leave their countries because their safety, freedom or lives have been endangered by generalized violence, internal conflicts, foreign aggression, circumstances which have adversely disturbed public cohesion or other massive violation of human rights. The increase of refugee influx in the past years has generated urgent concern across the world. Widely viewed as an uncontrollable crisis, these flows have generated a lot of humanitarian concern for the millions of persons compelled into exile and increased fear for the possible threat to the economic, political and social stability of hosting states triggered by inflow of newcomers. The hosting states therefore struggle to strike a fair balance between the need to maintain security over their borders and the concern to accommodate refugees who are seeking asylum within their boundaries.

Kenya has experienced a huge inflow of refugees in the past years due to the political instability currently facing her neighboring countries more particularly in the Horn of Africa. The Al-Shabaab emergence in Somalia has compelled Kenya to give refuge to many men, women and children who arrive within her borders everyday escaping from their war prone state. These refugees, were originally perceived and presented as humanitarian concern, but are now increasingly viewed as a source of insecurity. The overriding question in many circles is how this influx of refugees pose a threat of security to the state of Kenya. The refugees are settled in two large camps in the northern Kenya; Kakuma refugee camp in Turkana County and Dadaab in Wajir County. The United Nations commission of Human Rights and other U.N specialized departments like UNICEF and concerned NGOs have assumed the central role of providing basic materials for these needy refugees in the camps including: Sanitation, education food, water shelter and healthcare, while the government of Kenya provides administrative support, security back up and generally ensures the rule of law in the camp.
The Dadaab refugee camp established in the north-east Kenya was put up in 1991. It was originally intended to accommodate a maximum of 90,000 refugees, the camps currently hold five times in excess of their intended capacity, making Dadaab the third-largest populous center in the country after Nairobi and Mombasa. The region is interior and of harsh climatic conditions, with very high temperatures of up to 48 degrees Celsius in the dry spell and extreme flooding in the rainy spell. The Dadaab complex comprises the older Ifo and Dagahaley refugee camps, with more sites including: Ifo East, Ifo West and Kambioos. These centers are being developed to help deal with the inflow of over 154,000 people in the past one year, bringing the total refugee population to over 463,000. The refugee population is largely from Somali accounting to 95%, and other small numbers from Ethiopians, Sudanese and Ugandans.

The United Nations in Dadaab has two operations running concurrently, one which serves the long-term existing refugee population, and the other an emergency operation to deal with the inflow of new refugees. Moreover, the UN has begun to support projects focusing specifically at the native communities in order to try to reduce tensions among them and the refugees. In the long-term, refugee population could be noted as a developmental intervention. The camps in need be endowed with more permanent infrastructure, water systems and social amenities like: more schools, hospitals and police stations. The second, emergency-based operation focuses on providing the basic humanitarian resources and services for new arrivals. Working with its 30 implementing/operational partners, United Nations High Commissioner for Refugees (UNHCR) is struggling to provide items such as tents, blankets, sleeping mats and plastic sheeting.

Since Kenya's armed forces invaded Somalia in 2011 in pursuit of the terrorist organization al-Shabaab, the country has endured many terror attacks. North east of Kenya has been very insecure number of curfews being imposed with and travels to Dadaab and Mandera limited.
The presence of armed bandits and Al-Shabaab and periodic inter clan conflicts has resulted to threats of the security of humanitarian workers. The UN mission in Kenya operates under UN phase three security restrictions stipulating travel by convoy and with an armed police escort. Humanitarian workers do not move freely in the camps without armed guards and they have to be in a secure compound from 6 pm to 6 am. In the past few years the security situation has deteriorated further. On 13 October 2011 two Spanish aid workers from Médecins Sans Frontières (MSF) were kidnapped and their driver shot by Al-Shabaab in broad daylight in Ifo camp. In September a Kenyan driver working for CARE was kidnapped. There have been reports that Al-Shabaab has sold the MSF workers to pirates for $100,000 each.

To respond to the security issues, the Kenyan military launched Operation Linda Nchi (Operation Protect the Nation), moving its troops into Somalia on October 2013. The Kenyans have seized a number of towns held by Al-Shabaab militants some 100km inside Somalia and have plans to get to Kismayo. Al-Shabaab retaliated with grenade attacks in Nairobi on October 2013 injuring 30 people, and bomb attacks on the police and humanitarian convoys in Dadaab. A police officer was killed and three others seriously injured in a bomb attack while escorting UN officials in Ifo camp in December of the same year, and a landmine blast in Hagadera killed another police officer leaving two others in critical condition. Al-Shabaab also targeted refugee leaders believed to have cooperated with UNHCR and the police, with the killing of the chairperson of the Community Peace and Security Team (CPST), a community policing initiative, in Hagadera camp on 29 December. The CPST Chair for Ifo camp was shot and killed on 1 January 2012.

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34 McSweeney, D. P. J. (2012). The protection and security of vulnerable populations in complex emergencies using the Dadaab refugee camps in the north eastern province of Kenya as a case study.
The escalation of attacks by Al-Shabaab prompted UNHCR and its partners to significantly scale back their operations in the camps. As an indication of the level of insecurity, during a visit in December the UN Secretary-General, Ban Ki-Moon, did not even venture into the camps, instead remaining inside the secure UNHCR compound in Dadaab town. The withdrawal of many humanitarian workers from the camps had a negative impact on the security and protection of refugees. The Kenyan authorities imposed a curfew in the camps and deployed more police, with reports of mass arrests and beatings of refugees during police sweeps for Al-Shabaab fighters. The ability of Al-Shabaab to operate within the camps and in surrounding areas such as Garissa seems to confirm the fears of many Kenyans, who believe that Dadaab is used as a base for militants.

In April 2015, Al-Shabaab invaded Garissa University in Kenya and murdered nearly 150 students. It was the deadliest attack in Kenya since the 1998 bombing of the US embassy in Nairobi. The attack increased pressure on the government to find a solution to the wave of violence. On 11th April 2015, William Ruto, the Deputy President demanded that the United Nations close Kenya's Dadaab refugee camp within three months, continuing a longstanding government practice of blaming domestic insecurity on the country's refugees.

Dadaab is a sprawling complex of five camps in North Eastern Kenya bordering Somalia. Kenyan authorities speculate that al-Shabaab draws support from Kenya's refugee community and the closure of Dadaab would ultimately make Kenya less safe feeding the instability in Somalia that imperils Kenya causing further suffering for refugees. Kenya should therefore reconsider its demand for its own sake, as well as that of the refugees and Somalia.

A writer at a local Kenyan newspaper once compared Dadaab with the refugee camps set up in Goma in the aftermath of the Rwandan genocide: Dadaab presents a huge threat to Kenyan security. Like Goma, the refugee camp is probably crawling with militia. Reports indicate that it is likely that there are a number of trained fighters operating in the camps supported by minority of refugees, while the rest of the population lives in fear of them.  

Although Somalia gained her independence in 2012, the country remains severely unstable. Since 2009 when the transition begun with the appointment of moderate Islamist Sheikh Sharif to extend transitional government's mandate, the country has continued to register high violence rates. African Union peacekeeping force, Amisom, deployed its troops to Somalia in 2009 amid resistance from the Al-Shabab. Kenya deployed its troops to Somalia as a means to reduce rising insecurity in both countries. Since the deployment and subsequent integration of Kenyan troops into the African Union Mission in Somalia (AMISOM), however, the goal of reducing insecurity is yet to be realized. Instead, insecurity has been attributed to the presence of Kenyan troops in Somalia.

This intervention by Kenyan troops led to increased insecurity in Somalia, which resulting in further displacement of Somalis and increased insecurity in Kenya. The inception of attacks in Kenya is connected with Al-Shabab. Al-Shabab’s advances in Somalia during the last few years have challenged Kenya’s ability to prevent terrorist attacks at home. Kenya’s border with Somalia is long and cannot be secured effectively, and it is easy to smuggle across border weapons or men. Moreover, Al-Shabab has exploited radicalized Muslims in Kenya to support its fight in Somalia, and put pressure on the Kenyan government to withdraw its troops by attacking civilian targets in Kenya.

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Among the key attacks that have been associated with Al-shabab since the deployment of Kenyan troops to Somalia include. Al-Shabab seizing shopping center and killing 60 people in Kenyan capital Nairobi in 2013 September as a form of retaliation for Kenya's military involvement in Somalia. In 2014 June, Al-Shabab claimed two attacks on the Kenyan coast which killed more than 60 people, saying that operations against Kenya would continue unless the government of Kenya withdrew its troops from Somalia. Five months later, in 2014 November-December, Al Shabab carried out mass killings in north-east Kenya, including on a bus and a camp of quarry workers. The worst attack came in 2015 April when Al-Shabab killed 148 people, mainly Christian students, at Garissa University College in northern Kenya. In retaliation for this attack, Kenya carried out air raids on Al-Shabab bases in Somalia.

Faced with an increase in undeterred, high profile terror attacks in Kenya, politicians, analysts and citizens alike have weighed in on the vigorous debate about whether the Kenya Defense Forces (KDF) should withdraw from Somalia. The Kenyan government has maintained its stand of not withdrawing the Kenyan Defense Forces troops from Somalia stating that it would lead to even higher insecurity. In 2016 February - African Union leaders agree on need for more funding and support for their military presence in Somalia after weeks of increased Al-Shabab attacks on public spaces and pro-government troops. Government and African Union troops recapture southern port of Merca that Al-Shabab briefly seized.

2.2. Refugees and National Security.

The presence of refugees in many third world countries where they are hosted is compounded by armed groups of exiles engaged in warfare with political objectives. Refugee warriors attract military retaliation, jeopardize diplomatic relations with other states and threaten the security of the host states and their citizens. Consequently, host states have been unwillingly drawn into
conflicts with their neighbors. There should beconcerting Efforts to enable refugees to recognize their responsibility to the host government by demonstrating interest and effort in solving their own problems and becoming useful members in the country of asylum.\textsuperscript{39}

There were refugee movements in the 1990’s as a result of ethnic conflicts caused by the increasing availability of weapons, small arms and socio-economic inequalities. The underlying dynamics of many third world countries conflicts has in fact been competition for political power among fiercely rival ethnic communities. In the Horn of Africa, for instance, the major causes of the unending conflicts have been the greed for power among multi-ethnic communities in Ethiopia, Somalia and Sudan. Refugee and immigrant communities’ poses significant political and security risks for host governments influencing relations between the sending and receiving countries.

As per the Garissa District Development Plan (GDDP) 1994-1996, the influx of refugees into the district (Now Garissa County) resulted into insecurity adversely affecting the development programs. The insecurity posed by the presence of refugees in Dadaab has always been stressed by the various government officials as manifested in the various Garissa District Development Plans.

Apart from the GDDP report of 1994-1996 referred above, the GDDP report of 1997-2001 reiterated on the insecurity posed by the refugee influx when it reads in part that: With the political instability in the Republic of Somalia and the resultant influx of more than 150,000 refugees, a lot of insecurity in the district is now being experienced. A lot of resources have been diverted to attending refugees and in stemming the problem of insecurity. Sophisticated

weaponry have found their way into the district promoting banditry, cattle rustling and general violence in the district\textsuperscript{40}.

The latest GDDP report on insecurity posed by the refugee settlement in Dadaab indicates that refugees are allegedly responsible for destroying the environment and causing insecurity in adjacent divisions. Kenya experiences the challenge of refugee settlement in her land almost every day particularly as far as insecurity is concerned. There is major mistrust between the host community and country towards each other. Refugees reception by host states is characterized by suspicion leading to this reception is normally characterized by suspicion leading to mutual avoidance. Save for posing security threats to host state, refugees also strain relations between the state of origin and the state host state. The strained relations could advance to aggression between the countries involved if not professionally settled. For example, relations between Tanzania, Rwanda and Burundi strained between 1994 and 1995 when Tanzania hosted thousands of refugees seeking refuge from the genocide in Rwanda and political instability in Burundi. This was captured by sentiments of the then Tanzania’s Minister for Foreign Affairs as follows: The presence of refugees is a source of tension in the relations between Tanzania and Burundi and to a certain extent Rwanda, arising from suspicions that the refugees are regrouping and training in warfare for attacking the countries of origin\textsuperscript{41}.

It is therefore clear that even in functioning and peace-loving state such as Tanzania, the geopolitical stakes inherent in a refugee situation are such that security of camps and border areas cannot be reduced to a question of law enforcement. Kenya thus is not the only country where refugees pose as a threat to its national security. Even though refugees are welcomed by host

\textsuperscript{40} Garissa District Development Plan 1997-2001, Office of the Vice President and Ministry of Planning and National Development, (Nairobi: Government Printer), 59

states, the reception in most cases is cold and full of suspicion leading to mutual avoidance. Host countries have become reluctant to host refugees because of the fear that the refugees are no longer seen as a short-term challenge as earlier thought in the 1940’s during the Second World War.

Even though refugees are perceived as a threat to the national security of the host country, they also accuse the host government of exploitation, harassment and segregation on the basis of their nationalities. It is intimated that host government formulate policies unfavorable to refugees. Elsewhere in Kakuma, the state of insecurity resulting from refugee settlement is no different from that in Dadaab. Jeff Crisp captures an interesting conflict between the refugees and host government in regard to administration of justice in Kakuma and Dadaab refugee camps. Formally, the refugee camps are subject to the host country’s legal system. In practice, however, powers of arrest, adjudication and punishment appear to have been assumed by institutions which are indigenous to the different refugee populations.

In Tanzania, traditional refugee justice system is liberal. In both Congolese and Burundian refugee camps, refugees used traditional justice system to solve disputes, but there were no reports of detention or physical punishment by them. Consequently, it can be argued that human rights violations among the vulnerable are rampant. Community leaders who preside over the informal courts were allowed to pocket the fines they imposed and they ordered flogging as part of the punishment. Generally, the literature reveals that host countries have insecurity issues resulting from hosting of refugees.

Barry Buzan tries to overcome the gap between the concept of security and insecurity and freely uses insecurity-security continuum. Buzan has labeled security as a contested concept with

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various definitions. Buzan emphatically asserted that weak and strong nations are subjectively defined within their security capabilities and it is difficult to measure the strength of entire nations at the same parameter. The states forming the international community enter into relations on the basis of their capabilities, demands and national interests. While discussing about the weak and strong nations, he suggests that balance should exist between capabilities and demands. He explains that insecurity is generated by two reasons; Threats and Vulnerability. Buzan argues that, although security goes beyond military considerations to include political, economic, societal and environmental factors it cannot incorporate human security. Buzan finds “human security” concept a problematic concept in international security, because to him, human race levels are difficult to construct as referent objects for security. He notes that security is a “contested” subject and argues that, national security means the security of the whole socio-political entity. It is about country as well as about states. It concerns a way of life of self-governing people including their cultural political and economic modes of organization and their right to develop themselves under their own rule. Challenges to state security can emanate from internal and external pressures organized by groups. The state of the economy, ecological pressures and the dependence of the population on the resources of the physical environment may influence state security. Buzan observes that, all states exist in the hub of a whole universe of threats, which finally define its insecurity and the agenda of national security as a policy problem. Buzan, considers three levels at which security should be analyzed: individual, state and international levels. The concept of national security is of great significance because it tends to organize the other levels of security. For him national security means security of the whole socio-political entity. He also sees the state as an ambiguous component in world politics reflecting a variety of forces and processes.
His central concern is with the purposes expressed by the states and in particular with the ways in which ideas and values provide a ‘cement’ for states and their identity. A specific manifestation of state purposes is the notion of national security referred to by much of Buzan’s argument. He centralizes the concept of national security on the state and treats it as a completely separate entity that doesn’t pay attention to actors that do not approximate to either state or nation. Smith observes that Buzan sees states as antologically prior to other candidates and the problem with this is that the collectivities of individuals are prevented from knowing what was going on with regard to their security until they are constituted in states or nations.

To Buzan, insecurity in those countries is caused by illegitimacy of governments, ethnic rivalry and adoption of wrong ideology. Jervis observes that, the attempt of one state to achieve security precipitates a feeling of insecurity in other states. All states tend to assume the worst of others and respond accordingly. Their collective actions unintentionally generate a spiral of insecurity and in a situation of anarchy there can be no solution to this security dilemma. The security dilemma is further exacerbated by the inflexible images that it generates in the minds of decision makers both of their own intentions and those of their opposite members’. Buzan posits that, Third World countries are weak, it is therefore hard to identify the referent object of security than in the developed States of the West.

Regions and countries have been linked together in regional security arrangement indirect or direct. Regional security arrangement made in Europe, America, Africa, Asia, South East Asia, and Middle East. The regional organizations have multidimensional objectives such as military, economic, political and social security objectives. But most of the regional organizations have military alliances. These include North Atlantic Treaty Organization (NATO), South Asia Treaty
Organization (SEATO), the Baghdad Pact (CENTO) and Warsaw Pact. Some still exist; the others have either become defunct or formally dissolved.

Mohammad Ayub has categorized these organizations into two parts: Inter-Regional Security Level and Intra-Regional Security Level. At Inter-Regional Level, countries of the region bind themselves for security within the region, while at Intra-regional Level, regions make security arrangements with other regions. He particularly emphasized on the problem of Regional Security in third world and argued regional security arrangements for third world countries like a chimera. They can make alliances for Regional Security but cannot be practiced. According to him third world countries are normally involved in security arrangements for two basic purposes; To minimize the tensions and conflicts between states of the region and to limitize the external intervention in their conflict

These models have contributed a great deal in explicating the intricacies of state relations. The phenomenon is complex as well as delicate and too deeply embedded in the socio-psychological and environmental dimensions that most of the models and individuals’ efforts have to remain limited or narrow in dimension in explaining the security perception and demarcating of boundaries. All these models have focused on “Security Perception”. It is accepted that in the environment of fear, mistrust and hated, neither interaction between states, nor efforts to ensure peace can be seriously launched, it reveals that insecurity is a necessary condition for security.

The United Nations Development Programme's 1994 Human Development Report and sought after influencing the UN's 1995 World Summit on Social Development in Copenhagen. The UNDP's 1994 Human Development Report's notes that it is hard to formulate a clear definition of human security because 'like other fundamental concepts, such as human freedom, human
security is more easily identified through its absence than its presence, and most people instinctively understand what security means'. It offered the following definition. 'Human security can be said to have two main aspects. It means primary safety from long-lasting threats such as hunger, disease and suppression. Subsequently, it means protection against sudden and upsetting disturbances in the individual’s day to day life, whether in their homes, at work or in their communities. In this conception of security, the threats or causes of insecurity can be from the forces of nature or manmade, from wrong policy choices.

Based on the UNDP Human Development Report of 1994 given country or area can spread into a wider region and have negative externalities for regional and international security. This interdependence has important implications for policy-making as it implies that human insecurities cannot be tackled in isolation through fragmented stand-alone responses. Instead, human security involves comprehensive approaches that stress the need for cooperative and multisectoral responses that bring together the agendas of those dealing with security, development and human rights. With human security as the objective, there must be a stronger and more integrated response from communities and states around the globe to protect all individuals, refugees included, from fear and want.

2.3. AMISOM Intervention Efforts

The security situation in Somalia has significantly changed since the inception of AMISOM. Though insecurity remains a great concern in many areas in Somalia; the achievements by AMISOM lays a strong foundation for the restoration of peace and security. For instance, the improved security situation has enabled the country to engage in democratic governance. There has been a transition from the transitional government to an elected central government. The first election to be held in the country after nearly 21 years. Further, local administration structures in
parts of the country, particularly in areas liberated from al-Shabaab, by the Somalia National Security Forces (SNSF) with the support of AMISOM, have been established. Since 2009, the military component has supported the training conducted by the European Union Training Mission in Somalia (EUTM) of 4,500 soldiers of the SNA in Uganda. The bulk of troops trained so far are mainly from the rank and file, thus leaving gaps in junior and middle leadership positions and resulting in a critical vacuum in terms of command and control of the SNA. In order to fill these gaps, AMISOM has begun working with the FGS and other partners to undertake the training of a new corps of junior officers to assume Platoon and Company command positions in the SNSF. Accordingly, following weeks of initial training, on 15 April 2013, 96 junior officers and Non-Commissioned Officers (NCOs) completed a platoon Commander and Senior NCOs training course run by AMISOM at the newly refurbished Jazeera Training Camp in Mogadishu.

AMISOM police Component has the mandate to guarantee the rule of law in the city of Mogadishu and to improve the capacity building of the Somali Police Force (SPF) with the aim of transforming it into a credible body that can provide security for the population. For the moment, AMISOM police component continues to support the reform, restructuring, reorganization and professionalization of the SPF though various programs and activities. During the reporting period, AMISOM police, including the Formed Police Units (FPUs), worked closely with the SPF at various police establishments in Mogadishu to mentor, train and advise Somali police officers on a wide range of policing issues, including human rights and the management of crime.

AMISOM’s humanitarian unit collaborates with the Office for the Coordination of Humanitarian Assistance, the UN Children’s Fund, UN High Commissioner for Refugees (UNHCR), the
World Food Program (WFP) and other UN agencies as well as Somali and international NGOs to establish coordination mechanisms, information and knowledge management. It also collaborates with the relevant Somali government agencies and ministries. AMISOM’s exit strategy is tied to the development of the institutional capacity of the Federal Government of Somalia. There is need to ensure that major government agencies and institutions charged with providing security, are established and well structured to maintenance of rule of law, effective governance and provision of basic public services. In these, the AMISOM has and can play a critical role.

2.4. The UN Security Council’s Position on President Kenyatta’s directive to close Dadaab refugee camp.

President Uhuru Kenyatta hosted diplomats from the Security Council’s 15 member states earlier this month where they discussed his directive to close Dadaab camp and the implications this would have on security and the welfare of the refugees involved. Despite their disapproval of the decision, Kenya maintained her stand to close the camp stating the security risk posed to the country by Al-Shabaab radicals who have mixed with the refugees as the main reason behind the decision. According to the Principal Secretary, Karanja Kibicho, the camp is a breeding ground for terrorists who have carried out some of the largest terrorist attacks in Kenya, including the 2013 Westgate attack which is believed to have been planned and executed from Dadaab.

Following a subsequent meeting between president Uhuru Kenyatta and UN Secretary-General Ban Ki-moon, the United Nations (UN) decided to back Kenya on her decision to close the Dadaab camp. President Kenyatta and UN Secretary-General also agreed that troops serving in the AMISOM will also join the UN peacekeeping force, a decision that is pending approval by the five affiliates of the world Security Council. The repatriation, which is already underway with over 14,000 refugees already repatriated to their home countries, is expected to cost about
Sh11 billion. The UN pledged to seek the funds to facilitate safe repatriation of refugees from the camp. The final details and timelines of the repatriation would be agreed on in Nairobi next month during a meeting on the UN Conference on Trade and Development, which will be held in Kenya.

2.5. Gaps in Refugee Protection in Kenya.

While there has been successes achieved by the Kenyan government and international community in addressing refugee protection needs, there is need for consultations focused and designed on prioritizing refugee needs and identifying appropriate measures to address them. The following is a list of some of the key gaps in protection capacity identified in this report.

Little information on the urban refugee population Most refugees living in urban areas do so without the authorization of the government, and are in violation of the government’s encampment policy. In light of this, and UNHCR’s own limited resources, the program of the Office is focused on camp based refugees, with assistance to urban refugees reserved only for those whom there is a compelling reason for residing outside the camps.

Relatively little is known on the actual size and need of urban refugee populations living in Nairobi and elsewhere in Kenya. Lack of domestic refugee legislation Kenya does not have national legislation specifically addressing refugee issues and the government’s refugee status determination procedure was discontinued in 1993. Other legislation which has a bearing on refugee issues falls short of an asylum/refugee framework. The absence of specific legislation governing refugee affairs leaves refugees vulnerable to treatment that is not in accordance with internationally recognized protection standards. Refugees not included in development and poverty reduction strategies Refugees are often viewed negatively by the host population who

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see them as a threat to security, specifically as traffickers of small arms and drugs. They are also
Identifying Gaps in Protection Capacity 14/04/2005 Kenya believed to place a strain on social
services and to harm the environment. These sentiments are reflected in national poverty
reduction and development strategies which do not include refugees as beneficiaries of such
strategies or as agents of change. Absence of refugee registration by Government Prior to 1993,
the Government had a refugee determination process, and those who were found to be
Convention refugees were registered.\textsuperscript{44}
Since the discontinuance of Refugee Status Determination (RSD) by the Government, the
Government has undertaken a one-off registration exercise in each of the camps; however, no
regular and systematic registration by the Government is being done, and as a consequence over
half the refugees currently in Kenya are not registered by the Government. This responsibility
has fallen to UNHCR. Physical insecurity of refugees The Dadaab and Kakuma camps continue
to be plagued by security problems including banditry, rape and murder. While the situation has
improved over the years, women and children, in particular, remain vulnerable to abuse and
exploitation.
Women have been sexually violated while when collecting firewood outside the camps. They
have also been subjected to harmful traditional practices such as female genital mutilation,
forced early marriages and teenage motherhood which occur within both Somali the Sudanese
communities. Only about 20\% of refugees possess individual documentation which confirms the
status of the bearer. Moreover, there is no single document that is in use. Rather there are various
documents issued for different purposes including: Alien Identity Cards for government-
registered Convention Refugees; Refugee Certificates for mandate refugees residing outside of
the camps; movement passes for refugees transiting to/from the camps; and ration cards held by
the head of household for the all camp-based refugees. The vast majority of refugees are required to live in the isolated Dadaab or Kakuma camps. The government’s encampment policy, which severely restricts freedom of movement, limits refugee access to markets, employment, and opportunities for self-reliance. It also inhibits the potential for refugees to contribute to local development.\footnote{Pavanello, S., Elhawary, S., & Pantuliano, S. (2010). \textit{Hidden and exposed: Urban refugees in Nairobi, Kenya.} Overseas Development Institute.}

Violations of the encampment policy often result in the arrest and detention of refugees. Inadequate assistance in meeting protection needs. While minimum standards of life-saving assistance have generally been maintained, malnutrition rates, anemia among pregnant women, low-weight births, and neonatal death rates are unacceptably high due to nutrient deficiencies in the food baskets and limited supplementary feeding programs. Additionally, the lack of regular non-food distributions has led many refugees to sell portions of their food baskets in order to purchase needed items, further impacting both caloric and nutritional consumption. The majority of the refugees continue to reside in substandard shelters composed of branches covered by grass, cloth, and, when available, plastic tarpaulin which offer little privacy or security and are, arguably, inappropriate in a post-emergency situation. The collection of firewood, which has repeatedly been shown to put women and children at-risk for abuse and exploitation, has only partially been addressed through firewood distributions. The distributions, which cover only a portion of the need, have reduced but not eliminated women’s and children’s exposure to abuse. Environmental degradation Refugee firewood collection in areas surrounding all camps and animal grazing around the Dadaab camps has resulted in considerable damage to the local environment which has only been marginally
addressed by limited rehabilitation programs\textsuperscript{46}. Low primary school attendance rates There are a significant percentage of school-aged children who do not attend primary school. Of those who do attend, there is parity between boys and girls attendance in the early years but the latter falls dramatically in junior and senior grades. Limited access to secondary school Access to secondary education is severely limited. Secondary schools in the Dadaab camps, for example, only have space for 25\% of primary school graduates. Inability to achieve self-reliance The government encampment policy, which restricts access to markets, land and employment, and the local labor laws, which prohibits refugees from engaging in economic activities, severely constrains refugees’ income generation potential and, hence, the opportunity to become self-reliant\textsuperscript{47}.

Limited opportunities for durable solutions Voluntary repatriation to Somalia and southern Sudan is hindered by insecurity, the absence of services in communities of return, and the lack of UNHCR monitoring presence in areas of return. Local integration is contrary to government policy and not viewed as an option for significant numbers of refugees. Further, while large numbers of refugees are resettled out of Kenya each year (4,000 – 5,000), the numbers are fairly insignificant in comparison to the entire caseload. Limited assistance to needy, refugee-impacted host communities.

The host communities surrounding the Dadaab and Kakuma camps are, in many ways, more impoverished and desperate than the refugees in the camps. While members of the host communities can access some camp-based services more could be done to build a sustainable economic environment, continue to provide host community with access to camp services,


further develop local infrastructure, and strengthen programs which benefit both the refugee and host communities.

2.6. Refugee Protection and its Effects on Kenya's diplomatic Relations.

Refugees impose a variety of security, economic and environmental burdens on host countries, but also embody a significant flow of resources in the form of international humanitarian assistance, economic assets and human capital. These refugee resources represent an important state building contribution to the host state, but security problems and other hindrances inhibit the state's ability to access and control them. This section explores the challenges and opportunities for African states arising from the double impact of refugee-generated resources and security problems. It argues that the potential benefit for the state and its citizens go beyond the burdens imposed by a mass influx. Refugee resources and security threats potentially provide long-term gains, and, by compelling the state to strengthen its grip on border areas, enable the state to ‘harden’ its presence there. However, for host states to realize the potential of refugee resources and continue hosting refugees, they must be assisted by appropriate humanitarian programs.

Like most other countries, Kenya's diplomatic relations with neighboring countries have also been affected by the presence of and subversive activities carried out by refugees and other exiles. The United States and Kenya have maintained a close diplomatic relationship for decades. In the late 1970s, for example, at the height of the Cold War, U.S. security cooperation with countries in the Horn of Africa took on heightened strategic priority amid contingency planning for possible U.S. military intervention in the Persian Gulf, and Kenya’s port in Mombasa was viewed as a stable alternative to options in Somalia. A resulting base-access

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agreement accorded Kenya substantial military aid, which continued under the Reagan Administration’s policy to “contain” Soviet influence in the region. By the 1990s, with the Cold War over, the United States was increasingly sensitive to political and human rights abuses by the Moi government, although Kenya’s strategic location and comparative stability ensured that relations remained cordial, aided by Kenya’s role as a hub for international humanitarian relief operations in Sudan and Somalia. Ties improved as the two countries increased their cooperation on counterterrorism efforts. The 2002 elections and the subsequent political transition were a significant event in the warming relationship, which current U.S. Ambassador to Kenya Robert Godec has described as a friendship that is broad and deep. The recent rise in insecurity has been viewed with “great dismay and disappointment” by U.S. officials such as former Assistant Secretary of State for African Affairs Johnnie Carson, who had previously served as U.S. Ambassador to Kenya and who says the country’s democratic progress is seriously derailed and nearly destroyed by the crisis. While acknowledging the important security role Kenya plays, U.S. diplomats and some Members of Congress have continued to raise concerns about state corruption and human rights abuses by elements of the Kenyan security services. U.S. officials have also applauded progress, such as the passage of the 2010 constitution.

Conclusion

From this chapter’s discussion, it is clear that the dynamics and challenges of insecurity in a refugee environment are complex. As it emerged, insecurity arising from growing refugee numbers in the country and humanitarian concerns relating to the protection of refugees make it hard for the GoK as the host state to deal with this insecurity. The attachment of refugees to their
home countries complicates it even more and political events in those countries have often affected the stability of refugee camps. The location of refugee camps near the border of their home countries has sometimes exposed the neighboring countries into danger of aggression.

Although refugees are a matter of humanitarian concern, there is need to understand the political implication of hosting refugees—the threat to national and international security. There is therefore the need of striking a balance between Kenya’s conforming to international obligations and that of protecting her national interests. Chapter three will examine the relationship between refugees in Kenya and insecurity.
CHAPTER THREE
REFUGEES PROTECTION AND NATIONAL SECURITY IN KENYA

3.1. Introduction

This chapter will examine the relationship between refugees in Kenya and insecurity. It will scrutinize how refugee influx in Kenya has affected her national security and the laws and legislations put in place to curb this insecurity. The chapter will discuss different scholars’ view on refugees and insecurity. Lastly, it will look into refugees not as a threat to national security but as vulnerable individuals who require protection, the protection offered and the gaps in their protection.

3.2. An Analysis of Refugees and Insecurity in Kenya:

This chapter examines the impact that refugees have on security in Kenya, the issues that have arisen as a result of refugee influx and how Kenya is dealing with those issues. The chapter will provide a history of refugees in Kenya, discuss the factors that have contributed to refugee influx in Kenya and the relationship between refugees and national security. This chapter will also look into Kenya’s policy on refugees and her reaction to refugee influx as a security threat.

The history of refugees in Kenya dates back to independence in 1963. The country has been host to refugees from its neighboring countries which have experienced civil war, political unrest and upheavals at one time or another. These include countries such as Ethiopia, Somalia, Sudan, Uganda, DRC, Burundi and Rwanda. Kenya is a signatory to the 1951 UN Refugee Convention and its 1967 Protocol, as well as the 1969 OAU Refugee Convention. It has also ratified other international and regional human rights instruments on refugee protection. On the domestic front,

however, Kenya did not national refugee legislation until 2007, when the Refugee Act was enacted.\textsuperscript{50}

According to Buzan, political security concerns the organizational stability of states, systems of government and ideologies that give them legitimacy; economic security concerns access to the resources, finance and markets necessary to sustain acceptable levels of welfare and state power; and societal security concerns the sustainability, within acceptable levels conditions of evolution of traditional patterns of language, culture and religious and national identity and custom.\textsuperscript{51}

Kenya perceives refugees as a threat to security, added economic burden and unwelcome environmental degraders. To deal with the threat posed by refugees, Kenya has endorsed a number of policies among them being policies that confine refugees to designated refugee camps and settlements. These confinements restrict their freedom of movement, take away their right to work and expose them to insecurity especially violence connected to militia and rebel groups. Although these policies violate a refugee's right to freedom of movement (UN Refugee Convention, Article31 (2), UNHCR has not effectively challenged them. It is only through the effort of human rights groups and international humanitarian agencies that such policies have been challenged. Under international and Kenyan law, Kenya must formally justify any prohibition on free movement as the least restrictive measure necessary to protect national security, public order, or public health.\textsuperscript{52} The Kenyan authorities claim that the transfer of urban refugees to the camps was in response to a series of attacks in which unidentified people threw hand-grenades into crowds in various locations, killing and injuring a number of people,
including police officers and soldiers. This in itself is a threat to national security and thus the action was justifiable. The Amnesty International and other humanitarian NGO’s need to understand is that Kenya cannot risk the security of its nationals and other international investors.

3.3. Causes of Forced Migration Between Somali and Kenya

As a result of political instability and civil war within the borders of Somalia, many Somalis fled to Kenya in search for safer habitats. The continued instability in the region has prevented about half of these refugees to return to Somalia. The problems that faced these refugees are still seen today, and are continuing to cause many to seek refuge within the borders of Kenya. Some of these factors are discussed below.

3.3.1. Civil Wars in Somalia

The Somali Civil War grew out of resistance to the Siyyad Barre regime during the 1980s. By 1988–90, the Somali Armed Forces began engaging various armed rebel groups, including the Somali Salvation Democratic Front in the northeast, the Somali National Movement in the northwest, and the United Somali Congress in the south. This coalition of clan-based armed opposition groups eventually managed to overthrow the nation's long-standing military government in 1991. There was no national government in Somalia for nearly two decades now. Much of the country has been effectively governed by local authorities, in Somaliland and Puntland, but these entities were not recognized as states by the international community. There is a severe lack of capacity in every part of the country to adequately address problems. While parts of the north have been relatively peaceful, including much of thyself-declared "Republic of Somaliland," inter-clan and inter-factional fighting have flare-up with little warning, kidnapping, murder and other threats to foreigners occur unpredictably in many regions. Since 1991, an
estimated 350,000 to 1,000,000 Somalis had died because of the conflict and even more fled the country.\(^{54}\)

The civil war that caused them to flee is still manifest, despite the efforts of the Government of Kenya and the AU Peacekeeping Mission in assisting the Transitional Federal Government in combating the Al-Shabaab militant group in Somali from 2011-2012. Refugee numbers in Kenya are on the rise today, despite an effort by the Kenyan government and international Community to ensure that there is peace in Somali.\(^{55}\)

### 3.3.2 Al shabaab repression

The Islamist armed group al-Shabaab is subjecting inhabitants of southern Somalia to killings, cruel punishments, and repressive social control, Human Rights Watch said in a report. Many local al-Shabaab authorities devote extraordinary energy to policing the personal lives of women and preventing any mingling of the sexes. They beat, flog, or jail women for selling tea to support their families because the work brings them into contact with men. In addition, Al-Shabaab subject young men and boys to physical and psychological abuse including forced military recruitment and strict social control. Beatings or public humiliations are commonly meted out to men for a broad range of offenses such as failing to go to mosque, having long hair, or wearing clothes that al-Shabaab considers Western.\(^{56}\)

Opposition fighters regularly fire mortar rounds indiscriminately into populated neighborhoods controlled by the transitional government. They frequently fire from residential areas in apparent hope of attracting retaliatory attacks that will damage the image of the transitional government and AU forces. AU forces have fired mortar shells into densely populated areas without taking

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\(^{55}\) Omar Dhadho, interviewed by Evelyn Kiswii, July 28, 2011.

precautions to discriminate between civilians and military targets. Human Rights Watch interviewed people on both sides of the lines who witnessed family members being torn to pieces in such attacks, which violate the laws of war. Al-Shabaab and other opposition fighters threaten and kill civilians they see as sympathetic to the transitional government. Al-Shabaab has also carried out devastating suicide attacks against civilians.57

3.4. The Link between Refugees and Insecurity

Campbell’s work on forced migration and security examines the empirical relationship between displacement and military threats to security taking refugees as an independent variable in relation to the sources of insecurity. Forced migration is seen through the lens of national security. Loescher stresses that refugees are both a humanitarian and a political problem particularly in relation to security. He opines that refugees are perceived as a humanitarian issue by international humanitarian organizations and not as political and security problems yet refugee problems are intensely political. The presence of refugees advances existing internal conflicts in the host countries.58

Refugees and refugee regime have been manipulated as resources of war by both states and non-state actors. As such, refugees have been instrumentally used in conflicts by great powers and by groups in exile. Refugees’ human security is compromised by developments that have served to undermine integrity of refugees on suspicion about their long-term agenda in the host state. Currently there is a growing mix of genuine refugees and persons who while on pretext of being refugees are moving for non-protection reasons.59

59 Betts Alexander, Forced Migration and global politics, (United Kingdom, Blackwell Publishing, 2009), 78
According to the Department of Refugee Affairs in Nairobi, it is almost impossible for someone who is fleeing from fear of persecution to even think of causing trouble at the only place he/she can seek protection. To most refugees, Kenya is safe havens and if at all there is reported rise in insecurity then, refugees cannot be responsible since they are aware that the government of Kenya has their identification details and should they try to cause trouble, they then would arrested and charged. Although Omar believes that, there is no connection between refugee influx and insecurity, the Kenyan government and past events contend otherwise.

Over the years the ever-rising number of refugees in Kenyan has increasingly become a headache for the Kenyan government. While evidence linking Dadaab to recent terrorist attacks in Kenya is disputed, there is no doubt that al-Shabab is an ever-present threat to Kenya’s security.

Since 2011 Kenya has maintained its soldiers in Somalia as a part of the African Union Mission in Somalia (AMISOM) with the objective to conquer Al-Shabab in Somalia and restore political stability. While the force has had its successes against militants, repelling them from key cities such as Mogadishu, Al-Shabab remains a formidable force carrying out suicide attacks in Somalia, Kenya and other countries. Nonetheless, the Kenyan security team is yet to give any tangible evidence of an attack or any illegal businesses operated by refugees who are already registered as refugees and it was concluded that insecurity in Kenya should be blamed on illegal immigrants or other criminals whose intention is to enter the country to cause a stir in the security circles. Kenya has been unable to guard its boarders rendering them porous and unable to hold back illegal immigrants.

60 Omar Dhadho, Interviewed by Evelyn Kiswii, July 28, 2011
According to Weiner and reiterated by Rudolph, perceived threats have a more significant impact on a state’s actions than the real threats. Rudolph, argues that a state’s threat lies in a Nation’s grand strategy including migration and border policies.\textsuperscript{62} This concludes that the large numbers of refugees in Kenya, present a perceived threat and brings tension in the government security institutions, which triggers their reaction, no wonder, Kenya closed her Somali border in December 2006, following the Islamic insurgency and Al-Shabaab threats.\textsuperscript{63}

3.5. The Effects of Refugees on Security

Refugee host countries face swelling challenges to their political stability, policy formulation and implementation, governance and security provision. Among the dominant challenges are the risks that refugees pose to host countries’ security. When refugees enter a country, especially when this is done in large numbers, militant forces may follow them into the host country in the effort to send them back to their country by force.\textsuperscript{64} This may draw border patrols of host countries into a clash with the militant forces. In other cases, drug and weapon traffickers use refugees to smuggle these illegal commodities into the host states. Another usual occurrence is militant group members pretending to be refugees and residing in the refugee camps near the host state’s borders from where they can carry out their operations, including recruiting members from the refugee population. Consequently, refugee camps have been known as harbors for distribution of illegal weapons, drug use and trafficking of women and children.\textsuperscript{65}

\textsuperscript{62} UNHCR Refugee Emergency Relief No. 91 (Dec 1992)
\textsuperscript{64} Loescher Gil and Milner James, (2005), Protracted Refugee Situations, Domestic and International Security Implications, (London: IISS), 160
\textsuperscript{65} Loescher Gil and Milner James, 2005.
Kenya is perceived as a stable country. However, like other African countries, she demonstrates indications of civil strife such as ethnic divisions, diverged political issues, socio-economic inequalities, political manipulation, and a scarcity of economic prospects.66

Armed criminals and members of extremist groups have taken advantage of the large numbers of refugees streaming into the country and made their way through the borders disguising as refugees or civilians. When they enter the country, they engage in activities such as trading in illegal arms and violent activities. The availability of small arms in the country has resulted in criminal activities such as, robbery, cattle rustling, burglary and murder.67 Further, a lot of resources have been diverted to protection of refugees and dealing with the insecurity. Sophisticated weaponry has found its way into North Eastern region, promoting lawlessness, cattle rustling and violence in general in region.68

Al-Shaабаб takes form of the Islamic Courts Union, which was alive in Somalia until 2006 when it was destroyed by Ethiopian forces.69 Members of this group have crossed the Kenyan severally attacking and killing Kenyans, an act they justify through allegations that the Kenyan government is also meddling in Somalia’s affairs.70

Among the key attacks that have been associated with Al-shabab since the deployment of Kenyan troops to Somalia include Al-Shabab seizing a shopping mall, the Westgate and killing approximately 60 people in Kenya’s Westlands area, Nairobi in September 2013 as a retaliation attack for Kenya's military involvement in Somalia. In addition, Al-Shabab claimed two attacks on the Kenyan coast which killed more than 60 people in 2014 June, saying that operations

69 Lilian Ahianga, “Our Territory is under attack on Four Fronts and there is Danger it Could get Worse”, The Standard Sunday May 10, 2009.23
70 Lilian Ahianga, 2009.
against Kenya would continue unless the government of Kenya withdrew its troops from Somalia. Five months later, in 2014 November-December, Al Shabab carried out mass killings in north-east Kenya, including on a bus and a camp of quarry workers. The worst attack came in 2015 April when Al-Shabab killed 148 people, mainly Christian students, at Garissa University College in northern Kenya. In retaliation for this attack, Kenya carried out air raids on Al-Shabab bases in Somalia. Most of these attacks are believed to have been carried out by militants living in the Dadaab camp.

Other than the threats issued by Al-shaabab, the additional security threat being faced by Kenya is the piracy, a threat that has been linked to Somalia. This involves capturing sea vessels, an activity that impedes business and general transportation, predominantly across the Indian Ocean. The Kenyan government in conjunction with the International police have been actively working to fight this crime.

### 3.6 Kenya’s Policy on Refugees

The Refugee Act that was ratified in 2006, with the aim of facilitating the implementation of the 1951 United Nations Convention that is interrelated to the 1967 Protocol, the Status of Refugees, and the 1969 OAU Convention. Kenya sanctioned the 1951 UN Convention involved with the Status of Refugees in 1966 and the 1969 OAU Convention Governing the individual

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71 Reuters, “Somali pirates seize Panama-flagged vessel as 24 killed in battle” Daily Nation Thursday June 3, 2010, 19

... 18. No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where (a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or (b) the person’s 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 that country.”
facets of refugee difficulties in Africa in 1992. According to the Act, Section 11, (1), anyone who is admitted into Kenya, be it lawfully or otherwise, and wishes to reside Kenya as a refugee is required to make this known by presenting him/herself to a Commissioner immediately upon entry or, within thirty days of entry into the country. Without predisposition to the requirements of this Act, no individual asserting to be a refugee shall by the reason of unlawful entry to the country be announced an illegal immigrant, incarcerated or fined in any way unless he/she fails to observe subsection (1), commits a felony.

The expansion of the Act shadowed an era of constant activism by UNHCR and other civil society organizations. The Act now categorizes refugees into twofold, statutory and prima facie refugees, and defines the circumstances for the exclusion and/or retraction of refugee status including:

(a) Due to a justifiable fear of being victimized on the grounds of race, belief, sex, nationality, or social class.

(b) Lack of a nationality and not being in the country of his/her previous residence and the person is unable or unwilling to return to that country owing to a justifiable fear of persecution.

(2) A person considered a prima facie refugee as a result of external hostility, profession, foreign control or other extremely disturbing events in a part or whole of his/her motherland.

Section 18 of the Act deals with refugee protection and it provides that, no refugee shall be denied admission into Kenya, banished, or deported from Kenya or to any other country. The Refugee Act moreover established a special refugee department, the Department for Refugee Affairs (DRA), which is liable for the administration, synchronization and supervision of refugees’ related issues. A Refugee Affairs Committee, which was founded under the Refugee Act, is liable for Binaifir Nowrojee, an attrition of refugee rights in East Africa.
Furthermore, the act regulates the followed parameters in awarding and determining the status of the refugees. When asylum-seekers get denied of refugee status, they can appeal the decision. If an appeal gets rejected, the asylum seeker gets an ultimatum of 90 days to vacate the country. When asylum is granted, refugees get identification pass ad can applies for a Convention Travel Document which they can use in travelling without a passport. Those with a legitimate reason to leave the refugees camp must have a Movement pass.

Despite the higher refugees’ number in the country, Kenya has allowed refugees to freely flow in the country.

The policy gets characterized by the refugees liberal admission who gets awarded full socio economic rights which are repatriated to their countries in conducive conditions. Many migrants gets the refugee status without getting scrutinized like they would under Un convention and protocol and various governing international instruments of the refugees.

The Horn of Africa’s emergence of the Al-shabaab insurgency exposed Kenya to threats from the militia men. With the threat, there must be a policy shift with the refugees’ movement getting restricted. The refugees negative effects necessitates the policy shift and therefore Kenya must give its intentions in advocating in revising the current international refugee regime in order to protect the refugees in their own countries. Very little can be done by Kenya about this. The international laws say that no refugee should get expelled or returned to the territories or frontier where their life and freedom is under threat on various accounts like religion, nationality, race, social group’s membership or political opinion. Closely examined, the principle exposes the receiving country to insecurity as noted earlier, the refugees who got traditionally presented and conceived like humanitarian issues, currently are increasing which is a security threat and
precautions must be applied in enhancing that the country’s security is not compromised. In another perspective, the country’s state security protection and the security of refugees should not and are not to be mutually exclusive.\textsuperscript{15}

\textbf{3.7 Refugees and Kenya’s Security}

The national security applies in various sectors like political, military, terrorism, societal, economic, and environmental and radicalization among others.\textsuperscript{16} All these sectors depends on each other such that a change in one sector affects all the other sectors, may it be positive or negative change. This means that when the insecurity issues of the refugees affect one security sector, all the other sectors get affected. Buzan states that there exist five sectors where the national security concept applies: Political, military, societal, economic and environmental.\textsuperscript{17} These sectors are interdependent of each other where change in one sector whether negative or positive affects various sectors. When one security sector gets affected by the refugees, other security sectors get affected by the same token.

\textbf{3.7.1 Political Security}

The organizational stability of the government of Kenya gets undermined by the political threats where it threatens the country’s national identity and its ideology of organizing, and the institution that express them. In the sector of the military, the threats are mainly internal to the country, in the sector of politics; the state gets threatened both externally and internally. Internal threats arise due to the actions of the government threatening and constraining groups or individuals. Government’s resistance, efforts in the change of policies, or over the government, or political movements aimed at independence, or autonomy, all affects the country’s security.\textsuperscript{18}
The ideology of another state threatens a country internally, such as fundamentalism, nationalism, communism, liberal democracy, etc. As a result, when the receiving states and refugees have a common ideology, their togetherness poses a threat politically to the home country of the refugees.  

3.7.2. Economic Security

Economic threatens are unintentional or intentional, external or internal. No matter the type, economic threats results in loss in material and various institutions strains of the state, while still they undermine the longevity and health of the population. Thus, they get concerned with sustaining the levels acceptable welfare and state power. Economic threats are the hardest to handle in the framework of the national security, but when their effects get beyond the economic sector into political and military sphere, then there emerges three national security issues. The involved linkages are on one hand between economic capability and military capability, socio-political and power stability on the other. with the three linkages; same results get produced by economic deterioration: weakening the states’ power and strength, and international and external security enhancement.

Refugees threaten the economic security by imposing limits of the receiving states’ financial capability. Refugees are typically so poor and numerous hence creating a substantial economic burden, education, straining housing, sanitation, communication and transportation facilities and at the same time increasing consumption. In dealing with the economic burdens, receiving states must increase taxes that get paid by their own citizen. Social groups and national societies within them react negatively to the refugees’ influx due to the economic costs that the latter imposes towards the receiving state; second, as a result of the purported refugees’ behavior like welfare
dependency that affects the individual tax payers host country; and third, because the local people may get displaced by the refugees in employment because they get ready to work even for lower earnings.²²

As a result of the above reasons, social hostility’s considerable degree gets created against the refugees and also against all the foreigners in host countries. Social hostility, having being created by economic considerations undermines the states’ socio-political cohesion. At last, financial capability being directly affecting the receiving states makes the refugees to have an indirect impact towards the same state’s capability of the military and overall power.

3.7.3 Societal Security

The security’s referent in the societal sector is collective and identifies-national or religious, for instance, it can work independent of the country. In relation among states, societal level’s critical external threats are part of a military and political larger package of threats, which are all difficult to disentangle.²³

In the political sector, the societal sector’s threats arise externally or internally, while an internal threat gets transformed into an external one and the other way. When the societal security is on the traditional patterns of language’s sustainability, religious, culture and ethnic identity, threats to the values frequently come from within states compared from without them.²⁴ The camps for the refugees that are near or in conflicts are vulnerable to armed insecurity menacing, besides, host communities and displaced people, while on the other hand, humanitarian workers, for instance Dadaab camp in the county of Garissa mainly hosts refugees from Somalia. Such a camp for refugees gets targeted by foreign and domestic security forces and may be utilized as recruiting bases and training grounds for non-states actors. Insecurity state in Somalia is a
catalyst to this and it makes it difficult for the authorities of Kenya to differentiate from insurgents and genuine refugees. Small arms presence in the refugee camps are a security threat to the state.  

The refugees’ migration obvious long term effect is on the ethnic minorities’ creation in host countries. There is a long lasting social effect in admitting refugees on the receiving states. Homogenous societies may get relatively get turned into multicultural and multi-ethnic ones. Societal concerns are often raised by refugees as they threaten potentially the strength and popularity of the nation-state. Traditional notions get challenged on the within state’s membership, citizenship and nationality meaning, and the citizens’ duties and rights towards their state and vice versa. 

Just the way it has been pointed out, the fact that a few states’ number fit the picture idealized of the homogenous-state, considering that many states are social and cultural products of earlier people’s movement, fails often in registering popular consciousness. Nonetheless, the existence of refugees is generally acceptable to have a substantial impact to the economic stability and social stability interrelated factors. Refugees create a linguistic, religious, cultural and possibly an ethnically distinct minority by being citizens of the receiving state within the host country, hence changing its society’s nature. 

Somali’s migration of refugees threatens culture and communal identity by directly changing the cultural, ethnic, linguistic and religious characterization of the Kenyan people population. The refugees may be viewed as the cultural norms and value system’s threat of the country. If the values and norms get violated by the Somali refugees, Kenyans may view the violations as a national security’s threat. Questions of race and status are difficult to avoid as a result. As seen, it
is clear that refugees’ migration gets often accompanied by cultural rival identities clash. The clash of cultures and refugee migration threats leads to a societal conflict between refugee and domestic societies. As already witnessed, the conflict may feed into restructuring massive relations between the hosting and home states which in turn may affect international security.

3.7.4 Environmental security

Possible referents range of security is large in the environmental sector. However, the basic concerns are how the rest of biosphere and humans beings get related. In many cases, refugees get seen as the environmental threat, and as a result, it can lead to hostility generated towards them especially the time they consume certain amounts of natural resources like produce waste and water. For instance, in Dadaab camp, clashes between the locals and the refugees gets rampant and the clashes gets started by local resources competition such as firewood as reported by UNHCR.

3.8. Key gaps in refugees’ protection capacity

Security problems continue to plague Kakuma and Dadaab camps. The problems include; rape, banditry and murder. As the situation increases over the years, children and women in particular are vulnerable to exploitation and abuse. Sexual assault is one perennial problem that faces women especially as they collect firewood outside the camps. Traditional practices that are harmful also affect the well-being and protection of girls and women including the practice of female genital mutilation which gets done amongst the Ethiopian and Somali refugees, and also forced marriage that occurs to the Sudanese and Somali communities.

There exist challenges in identification and documentation of the refugees’ documents. Less than 20% of the refugees are in possession of individual documentation confirming the bearers’ status.
Furthermore, there isn’t any document in use. Besides, there are different documents given for various reasons including: Refugees Certificates used for mandate refugees outside the camps, Alien identity card for Convention Refugees who are government-registered, movement passes for those refugees transiting from/to the camps, and finally the ration cards for the household’s head for the camp-based refugees.

Refugees’ freedom of movement is limited. Refugees’ vast majority are expected to live in isolated Kakuma or Dadaab camps. Encampment policy by the government severely restricts the movement freedom, limits refugees market access, opportunities and employment for self-reliance. Also, it inhibits the refugees’ potential in contributing to local development. Encampment policy’s violation results in the detention and arrest of refugees.44

Insufficient assistance in protection needs attainment has been a challenge. Life-saving assistance minimum methods have been generally maintained, anemia in pregnant women, malnutrition rates, neonatal death rates, and low-birth rates are unacceptably high as a result of nutrient deficiencies in the baskets of food and restricted supplementary feeding program. Furthermore, regular non-food distributions lack has made many refugees sell portions of their baskets of food in order to buy needed items, further leading to both nutritional and caloric consumption. Many refugees reside in the standard shelters covered by cloth and grass. Furthermore, when available, plastic tarpaulin offers little privacy and is inappropriate in post-emergency situations.31

The firewood collection puts women and children at the exploitation and abuse risk, and has partially got addressed through distribution of firewood, the distribution covers only a need’s portion and has decreased though has not eliminated children and women’s exposure to abuse.
Collection of firewood by refugees in the areas surrounding the camps and the grazing animals around the camp of Dadaab has led to considerable damage to the environment which has marginally been addressed by few rehabilitation programs. This has led to critical degradation of the environment.

An important percentage of children aged to go to school do not attend their primary school. Few of those that attend, there exists parity between girls and boys in attendance in the early years, while the latter dramatically falls in senior and junior grades. Secondary education access is severely limited. In Dadaab camp, secondary education, for instance, the camp has only 25% of graduates in the primary school. Self-reliance achievement inability. The government encampment policy restricts access to markets, employment and land, and the state’s local laws prohibits the engagement of refugees from economic activities, income generation of refugees get severely constrained and hence the chance to become self-dependent.

South Sudan and Somalia’s voluntary repatriation gets hindered by security, services absence in communities of return, and UNHCR’s lack of monitoring presence in the return areas. Local integration goes against the government policy and is not seen as a significant number of refugees option. Further, as refugees’ large number gets resettled out of Kenya annually (4,000 – 5,000), the digits are insignificant compared to the entire caseload. The hosting communities around Kakuma and Dadaab camps are more impoverished in many ways, and are desperate compared to the refugees in the camps. In Kakuma, the members of the host communities are able to access various camp-based services and more can get done in building a sustainable economic environment, go on providing host community with camp services access, additionally develop local infrastructure, and reinforce programs benefitting both the host communities and refugees.
Conclusion

From the chapter, it is evident that, despite a policy which is unofficial that prioritizes the accommodation of refugees notion in camps which is located in the country’s report parts, Kenya tolerates the increasingly growth of large refugees population in Nairobi capital city and various urban centers. As already noted, this has fueled insecurity of the state in Kenya. Various set of conclusions can serve as policy guidelines and get drawn from the consideration of the relationship between security and refugees. The first conclusion says that repatriation constitutes the alternative that is best for the international community when dealing with the problem of refugees.32

However, repatriation’s prerequisite is the existence of a political settlement allowed by all sides in the conflict. Such settlements minimizes and eliminates the refugees responsibility in acting in opposition to their own home country, without or with the approval of official receiving states, thereby reducing the conflict possibilities between host and home countries. A political settlement provides fertile ground for repatriation, and additional guarantee must be given to the refugees where their daily life gets not affected in the post – conflict society by the created bitterness during and before the conflict. Deep hostility is brought by conflict which gradually needs to evaporate gradually if peaceful relations to the communities competing which are firmly established. The international community must help to that end. Conflict brings with it critical damage. States which experienced conflicts in domestic level are weak economically and thus are not capable of reconstruction after the termination of the conflicts.

From the discussion in this chapter, it is evident that there exists a strong interrelationship between international and domestic security, which is the international community’s interest in
assisting the states construction in the efforts stabilizing them. When the international community fails to act in that way, instability and domestic weakness easily spills over from the states, therefore endangering international and regional stability. At last, the receiving states must be very cautious in their political, social, and economic planning so as to minimize or avoid domestic dissatisfaction that can lead to feelings creation towards racism and xenophobia, hence the feelings may destabilize the domestic environment of the host countries and their relations with the home country of the refugees. Chapter four contains a refugees’ critical analysis in Kenya and insecurity.
CHAPTER FOUR

CRITICAL ANALYSIS OF NATIONAL SECURITY AND PROTECTION OF REFUGEES IN KENYA

4.0. Introduction

This chapter will be a critical analysis of National security and its relation to refugee protection in Kenya. It will study the efforts the government and the international community have made to protect and repatriate refugees. It will examine what international laws and conventions on refugee law stipulate vis-a-vis what happens in Kenya. It will also discuss whether the Refugee Act and international instruments that have been ratified by Kenya have been implemented; show the extent of that implementation and the existing protection gaps. This chapter will lastly look at where Kenya is in terms of its international obligation to protect, what Kenya does and how it needs to improve in terms of its international obligation to protect.

4.1. Legal framework of Refugee Protection in Kenya.

Kenya is a signatory to various international legal instruments that covers both international human rights law and international refugee law. This is inclusive of Geneva Convention’s protocol in 1967 and the OAU convention. Up to 2006, there existed no refugees’ national legislation, but over the years, Kenya has registered hundreds of thousands of refugees from Somali and gave them temporary protection in various camps. Since it was passed in 2007, there has been a regulation of the Kenyan refugees by the Refugees Act of 2006. The acts provision are related closely on the regional and international instruments, containing necessary exceptions as necessitated by specific Kenya’s circumstances.
4.1.1 International laws and conventions on refugee law vis-a-vis what happens in Kenya

It is the state’s responsibility in protecting their citizens. When the governments are unable or unwilling to safeguard their citizens, people may seriously suffer violations of their rights and they get forced to vacate their homes, and mostly even their families in seeking safety in neighboring countries. By definition, therefore, their home countries’ government no longer protects their refugees basic rights, the international community then gets in ensuring their basic rights get respected.

4.1.2. International laws and standards Concerning Refugee Admission and Protection

International law on refugees main sources are the 1951 Convention of Refugees, and the Convention of OAU of 1969. In 1951, Kenya acceded but has not ratified it. Under these document’s obligation is inclusive of not sending a person back to any state where they may have their life threatened due to the public threats order that makes the refugees status basis; and not being biased among the refugees groups; the refugees movement freedom and working in the country though there can get imposed three year limit in protecting the local labor market, the same basic education right as a national; refugees duty in obeying the country’s law where they are received. The OAU convention puts in that member states must utilize their best endeavor in receiving refugees and ensuring their settlement.

The OAU convention and the 1961 Convention were made in situations which were very difficult from the circumstances obtaining today. A European was a typical refugee in 1951 as he had fled to a different European country, with a small family or alone, perhaps was a professional, and had to be able to return home in a few years, or reasonably become integrated well into another country. The huge numbers influx of people, many subsistence farmers, in countries that were poor, and the ones that might live in various camps for more years, without it
being clear when their circumstances would get resolved, simply was not imagined, even in 1969 in Africa. Nevertheless, the Convention set decent treatment standards. No matter the refugees being many, it should not obscure the hardship that some of them endured in reaching the host country, or the hard situations in which they live here.

Kenya is a signatory to roughly all the AU and United Nations human rights and refugees conventions. Although Kenya hasn’t domesticated several of the instruments, provision of human rights in customary international law and the constitution like the Principle of non-recoupment affords some regulations to the refugees’ rights in Kenya. No one gets to lose their basic fundamental rights as humans for only being refugees in a country.

Scrutiny of constitutions from different nations shows that they had nothing for the refugees. This includes countries that had a very high number of refugees during the drafting of their constitutions like Uganda. The Chapter of a constitution on Fundamental Rights provided rights to ‘persons’ and not ‘citizens’. ‘Persons’ in this case covers all people residing in that country including the refugees unless be it that other provisions indicate otherwise or a good reason is available to limit the use. Furthermore, responsibility to put in place agreements applies also to treaties that will be beneficial to the refugees. Therefore, while states consider matters that pertain to citizenship, they need to put the refugees’ presence in perspective too.

4.2. International Law and Refugees in Kenya

Kenya’s asylum policy was profoundly affected with the arrival of over 400,000 refugees from Somalia in 1991 and 1992. Claiming that the sheer number of new arrivals had caused the collapse of Kenya’s previously open asylum policy, the government ceased to conduct individual
status determination interviews for new asylum seekers.73 Refugee affairs were transferred almost exclusively to UNHCR, who became responsible for the establishment and running of camps in government-designated areas. At the same time, it placed significant restrictions on the quality of asylum it extended to refugees. The strategy the government intended to use was laid out very well: try to control and monitor the refugees in camps, provide them with protection for a while, pass on to UNCHR the role of containing the refugees and concentrate and monitor them in areas considered as remote in the country.74

The government of Kenya policy to restrict refugees in camps has violated rights of refugees guaranteed under the Geneva and Human Right Conventions. It has placed an “encampment policy” whereby refugees are obliged to exist only in camps so as to qualify for assistance; anyone found outside the camp is classified as illegal aliens and subject to punishment including deportation.75 Most importantly the treatment offered contradicts the human right obligations of the government. In light of these restrictions, the rights of refugees in camps are grossly violated and this section is dedicated to the general description of refugee policy in Kenya in connection with the standard of treatment offered in Dadaab camp.

Kenya is part of several international Conventions on Human rights. The conventions include the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and Universal Declaration of Human Right (UDHR). All the conventions are known as the International Bill of Human Rights together with their optional protocols. The Kenyan constitution plays an integral part in reminding member

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73 Ibid, pp
75 J. Milner “Refugees, the State and the Politics of Asylum in Africa” Jan ZielonkaFellow of St Antony’s College, Oxford (2004–), pp 84.
states to respect and acknowledge the Bill of Rights as a major part of its democracy and the structures of its social, economic and cultural policies.\textsuperscript{76} Moreover, in light of the changing nature of refugee problems in mass influx situation, it has been addressed by international community that refugee solutions must also be supplemented by human rights Conventions.\textsuperscript{77}

Refugees in Kenya have a several rights as well as responsibilities as indicated by the refugee and human right law Conventions, once granted entrance in Kenya. The ACT’s section 16 (1)\textsuperscript{78} provides the entitlements and duties that are covered by the international conventions, conventions that Kenya is a party, to recognized refugees and their families. However, it does not give explanation as to what the rights and obligations entails. With the exemption of few rights like, the right to documentation (Section 14-a)\textsuperscript{79}, the wage-earning employments (article 16(4))\textsuperscript{80}, and the principle of Non refoulement (Section 18-b)\textsuperscript{81}, it does not explicitly address the applicable rights to refugees.

\textsuperscript{76}Article 19(1) of the Kenyan Constitution reminds us that the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies. 19. (1) states “The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.”

\textsuperscript{77} Document E/CN.4/1503. Fact Sheet No.20, Human Rights and Refugees

\textsuperscript{78} Article 16 1 (a) of the Act states “refugees shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party.”

\textsuperscript{79} Section 14 (a) provides that ‘every refugee and asylum seeker shall be issued with a refugee identity card or pass.’

\textsuperscript{80} Section 16(4) provides that in respect of wage earning employment refugees shall be subject to the same restrictions as imposed on persons who are not citizens of Kenya

\textsuperscript{81} No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or subjected to similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return or remain in a country where - (a) The person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or (b) The person’s 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 that country.
Since Kenya is a member of the Geneva and OAU Conventions, the direct reading of the provision could mean that recognized refugees and their families are covered under both Conventions. However, it is not clearly stated if all the refugees in Kenya are beneficiary of the provision. Different scholar arguments have developed in connection with the principle of non-discrimination. The Geneva Convention, Article 3 and the OAU Convention, Article IV, compel member states not to be biased against refugees in the submission, formulation and implementation of the corresponding conventions. This code similarly cuts across a number of other human rights tools including the ICCPR, and ICESCR. Accordingly, it has been argued that since the principle of non-favoritism necessitates that all refugees be given equal treatment, notwithstanding their race, ethnicity, faith, nationality, social class or political view: refugee under the Act should be provided equal rights as the conventional refugees.\footnote{Refugee Consortium of Kenya, “Asylum under threat Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor” A publication of the Refugee Consortium of Kenya with the support of the Danish Refugee Council June 2012, (3-98)} However, the interpretation seems general and ideal, looking to the practical situation of the state capacity to provide the large number of refugees the standard of treatment accorded in the Geneva Convention.

Looking at the level of standards that the Geneva Convention accord, the convention is seen to provide minimum rights to the Conventional Refugees. The rights can be generally categorized into three.\footnote{Ibid} Those where the refugees receive treatment same as the receiving country’s nationals: these include, freedom of religion both in education (art 4) and worship, court access, legal presentation (art 16), right to education (art 22), assistance as well as public relief access (art 23) etc. The other category is that advocating to equal treatment to foreign country’s nationals: among others, it includes right to be a member of trade unions (art 15) and right to
income generating employment (art 17). In the third category are those rights that call for favorable treatment of refugees equal to that provided to visitors to a country. Such rights include, freedom to choose where to reside and also freedom to move around the country (art 26), right to acquire and own assets (art 13), right to start up businesses (art 26), access to quality housing (art 21), higher education access (art 22) including others.

The general understanding under international refugee law is that, these rights are crafted in respect of refugees recognized individually, while it is difficult to argue similarly to refugees recognized through clusters. The decision-making Committee of the UNHCR established that, after admittance, refugees ought to be treated according to a given set of minimum standards. The main goals of protection within the recommendation context include; ensure admission and at least temporary refuge, prevent forcible return and to ensure refugees are treated according to basic human rights standards. Parts of the standard focus on civil rights in particular those set out in the UDHR.

Furthermore, the ICCPR rights applicability to the refugees has been made legitimate by the HRC (Human Rights Committee) through their General Comment that set forth aliens’ rights through the International Covenant on Civil and Political Rights. The aliens in question here include the refugees. According to the committee, the rights as stated forth in the ICCPR, are applicable to all individuals residing in a particular country that is under the covenant and under

84 Refugee Consortium of Kenya, “Asylum under threat Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor” A publication of the Refugee Consortium of Kenya with the support of the Danish Refugee Council June 2012, (3-98)
86 Ibid
the jurisdiction of a government that endorses the Covenant. It also poses the general rule proposing that all of the rights found in the covenant have to be provided to all aliens and citizens without discrimination.  

In general, these standards mainly focus on basic human right treatment that as refugees should receive upon admission as an emergency response, without referring to most of the rights enshrined under the Geneva Convention. The applicability of Human Right Laws is easier to reach than the refugee law regime, although protection under the Geneva Convention cannot at the same time be totally excluded. Accordingly, this section will address the specific application of selected rights under both regimes.

4.2.1. Protection Gaps in the Legal Framework.

Several key refugee conventions have taken place in Kenya. In 1951 a Convention on Status of Refugees took place, it will followed by a 1967 Protocol. A third one, OAU Convention Governing the Aspects of Refugees Problems was held in 1969. Furthermore, Kenya is a member state to different international waves on human rights. Such Conventions includes the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). There is also the Convention that focused on Elimination of Discrimination against Women (CEDAW), the (CRC) Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR).

Refugees are categorized by the Refugee Act of 2006 and the Refugee Regulation act 2009 as either prima facie or statutory. The statutory categorization of refugees definition is adopted from a Convention in 1951 that added gender as a considerable factor. The Department of Refugee

88 Ibid
Affairs (DRA) under the Interior and Coordination of Government ministry was established by the Refugee Act. The Department of Refugees Affairs is charged with the responsibility of formulating policies, implementing lasting solutions, monitoring international aid, accepting and processing refugee information, their registration, travel documents and identity cards issuance to refugees as well as the management of the refugee camps around the country. RAC – Refugee Affairs Committee, was also founded under the umbrella of Refugee Act. Its key responsibility was advising the Refugee Affairs’ Commissioner.

In 2007 the 2006 Refugee Act begun carrying out its mandate. In 2009 regulations were enforced by it which became the major legal channel that monitored Kenyan refugees. Another bill, Refugee Bill that has not been passed yet, was introduced. A task force chaired by the Refugee Affairs Department was enacted in 2006 with the responsibility of reviewing the Refugee Act. There are several agencies in the Task Force, these are: Danish Refugee Council (DRC), International Rescue Committee (IRC) and Heshima Kenya, Refugee Consortium of Kenya (RCK), HIAS Refugee Trust of Kenya, Department of Refugee Affairs (DRA) and Kitua Cha Sheria. The task force is mandated with the responsibility of drafting a refugee bill that will stipulate measures and solutions to administrative gaps and protection found in the Refugee Act of 2006. It was also mandated with the responsibility of ensuring that it is in line with the Kenyan Constitution enacted in 2010 as well as the Kenya’s international obligations to asylum seekers and refugees.

This Task Force was to draft the Kenya National Asylum Policy, the first, on Asylum Seekers and Refugees that was supposed to strengthen the Refugee Bill that had been proposed. This National Asylum Policy also seeks to put in place three conventional lasting solutions, affirming its commitment to the role of the national government on the refugees. The 2014 Refugee Bill as
well as the Policy (Kenya National Asylum) on Asylum Seekers and Refugees was under Implementation.

4.3. Movement of Refugees

It would be an understatement to say that the refugee situation in Kenya is Ideal especially considering the Daadab Camp. The Daadab camp is located in a semi-arid region 500 km from Nairobi. Reliable information sources pose that responsible Kenyan authorities have not adequately responded to the ever rising excess number of refugees in the Daadab Camp that has chanced complications in the process of service delivery to those residing in this camp. This has resulted into gross violations of human and refugee rights. In the following section I am going to address the high level violations commonly addressed or seen pertaining to the camps. These include Physical security, violations of movement freedom, denial to the right to remunerated engagement and well as right to access to travel documents.

4.4. Physical Security Threat

Physical security remains to be the biggest threat to and concern to Daadab Refugees. There is simply no amount of data that can be used to give a picture of the magnitude of the violence experienced in and around the Daadab camp. The area has not been stranger to bandits, shootings, local communities and refugees feuds, sneaking in of arms into the camps as well as cruelty in

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90 Refugee Consortium of Kenya, “Asylum under threat Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor” A publication of the Refugee Consortium of Kenya with the support of the Danish Refugee Council June 2012, (3-98)
women including rape as they around their daily chores over the years.\textsuperscript{91} Recent years have seen the rocketing of the crisis owing to overcrowding. Humanitarian workers have been kidnapped, explosions have been experienced by the Kenya Police while at the same time leaders in the refugee camps have been attacked owing to internal conflicts and external interferences.\textsuperscript{92}

In December 2011, three explosions were experienced. These attacks resulted into the injury and death of a number of officers. This prompted the initialization of protection measures to stop and prevent occurrence of such security concerns. The counter-measures put in place resulted into direct and indirect punishment of the population.\textsuperscript{93} According to reliable sources, the Kenya Defense forces raised curfews and imposed restrictions on travel. They also conducted arrests indiscriminately mostly on refugees. There were beatings and other atrocities including rape all of which bore from the attacks.\textsuperscript{94} In the year 2012, the CCPR adopted conclusive observations which addressed issues similar to those explained above in the Daadab camp. It raised concern about the rise of cases of both physical and sexual atrocities performed by the police force on the refugees.\textsuperscript{95}

A major role of Refugee Protection Act is the realization of physical security for refugees.\textsuperscript{96} It entails enhancing the security of the areas in which they reside as well as putting in place

\textsuperscript{91}Refugee Consortium of Kenya, “Asylum under threat Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor” A publication of the Refugee Consortium of Kenya with the support of the Danish Refugee Council June 2012, (3-98)

\textsuperscript{92}Ibid

\textsuperscript{93}Ibid

\textsuperscript{94}Ibid

\textsuperscript{95}UN Human Rights Committee (CCPR), Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Kenya,CCPR/C/KEN/CO/03

security breach preventive measures. Other refugee environment characteristics advocated for include humanitarianism, peace and being civil. They should be violence free, lacking of criminal cases and simply human. This brings about the question, has the Kenyan government has taken up the responsibility of protecting Kenyan refugee’s physical security?

Human rights and refugee laws stipulate that a host state is required to provide physical protection to all those that reside in it. Geneva Convention’s Article 35 (1) and the UNHCR’s Statute mandates UNHCR with the role of monitoring and assisting states in their role of providing refugees with physical. Following this countries work hand in hand with the UNHCR in the duty of advertising and implementing international accords that pertain to refugee protection as well as the use of those accords. The Refugee Act in Article 17(e) is a good example of an act that offers refugees in camps physical protection.

ICESCR, UDHR and ICCPR are good examples of human right organizations that illuminate this right. The UDHR for instance in article 3 and 5 offer a guarantee to this right. Article 3 clearly states “Everyone has the right to life, liberty and security of person” while Article 5 states “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The same issue is also found in three articles of the ICCPR. These are article 9 (1) that states

97 Ibid
99 Article 35 (1) states “The Contracting States should undertake to co-operate 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 application of the provisions of this Convention.”
101 There shall be a refugee camp officer, for every refugee camp whose functions shall be to— (e) co-ordinate the provision of overall security, protection and assistance for refugees in the camp;
“everyone has the right to liberty and security of person.” Article 6\textsuperscript{102} and article 7\textsuperscript{103} also frame the same kind of message. As if that is not enough, article 6 advocates for the “inherent right to life” protection for everyone. The message in article 7 abolishes the need for cruelty and torture against any human being as well as treatment and punishment that may be deemed as degrading.

Simply put, the mandate of the ICCPR is carried out under the obligation of the state under which their jurisdiction lies. As per article 2 (1) of the same convention, the member states of the Covenant have to respect and ensure that it maintains upholding of the rights of the residents in its territory as it pertains to its jurisdiction. It is very clear that Daadab is under the jurisdiction of Kenya as a state since it is located inside Kenyan borders. Borders remain to be the most basic yet efficient means of telling jurisdictions under which certain things lies when it comes to a world order that is made of different states.\textsuperscript{104} Another aspect that puts Daadab under the jurisdiction of Kenya is the fact that the administration structures and police forces that govern the area are Kenyan.

Having made that clear, the government of Kenya owes the refugees of Daadab physical protection as long as they remain within Kenyan borders. Excom concludes, in its No. 72 (XLIVI) 1993 Conclusion, that it remains to be the state’s responsibility to offer respect and as well as ascertain human fundamental rights for asylum seekers and refugees, their liberty, their security,

\textsuperscript{102} Article 6 (1) states “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”
\textsuperscript{103} Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
and freedom from degrading punishment or treatment that may be regarded as cruel or torturous. \(^{105}\)

In short the government of Kenya has obligation to provide physical security to all refugees both according to Refugee and Human Right Conventions and it has failed to uphold its obligations. In this regards, the Human Rights Committee (CCPR) in its concluding observation report in 2012 has urged the state to take solid measures to provide adequate security at refugee camps, particularly at Dadaab camp, and to carry out thorough probes into all cases of violence as well as all allegations of violence by the law enforcement department to facilitate justice.\(^{106}\)

**4.5. Movement From Dadaab Refugee Camp**

For the refugees to move from the Daadab camp they need to acquire movement passes. The passes will authorize them to travel for reasons such as to seek medical attention, seek higher education, for resettlement purposes, for business and also in case of security reasons in the camp. \(^{107}\) DRA is the only body with the mandate to issue these passes. The process is characterized with numerous rejections and prolonged pass acquisition process in terms of time. Should a refugee feel like leaving without the ID or passes they get harassed, requested for documentation which mostly results to being turned back into the camp.\(^{108}\) It goes without saying that these refugees need to have their right and freedom for movement respected to enable

\(^{105}\) UNHCR, Personal Security of Refugees, Excom Conclusion No.72 (XLIVI) 1993, preamble clauses

\(^{106}\) UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Kenya,CCPR/C/KEN/CO/03 , para 12.


\(^{108}\) Ibid
them access to agricultural land, clean water, salaried engagements among others.\footnote{Training Manual on Human Rights Monitoring - Chapter X: Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps, available at \url{http://www1.umn.edu/humanrts/monitoring/chapter10.html}} This brings us to another important question, are refugees’ right to free movement around Kenya as per the human rights and refugee laws respects?

The Geneva Convention together with the Refugee Act of Kenya preserves the movement rights of refugees. Perusing through article 26 of the Geneva Convention will provide a vivid connection with Article 16 (1)\textsuperscript{110}. Article 26 calls for the states under the Convention to ensure that refugees under the state decide their residence of choice and are allowed to move freely around that state just as much as other types of aliens are allowed to roam around the country.\textsuperscript{111} Other instruments guaranteeing the same right include UDHR’s article 13 that states that every person has the right or rather freedom to move and reside anywhere within the state’s territory. ICCPR’s Article 12 (1) offers that every individual be given the right to move freely around the state and be allowed to choose a place to reside within the borders of the state as long as they are law respecting persons. It should however be noted that several limitations exist pertaining to this.

The situations under which the Geneva Convention and the Act can be applied to refugees has several interpretations. One, the refugee Act does not clearly call for encampment of refugees. It talks about designated residential places. Sections 16 (2) (a) (b) explain that a Minister notifies through the Gazette following consultation with the community considered as the host, decide and appoint areas in Kenya to be used as waiting areas to be used to temporarily hold the

\textsuperscript{109}Article 16 1 (a) of the Act states “refugees shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party”
\textsuperscript{110}Article 26 of the 1951 Refugee Convention, see also article 2 of the OAU Convention, which requires states require states as far as possible, to settle refugees at a reasonable distance from the frontier of their country of origin.
applicant refugees awaiting acceptance as refugees while they are being processed. It good to note that the camp’s location is yet to be designated. Also found in the Act are indirect references of policies for encampment via other provisions.\textsuperscript{112}

The applicability of section 16 (1) to refugees has not yet attained a clear stand. As mentioned, the Act failed to provide the scope of this provision. The High Court of Kenya in a recent decision in the case of Kituo Cha Sheria and others v. The Attorney General confirmed the applicability of the provision to urban refugees. On 26 July 2013, the Court has passed judgment with regards to urban refugees were involuntary displaced from the cities and forced to live in camps. The case was brought by eight petitioners against a decision of the government to move all refugees who were living in urban areas to the Dadaab and Kakuma Refugee Camps and eventually moved them to their countries of origin.

The first phase of rounding-up, which is targeting 18,000 persons started in January 2013, and the security personnel started by rounding up refugees and transferring them to the Municipal Stadium in Thika, which acted as the holding ground during the process of moving them to their respective Camps. The court in its legal analysis declared that the laws in Kenya, “Do not prohibit refugees from residing anywhere in Kenya”\textsuperscript{113} which is clearly manifested under the Geneva Convention and the Act. However, the applicability of this rule to refugees depends on the interpretation of urban refugees and the scope of article 16 (1) of the Act. The international community has welcomed the decision considering it as a landmark to the right of refugees in general, and hoping future jurisprudence will develop in favor of camp refugees.

\textsuperscript{112} Section 17(f) empowers Refugee Camp Officers to issue movement passes to refugees wishing to travel outside of the camps, Section 25(f) makes unauthorized residence out of the camp an offence punishable by a fine of up to KES 20,000 and/ or imprisonment for six months

\textsuperscript{113} Kituo Cha Sheria and others v. The Attorney General, Petition No. 115, High COURT of Kenya at Nairobi, Constitutional and Human Rights Division available at: \url{http://www.refworld.org/docid/5151b5962.html} [accessed 3 September 2013]
ICCPR in article 12 offers a guarantee to individual’s free movement around the member state. The Human Rights Committee through its General Comment No. 27 sought to clarify the assumption of the provision. This adoption from the 67th Human Rights Committee session held in 1999, November 2nd, states that a resident lawfully occupying a state should be let to enjoy that territory and move around it freely as well as choose the place they feel comfortable to reside. Naturally, a citizen of a country is considered a resident of that state lawfully. Deciding on whether an alien inhabits a state lawfully is usually the responsibility of that domestic laws. This therefore poses possibility of restrictions on alien entrants into a country even though they are compliant with the obligations put in place by the international instruments in which they are under. With regard to this, this committee stipulates that illegal immigrants entering a state who later have their status regularized are lawfully residing within that state and therefore need to be accorded the same respect to rights as any other alien as provide by article 12’s 1 and 2 paragraphs. They should not be subjected to treatment different to that of nationals unless justified through the rules found in paragraph three of the same article.\footnote{114 General Comment No. 27: Freedom of movement (Art.12): 11/02/1999. CCPR/C/21/Rev.1/Add.9, General Comment No. 27. (General Comments) available at http://www.unhchr.ch/tbs/doc.nsf/0/6c76e1b8ee1710e380256824005a10a9?OpenDocument} In cases of refugees, their status can be regarded as regularized once determined as such and the government has to provide justification for the different treatment.

The question whether the restriction imposed in the camp fulfill the limitations prescribed under subsection 3 is still subject to different interpretations. In other words, the justification needs to take into consideration if the decision of the government limiting this right was to preserve public order, public health or other limitation according to subsection 3. The same article in subsection 3 poses that the rights mentioned above should not be subjected to any restrictions
unless the law provides for them because of national security, health of the public, public order, freedoms and rights of others as well as their morals, or the restrictions be in line with the rights stipulated in the current Covenant.

In the High Court of Kenya in case of *Kituo Cha Sheria and others v.* the Attorney General has addressed clearly that it is compulsory for the State to prove that the concerned individual can potentially cause harm to the state and should not be generalized.”  

The government has to show the rational connection between the purpose of the decision to limit refugees’ movement outside the camp and the conditions of subsection 3, for every refugee individually. The government in its state submission report for 2010 (Third Period Report of the state party on the ICCPR) has stated that the Refugee Act clearly provides for the advancement and security of refugees in Kenya and it also protects them from biases upon entering Kenya.  

Amnesty International has stated that the restriction on free movement as enforced to refugees living in the various camps is considered as a infringement of the Covenant and Kenya’s Refugee Act.  

The Amnesty International report on the kind of treatment given to the Somali refugees living in Kenya that was produced in 2010 acknowledged that clearance to move outside camp is granted to refugees with special needs and those travelling without permission risk detention. It also urged the government of Kenya to ensure full freedom of movement in accordance with

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115 Paragraph 87 of the case of Kituo Cha Sheria and others v. The Attorney General.
118 Ibid
119 Special needs includes medical treatment unavailable in the camps, pupils and students who have obtained a scholarship or a place to study in education establishments outside the camps, for family reasons (such as funerals), or for attending resettlement interviews set up by embassies of third countries;

The stand of UNHCR is this regard is also not clear. In practice UNHCR seems to have accepted the restriction imposed on the refugee movement in the camps. For instance UNHCR in Dadaab has accepted the criteria that should be eligible to leave the camp, and refugees who fail to avail themselves of these criteria will not benefit from any kind of material assistance.\footnote{UN High Commissioner for Refugees, Analysis of Refugee Protection Capacity - Kenya, April 2005, available at: http://www.refworld.org/docid/472896f70.html [accessed 21 May 2013]} On the other hand, when addressing the right in Excom no 22 of 1981 within the “minimum standard of treatment” it stated that “the movements of refugees in a mass influx situation should not be restricted unnecessarily.”\footnote{ExCom No. 22 (XXXII) Protection of Asylum seekers in Situation of Large- Scale Influx (1981)} This standard seems to be similar to the limitations provided by article 12 of the ICCPR.

Some refugee law commentators have argued in favor of host state to confine large number of refugees in camps. In connection to this Goodwin-Gill stated that legal specialists have documented the right of host states to house refugees in special camps. Additionally, article II (6)\footnote{Article II (6) states “For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin”} of the OAU Convention may be deciphered as offering states the power to resolve refugee settlement issues.\footnote{Goodwin-Gill, Guy 1996. The Refugee in International Law. Oxford: Clarendon Press pp 300-11 note 31, see also Schmidt, Anna 2003. Camps versus settlements. Forced Migration Online Research Guide}
In short refugees’ right to decide on their place of settlement is enshrined in the domestic law of Kenya, Geneva Convention and different Human Right instruments. However, the applicability of this right to refugee has not yet attained clear stand particularly with regards to refugee laws (domestic law of Kenya and Geneva Convention). Its applicability can easily be attained under human right instruments, although the limitation provisions are subject to different interpretations, and so is the government’s action.

4.6. The right to work

An individual’s right to employment is among the fundamental refugee rights affected by the encampment policy, and it is heavily dependent on the right to move freely. Not only are the opportunities of securing employment within the Dadaab very limited, but also the refugees’ ability to secure employment is hampered by the inaccessibility of the camp. In addition, the numerous enticements employed by the Kenyan government to ensure that refugees stay confined to their camps also make securing employment challenging. Constraints on employment deny refugees the power to reestablish their lives and grow into productive members of the societies they live in.

The Refugee Act, Article 16(4), states that each refugee and his/ her family members in Kenya shall be subject to similar employment restrictions as those levied on non-citizens. Similarly, the Geneva Convention, article 17, requires that refugees’ right to work be equivalent to those enjoyed by other foreign nationals. Moreover, it is one of the primary human rights protected

126 Article 17 of the Geneva Convention reads, “1. The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
under the Article 23 of the UDHR and the ICESCR, Article 6.\textsuperscript{127} Foreign nationals’ right to employment in Kenya is addressed satisfactory and well regulated; unlike it is the case with those of refugees.\textsuperscript{128} Although the applicability of article 17 of the Geneva Convention is not yet clear to refugees, the right is clearly guaranteed though the Refugee Act and ICESCR.

It is also linked closely with self-esteem and independence. When refugees are deprived of their right to work for indefinite period of time; it can have serious psychological and physical wellbeing implications. These restrictions automatically produce a culture of over dependence, which in turn dissuades refugees from seeking employment. Additionally, as it is the case with the right to move, keeping refugees in camps and denying them the right to work, could potentially endanger them and result in instability especially during rations and periods of low aid supplies, creating a multitude of crime and instability related problems.\textsuperscript{129} In this regards the Committee concerned with Economic, Social and Cultural Rights recommended that the government should issue work permits to all refugees, in accordance with the Refugees Act (2006) and monitor unfair labor practices and exploitation of refugees in the informal sector.\textsuperscript{130} The violation of the right to work of refugees under this context remains to be clear.

\textsuperscript{127} Article 6 of the ICSER states “1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

\textsuperscript{128} Work/Residence Permits are issued to any Non-Kenyan wishing to engage in employment in Kenya whether in gainful employment or voluntary service. The Work/Residence Permits issued by the Department are classified from A to M inclusive. They are issued under Kenya Citizenship and Immigration Act 2011 of Laws of Kenya. The various classifications are available at http://www.immigration.go.ke/index.php?option=com_content&view=article&id=89&Itemid=1


\textsuperscript{130} The Committee on Economic, Social and Cultural Rights, Report on 40\textsuperscript{th} and 41\textsuperscript{st} Session in 2008 40\textsuperscript{th} and 41\textsuperscript{st} Session in 2008, E/2009/22 E/C.12/2008/3.
4.7. The Right to Have Travel Documents and other Rights

The right to hold travel documents according to Geneva Convention, article 28,\textsuperscript{131} and the OAU Convention, article VI,\textsuperscript{132} might not be as limited as the above rights, although, in practice the issuance of travel documents is discretionary and routinely necessitates that the refugee to justifies the reason for the application.\textsuperscript{133} An unidentified number of refugees leave Kenya each year courtesy of official family reunions, as a result of student and work migrations among other reasons.\textsuperscript{134} Before 1990 refugees were eligible for international travel documents from the Government and UNHCR processed few requests but authorities generally did not consider applications from Somalis.\textsuperscript{135} The stand of UNHCR with this regard seems in line with the Conventional requirements.\textsuperscript{136}

The ill treatment of refugees in Kenya cannot only be capsulized with these violations; one could contend that other rights, such as the right to satisfactory health care, the right to ethnic and spiritual practices, and debatably the right to due process are all highly challenged.\textsuperscript{137}

\textsuperscript{131} Article 28 of the Convention (Geneva convention), urge states to issue travel document to refugees lawfully staying in their territory for purpose of traveling outside their territory.

\textsuperscript{132} Article VI, (1) states “Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory”

\textsuperscript{133} Ibid

\textsuperscript{134} Ibid


4.8. The Status of Kenya on its International Obligation to Protect

The Protection provided to refugees in Dadaab Camp is below the international standards set by the Geneva Convention, and various Human Right Conventions despite the various efforts made by the government. It is undeniable that Kenya is currently honoring its minimum obligation to refugees in general, in that it has not sent back refugees to a place where they feel that their lives are endangered. However, the level of protection provided to these refugees is not according to the standard set by the international refugee regime, and Human Right Conventions, which confirms the general practice of states, especially in Africa.

The legalization of encampment policy has grossly restrained list of rights including the conventional ones. The policy has created a situation where there is limited physical security, limited freedom of movement, limited or no ability to work, limited legal rights and lack of status, and so on. Practically the extension of rights to refugees in Kenya is not in the first instance intended to promote a permanent solution. The government seems to have provided certain rights as an interim and with the hope that refugees would return to their country of origin after a given period. Most of fundamental rights have been suspended or denied. It has been argued that refugees have bought their right to life at the expense of all their other rights, in which states have only accepted the obligation of.\textsuperscript{138} This has been the case in Kenya since 1991 and there is no indication for improvement.

An important question that addresses a protection gap from the legal regime perspective is; whether the Geneva Convention, OAU Convention and domestic law of Kenya is adequate to

provide protection to refugees, and what are the effects of legal ambiguity at the international level to refugees in Kenya.

As discussed, the legal uncertainties that exist at the international level created a room for different interpretations. It has created a debate on whether or not to consider refugees as Conventional Refugees. The complications connected with this obscurity are very broad. To begin with, it will be difficult to claim any legal rights without clear international norms and enforcing domestic norms at the same time would not be without challenges.

The situation of these refugees in Dadaab is far from being satisfactory. Physical security of all camp refugees has been the focus of international community and the situation is deteriorating with time. Despite various efforts by the government to halt the situation, security incidents in the camp remain to be a challenge. As a result, refugees suffer from different forms of abuses. The movement of refugees is limited only within the camp, and those wishing to leave should have special reason to apply for a permit. Even those with permit are subject to police abuse and indiscriminate treatment by police officers. Moreover, this restriction interferes with other fundamental rights, like the right to attain wage-earning employment, access to court, and so on.

In light of these gaps the applicability of the Refugee Act of Kenya to refugee cannot be easily established. The Act is considered to domesticate most of the principles under the Geneva and OAU Convention.139 According to article 16 (1), “recognized refugees” are eligible for the rights specified under the Geneva Convention and any other legal instruments that Kenya is a party. However, it is not clear if the term “recognized refugees” includes refugees. In general, domestic refugee law of Kenya has failed to address the applicable rights of refugees except for some rights like the principle of non-refoulement, the right to have documents and the right to work.

139 Human Right Report of the state of Kenya available at www.state.gov/documents/organization/160127
Moreover, the Geneva Convention does not explicitly address the issue and the argument that limits refugees to the OAU Convention and only to the broader definition has been subject to different criticism.

The applicability of Human Right laws is relatively clear. Refugees are entitled to human rights, which among them include living a free and dignified life.\textsuperscript{140} Since Kenya has ratified the ICCPR and ICSER and its Constitution require integrating the Bill of Rights as integral part of the state legal system; it has international as well as domestic obligation to fulfill the applicable provisions to refugees. As highlighted by the UNHCR, a refugee should, enjoy all the ultimate civil rights that are internationally recognized and should not be exposed to any form of cruelty, inhumanity or humiliating treatment.\textsuperscript{141} The protection gaps stated earlier clearly fall within the legal mandate of the state. The rights of refugees under Human Right laws are in general protected and the government can be considered as violating the rights if the conditions for concerned rights are met. For instance the right to physical security and the right to work are violated; although the right to move freely outside the camp is subject to different interpretations in the context of camp refugees.

Therefore, the reasons as to why the government failed to extend protection cannot be totally be attributed to the legal regime. Legally the standard of treatment or protection to refugees in Kenya according to human right laws is not controversial. Even though the international and domestic refugee laws fail to address to most of the rights, the human right laws can be applicable.

\textsuperscript{141} UNHCR, Protection of Asylum-Seekers in Situation of Large Scale Influx, Excom Conclusion No.22 (XXXII) 1981, II.B.2. (b).
It is contended that any gap in the standard of treatment of refugees does not stem from the legal regime, rather from the decision of states to suspend or accorded limited Conventional rights.¹⁴² This is true in the case of Kenya. Although, it is important at this juncture to understand as to why states opt to suspend and only provide the minimum standard. The immediate response in case of Kenya is rather domestic related issues, such as economical capacity, political willingness, security and other reasons depending on the specific category of rights violated.

The quality of protection started to devaluate after 1990, with the arrival of large number of refugees, in which apparently have threatened and overwhelmed the institutions, and created strains on economic resources and its physical infrastructure. Kenya as a developing country has limited resources, and as a matter of fact it has its own national allocation of resources problem and dealing with refugees is beyond reach. Refugees might drain the available health and education services,¹⁴³ and will overwhelm the job market where the country is struggling to establish to its citizen.

Kenya, in addition was not willing because granting some of the rights is assumed by the government to simply trigger local integration. For instance, the land in the northern part of Kenya is unable to support a large number of people because of it is infertile. It would seem unpractical for the government to provide land for agriculture to refugees. However, states’ inability or unwillingness cannot be a justification for violations. The practical challenges, which the government is facing in managing refugees, should be acknowledged and deserves the attention of the international community for adequate enforcement.

¹⁴³ ibid
The reasons as to why the government failed to extend protection cannot be totally be attributed to the legal regime. Legally the standard of treatment or protection to refugees at the minimum according to human right laws and the various ExComm recommendations is not controversial. Therefore, it is difficult to establish in case of Kenya a direct connection between this legal gap at the international refugee law level and the various violations. The main causes are directly related other than the unclear refugee status and rights in relation with the Geneva Convention.

However, this cannot negate the importance of developing clear international refugee law to refugees. If they are recognized as “refugees” their right and status should develop from refugee law perspective as well. The Geneva Convention which is considered as a core stone and central in the international refugee protection regime, fail to reconcile with the practical reality of refugees. In order to cope with this challenge UNHCR has issued different recommendations, which are on an ad hoc basis and not binding. The status of these refugees in connection to the Geneva Convention remains to be unclear.

**Conclusion**

From the chapter, one can deduce that the standard of treatment offered in practice, particularly in Kenya is far from being satisfactory. Fundamental rights like the right to physical security, right to work, the right to move outside camps, and so on, guaranteed under the Human Right Conventions and domestic laws are violated. The causes of such violations are not directly related to the legal uncertainty that exist at the international refugee level, rather failure of implementations on part of the government because human right law provides protection. The main reasons of protection gaps are rather state oriented reasons like economic capacity, security, and the political willingness and so on. Therefore, it is difficult to establish a direct connection between the unclear legal uncertainties and the protection gaps in Dadaab, but this should not
undermine the importance of clarifying the status in connection with the international refugee law.
CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

5.1: Conclusion

This research was concerned with the legal protection and security of refugees in the war torn Horn of Africa and in particular the refugees at Kenya’s Daadab refugee camp. Chapter one was an introduction to the study. It began by defining the concept of war and naming the countries forming the Horn of Africa and the factors contributing to refugees' influx in the region. It proceeded to define a refugee is and international security and the elements of a collective security system and defines the concept of refugees. It laid the background of the study, the statement of the problem and the objectives of the research project. It will then discussed the literature of refugees’ protection and security in the Horn of Africa and how international humanitarian organizations’ have intervened, the application of international humanitarian law and the gaps in enforcement mechanisms.

Chapter two gave an account of post-cold war conflict in the Horn of Africa. It discussed various studies on refugees, refugees’ security and their link to national security in their countries of origin and in the host country. It also analyzed the various local and international interventions have been employed to ensure refugee protection in Kenya by the government and also regional and international organizations/ states/ the UN Security Council and the gaps that still exist in refugee protection. Lastly, it looked at how refugee protection issue in Kenya affected Kenya’s diplomatic relations.
Relatively little is known on the actual size and need of urban refugee populations living in Nairobi and elsewhere in Kenya. Lack of domestic refugee legislation Kenya does not have national legislation specifically addressing refugee issues and the government’s refugee status determination procedure was discontinued in 1993. Other legislation which has a bearing on refugee issues falls short of an asylum/refugee framework. The absence of specific legislation governing refugee affairs leaves refugees vulnerable to treatment that is not in accordance with internationally recognized protection standards. Refugees not included in development and poverty reduction strategies Refugees are often viewed negatively by the host population who see them as a threat to security, specifically as traffickers of small arms and drugs. They are also

Identifying Gaps in Protection Capacity 14/04/2005 Kenya believed to place a strain on social services and to harm the environment. These sentiments are reflected in national poverty reduction and development strategies which do not include refugees as beneficiaries of such strategies or as agents of change. Absence of refugee registration by Government Prior to 1993, the Government had a refugee determination process, and those who were found to be Convention refugees were registered.

From chapter two discussions, it is clear that the dynamics and challenges of insecurity in a refugee environment are complex. Insecurity arising from growing refugee numbers in the country and humanitarian concerns relating to the protection of refugees make it hard for the GoK as the host state to deal with this insecurity. The attachment of refugees to their home countries complicates it even more and political events in those countries have often affected the stability of refugee camps. The location of refugee camps near the border of their home countries has sometimes exposed the neighboring countries into danger of aggression.
Chapter three examined the relationship between refugees in Kenya and insecurity. It looked at the history of refugees presence in Kenya and scrutinized how refugee influx in Kenya has affected her national security and the laws and legislations put in place to curb this insecurity. The chapter discussed different scholars’ view on refugees and insecurity. It also looked into refugees not as a threat to national security but as vulnerable individuals who require protection, the protection offered and the gaps in their protection.

From the discussions, the Kenyan security team is yet to give any tangible evidence of an attack or any illegal businesses operated by refugees who are already registered as refugees and it was concluded that insecurity in Kenya should be blamed on illegal immigrants or other criminals whose intention is to enter the country to cause a stir in the security circles. Kenya has also proved its incapability to completely seal the borders; a reason that renders them porous and unable to hold back illegal immigrants.

From this chapter, it is clear that, despite an official policy that prioritizes the notion of accommodating refugees in camps located in remote parts of the country, Kenya has tolerated the growth of an increasingly large refugee population in the capital city of Nairobi and other urban centers. This, as already noted, has fueled state insecurity in Kenya. A set of conclusions that may serve as policy guidelines can be drawn from this consideration of the relationship between refugees and security. The first conclusion is that repatriation constitutes the best alternative for the international community in dealing with refugee problems.

However, a prerequisite for repatriation is the existence of a just political settlement accepted by all sides in the conflict. Such a settlement will minimize or eliminate the possibility of refugee’s abroad acting against their home country, with or without the official approval of the receiving
states, thereby minimizing the possibilities of conflict between home and host countries. Although a political settlement may provide fertile ground for repatriation, additional guarantees should be given to refugees that their daily life will not be affected in post-conflict society by the bitterness created before and during the conflict. Conflict brings with it deep hostility which needs to gradually evaporate if peaceful relations among the competing communities are to be firmly established. The international community should assist to that end. Conflict may also bring with it significant destruction. States that have experienced domestic conflicts are usually economically weak and therefore unable to reconstruct after the conflict has terminated.

Chapter four was a critical analysis of refugee protection in Kenya and the efforts the government and the international community have made to protect and repatriate refugees. It examined the domestic and international legal framework on refugee law and protection vis-a-vis what happens in Kenya. It discussed the extent of implementation and the existing protection gaps in regards to the legal protection and where Kenya is in terms of its international obligation to protect. From the discussions, the government of Kenya policy to restrict refugees in camps has violated rights of refugees guaranteed under the Geneva and Human Right Conventions. It has placed an “encampment policy” whereby refugees are obliged to reside in camps to qualify for assistance, and those found outside are classified as illegal aliens and subject to punishment including deportation. Most importantly the treatment offered contradicts the human right obligations of the government. In light of these restrictions, the rights of refugees in camps are grossly violated and this section is dedicated to the general description of refugee policy in Kenya in connection with the standard of treatment offered in Dadaab camp.
The legalization of encampment policy has grossly restrained list of rights including the conventional ones. The policy has created a situation where there is limited physical security, limited freedom of movement, limited or no ability to work, limited legal rights and lack of status, and so on. Practically the extension of rights to refugees in Kenya is not in the first instance intended to promote a permanent solution. The government seems to have provided certain rights as an interim and with the hope that refugees would return to their country of origin after a certain period of time. Most of fundamental rights have been suspended or denied. It has been argued that refugees’ right to life has been bought at the expense of almost every other right, in which states have only accepted the obligation of. This has been the case in Kenya since 1991 and there is no indication for improvement.

From the chapter, one can deduce that the standard of treatment offered in practice, particularly in Kenya is far from being satisfactory. Fundamental rights like the right to physical security, right to work, the right to move outside camps, and so on, guaranteed under the Human Right Conventions and domestic laws are violated. The causes of such violations are not directly related to the legal uncertainty that exist at the international refugee level, rather failure of implementations on part of the government because human right law provides protection. The main reasons of protection gaps are rather state oriented reasons like economic capacity, security, and the political willingness and so on. Therefore, it is difficult to establish a direct connection between the unclear legal uncertainties and the protection gaps in Dadaab, but this should not undermine the importance of clarifying the status in connection with the international refugee law.
5.2: Recommendations

Although refugees are a matter of humanitarian concern, there is need to understand the political implication of hosting refugees—the threat to national and international security. There is therefore the need of striking a balance between Kenya’s conforming to international obligations and that of protecting her national interests. There is a strong interrelationship between domestic and international security, it is in the interest of the international community to assist the construction of states in an effort to stabilize them. If the international community fails to do so, domestic weakness and instability will easily spill over from those states, thereby jeopardizing regional and international stability. The receiving states should be very careful in their social, political and economic planning in order to avoid, or minimize, domestic dissatisfaction that may lead to the creation of feelings of xenophobia and racism, since such feelings may, in turn, destabilize not only the domestic environment of the host states, but also their relations with the refugees' home country.
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Section 16(4) provides that in respect of wage earning employment refugees shall be subject to the same restrictions as imposed on persons who are not citizens of Kenya

Section 17(f) empowers Refugee Camp Officers to issue movement passes to refugees wishing to travel outside of the camps, Section 25(f) makes unauthorized residence out of the camp an offence punishable by a fine of up to KES 20,000 and/ or imprisonment for six months


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Reports


Article 28 of the Convention (Geneva convention), urge states to issue travel document to refugees lawfully staying in their territory for purpose of traveling outside their territory.

Article II (6) states “For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

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Article 6 of the ICSER states “1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article VI. (1) states “Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory”


Article 35 (1) states “The Contracting States should undertake to co-operate 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 application of the provisions of this Convention.”

Article 6 (1) states “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”

Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 19(1) of the Kenyan Constitution reminds us that the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies. 19. (1) states “The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.”

Article 16 1 (a) of the Act states “refugees shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party.”

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Article 26 of the 1951 Refugee Convention, see also article 2 of the OAU Convention, which requires states require states as far as possible, to settle refugees at a reasonable distance from the frontier of their country of origin.


UNHCR (2006), “Operational Protection in Camps and Settlements. A Reference Guide of Good Practices in the Protection of Refugees and Other Persons of Concern” There shall be a refugee camp officer, for every refugee camp whose functions shall be to— (e) co-ordinate the provision of overall security, protection and assistance for refugees in the camp;


UNHCR, Personal Security of Refugees, Excom Conclusion No.72 (XLIVI) 1993, preamble clauses

UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Kenya, CCPR/C/KEN/CO/03 , para 12.


UNHCR, Protection of Asylum-Seekers in Situation of Large Scale Influx, Excom Conclusion No.22 (XXXII) 1981, ILB.2. (b).


1951 Convention Relating to the Status of Refugees, acceded 16 May 1966, no reservations


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