

**THE EFFECTIVENESS OF LEGAL INSTRUMENTS OF THE CHILD
REFUGEE: A CASE STUDY OF DADAAB IN KENYA**

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DECLARATION

This Research Project is my original work and has not been presented for a degree in any other university or institution.

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DECLARATION BY THE SUPERVISOR

This Project has been submitted for examination with my approval as the University Supervisor.

Signature.....

Date.....

DR. ROSEMARY ANYONA, PhD

DEDICATION

I dedicate this study to my son, Lance Benjamin. Son, though you are just a baby, your laughter and smiles always warms my heart. You are an inspiration. I pray you achieve beyond my reach.

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To cap it all, I acknowledge God for providing me with life, energy and knowledge to undertake this study.

ABSTRACT

In 2015, the total number of refugees in the world reached 21.3 million. Over half of these were children. The majority of these minors were unaccompanied, traveling alone without their families, trying to find a safer place to continue their lives. The government of Kenya is obligated to protect the rights of refugee minors in accordance with the United Nations Convention on the Children's rights. The aim of this research is to investigate how effective the legal instruments are to human rights of these refugee children and how the instruments protect them in Kenya with Dadaab refugee camp being the case. Additionally, in this exploration, International law secures the privileges of displaced person youngsters as expressed in various arrangements and traditions, for example, the Universal Declaration of Human Rights (1948), the Convention Relating to the Status of Refugees (1951), the International Covenant on Economic, Social, and Cultural Rights (1966), the African Charter on the Rights and Welfare of the Child (1990) and the Convention on the Children rights (1990). Consequently, an extra motivation behind this exploration is to feature the authentic advancement of the privileges of displaced person kids through projects driven by states and non-states performing artists, and to stress the significance of kids' rights as a feature of current helpful mediations. This examination looks at how viable, are lawful instruments intended to secure outcast kids in Dadaab displaced person camp. The lawful structures are disclosed with respect to how universal law ensures the privileges of child displaced people and in addition the need hypothesis. Customarily all philanthropic guide comprises of three key columns, where the attention is on nourishment, medication and haven. The universal network has perceived that the privileges of displaced person youngsters are crucial, however more should be done to guarantee financing that would incorporate crisis reactions. This can be accomplished by fusing exile kids as an imperative column in helpful rights. The examination included investigations of worldwide and national lawful instruments/records, the advancement and security of outcast youngsters' rights in Dadaab and prospects and difficulties in the applicability of legitimate instruments towards the insurance of privileges of kids initiated by meetings with non-administrative associations and legislative foundations required with the assurance and care of the privileges of kids. The outcomes demonstrate that the Children rights have a solid position in authoritative archives, non-legislative associations and administrative establishments. The outcomes likewise demonstrate a differential consideration and insurance gotten by youngsters according to their ages. Additionally, there is no reasonable meaning of what sufficient consideration is, which made diverse translations by non-legislative associations and the legislature. The lawful watchmen whom are named to secure the child all through the haven procedure will give help, however not every day care.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR	–	African Charter on Human and Peoples Rights
ACRWC	–	African Charter on the Rights and Welfare of the Child
AU	–	African Union
AUPRWA	–	African Union Protocol on the Rights of Women in Africa
CRC	–	Convention on the Children rights
DRA	–	Department of Refugee Affairs
ECD	–	Early Childhood Development
FNCPSK	–	Framework for the National Child Protection System for Kenya
IACtHR	–	Inter-American Court on Human Rights
ICCPR	–	International Covenant on Civil and Political Rights
INGO	–	International Non-Governmental Organization
NGOs	–	Non-Governmental Organizations
NRC	–	Norwegian Refugee Council
OUA	–	Organization of African Unity
RCK	–	Refugee Consortium of Kenya
RSD	–	Refugee Status Determination
SCEP	–	Separated Children in Europe Programme
UASC	–	Unaccompanied and Separated Children
UDHR	–	Universal Declaration of Human Rights
UN	–	United Nations
UNCRC	–	United Nations Convention on the Rights of the Child
UNDAF	–	United Nations Development Assistance Framework
UNHCR	–	United Nations High Commissioner on Refugees
UNICEF	–	United Nations International Children Emergency Fund

CHAPTER ONE

1.1 Background

Children refugees make up approximately a fifty percent of the globe's total refugees, therefore they profit from the efforts relating to material assistance, durable solutions, international protection and material assistance. Children, have special requirements that need to be pointed out and solved. Although children refugee have always been the main concerns by global bodies like the UNHCR, children have not gotten the support they need lately partly because of the large many children in many other expansive cases of refugees in different parts of the world and the intricacy of the difficulties caused by their presence. However, more global attention is now being given generally to children in and to particularly refugees.¹

Built up rules at the national and universal dimensions show that youngsters require to be treated particularly. In addition, their case accounted for inside a few worldwide instruments including the 1924 Geneva Declaration on Children's' Rights bolstered by the Assembly of the League of Nations, which opines that the youngsters are to be given first need amid times of pain.² The UN Declaration on the Children's rights in 1959' subtle elements that the child will dependably be the first to get help and insurance.³ These qualities and instruments apply to outcast youngsters. In addition, UN Draft Conventions on the Children rights traces the predefined circumstances of youngster displaced person. That is, a gathering state to the assertion needs to put into thought with the end goal to take relative estimates which guarantee that a youngster is looking for displaced person status, in accordance with material worldwide or local laws and methods must, regardless of whether joined or unaccompanied by their nearby relatives, lawful watchmen and guardians to get fundamental helpful and security bolster in the delight in relative rights built up in the agreement and other global compassionate or human rights instruments to which a state is party.

¹ UNHCR, *Note on Refugee Children* (9th July, 1987).

² Principle 3, *The Geneva Declaration of the Rights of the Child* (1924).

³ Principle 8, *UN Declaration on the Childs' Rights* (1959).

In any case, in connection to the imperative capacities attempted in the assurance of displaced person and bolster issues by the UN and other relative bury/non-legislative organizations, the state signatories to the agreement must give appropriate co-task in the journey by the significant associations to help and ensure such kids (unaccompanied) and to discover their relatives and guardians for unification. Thus, situations where no nearby relatives, legitimate gatekeepers or guardians can be followed, the unaccompanied kids must be given indistinguishable consideration from some other child briefly or forever denied of his nuclear family for any reason set out in the agreement.⁴

The 1990 African Charter on the Rights and Welfare of the Child (ACRWC), which is the primary African concurrence on kids' rights, was set up on things from the 1979 Declaration on the Welfare and Rights of the African Child.⁵ It is expressed in the presentation that a kid represses an extraordinary advantaged position inside the general public and requirements unique consideration and legitimate assurance with respect to their physical, wellbeing, mental, social advancement and good. The sanction further characterizes a youngster as is anyone beneath 18 years of age.⁶ This Charter plots the estimations of non-segregation and the children's' ideal and further includes that kids have a privilege to security by law and appropriate to live. The contract, likewise, decries the capital punishment against wrongdoings submitted by youngsters.⁷ Kids have a privilege to a nationality name, opportunity of affiliation and articulation and quiet gathering; religion, thought and soul; instruction; protection, relaxation and rest.⁸ his contract further demonstrates that kids ought to be ensured against all types of monetary misuse and from performing work that is risky⁹ and against all types of maltreatment, abuse, and torment, hazardous social and social practices,¹⁰ all types of sexual

⁴ Principle 11, *UN Draft Convention on the Rights of the Child* (1989).

⁵ Organization of African Unity, 1979

⁶ Article 2, ACRWC, 1990

⁷ Article 3-5, ACRWC, 1990

⁸ Article 6-12, ACRWC, 1990

⁹ Article 15, ACRWC, 1990

¹⁰ Article 21, ACRWC, 1990

maltreatment or abuse, the utilization of illegal medications and opiates and used to sneak, move and additionally kidnapping.¹¹

The Kenyan Constitution maintains the requirement for kids being shielded from disregard, misuse, brutal treatment and discipline, a wide range of viciousness, hurtful social practices and risky or oppressive work. Further, it supports that they have all the essential rights stipulated in the constitution. These arrangements are in accordance with the ACRWC and CRC arrangements where Kenya is a part.

The privileges of shelter searchers and displaced people in Kenya were as of late settled under the national lawful system that oversee matters with respect to evacuees in which Kenya expect temporal charge for the procedure of Refugee Status Determination (RSD). Kenya did this when it took actualized its obligations under worldwide law by putting to impact the Refugees Act in 2006, and was affected in 2007, its optional resolution, the Refugees (Registration, Adjudication and Reception) Guidelines, in 2009(Regulations Refugees).¹² In any case, this Act further sets up the Department of Refugee Affairs (DRA), commanded with the obligations to taking care of and accepting solicitations for displaced person status.¹³ Therefore it was set up, outcast issues in Kenya were regulated under the now canceled Immigration Act and Alien Restriction Act, and RSDs and different issues identifying with displaced person the executives were designated to the UNHCR. Furthermore, it 2014 that the DRA took up some RSD capacities, predominantly approval of RSD judgments made by the UNHCR and giving notices of affirmation to displaced people that meet the compulsory criteria spelt out under the Refugees Act.¹⁴ RSD elements have so far been exchanged to DRA.

Kenya is home to a major number of haven chasing and evacuee populace because of its area inside this contention inclined zone. For example, Kenya's flanking states like Somalia and South Sudan have encountered steady polite clashes which have brought

¹¹ Article 29, ACRWC,1990

¹² Pavanello Sara et al., *Hidden and Exposed: Urban Refugees in Nairobi, Kenya* 15 (HPG Working Paper, Mar. 2010).

¹³ Section 7, Refugee Act. 2006

¹⁴ <http://www.unhcr.org/5551f3c49.pdf>, Retrieved on 4th Aug 2018

about outer and interior dislodging of extensive quantities of their kin. Information from-- the UNHCR, express that there were 625,250 refugee seekers and displaced people in Kenya in 2014.¹⁵ This figure further rose to 650,610 in 2015.¹⁶ As indicated by the UNHCR, near 70% Somali nationals, 20% originated from South Sudan.¹⁷ The rest of the rate was comprised of those from Ethiopians, Congo and around 20,000 stateless individuals.¹⁸

Dadaab is one of the oldest refugee camps in Kenya. It mainly hosts refugees from the Somalia conflicts, which has lasted decades. The camp is located in Garissa County and is an establishment jointly established and managed by the Kenyan government and the UNHCR since 1990; with the aim being accommodation and administration of the massive influx of Somali refugees displaced by civil wars. According to the UNHCR report on the refugee census, currently the population at the camp is approximately 276,000; with Somali refugees being the majority at close to 95% of the refugee and asylum-seekers population. However, the remaining 5% according to the report comprises of Ethiopians, Burundi, DR Congo and South Sudan nationals.¹⁹ It is however alarming that of these asylum seekers and refugee population at Dadaab camp; approximately over 60% are under the age of eighteen years.²⁰ Currently, the camp is divided into five sub-camps namely: IFO2 Kambioos, Dagahaley, Hagadere and IFO. Consequently, due to the continuous violent conflicts experienced in Somalia and its insecure borders with Kenya which has mainly been blamed for the infiltration of the Al-Shabaab terrorists into Kenya, the government of Kenya has repeatedly threatened to entirely close the camps.

¹⁵ United Nations High Commissioner for Refugees (UNHCR), *Global Appeal 2014–2015: Kenya 2* (1st Dec. 2013).

¹⁶ UNHCR, *Global Appeal 2015 Update: Kenya 2* (1st Dec. 2014).

¹⁷ Ibid

¹⁸ Ibid

¹⁹ UNHCR, 2016

²⁰ Ibid

1.2 Statement of Research Problem

While it's inhumane for human beings to live their lives inside concentrated camps due to displacements in conflict situations, children in refugee camps often bear the greatest brunt as they are usually forced by circumstances to spend their entire childhood in displacement. They are at bigger risk compared to adults to become victims of abuse, violence, exploitation and neglect. Bearing the disruptions that refugee life wreaks especially on displaced families in camps, family and other social support networks for children in refugee camps such as: education, medicare, sports and leisure may be weakened leading to unmeasured effects on the wellbeing of the children.²¹

A number of studies such as the *Refugee Protection Situation Report* carried out by the Refugee Consortium of Kenya (RCK) in May, 2018, largely dwell on risks of asylum seekers and refugees including children in camps and cross border points, however, they have greatly shied away from probing deeper on the specific discussions on the effectiveness of various legal instruments that have been put in place both nationally and internationally to the rights of children in refugee camps.

It is against this backdrop that this study seeks to critically analyze the effectiveness of various legal instruments and how they are used in protecting children refugees with regards to the protection of their rights, prospects and challenges faced in the promotion of their rights and the required specific legal instruments, their effectiveness and applicability that safeguard children's rights in Dadaab Refugee Camp.

1.3 Objectives of the Study

The following are the study objectives:

1. To test the legal instruments and their effectiveness in the protection of the rights of children in refugee camps.
2. To interrogate how children's rights are promoted and protected using the legal instruments in refugee camps.

²¹ Ibid

3. To critically analyze prospects and challenges in applicability of legal instruments towards the protection of rights of children in Dadaab refugee camp.

1.4 Literature Review

In this section, the study reviews literature related to various global conventions and treaties on refugees' statuses, rights of refugees and legal instruments applicable to these rights, children in refugee camps and their rights as provided by various legal instruments. Finally, the study reviews various rights of children in Dadaab refugee camp.

1.4.1 International Human Rights Law

The International Law on Refugee is a share of the bigger montage of global humanitarian law and the international human rights. The law on human rights encompasses an extensive framework which refugee law requirements are shown.²² For instance, the International Covenant on Civil and Political Rights has been understood to prohibit return to torture.²³

Under the Human Rights Act, refugees have the right to two overlapping rights: the rights granted to them as individuals and guaranteed by international principles of human rights and national law, as well as specific rights regarding their refugee status. According to James Darcy, human rights standards apply to internally displaced and refugees as well; though in the case of refugees, specific provision is made by international refugee law.²⁴ Amnesty International further argues that asylum seekers do not have their rights lost after crossing international borders and that people have rights, regardless of the labels they are given.²⁵

²³ Article 4, CCPR on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984

²⁴ James Darcy, *Human Rights and International Legal Standards*, p.14 (2009) at <https://www.odi.org/resources/docs/2325.pdf> Retrieved on 3rd August 2018

²⁵ Amnesty International, *Rights Wherever You Are*, (2002)

The General Declaration of Human Rights (UDHR) was embraced by the General Assembly of the UN in 1948 December. This statement stresses on inherent values of the universal status of human rights and human dignity. The declaration is not directly related to refugee law but its concepts have been replicated in the international and national legal mechanisms and many other constitutions, including the Constitution of Kenya, 2010, which uses this as a foundation for the human Rights bill. Surprisingly, the duty of implementation it has been more often stated in global declarations, and human rights mechanisms with but not limited to the 1993 Vienna Declaration.²⁶ UDHR's 3rd article provides that everybody is at a liberty, to security, right and life. Article 5 also conditions that nobody need to be exposed to cruelty or torture to, degrading or punishment or handling in an inhuman manner. Everyone is entitled to equal protection against incitement to such discrimination or discrimination in violation of the Declaration. Article 14 provides for everybody the right to enjoy and seek asylum in other countries. This is relevant to refugees since they are forced to flee their own country and seek asylum in other countries. Article 26 talks about the right to education. Children Refugees are allowed the right to education and UDHR emphasizes the right to elementary education.²⁷

These and other rights are applicable to all human beings regardless of their label whether non-citizens, nationals, refugees, children, women, disabled or any social differentiations. As it is clearly evident from the provisions above, all the relevant rights mentioned have been codified in the legally binding documents that deal with the security and protection of refugees. The refugee rights spelt out in the 1951 convention have their pedigrees in the 1948 UDHR. Under the preamble of the UDHR, states are called upon to promote human rights and protect all everyone under their jurisdiction. Kenya therefore has obligations of protecting, promoting and fulfilling these provisions as enshrined in the UDHR in relation to refugees living on her territory.

²⁶ UN, *Vienna Declaration*, World Conference on Human Rights, UN Doc.A/CONF.157/24 (June 14-25, 1993)

²⁷ Article 26 of UDHR, *Claiming Human Rights*, December, 1948, at http://www.claiminghumanrights.org/udhr_article_26.html Retrieved on 4th August 2018

Article 14 of the 1948 Universal Declaration on the grounds Human Rights in 1951 covenant on status of refugees and identifies people's rights seeking asylum from maltreatment in the host countries. This pact limited the scope of persons fleeing events to only within Europe before January 1951. However, the 1967 protocol removed the limits therefore giving the pact full general coverage. The instrument has since been complemented by refugee and subsidiary protection governments in a number of other regions.

Under the terms of the agreement, a person who is unable or unwilling to return to his or her mother state will be confronted with an understandable fear of being oppressed on the basis of religion, nationality, race, affiliation with a particular political opinion or social group to be regarded as a refugee. This definition however fails to outline how member states are supposed to determine whether a person meets the description of a refugee. The formation of refugee status determinations and asylum proceedings are assigned to every member state to develop instead. Consequently, this has resulted in differences among different member states because governments establish asylum laws based on their different national security concerns, resources, and pasts with involuntary immigration activities.²⁸

However, employing this characterization, persons displaced internally (IDPs); as well as comprising people running away from natural violence and tragedies, stateless people not facing persecution outside their country of habitual residence and people that have crossing international borders running from general clashes are not characterized as refugees under neither the 1967 Optional Protocol nor 1951 Convention. For instance, American and African countries experiencing significant displacement due to armed conflicts finds the 1951 convention definition not addressing the protection requirements of their people. Both Article 1(2) of the 1969 OAU Convention and Article 3 of the Cartagena Declaration give refugee status to a person who due to foreign, external aggression, events seriously troubling public order in their country of origin is forced to

²⁸ <http://www.ijrcenter.org/refugee-law/> Retrieved on 3rd August 2018

seek refuge in another country.²⁹ The AU convention has a provision that reacts to the protection needs of such IDPs in a special way.

Consequently, the Convention held on 1951 only benefit people who had become refugees from events happening before 1 January 1951. The years subsequent to 1951 however disclosed that the movements of refugees were not just the momentary results of World War 2 and its outcome. Through the late 1950s and 1960s, new refugee groups began mostly in Africa. These refugees needed protection which could not be given under the limited time-frame of the 1951 Agreement. However, the 1967 Protocol Linking to the Status of Refugees (also referred to as the 1967 Protocol) prolonged the enactment of the convention to the new refugees, which are people who become refugees due to the proceedings that occurred after 1 January 1951.³⁰ Thus it can be asserted that the 1967 Protocol is an additional instrument, following the 1951 Convention, in the form of an amendment. It was intended to address the provisions in the 1951 Convention that were repugnant to the notion of human rights.

Refugee Pact is the general mechanism and basic that relates to the refugee status according to UNHCR. Until now, The OAU Agreement is the only legally binding Treaty for refugees regionally.³¹ Thus, the 1969 OAU Agreement is the foundation of the policy on refugee in Africa going past the limits of the Agreement in 1951 and its protocol reflecting the African governments' hospitality towards the continent's refugees. Article 1(2) of the agreement adds that, title 'refugee' will be applicable on everybody who, because of foreign events or dominance extremely affecting people specifically or as a nation is forced to leave their mother nation in search of refuge in another country outside his nationality.

²⁹ Article 1(2) and Article 3, OAU (1990).

³⁰ <http://www.refworld.org/docid/4794773f0.html> Accessed on 3rd September 2018

³¹ UNHCR, *Refugee Protection: A Guide to International Refugee Law* (2001), available at <http://www.refworld.org/docid/3cd6a8444.html> Accessed on 30th August 2018

This pact also considers that OAU member states must implement their best measures and measures to receive refugees.³² This means that nations have the responsibility to grant asylum to those who fulfill the status of refugee under the pact. It is allied to the 1948 Human Rights Universal Declaration which provides the right to seek and enjoy asylum in other countries from mistreatment.³³ The convention in Article 2(3) prohibits refoulement, making it similar to the 1951 convention. The non-refoulement principle elaborates more on the commitment and concern of the international community in ensuring those that need protection the pleasure of basic human rights. This principle of not only applies to recognized refugees, but to them that are yet to have their status officially declared. This principle is mainly relevant to asylum seekers since these people may be refugees; it is a recognized principle of International law on refugee that must never be ejected until their station is definitively determined.³⁴

Most domestic and regional courts across the globe have noted that refoulement of refugees goes against the fundamental people's rights. For example, in the case of *Association Internationale des juristes démocrates, Organization mondiale contre la torture, Union interafricaine des droits del'Homme v. Rwanda, Commission Internationale des juristes*, the African Commission on Human and Peoples' Rights in paragraph 33 indicated that sufficient proof in this communication show that some refugees from Burundi were expelled because of their nationality. This violates the principle of non-refoulement according to the pact. The African Commission on Human and Peoples' Rights found that Guinea violated Article 12 (5) that prohibits mass ejection of non-nationals and non-refoulement right in the *Institute for Human Rights and Development in Africa (on behalf Sierra Leonean refugees in Guinea) v. Guinea*, 2004 case.

³² Article 2(1) of the 1969 OAU Convention

³³ Article 14(1) of UDHR states that "everyone has the right to seek and to enjoy in other countries asylum from persecution

Kenya as a member of the 1969 OAU Convention and its obligations to protect refugees who seek asylum on its territory. Article II of the convention necessitates that member states to the Convention implements its best reliable efforts to receive its respective legislation, secure and settle those refugees that with concrete reasons, are unwilling and unable to go back to their original countries of origin. Additionally, Article IV of the convention obliges states to treat refugees without any bias. Thus, the Member States employ the provisions of this Agreement to all refugees without discrimination as regards membership of a specific political opinion or religion, race and nationality of a social group. Thus, state members to the convention, Kenya included, have obligations to receive refugees escaping persecution and insecurity and give them sanctuary with all the rights and entitlements.

Member states of this convention are also obliged under the convention to; issue travel documents to refugees, cooperate with UNHCR in protecting refugees and also to cooperate with other states in the voluntary repatriation of refugees. The convention however has loopholes that include among others, failure to recognize economic refugees or migrants whose socioeconomic rights are violated, being silent as to whether victims of natural disasters can legitimately be considered as refugees³⁵ and upholding three solutions (local integration, voluntary repatriation, resettlement) that are no longer effective in addressing the contemporary refugee problem.³⁶ In other words, this convention is yet to reflect the new trends and dynamics of forced migration in Africa.

1.4.2 The Rights of Refugee Persons

The Refugee Human Rights are stated in the United Nations Agreement of 1951 relating to Refugees status and the decorum from 1967. The Convention against Inhumane or Degrading Torture or Treatment and other, Cruel Punishment 1984 (CAT) has provisions pertinent to refugees. Kenya sanctioned the three treaties as reflected under Article 2 (5-6) and Chapter 4 of the Constitution of Kenya 2010. Moreover, rights

³⁵ Okello Moses, *The 1969 OAU and the Continuing Challenge for the African Union*, 48 FORCED MIGRATION REVIEW 70—73 (2014).

³⁶ Oloka-Onyango Joe, *Human Rights, The OAU Convention*, *Op. Cit.*

listed under the international human rights pacts are universally applicable. The ICCPR necessitates that every endorsing state safeguards the political and civil rights of refugees in their authority indiscriminatingly. It includes the right of foreigners to be legally not to be expelled in a State party to the Agreement, apart from through a legal process after their case is heard by an expert specialist.³⁷ It also strengthens the right to life and is not punished unusually cruelly. In addition, CAT necessitates that, a ratifying nation shall not refole (extradite return or expel) an individual to another nations with possibilities of their subjection to danger and torture. The UN Pact on the Children rights (UNCRC) specifies that, unless determined by competent authorities, children must never be separated from their parents. The Convention on Refugee offers a mechanism for recognizing the refugees' legal status.³⁸ It however forbids refugees from being returned to states where they be subjected to vulnerability due to oppression (the concept of non-refoulement) further necessitating that Socio-economic rights are granted to refugees on non-discriminatory grounds. Therefore, refugees should be able to access basic rights including education housing and work like other citizens.

Consequently, dependence on rights involved, the Convention further describes the non-biased refugees' treatment as: refugees being given similar care like other locals in the country with regards to elementary education, rationing, social security and public relief. This, however, minimizes the protection against discrimination. This difference is largely hypothetical in Kenya setting, because individuals given refugee status have undistinguishable rights with other nationals. This condition is nonetheless less satisfying for informally recognized refuge seekers as refugees - including those in the process to appealing their determination of status. These categories of refugees often get the insignificant support essential to meet conventional requirements (such as admission to medical emergency care and lack access to specialized medical services).

³⁷ Article 32(2) of the Refugee Convention

³⁸ Kinley D, *A grant of refugee status is not the same as citizenship: It is recognition of a temporary status pending a durable solution* (Human Rights in Australian Law: Principles, Practice and Potential, The Federation Press, Sydney 1998).

The UNHCR executive committee further gives convincing explanations of the Refugee Convention as well as the complementary procedure. Additionally, The Committee provides guidelines on the treatment principles applicable to refugees. In addition, these decisions must be taken without discrimination and subject to legal or administrative review.

As a protector of human rights including those of children and refugees, Kenya is signatory to a several international pacts that are applicable to people looking for protection and asylum. For example, Kenya acceded to the United Nations Pact on the Refugees Status of 1951 in 16 May 1966 and its Protocol of 1967 in 1981.³⁹ Furthermore, Kenya assented in February 1997 to the 1984 Convention against Torture and other cruel, inhuman or degrading treatment or punishment.⁴⁰ The provision on rejection in the Convention is of particular relevance to refugee issues, pointing out that, No State Party shall return, extradite or expel a person to another State with possible belief that they will be subjected to danger and torture.⁴¹

1.4.3 Refugee Children

About 50% refugee populations are made up of children and nearly one out of three children outside their place of birth is a refugee.⁴² However, the figures include children in situations similar to refugees and children whose refugee status has been formally confirmed. Additionally, with regard to the direct threat of conflict - related conflict, displaced children face different health risks, including outbreaks of disease and prolonged psychological suffering, and lack of sanitation and clean water, vaccination schedules and quality food. Children refugees, especially the ones that lack proper documentation and lone travelers, are vulnerable to exploitation and abuse.⁴³ Many communities around the world have welcomed them, but displaced children and their families are experiencing social exclusion, poverty and transit discrimination in their

³⁹ UNHCR, *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*.

⁴⁰ *Status: Kenya*, United Nations Treaty Collection,

⁴¹ Article 3, Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

⁴² <https://www.unicef.org/videoaudio/PDFs/Uprooted.pdf>, Retrieved on 4th August 2018

⁴³ Vandenhole Wouter, Ellen Desmet, Didier Reynaert, and Sara Lembrechts, *Routledge international handbook of children's rights studies*. Routledge (2015).

destination countries and in their home countries.⁴⁴ Legal and language barriers in destination and transit countries often block children refugees and their families getting healthcare services, social protection, education as well as other necessary services. Moreover, many destination countries often lack intercultural policies and supports for social integration. Children are often exposed to new and painful life when a conflict engulfs their habitations. They are left in an indecisive state about their whereabouts and even as they escape along with their parents or fleeing alongside other people to a land of refuge, they do not have the slightest ideas of what the future holds for them.

1.4.4 The Rights of the Refugee Child

Member nations to the pact establish measures ensuring that children seeking refugee status or are considered as refugees in line to the national or international law. They need to see to it that the children get protection and humanitarian support so as to enjoy the rights laid down in the CRC as well as other relevant humanitarian policies.⁴⁵ It further states that member states must work in line with the UN to protect as well as offer assistance to these children including tracing their family members and give necessary protection and care in cases where no family member is traced.

In 2005, the UNCRC declared that the treatment of unaccompanied and separated children outside their motherland is the responsibility of the state where the children seek refuge and protects the rights of these children.⁴⁶ Article 9 is of the opinion that if a child is separated from their guardians, where separation resulted from an action by a member state, that particular member must, Provide information to the child on the whereabouts of a family member unless the provision of information is detrimental to the child's well-being.⁴⁷ All children, whether refugee or free, has a right to nationality from birth.⁴⁸ Article 6.2 of the European Convention on Nationality (CEN) provides that each State

⁴⁴ Kennet Bush and Diana Saltarelli, *The two faces of education in ethnic conflict* (2000).

⁴⁵ Article 22, UNCRC, 1990

⁴⁶ UNCRC General Comment No.6, 2005

⁴⁷ Article 9, UNCRC, 1990

Party shall grant its nationality to children born in its territory in accordance with its domestic law. Article 23 of ACRWC provides for internally displaced children as a result of civil strife, internal, social order, economic breakdown or natural disaster and armed conflicts.

The UNCRC comprises of four Articles for Children suffering from forced displacement. These are: the principle of non-discrimination (Article 3), the best interests of a child (Article 6), children's right to development and survival, life (Article 12). Children's right to participation However, state parties to the convention are required to uphold the mentioned articles, of a child's migration status.⁴⁹ The 1951 UN Agreement on the Refugees Status is a detailed and static legal framework with regard the refugees' rights at an international level. Further to this, defines conditions under which a person should be deemed as a refugee and be accorded with these rights.⁵⁰ The agreement often acts as the primary basis for the determination of refugee status for countries that have ratified this pact.

The protection of refugee children may also be spearheaded by other global lawful tools or mechanisms such as the protocols supplementing UN Pact against Transnational Organized Crime with relation to child migration. This protocol helps avoid or stop, punish and suppress human trafficking mostly of children and women that are smuggled via any form of transport.

1.4.5 The Rights of Children in Dadaab Refugee Camp

Dadaab Refugee Camp is home to children who are over half of the refugees' population and each has the right to survival, development and life. Children in refugee camps have absolute right to family and protection and must be accorded with undenied access to information and opportunities to make decisions.⁵¹ These are achieved by facilitating access to services that children need, and by helping adults understand the laws in place to protect children and the reason for them. Dadaab camps should have

⁴⁹ UNICEF, *Convention on the Rights of the Child: Child Labor* (1989), 8.

⁵¹ Section 7 and 8, *the Children Act* (Chapter 141, Laws of Kenya) 2010

team programs for building understanding in the community that all children have a universal right to health, safety, education and play, and finding ways to help marginalized children access these - girls and boys, unaccompanied children and those with disabilities.

Refugee camps present children with many challenges, and protecting children presents a challenging task. Organizations like Save the Children and the UNHCR and should work with the government and communities around the camps to build safe environments that ensure children can live, survive and develop into strong, healthy adults.⁵² Moreover, there must be child protection programs which should be tailored to put the child's interests first, aligned to the laws of Kenya with regards to children rights.

1.5 Justification of the Study

Despite the basic rights being outlined, there is no study that has been undertaken to describe the situation or condition of children refugees in terms of their rights, let alone the assumption that they are enjoying similar rights as their counterparts who are free and living their full lives uninterrupted by violence and other similar misfortunes. Many children refugees lack opportunities to participate in sharing the basic rights since they are among the last in line for these rights, even with full provisions of both municipal and international legal instruments. To say the least, these children are the objects of pity, discrimination, trauma and abuse.⁵³

This study seeks to understand and inform the argument on the effectiveness of legal instruments on the child refugee. Specific focus being set on the case of children's rights in Dadaab refugee camp. This study also looks into the intervention legal instruments of the various stakeholders and seeks to identify the most suitable intervention legal instrument to deal with the challenges experienced while ensuring the rights of refugee children are in place. Circumstances have always conspired to cause very limited knowledge about the refugee children to reach support stakeholders from beyond the shadows of their lives in which these boys and girls find themselves in. One

⁵² Refugee Consortium of Kenya (RCK), *The Refugee Protection Report* (June, 2018)

⁵³ UNICEF, 2013

circumstance in this scenario is the fact that such children are likely to live stateless and if they are not registered as a refugee with the UNHCR or the Refugee Affairs Secretariat (RAS). However, the need to remain unregistered occurs because more often than not, such registration would necessitate the children being accommodated in refugee camps.

This study systematically analyses the effectiveness of legal provisions that are made available for the protection of children refugees and to the extent to which these unfortunate and traumatized children are inhumanely treated at Dadaab refugee camp, despite the fact that there are available legal instruments in law to rightfully cater for their survival and needs. The study is also curate to give a detailed understanding of the case of children refugees in Dadaab camp. It examines the extent to which legal instruments are effective and provide for their protection both nationally and internationally (in line with the existing laws). The outcomes of the study are essential in issuing recommendations to policy changers/makers to effectively provide rights according to the legal requirements for children refugees' protection. Also, the knowledge obtained from this study is beneficial to stakeholders in encountering new but inevitable trend in refugee migration issues. It in addition ignite debate among implementing partners on the best effective legal instruments to put in place so as to reach the circumstance of such children.

1.6 Theoretical Framework

This study is anchored on human needs theory which states that, for one to live and achieve well-fare, people require certain fundamentals. The proponents of the human needs approach argue that skirmishes are brought by unfulfilled human needs. The theory opines that, violence occurs when some people or groups find no other way of meeting their needs, or when they need respect, consideration and understanding for their needs. According to Rosenberg, violence is a disastrous expression of unmet needs, suggesting that most actions taken up by people are attempts to satisfy their needs. Furthermore, if needs can be positioned and met, violence and destruction which leads to displacements and uncalled for sufferings experienced by refugees especially children can be avoided.⁵⁴

⁵⁴ Rosenberg, Marshall, *Nonviolent Communication: A Language of Life*, (California, Puddle Dancer Press), 2003

On the other hand, John Burton in his research about prolonged, social skirmishes examines how universal human needs are often overlooked, which leads groups to use violence to meet their essentials and claim their rights. He contends that culture and education make some parties to dehumanize others by manipulating the issues.⁵⁵ Prolonged social conflicts in Somalia and other neighboring countries often force people, including children, who are in more volatile states to flee their countries into refugee settlements like Dadaab.

This study applies the definitions of human needs theory as offered by Abraham Maslow and Marshall Rosenberg. Maslow in his pyramid of human needs, emphasizes on the hierarchy of needs, stating that some are more urgent compared to others. Basing on the pyramid he places food, shelter and water as the most important, the need for security has been placed at number two then followed by the need for belonging or love. Every child, whether a refugee or free child, has the right to receive basic needs like water, food and shelter. They too have fundamental rights to security and safety from both national and international authorities; right of belonging and love by parents, guardians and national and international authorities responsible for providing and safeguarding lawful mechanisms for the protection of refugee children. On the other hand, Rosenberg opines that human wants are universal and it is essential to meet them for human survival. He however proposes a model for finding needs which should be applicable to all levels of the society.

Every society, as the theory postulates, has to deliberately think about how it protects and provide for its children needs. Normative norms such as religion, culture and laws can determine how members of a particular community choose to protect the needs of their children. However, the vital question as on how children shall be protected against violence, abuse, neglect and exploitation and as well as other emergencies, as a matter of a child's important rights. The family plays a central role in protecting children's rights

⁵⁵ Burton, John W. *Conflict Resolution: The Human Dimension*, (In the International Journal of Peace Studies), Available at http://www.gmu.edu/academic/ijps/vol3_1/burton.htm Retrieved on 25th August 2018

and needs and especially during the child's earliest days.⁵⁶ Children are part of a wider community where their engagements, roles and relationships deepen with time and take on increased meaning. Therefore, protecting children's needs is either a public or private duty through the applicability of effective legal instruments. However, for several of reasons, available legal instruments are not always adequately applied to the protection of the needs of children refugees. Sometimes, risks facing children refugees are present within the political and socio-economic externalities on communities in which families reside.

1.7 Hypotheses

The following are the study's hypotheses:

- a) Majority of the children refugees living in Dadaab are not effectively protected by legal instruments.
- b) Provisions of International Laws regarding the welfare of refugees or children hardly benefit the child refugee in Dadaab.
- c) Multi-sectoral approaches of intervention in refugee situations have not been successful in improving the quality of children refugees in Dadaab.

1.8 Methodology

This research employs both primary and secondary data where primary data is gathered through in-depth interviews administered through semi structured open-ended questions/interview guide. The interview guide is based on major themes relevant for the respondent's knowledge on the field and includes the most relevant and important themes in the study. Some of the respondents are asked specific questions regarding their areas of expertise. The general interview guide is included to show the most important themes covered (see appendix II). A semi structured interview guide creates more flexibility in the process of questioning the respondent as the interview guide is not absolute.⁵⁷ The advantage of using this method to react to the research question is that there are certain

⁵⁶ The preamble to the Convention on the Rights of the Child establishes the family as "the fundamental group of society and the natural environment for the growth and development of all its members and particularly children . . ."

⁵⁷ Bryman, A. "*Social research methods*", (Oxford university press), 2008

topics that ought to be covered. Some of the topics have been covered in all of the interviews, while other topics have been covered in one due to their knowledge on the field. The order of the questions varies, and follow up questions are asked if there is a need to clarify certain issues or matters. The flexibility of the semi structured interview allows for the interview to ask questions that may arise during the interview.⁵⁸

This study mainly targets data from a body of human professionals who are well versed with the requirements of both local and global legal mechanisms and requirements in the effective implementation of human rights, zeroing in the protection of children's' rights especially those living in refugee camps around the globe. Collecting data from a huge un-approximated refugee population seeming impractical and equally cumbersome, the study adopts a sample to equally show the attributes of the entire sets of units termed as population. This study therefore arrived at a 95% confidence level and 5% margin of error.⁵⁹

The interviews in this study were conducted in person and mainly at the respondent's office or a meeting room at the respondent's place of work. This arena is however chosen in order to increase the convenience for the respondent, keep the setting professional and formal, as well as to minimize the effect of the surrounding environment upon the respondent. The interviews with Refugee Affairs Secretariat (RAS), Save the Children, UNHCR, and UNICEF were held at their subsequent offices in Nairobi. The interviews with the refugee heads and guardians were held at Dadaab refugee camp in Garissa. However, each respondent was given a form of consent prior to the interview via email, which was signed in person before the interview. The interviews were all recorded to ease transcriptions of the interviews as the primary method of creating text from interviews is to record the interviews and to transcribe them. This also lets the researcher preserve the original data, allowing for the researcher to check the source and situations

⁵⁸ Ibid

⁵⁹ <http://research-advisors.com> Retrieved on 26 August 2018

of uncertainty.⁶⁰ Meeting each respondent separately however allowed for clarification of questions.

Open - ended questions are useful for collecting qualitative data for the study so as to get an in-depth overview and if possible, enable a more insightful and better analysis of the results generated from the research. Moreover, open-ended questions allow the respondents to include more information including understanding of the issues, attitudes and feelings.⁶¹ This is conducted through distribution of questionnaires and cooperation of the respondents. Interviews for this study are personally administered to ensure consistency and uniformity in the data, which includes: facts, opinions and unexpected insights. This study also uses census in collecting data from 50 officials of Refugee Affairs Secretariat (RAS), UNHCR, Save the Children and UNICEF based both in Nairobi offices and Dadaab refugee camp and sampled individual refugee and asylum seekers leaders (children and adults) living in Dadaab refugee camp.

Non-probability method of sampling of purposive is applied data collection research. The selection of samples is based on the nature of the study objectives. Non-probability sampling indicates that the sample is chosen because of its relevance to the subject of the study and not because of its representativeness, which determines how people to study are chosen.⁶² The study problem calls for examination to be conducted using several specified communities in Kenya that have been mandated with the responsibility to effectively govern legal instruments that protects child refugee both locally and internationally. The sample size for this research study is 50 respondents. In addition, the study uses purposive sampling approach as a way of ensuring that the sample representative for groups selected is reasonable. The study also applies Neuman's book principle for a small population (under 100); a big sampling ratio (about 30%) is necessary for a high accuracy level.⁶³ Therefore, purposive sampling takes into mind the

⁶⁰ Ibid

⁶¹ A Bryman et al, *Business Research Methods* (2nd edition, England: Oxford University Press, 2007).

⁶² Neuman W.L., (2006). *Social Research Methods: Qualitative and Quantitative Approaches*. Allyn and Bacon, Boston, Massachusetts, USA. p. 560.

⁶³ Neuman W., (2006). *Social Research Methods: Qualitative and Quantitative Approaches*.

mutual characteristics of the population, endeavors to know where individuals are and tries to study them and obtain data from them.⁶⁴ It is considerate because many respondents reside and work from Nairobi offices which are considered as a regional hub within the East and Central Africa hence, well versed with knowledge about the provisions of international treaty and convention articles concerning the safeguard of human rights. Such are highly informative source to this study.

Table 1.1: Target Population and Sample Size

Sample Target	Sample Size
Refugee Affairs Secretariat (RAS) officials	10
UNHCR officials (both in Nairobi and Dadaab offices)	10
UNICEF officials (both in Nairobi and Dadaab offices)	10
Save the Children officials (both in Nairobi and Dadaab offices)	10
Refugee heads/leaders (in Dadaab)	10
Total	50

Moreover, secondary data in this study is obtained from documents accessed with relevant information. The document materials that supports this study were accessed mainly from the respondents' organizations and included: reports on the refugee child rights strategies, minutes of agency and interagency meetings, records of projects implemented under the Dadaab refugee camp and any other relevant documents related to the application of legal instruments that protects rights and needs of children living in refugee camps. In addition, the study analysed various books, websites, YouTube videos and journals relating to the main subject.

1.8.1 Data Analysis

This study relies on the primary and secondary collected data. It applies the analysis of content, which involves detailed explanation and observation of things, items or objects that make up the study. The analysed data is qualitative in nature obtained from open-ended interview guided questions and organizations' or stakeholder agencies' reports and minutes that are relevant to this study. Content analysis is a method for establishing the content of recorded, published or written communication through a quantitative, objective as well as a systematic process.⁶⁵

Data analysis in this research involves in-depth comparison of the data obtained from various respondents and records of stakeholders charged with safeguarding legal instruments both nationally and internationally including RAS, UNHCR, UNICEF, Save the Child and sampled refugee leaders at Dadaab camp and Nairobi offices in order to get more detailed analysis and confirm the similarities or differences between them. Obtained qualitative data for the study are analyzed through content analysis and presented both in continuous prose, and where necessary in tables, graphs and charts.

1.9 Chapter Outline

In this study, chapter one outlines the research background, the research problem statement, of the study objectives, justification of the study, the literature review, the theoretical framework, the hypotheses and methodology. Chapter two is about international and domestic legal instruments for the child refugee protection. Under the domestic instruments for the protection of the refugee child, this chapter examines the children rights in the Kenyan context, the vision 2030 on the child protection, Kenya's child protection framework and the children's Act while under the international legal instruments in protecting the child refugee, this part examines the convention on the children's right, the African (Banjul) charter peoples' and human rights, the relevant human rights standards, the prohibition of child recruitment in armed conflicts and the sexual exploitation. Chapter covers the children's situation in Dadaab, the children

⁶⁵ Texas State Auditors Office, *Analyzing Data through Content Analysis: Methodology Manual*, Retrieved 3rd May 2018 from <http://www.Preciousheart.net/chaplaincy/auditors-manual/iucontent.pdf>

refugees as well as children's rights , the psychosocial well-being of children in Dadaab, the deteriorating security in Dadaab, the solutions to Dadaab security problems, the security of refugee children, the personal security of the refugee child, the Dadaab refugee settlement and location, the legal status of refugee child, unaccompanied refugee children, birth registration, nationality and statelessness, the right to education of the refugee child and the right to quality of education of refugee children in Dadaab. Chapter four looks at the implementation challenges for the child protection framework, the refugee child protection challenges, lack of documentation, the best interests determination for refugee children, improvement of national child protection systems through partnerships, the impacts of human rights principles on refugee protection mechanisms, the problems and constraints for refugees and legal instruments, the new challenges, constraints and complexities, the importance of refugee laws and protection, the ineffectiveness of legal instruments and the cross-mandate approach in the horn of Africa. The last chapter five outlines the study summary, conclusion and recommendations of the research study. Finally, the study suggests possible areas for further research related to the study.

CHAPTER TWO

DOMESTIC AND INTERNATIONAL LEGAL INSTRUMENTS FOR THE PROTECTION OF THE REFUGEE CHILD IN KENYA

2.1 Introduction

For a long time, clashes have brought about waves of far reaching displacements of people in parts of North, middle and Eastern Africa. Governments and populaces in these districts have kept their borders and homes open, indicating generosity to their neighbors searching for safety and their wellbeing far from brutality and abuse according to established traditions of hospitality and refugees. The biggest threats posed by conflict and its subsequent displacement are those who need protection most: *children*.⁶⁶ Kids that are compelled to escape abandon their residential homes, networks, schools, companions, desires, feeling that all is well with the world and, mostly their childhood. Interactions with children refugees have expounded on the day to day struggles that they undergo as they try to set up a sense of normalcy in their lives. Their strength and resilience are however a source of inspiration for those who meet their needs.

The section analyzes against the background of relevant international and national principles. It analyzes, along with United Nations' High Commissioner for Refugees (UNHCR), foundation of important international and national administrative standards to react to refugee children's needs, guided by the child's best interests. It is proposed to deliver models of successful mediations that can realize substantial advancement in protecting and securing displaced children. In spite of the varieties in settings and requirements of abandoned children in Kenya, a considerable lot of the precedents can be recreated and scaled up to accomplish a more prominent, longer-term effect on the lives and protection of children refugees. The point of this chapter is to create a clear understanding of the Kenyan setting, government reactions, commitment by different performing player and extra factors that are set towards the agenda of protecting children from violence and abuse.

⁶⁶ Amin Awad, *UNHCR Bureau for the Middle East & North Africa*, 2014

2.2 Domestic Instruments for the Protection of Refugee Child

Kenya has a big number of refugee and asylum-seeking largely due to the location of the country in a conflict - prone region. For instance, its neighbors like South Sudan and Somalia experience continuous civil conflicts which have led to external and internal population displacement. The UNHCR documents that 625,250 immigrants and seekers of asylum were accommodated in Kenya in 2014.⁶⁷ This number rose in 2015 to 650,610.⁶⁸ 70% were Somali nationals which claimed the lions share and 20% were South Sudanese. The residence of refugees in Kenya is Dadaab refugee camp in the county of Garissa. (Dadaab comprises of five centers: Ifo, Kambioos Hagadere, Ifo II and Dagahaley) and the Kakuma the Turkana County.⁶⁹ Additionally over 50,000 urban refugees were reported to be living in Nairobi as of April 2014.⁷⁰ Kenya has signed a several global treaties that apply to asylum seekers and refugees. Some of these treaties consented to include the United Nations Convention regarding the Refugees Status on May 16, 1966 and its 1967 Protocol in 1981. It is further a state party to the 1969 African Union (AU) Convention Governing the Specific Aspects of Refugee Problems in Africa, to which it became a member in September 1969 and ratified in June 1992. Particularly relevant for issues on refugees is a provision in the Non-Refoulement Agreement which says that no State party will return, extradite or expel an individual to another nation that is believed to possibly cause danger of persecution on the individual.

Consequently, Kenya lately set up a national legal system administering displaced peoples' issues and accepted temporal accountability for the Refugee Status Determination (RSD) procedure. This was done when Kenya established its mandates under the global law by ascending to the Refugees Act in 2006, that was effected in 2007 as well as its subsidiary law, the Refugees Regulations (Adjudication, Registration and

⁶⁷ United Nations High Commissioner for Refugees (UNHCR), Global Appeal 2014–2015: Kenya 2 (2013), <http://www.unhcr.org/528a0a244.html>, Accessed on 5th September 2018

⁶⁸ <http://www.unhcr.org/5461e600b.html>, Accessed on 5th September 2018

⁶⁹ (2005), <http://data.unhcr.org/horn-of-africa/download.php?id=1535>, Accessed on 5th September 2018

⁷⁰ <http://www.unhcr.org/5342b35d9.html>, archived at <https://perma.cc/UW48-F2GB> Accessed on 6th September 2018

Reception) and in 2009 (Refugees Regulations).⁷¹ Among other aspects taken care of in this pact was the setting up of the Department of Refugee Affairs (DRA), which was responsible for processing and receiving applications for refugee status.⁷² Before it was set up, matters regarding the refugees were handled under the Alien Restriction Act and Immigration Act that no longer apply. In 2014, the DRA assumed several functions from the RSD, mainly endorsing the UNHCR's RSD determinations and recognizing notifications to refugees that fulfilled the required criteria under the Refugees Act.

2.2.1 Children Rights in the Kenyan Context

Approximately, there are 46 million people living in Kenya of which 42% are aged under 14. Kenya's economy and governance has steadily improved from a low point that it experienced after the 2007 post elections violence as well as the 2008 global financial crisis. However, despite becoming a middle-income economy in 2014, indicating the availability of local resources, Kenya continually experiences persistent internal conflicts, climatic risks and vulnerability to insecurity and terrorism. All of these aspects including harmful social norms negatively impact the children's rights realization.

Particularly, this is more rampant in country's coastal, North Eastern and Northern areas as well as in ever growing informal settlements. The introduction of devolved system of government continues a platform to remedy historical inequalities. However, quick transition process has opened up loopholes for challenges in the management of human and financial capital and political divisions. Lately, no children's services and child rights' standards have been set up for the county administration. The issue is exacerbated by an absence of mindfulness and ability to address these issues. Proof recommends that, extending income imbalances are bringing about more prominent variations and disparities among Kenya's populace. Many children that have been affected in Kenya are the ones that live among the poorest 40% of households, in some counties and regions, as well as the urban slums. A majority of Kenyan children in are

⁷¹ Sara Pavanello et al., *Hidden and Exposed: Urban Refugees in Nairobi, Kenya* 15 (HPG Working Paper, Mar. 2010), available on the Overseas Development Institute (ODI) website, at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5858.pdf>, Accessed on 5th September 2018

⁷² Section 7, Refugees Act, 2006

conceivably in danger of brutality, abuse and exploitation; however, certain groups are more vulnerable as compared to others because of their geographical location, social status and gender. Children lacking parental care miss the protective environment and supervision usually provided by adult. Children in large families may also lack parental care and become victims of neglect. While both boys and girls are subject to socio-cultural violations and economic and cultural restrictions, girls are particularly vulnerable to sexual abuse, violence and other harmful practices. The case of children is often aggravated by the many disadvantages and difficulties in certain population groups and communities, although there is little information and concentration on these issues.

Many children in Kenya have encountered no less than one kind of violence (physical, sexual or emotional) before they turn 18 years old. 2 in every 3 girls and 3 out of 4 boys have been subjected at least one physical violence episode before the age of 18, and 1 in 4 girls and 1 in 3 boys have experienced emotional brutality in childhood. About one in three girls and one in five boys were victims of at least one sexual violence episode before 18 years of age.⁷³ Nonetheless, among girls in the age bracket of 18 to 24 that encountered sexual violence before they attained the age of 18, close to 7% have been given money in exchange for sex. Close to 17,500 Kenyans are trafficked annually to go and perform domestic work, commercial sexual exploitation or forced labour, with suspicion that about half of them are minors.⁷⁴ Moreover, the commonness of child labour in Kenya remains high, with over 1 million children aged 5 to 17 years being subjected to it.

Among Kenyan youth and children in areas exposed to violence, especially in the coastal and North East areas, there are indications of radicalization and recruited to terrorist organizations. Terror groups have targeted teachers and schools resulting to abandonment of duty by teachers. Same matters have risen in response to intercommunal conflict and family displacement, together with plundering or destruction of school infrastructure. Additionally, Kenya is home to large population of refugee, mostly from

⁷³ Refugee Consortium of Kenya (RCK), *The Refugee Protection Report*, 2018

⁷⁴ Ibid

neighboring nations (South Sudan Ethiopia and Somalia), some coming in from and from as far as the DRC. According to data o refugees in Kenya, in 2015, Kenya hosted 589,994 recorded refugees where 49% were women and 51% of them were men and from the figures, over 55% of the total number were children a good percentage of them being identified as unaccompanied and faced many dangers (about 30,892).

2.2.2 Vision 2030 on Child Protection

The general vision for the country's growth has been set out in the country's' Vision 2030. Kenya's longstanding national development plan focusing on reducing vulnerability and paucity and investing in people is included in the Vision 2030. Matters of child protection have largely been aligned with the social pillar in the Vision 2030's, although not precisely expressed. However, regarding the Second Medium-Term Plan (2014-2018), child protection is one area of intervention under the purposes for vulnerable groups, youth and gender. With regards to consolidating systems on child protection, the plan put more emphasis on creating child protection centers, and enabling alternative family care facilities, creating an integrated data management system and implementing and finalizing the National Community Development Policy. Explicit emphasis is on gender-based and sexual violence. This encompasses measures of decreasing occurrences of FGM, by enacting the FGM Act 2011.⁷⁵

Despite the fact that child protection has not been clearly defined in the United Nations Development Assistance Framework (UNDAF), the process of child protection is fully linked to various UNDAF outcome specs. They comprise of the 2016 targets for the developments in policy and institution based frameworks, including legal systems and law; 2017 revolves around human rights and democratic participation (and gender equality) matters, including civil society citizenry empowerment: and 2018 the focus is on social protection, including policies and strategies that guarantee the effective leadership role of the government, sustainability results and the promotion and learning

⁷⁵ Ministry of State for Planning, National Development and Vision 2030, *Millennium Development Goals Status Report for Kenya, 2011*, August 2012.

of innovation.⁷⁶ The UNDAF further states that social protection systems are to be resourced, well-coordinated and incorporated adequately at the county and national levels.⁷⁷

In her commitments to international standards, Kenya as a State ratified UNCRC in 1990; approved the Elective Protocol about the association of children in wars in 2002; and later became a signatory to the same in in 2000 to the Optional Protocol on the sale of children, child pornography and child prostitution. Kenya further approved ACRWC, The Hague Convention on Inter-Country Adoptions, the Palermo Protocol and the Millennium Declaration 2000. To date, Kenya has endorsed seven of the eight labor conventions, including Convention No 138 (on minimum age) and Convention No 182 (on the worst forms of child labor). The nation is additionally a party to other international human rights instruments, which tie it ethically and lawfully to arrangements that advance value and non-segregation in the development procedure. These include the Pact on the Beijing Platform for Action and Elimination of All Forms of Discrimination against Women, other regional instruments such as the 1981 Protocol of the African Union on the Rights of Women in Africa (AUPRWA) and the African Charter of Peoples and Human Rights (ACHPR).

2.2.3 Kenya's Child Protection Framework

Article 53 of Kenya's constitution, 2010 perceives the requirement that children are shielded from mistreatment, destructive social practices, neglect, brutality, heartless punishment and treatment, and exploitative or hazardous tasks. It also confirms the fundamental rights of children, including the right to health, shelter, education, nutrition and parental care. The provisions stated are associated with those included in the UNCRC and ACRWC, to which Kenya is a signatory. Kenya as a State guarantees that kids are shielded from violence, neglect abuse, family separation and exploitation need an effective and operative child protection system. Moreover, after the passing the Children Act in the year 2001, Kenya got on setting up the mechanisms in 2009, aiming at refining

⁷⁶ Ibid

⁷⁷ United Nations Development Assistance Framework, 2016

it, the government carried out a set up measures to help with identifying the weaknesses, opportunities and strengths with regards to functions and capacities, legal context, structures, child protection policies.

The recognition of the Kenyan Government that child protection is a multisectoral and multidisciplinary matter calling out for everyone's involvement with the application of the mapping exercise outcomes and from consultations with other actors, it established two important documents to guide the players in establishing a more effective and stronger system. The first document, *The Framework for the National Child Protection System for Kenya* (FNCPSK), strives to foster connections between different parties and offer synchronized responses and interventions through constitutional instruments while the second, *County Child Protection Systems Guidelines* (CCPSG), displays a programme for synchronized action at the county level and providing job practice direction for the formal and informal players. Moreover, Kenya has also drawn a strategy program with specific targets. The program dubbed *Strengthening Child Protection in Kenya: Programme Strategy* was developed by the government in a period of four years from 2011 to 2014 under the leadership of the then Department of Children Services and National Council of Children Services, under the Ministry of Labour, Social Security and Services.

2.2.3.1 The Children Act

An Act of Parliament providing for the children's rights seek to improve their welfare in Kenya. This statute was enacted to combine provisions of the various children's laws and to put into effect the requirements of the ACRWC and CRC. The statute gives the legal definitions of several sections, terms and phrases in its interpretation and also for the children rights as provided for in the CRC and ACRWC. The provisions of this statute is aligned with the Rights Bill as outlined in Chapter four of the of 2010, Kenya Constitution and are as shown: Intrinsic right to life, where the family as well as the government are responsible for guaranteeing the development and survival of all children; their right to parental care, which indicates that all children have the right to live and be taken care of by their parents; the right to education, stating that every child is

entitled to Compulsory and free primary education by parents and the government; right to religious education, where every child has a right to religious education. parents in this situation have the obligation of giving children appropriate direction in religious education; right to health care, where all children have a right to quality healthcare which is their parent's responsibility parents; protection from armed conflict and child labour, which states that every child is shielded from any task otherwise considered dangerous to their health, be harmful to the child's health, possibly affect the child's education. Further to this, it includes that children must never be forced to take part in armed conflicts or participate in hostile environments. Nonetheless in armed conflicts prone areas, protection and respect for their rights shall be maintained with regards to the law.⁷⁸

The statute in addition provides child's right to nationality and name, which explains that in case a child lacks an identity, the government will then provide relevant support and protection with regards to establishing their identity; right of children with disabilities requires that every child is treated respectfully. All children with a disability are entitled to their right to dignity, and are allowed access to special care, medical treatment and education; protection from child abuse, which states that children are entitled to protection from sexual, physical neglect, psychological as well as other forms of exploitation including abduction trafficking or sale by anybody; protection from sexual harassment, where children are to shielded from sexual inducement, abuse or forced to take part in any sex related activity, prostitution; protection from drugs, which requires that every child shall be protected from being used in the production and use of drugs, distribution or trafficking . The Act further provides for the wellbeing of children through recreation and leisure, where a child has the right to participation in artistic, cultural, play and leisure activities. The statute finally speaks against deprivation of liberty, torture in which it warns against children's' subjection to torture, punishment, cruel treatment, deprivation of liberty or unlawful arrest.⁷⁹

⁷⁸ The Children Act, Chapter 141, Laws of Kenya (Revised Ed. 2010)

⁷⁹ Ibid

2.3 International Legal Instruments on the Protection of the Refugee Children

This substantive privilege described within major human rights treaties apply to everybody including children. Just like for grownups, the enjoyment of the human rights projected in human rights pacts not only applies to children belonging to a given country but are universally applied to all the children regardless of their residence status or citizenship, including the refugee. Although human rights apply to both children and equally, some human rights pacts, like the CRC, to which almost all the countries in the world are party and the ACRWC were implemented with a specific purpose to enhance child protection as well as include certain rights missing in other human rights instruments internationally. Article 22 on the CRC is the only provision of a global pact on human rights that clearly refers to the protection of refugees.

The principle of the “best interest of a child” included in Article 3 acts as a point of reference for other provisions of the CRC must reinforce all decisions and measures taken in relation to displaced children and refugee. Whereas this standard must not direct to the giving of refugee status to children that that fail to meet the refugee standards, the code must be respected in all the phases of the displacement cycle and is a significant principle towards the enhancement and protection of the children.

Safeguard to the violation of child refugee rights is thus imminent. Both sexes might be predominantly exposed to the exploitation of human rights when displaced or refugees. Human rights including, domestic violence, underage military recruitment, trafficking, forced marriage, underage marriage, pornography, forced labour and or prostitution, female genital mutilation and infanticide can happen throughout during the displacement cycle. The unaccompanied or children disjointed from their guardians are mostly vulnerable to violations on their human rights.

2.3.1 The Pact on the Children’s Rights

The Pact on the Children rights (CRC) was the first global pact specifically targeting the rights of the child. It strives to safeguard children from activities that might put their lives and livelihood in dangers such as all kinds of exploitation and sexual abuse, child

trafficking, illicit use of drugs, and economic exploitation. The pact was enforced in September 2, 1990, and since then, is the most broadly backed. Kenya approved it on 30th July, 1990. Article 19(1) provides that, member parties shall apply suitable precautions to safeguard children from all kinds of abuse or injury, physical, negligent treatment or exploitation, plus sexual misuse. Additionally, Article 6 indicates that all children have right to life, furthermore indicates that member parties to the statute shall make sure that all the necessary measures towards the development and survival of the child are met.

Article 34, further states that member parties agree to safeguard children from all types of sex abuse as well as exploitation, in agreement to Article 37, state members need to see to it that no child is exposed to torment, any painful, heartless, penance or inhuman treatment. Article 22(1) is more precise on children refugee and conditions that member party states will take suitable actions in guaranteeing that children in search of refugee status or who are already refugees in line to the appropriate domestic or international laws shall, when or not accompanied by their guardians or parents, receive proper protection and humanitarian support in the enjoyment of the rights described in the convention. Sub-article 2 of the same Article provides that for the stated purposes, member party states shall provide cooperation in any efforts by capable non-governmental organizations (NGOs) or intergovernmental organizations (INGOs) working together with the UN to assist such children in tracing their guardians or parents of any child refugee so as to get data essential for the reunion with their families.

It is however interesting to observe how courts have dealt with refugee children's rights. Four jurisprudence cases are particularly relevant. In *Lukwago v. Ashcroft, Attorney General*, the US Court of Appeal argued that ex-child soldiers who had run away from the Lord's Resistance Army confinement might establish a specific communal group. This precisely fits within the acknowledgement that a past experience shared are necessary to connect people of a specific social group.⁸⁰ It is imperative to note that the court's declaration on a former child soldier *Lukwago Bernard* sets a precedent that

⁸⁰ UNHCR, *UNHCR Compilation of Case Law on Refugee Protection in International Law*, at 16—17 (March, 2008), available at <http://www.refworld.org/pdfid/47dfc8e32.pdf> Accessed on 10th September 2018

persecuted children constitute a precise social unit and qualify for refugee protection and status. For instance, the case of *ZH (Tanzania) v. Secretary of State for Home Department*, the court ruled that the child's welfares shall at all times be respected.⁸¹

This ruling has had great influence on immigration, asylum and refugee cases that involve children. Additionally, in the case of *ST (Child asylum seekers) Sri Lanka v. Secretary of State for the Home Department*, Judges held that if a child has a clear fear of being exposed or trafficked, a form of serious harm is sufficient to protect the international community and can be evidence of a fear of persecution on the grounds of a convention. The court overturned the previous decision that had denied the child refugee status and argued that persecuted children constitute a social group as provided for under the 1951 UN convention. The court was in favor of granting refugee status to the child from Sri Lanka. Finally, in the of *Suppiah & Ors, R (on the application of) v. Secretary of State for the Home Department*, UK, the two children failed asylum seekers with their families had been put under arrest and incarcerated by the UK Border Agency in 2010. It was asserted that the policy makers failed to have respect to their obligation to protect and promote the welfare of the child applicants in advance of their conclusion to detain them therefore making their detention unlawful. The authorization of confinement of the plaintiffs directly conflicted with the Policy that required that the decision-maker must have respect to section 55 of the 2009 Act, consider all reasonable alternatives to detention and use only as a last resort measure a consider every sensible option in contrast to detainment and depend on confinement only as a the last resort and in remarkable conditions and in exceptional circumstances.⁸² Kenya therefore has responsibilities to protect rights of refugee children including freedom from torture, rights to life or other degrading treatment or inhuman, cruel or punishment, sexual abuse, security and people's discrimination.

⁸¹ *ZH (Tanzania) (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)*, UKSC 4, United Kingdom: Supreme Court, February 1, 2011, *available at* <http://www.refworld.org/docid/4d5aa24212.html> Accessed on 10th September 2018

⁸² Council of Europe (1950), *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 & 14.

2.3.2 African (Banjul) Charter of Human and Peoples' Rights

At its 18th meeting in June 1981, the OAU Assembly of Heads of State and Government recognized the African Charter on Human and Peoples' Rights. This Charter entered into force on 21 October 1986 and was ratified by Kenya in the same year. Article 4 specifies everybody shall be entitled to respect for their life and the integrity. Nobody shall subjectively be deprived of this right.⁸³ Article 5 further assumes that everyone has the right to respect for the inherent dignity of the human person and that all forms of exploitation of human beings by degradation, in particular inhuman, cruel, tortuous and degrading treatment and punishment, are prohibited. Article 6 assures everyone's right to security and to the liberty. The above rights are equally accorded to refugee children as they are equally persons.

Party states to the African Charter have obligations to guarantee these rights. According to the preamble of the charter, the state members are under and responsibility to respect the duties, freedoms and rights contained in the Charter and legislative or other measures to enforce it. Their duty mainly is to see to it that the following freedoms and rights are respected through teaching, publication as well as education. *The African Commission on Human and Peoples' Rights in Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea* established that the plaintiff state of Guinea had dishonored Articles 2 (Freedom from discrimination), 4 (Right of life and integrity of person), 5 (Right to inherent dignity and freedom from all forms of exploitation and degradation), 12(5) (Prohibition of Mass expulsion of non-nationals) and 14 (Right to property) of the African Charter.⁸⁴ This case illustrates the fact that refugees were entitled to the rights enshrined in the African Agreement whose party states have the obligations of respecting, protect and fulfillment of these rights.

⁸³ Human Rights Education Associates, University of Minnesota, *Study Guide: The Rights of Refugees* (2003), available at <http://www1.umn.edu/humanrts/edumat/studyguides/refugees.htm>. Accessed on 10th September 2018

⁸⁴ Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea, 249/02

2.3.3 Relevant Human Rights Standards

The human rights agreements conditions that member states are supposed to make sure enjoying all rights included in these mechanisms. They are further required to apply special measures in child protection. However, member states that are signatories to treaties relating to human rights are not only required not to commit any of these violations, but they also have a responsibility to shelter against violations committed by non-state players. The International Covenant on Civil and Political Rights (ICCPR) identifies the right of all children to receive from their families, the State and society, without discernment, the protection essential by their status as minors. Moreover, the enactment of this provision calls for the implementation of special measures set at the protection of children. These measures must not be discriminatory between non-national and national children. However, Human Rights Committee states that the measures to be implemented are not stated in the Agreement in most cases; it is therefore the responsibility of each State to decide on those measures in relation to the protection of the children's needs within its territory. According to the committee, such measures might cover cultural, social, and economic rights as well as the political and civil rights indicated in the Covenant. Therefore, refugees and asylum-seeking children may appeal this provision when denied education, health care, clothing, housing, food and adequate water.

Consequently, if the provision is dishonored, a person can give complain with reference to the First Optional Protocol of the ICCPR's. CRC further indicates that children are competent of a nation, irrespective the position they hold and they are eligible for the entire components of human rights. It further defines children as people below 18 years, under the national law applicable to them. Since the Agreement stresses on the "child's best interest" principle, member States are obliged to determine child's best interest. This principle also reinforces all decisions that relating to children refugees' fate. Additionally, Article 22 of the CRC, requires that member states will apply suitable mechanisms to guarantee that children seeking refugee status or are considered refugees in agreement with applicable domestic or international law and procedures will, whether

or not accompanied by their parents or guardian, get humanitarian support in the satisfaction of applicable rights expressed in the existing Convention and in other international human rights instruments to which they are parties. Measures must therefore be set up to guarantee that in assessing and processing children's requests for refugee status, due thought is given to the children's level of maturity, mental development and their capability to express a claim in relation to their family, cultural and personal background and that children's specific forms and persecution manifestations, like underage recruitment, are recorded.

However, in situations where no guardian or parents is traced, children are to given the same protection just like other children temporarily or permanently denied their family atmosphere for any intention, as stated in the Agreement. Separated or unaccompanied refugee children should be assigned a guardian to represent their interests as well as a legal representative assisting them in handling the refugee status request. Member states have an obligation to work in line with the all relevant humanitarian groups in supporting and caring for child refugees in the quest to identify their parents or family members so as to get the necessary information for reunification. Article 20 further highlights the interest of continuation children's development considering the child's cultural, linguistic, ethnic and religious background. This Agreement being the greatest extensively approved human rights mechanism with 192 state members; it is therefore a predominantly significant tool with regard to the nations that are not signatories to the 1951 Convention.

The general children protection aspect is elaborated and given within the American Convention on Human Rights (ACHR) provided for under Article 19 of the same pact. However, this provision needs to be interpreted in accordance to the 1951 pact and the CRC and the consequently, defense mechanisms must be put to consideration when determining refugee status especially for the separated refugee child. A recommended judgment by the IACtHR emphasized that countries need to assume exceptional measures to safeguard child refugees-based child's best interest principles.

2.3.4 Prohibition of Child Recruitment in Armed Conflicts

Refugees Children affected by armed conflicts can become victims of human rights violations and have protection and treatment rights. They often escape from their nations to neighboring nations. Refugee children are among those at the highest risk of underage employment. In light of this, the CRC indicates that member States have a responsibility to respect the regulations of the global humanitarian law, applicable in armed clashes and wars relating to children and take full responsibilities in protecting and assisting them. (Article 38 It also specifies that States implement all possible measures to ensure that children under 15 years of age do not participate directly in conflicts and are not registered in their armed forces).

Consequently, implementation of the Rome Statute of the International Criminal Court was a significant improvement in fighting acts that involved children in conflicts. The following acts are described as crimes of war: Enrolling and recruiting children into the national armed forces to actively take part in war; and enlisting and recruiting children that are 15 Years and below to actively participate in local armed conflict hostilities.

2.3.5 Sexual and Other Forms of Exploitation

Kids are more susceptible to abuse and manipulation in the course of displacements. They are placed at a general but teenagers are the main objectives of sex exploitation and manipulation. CRC necessitates that member States assume the roles of protecting children from all kind of sexual exploitation and to apply suitable national procedures to prevent: (a) The coercion or encouragement of children engage in any sexual activity; (b) the use of children in prostitution and sexual practices and (c) the abusive use of children in pornographic performances and materials. Nonetheless, to openly and efficiently fight sexual mistreatment, an alternative protocol to CRC on Child Prostitution, Sale and Pornography of Children was approved and enforced in 2002. This Protocol complements the CRC with comprehensive necessities for outlawing the defilements on children's rights which are related to sale of children, pornography and child prostitution. Unaccompanied children refugees that have been separated from their caregivers and

relatives are predominantly devastating for a child refugee further worsens their risk and vulnerability of going through violations.

In sum, this chapter has established that national legal system has played its dynamic role to make part of or accommodate the international legal system as part and parcel of its laws. This is testament to Article 2(5) and (6) of the Kenyan constitution, 2010. Moreover, Articles 26, 45 and 53 which speaks of fundamental rights to life, family and basic fundamental rights of Children cups it all and tells of the import of rights of human beings from all walks of life. Hence, Kenya as a State has the obligation to effectively apply the legal instruments adopted both domestically and internationally. The study also shows that despite the fact that Kenya's national laws caters for fundamental rights of all children within the confines of her boundaries, there still exist key holes, prominently in mainstreaming and adhering to the application of the effective laws to protect the rights of children living in refugee camps. In addition, international regimes have assembled under the United Nations body to effectively pass laws that cater for the rights of human beings of all races in the world. The effective legal instruments meant for the child refugee regimes being executed have so far acted to restrict than to facilitate hence affected children refugees negatively instead of facilitating them to achieve their potential.

CHAPTER THREE

THE PROMOTION AND PROTECTION OF REFUGEE CHILDREN RIGHTS IN DADAAB REFUGEE CAMP IN KENYA

3.1 Introduction

This chapter deals with the promotion and protection of the rights of Dadaab refugee children. The Dadaab refugee camp in North-eastern Kenya was established in 1991. It was initially intended to suit 90,000 outcasts, at present notwithstanding, the camp holds in excess of multiple times its proposed limit in this manner being delegated the third most populated zone in Kenya. This region atmosphere is unforgiving and remote, and gets extremely sweltering in summer and surges exorbitantly in rainy seasons. Dadaab's fundamental complex contains Dagahaley, Ifo and Hagadere refugee camps, and additionally three different locales, Kambioos, Ifo West and Ifo East. These destinations are being produced to meet the consistently expanding number of outcasts hurrying to 154,000 individuals over the most recent one year. The exile populace in the complex contains for the most part of Somali nationals (95%), and fewer number of Ethiopians, Eritreans, Burundians and Sudanese.⁸⁵

This section surveys the utilizations of different successful lawful instruments with regards to kid's rights and security embraced by different states. This involves the UNHCR survey approach on youngsters' exile as a noteworthy universal legitimate instrument on human rights embraced by different worldwide states. With the end goal to get experimental proof identifying with the protection and advancement of displaced person youngsters in Dadaab exile camp, this part utilizes legitimate decree and investigated inquiries to portray the kids' rights security procedures and conditions in Dadaab.

⁸⁵ Damien Mc Sweeney, *Conflict and deteriorating security in Dadaab*, 2017. Available at <https://odihpn.org/magazine/conflict-and-deteriorating-security-in-dadaab/> Retrieved on 3rd September 2018

3.2 The Situation of Children in Dadaab

Situated in the north of Garissa County in Kenya, Dadaab is the biggest exile camp on the planet facilitating around 50000 displaced people from in excess of ten nations, however for the most part from neighboring Somalia. The investigation affirms viciousness against kids and ladies as a typical occurrence in this place.⁸⁶ Numerous adolescent moms and honest young ladies experience nerve racking untold encounters in the camps; where some are baited into early relational unions as routes out of neediness; subsequently others get engaged with easygoing associations with more established men and wind up being impregnated.⁸⁷ The investigation discoveries demonstrate that it is to a great degree difficult to break the news of pre-marriage pregnancies, not to mention get bolster in a generally patriarchal and male chauvinistic social orders like those of networks in Dadaab. However, lion's shares of the youngsters resulting from easygoing connections are surrendered by their moms inspired by a paranoid fear of disgrace and segregation.⁸⁸

Save the Children and other relative organizations with outside funding from establishments, for example, the German Federal Foreign Office (GFFO), have figured out how to set up network structures for the respond towards the necessities of powerless and relinquished kids, helpless kids, isolated and unaccompanied minors. The task, as the examination discovers, encourages preparing of non-permanent parents in guaranteeing that they are prepared and ready to offer elective consideration and support for the youngsters that have no parental consideration putting them at a hazard.⁸⁹ Moreover, to meet these children's prerequisites adequately, Save the Children bolsters encourage guardians by setting up Income Generating Activities (IGAs), fundamental utilities and limit building vital instruments to help them in dealing with defenseless children.⁹⁰

⁸⁶ Interview, Save the Children, *Most arriving women and Children in the Dadaab Refugee Camp are forced into labour while some are sexually assaulted*, (Save the Children Office in Dadaab) 25th October, 2018

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Interview by Save the Children, *To alleviate the situation of abused children, especially those without parental or guardian care and those unaccompanied, structures which remedy the situation are in place* (Save the Children Offices in Dadaab and Nairobi), 25th October 2018

⁹⁰ Ibid

Article 21 of Kenya's Constitution, 2010 requires every one of state's instruments and community workers to meet the necessities of helpless gatherings in the Kenyan culture, including youngsters. This basically involves established commitment for the country to be in charge of the youngsters needs and for this situation that need elective help.⁹¹ The procedure in taking care of deserted youngsters is accommodated both in the Kenyan constitution and statutory arrangements. In like manner, Article 14 gives that, anyone going over a kid that seems more youthful than 8, and with an obscure guardians and nationality will take the child to the concerned government office that bargains with youngster related issues or at the nearest government office or organization.⁹² Such children are assumed as of Kenyan residents by birth.⁹³ This provision ensures that no child within Kenya's boundary misses up on the commitment of the legislature to secure him/her on the reason that the youngster is definitely not a Kenyan with the end goal to get to the rights ensured by the constitution. Numerous youngsters and infants found relinquished in Dadaab are taken to Garissa kid security save focus inside Garissa county.⁹⁴

On the other hand, when a kid is gotten into an administration office that isn't in control for kid related issues, the organization will instantly report and present the youngster to the mindful government division which at that point attempts vital examinations through significant channels that are liable to Children rights under any composed law, to decide kid's birthplace. On the off chance that this flops be that as it may, the youngster will be displayed to the Children's Courts where procedures are taken out to decide the age, parentage, nationality and living arrangement of the child; from there on, the kid as coordinated by the court will be assumed a native by birth or some other request thought about fit to give.⁹⁵ This finding is bolstered by the arrangement of Section 40 that it is the commitment of every single nearby specialist to advance and

⁹¹ Article 21 of the Constitution of Kenya, 2010

⁹² Article 14 of the Constitution of Kenya, 2010

⁹³ Ibid

⁹⁴ Interview of a Refugee head and Guardian (Dadaab Refugee Camp), 27th October 2018

⁹⁵ Ibid

secure the rights and prosperity of kids in its zone of locale and also advance the quality childhood of youngsters.⁹⁶

3.3 Refugee Children and the Children's rights

According to Articles 2 and 3 of the Agreement on the rights Children, every member state to the pact must ensure the Children rights in its jurisdiction without any kind of discrimination and in all activities concerning children and their interest shall be a main point of consideration. International agreements on the Children rights are significant to refugee children since they set standards.⁹⁷ The 1967 Protocol and the 1951 Refugee Convention set measures that are relevant to the two youngsters and grown-ups. Generally, kids who have a consistent dread of mistreatment for any of the predefined claims is an outcast and a kid holding the evacuee status will not be constrained back to their nation of root (the rule of non-refoulement). Moreover, no refinement is made among grown-ups and youngsters with respect to their legitimate rights and social welfare.⁹⁸ One article in the assertion builds up gauges particularly critical to youngsters, that is, exiles must be given equivalent treatment simply like local people in fundamental treatment and training in any event as promising as that given to non-outcasts in secondary education.⁹⁹ Moreover, the 1966 OAU extended the meaning of evacuee and included Africans who flee from events that to a great degree irritate general public order.

Consequently, setting the best qualities identifying with youngsters is the Convention held in 1989 concerning privileges of kids. Notwithstanding when CRC is not a concurrence on outcasts, youngsters' exiles are secured here on the grounds that all rights under the CRC are to be given to everybody that is matured under 18¹⁰⁰ without discrimination.¹⁰¹ The Agreement on the Children rights is noteworthy to kids' displaced person since it sets comprehensive benchmarks. Basically, every kid life angle is dealt

⁹⁶ Section 40 of the Children Act, 2001

⁹⁷ Interview, *The significance of international treaties on the child refugee protection* (UNHCR, Nairobi Office), 30th October 2018

⁹⁸ Interview on how legal instruments adheres to the protection of the refugee child (UNHCR, Nairobi Office), 30th October 2018

⁹⁹ Interview on the Effects of refugee status on the Child's Education (UNHCR, Nairobi Office), 30th October 2018

¹⁰¹ Ibid at Article 2

with appropriate from training and wellbeing to socio-political rights. Some of these measures are exact; for example, the Articles on kids' equity which defines principles to administer adolescent equity framework past criminal law and spreads disregarded, manhandled and subordinate kids and in addition their folks and other affected persons.¹⁰² In addition, various human rights are explicitly eligible by the country's budgetary capacity. The right to wellbeing, learning,¹⁰³ and to an acceptable standard of living¹⁰⁴ alluded to as dynamic rights since they increment alongside the state's monetary changes. These communal welfare rights are however not just abstract or principles goals.

Due to the near universal ratification of the Treaty, the CRC has offered significance to refugee children. Qualities have been settled upon by nations everywhere throughout the world including nations of any geological and populace size and phase of monetary development, for a wide range of religious custom and political frameworks. The standards being universal, the CRC can be applied as a powerful advocacy instrument: a nation can't ensure its uniqueness as a purpose behind not fulfilling all-inclusive guidelines. Moreover, the broad underwriting of the CRC is noteworthy for some different reasons. For instance, if a nation is a signatory to the CRC and not a signatory to other refugee agreements, the CRC is connected as the essential reason for children refugee protection. Even when a country is yet to approve the CRC, the UNHCR backs its adherence since the standards are aggregate.¹⁰⁵

The major innovation of the CRC is the way that that it advances and gives the rights to children. Many people are accustomed to think about children as having needs that are supposed to be met, rather than as having legal rights. Children now have human rights that are recognized internationally thanks CRC. Although these rights take charge of possibly almost all aspects relation children rights, there are three rights that are so crucial and that they can be considered to be underlying the entire CRC. These rights

¹⁰² Barbara D. Flicker, *Standards for Juvenile Justice: A Summary and Analysis*, 2nd edn. (Balingers Publishers Company), 1982

¹⁰³ Ibid at Article 28

¹⁰⁴ Ibid at Article 27

¹⁰⁵ Interview on how Convention on the Right of the Child and how it ensures children's rights (UNHCR, Nairobi Offices), 30th October 2018

include; the right to participate, the best interest rule and non-discrimination. These rights are much correlated to the extent that normally, they are referred to as the Triangle of Rights. Their reinforcement achieves the objective of children's survival and development.¹⁰⁶

In the Dadaab refugee camp, the best interest rule contains two main applications, thus, Decisions are made about children at an individual basis and Government policy making. On government policy decisions, Article 3 of the CRC necessitates that all child related concerns are primarily to be made by the state. It necessitates states need to analyze the effect of each course of action on children within its jurisdiction. Since the interests of children are not normally similar to those of adults and can sometimes conflict with each other, states must carefully separate the various interests involved. Kenya is not obligated or forced to take the best strategy for children in Dadaab, but in case conflicts are identified within the refugee camp, Kenya as a state must ensure the children's primary concern is their best interest. This the government can fulfill through budget allocations, legislations and administration of the already existing government's children rights policies.¹⁰⁷

Moreover, when making discussions concerning a specific child, his best interests must be the main concern. However, certain situations require higher consideration with the child's welfare being considered. For example, children might be separated from their biological parents if necessary, in the event of negligence or abuse.¹⁰⁸ The welfare of a child is given priority over that of an adult. For instance, when making a permanent plan for unaccompanied child necessitates that emphasis is put on the best interest of the child. In determining the child's best interest, many factors will have to be well thought-out, including the desire of continuity of language and culture,¹⁰⁹ nationality and family preservation,¹¹⁰ and the desires by the child, which must be considered in accordance to

¹⁰⁶ Ibid at Article 6

¹⁰⁷ Interview, the role of the CRC in the protection of refugee children, is it a shared role by the state? (UNHCR, Nairobi Office) 30th October 2018

¹⁰⁸ Article 7 of the Convention on the Rights of the Child, 1989

¹⁰⁹ Ibid at Article 20

¹¹⁰ Ibid at Article 8

the child's maturity level.¹¹¹ The objective here is to let the child grow in a happy atmosphere, friendly family environment, understanding and love.¹¹²

3.3.1 Non-discrimination

Article 2 of the agreement necessitates that nations give respect and make sure that the human rights set to every child within the state's jurisdiction are applied without discrimination.¹¹³ This simply states that every child in a country of refuge is protected under all the CRC. Rejected asylum seekers, Asylum seekers and refugee children are authorized stipulated protection under the CRC Act.¹¹⁴ Article 12 of the CRC furthermore states that member states will guarantee the child that is able to create their views the right to express them freely in all aspects touching on the, child's views being given due weight with relation to their level of maturity and age. The agreement offers several forms of participation including social participation in community life¹¹⁵ and family,¹¹⁶ and participation of those with special needs.¹¹⁷ Children's involvement in making decisions enables adults to make better decisions since because they are well-versed on the needs, thoughts and feelings of the children. Their contribution further meets a developmental need because by participation, those children learn about decision-making skills and as well as get the confidence to wisely use these skills.¹¹⁸

Although the CRC advocates for the promotion of different rights to children, it also highlights on relationships. In Dadaab and any other refugee camp across the globe, a child's wellbeing and the enjoyment of his/her rights is dependent upon his/her family(s) and the community(s). Family therefore is the most central group or organ of a society which puts the child's rights in the perspective of parental duties and/or obligations.¹¹⁹

¹¹¹ Ibid at Article 12

¹¹² Ibid at the Preamble

¹¹³ Article 2 of the Convention on the Rights of the Child, 1989

¹¹⁴ Interview on which category of refugee children are entitled to protection (Refugee Affairs Secretariat, Nairobi office) 2nd November 2018

¹¹⁵ Ibid at Articles 15 and 17

¹¹⁶ Article 7(1) and Article 10 of the Convention on the Rights of the Child, 1989

¹¹⁷ Ibid at Article 23

¹¹⁸ Interview on how best refugee children's rights are protected through the doctrine of non-discrimination (RAS, Nairobi Office), 2nd November 2018

¹¹⁹ Ibid at Article 5,14 and 18

The significance of the community is continually acknowledged.¹²⁰ However, throughout these guidelines, this study stresses the greatest way of helping children refugees is to support their families which are on the other hand better sustained when the community is assisted.

3.4 Psychosocial Well-being of Children in Dadaab

Articles 31 and 39 state that all kids have the right to care and protection, which is essential to their well - being, and that every child suffering from neglect or abuse of any kind is entitled to psychological, physical and social recovery. Mostly in the Dadaab refugee camp, the emotional welfare of children is affected by the care and protection they receive from their communities and families.¹²¹ Grownups in such situations often suffer significantly, a fact that can affect their capability to support their children.¹²² Sometimes parental misery ay lead to abandonment child abuse and household conflict among other forms of disintegration of the family.¹²³ Children also do face bigger risks to their psychological growth during refugee circumstances.¹²⁴ Hardships in Dadaab are chronic and children are living in endless fear might be too stressed and disturbed affecting their ability to give good care. In such cases, children end up suffering from malnutrition and related illnesses.¹²⁵ Children are not only affected by the goings on around them, but what they are denied; for instance, missing basics for their development like school and play.¹²⁶

According to Rural Education and Agriculture Development Organization (READO), a local charity organization at Dadaab, the chief worry at these camps is that it is easy for terror groups to target uneducated children;¹²⁷ Al-shabab is battling to oust the Somali government and hides away in in forests. Teenagers aged 18 to 20 and who are

¹²⁰ Ibid at Articles 20, 29 and 30

¹²¹ UNICEF, Interview on the care and protection of the refugee child at Dadaab, Held on 2nd November 2018

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Save the Children, interview on the care and Protection of the Refugee Child in Dadaab, Held on 25th October 2018

¹²⁶ Ibid

¹²⁷ Rural education and Agriculture development Organization (READO), *Report on the Situation of Refugee Youth at Dadaab Refugee Camp*, Accessed on 17th October 2018

uneducated are easy targets of the terrorist group which they easily accept. It is therefore significant to note that that uneducated youth often. The government of Kenya in partnership with the UN Humanitarian agencies has laid down protocols aimed at controlling the registration of asylum seekers and refugees that are at their youthful stage. Through voluntary repatriation and reintegration exercises, the management of the refugee youths has been easy.

In alleviating refugee problems and mostly dangers that refugee children face in Dadaab, most humanitarian agencies are closely working in partnership with the civil society organizations, the Kenya government, UN and other players in advocating for legal reforms, policy change, and resources necessary to protect refugee children in a better way. There is need to introduce the big heart campaign for refugee children initiative that will increase obligations to the funding of child protection and education in Dadaab refugee camp. This initiative is similar to one used in the protection of Syrian refugee children. The UNHCR in Dadaab seeks to reinforce the children and adults capacity, thereby so as to help the children to overcome the effects of displacement and conflicts, as well as protect them from further abuse, violence, exploitation and neglect.¹²⁸ UNHCR in partnership with UNICEF at Dadaab refugee camp seeks to raise the involvement of children refugee in the formal education and to see to it that education centers in the camp offer a safe and supportive atmosphere.¹²⁹ The Refugee Affairs Secretariat in partnership with the UNHCR is closely working at the Dadaab refugee camp to reduce procedural obstacles to birth registration, promote policies that recognize the right of all children to registration at birth regardless of their status, and has conducted activities to raise awareness among refugees on the process of registering new births. In all the five camps ta Dadaab, UNHCR has so far dispersed over 150,000 leaflets enlightening people on the process of birth registration.¹³⁰ Moreover, specialized services are urgently provided to separated and unaccompanied children, or those that experience

¹²⁸ UNHCR, Interview on the Mechanisms used in the protection of the refugee child in Dadaab Refugee camp, Held on 30th October, 2018

¹²⁹ Ibid

¹³⁰ Ibid

conflict in their schools or homes, trafficking, or gender-based and sexual violence, including who have disabilities or early marriages. Over 15,000 children in Dadaab refugee camp received specialized child protection services in the first half of 2013.¹³¹

Further on children refugee protection, UNHCR has partnered with other humanitarian agencies in Dadaab refugee camp settlement have put in place play areas which according to the UNHCR is free from dangers and fits in comfortably with the entire community.¹³² Plays are promoted by simple material contributions such as soccer. Also, there is imaginable need to offer support to parents taking care of their children and babies. Breast feeding has to be facilitated. In some critical situations, such as extreme hardships in the camp or famine, some parents are so affected that they do not even give adequate attention and interaction to the healthy improvement of their babies.¹³³ According to UNHCR staffs at the camp, children of about 10 months are predominantly susceptible. In such situations, however, the combination of child motivation programs in emergency facilities and programs like feeding programs has proved to be useful. Screening is required to identify a child whose growth has been delayed.¹³⁴ This includes knowledge of the meaning of normal development in this specific culture.¹³⁵ The study found a group of refugee mothers to be of tremendous help.

According to the CRC, all children who are able to form their own opinion have the right to express themselves freely on all matters concerning them.¹³⁶ Children will always become very anxious when they fail to understand the goings on around them. In Dadaab, there are several facets of life around refugees and about which children need to be explained to for instance; repatriation and resettlement plans, why a parent was killed,

¹³¹ Ibid

¹³² Ibid

¹³³ Save the Children, Interview on additional ways and criterions of possible refugee child care and protection at Dadaab camp, Held on 25th October 2018

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Article 12(1) of the Convention on the Rights of the Child, 1989

tracing efforts, refugee status determination, the fate of a loved one, why their family had to run away, the rules of camp life among other concerns.¹³⁷

There is always a connection between the psychosocial well-being of a refugee child and right to participate. For instance, when a child becomes depressed, upset or anxious, they can effectively lose the right to participate: the child might be unable to process new material, and may lack the ability to make genuine decisions.¹³⁸ At this instance therefore, the child needs counselling so as to reduce stress before they absorb information and can focus fully.¹³⁹ To remedy this, children care givers such like Save the Children encourages formation of support groups in which children have opportunities to express themselves about issues and methods of solving them. It is also central that children get to know that they are neither alone nor are they responsible for their existing situations.¹⁴⁰

Consequently, reestablishing normalcy for unaccompanied refugee children calls for a speedy search for their parents or guardians¹⁴¹ and once their parents are trace, they need assistance to ensure they maintain communication until they are reunited. The threat to their psychosocial welfare unavoidably increases when there are long or permanent disruptions between children and primary caregivers or between children and families. Losing a parent or substitute parental figure, psychologically affects a child, therefore it is important to quickly arrange for a substitute family care or immediate family reunion.¹⁴²

3.4.1 Helping Refugee Children through Families in Dadaab

The study discovered that, the absolute most ideal approach to empower the kids' psychosocial welfare is by supporting their nearby families. Outcasts in Dadaab accompany their individual creativity alongside their neighbors, companions and relatives

¹³⁷ UNHCR, Interview on Child protection, Held on 30th October 2018

¹³⁸ Save the Children, Interview on approaches of ensuring that refugee children are cared for and their rights protected, Held on 25th October 2018

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ UNHCR, Interview on the need for care for refugee children who come as unaccompanied minors, Held on 30th October 2018

¹⁴² Ibid

with a custom of helping each other. Families that are broken or focused don't meet the enthusiastic and physical needs of their youngsters. These families require bolster through their own adapting strategies and change their help partners. It is hence reasonable to reservation the family solidarity. In any case, subject to the reason or issues that undermines family. Activities to advance the wellbeing and physical security of displaced person ladies in Dadaab help to keep the detachment of mother and child.¹⁴³

In cases where family members are separated, dynamic discernibility and re - foundation and support of contact and family gathering ought to be sought after definitely. The finding of this examination demonstrates that families inside a displaced person circumstance experiences considerable difficulty addressing the requirements of kids. A missing parent means less consideration and security, less pay or sustenance, lost aptitudes and a workforce. Moreover, anguish or nervousness over the missing grown-up figure includes to the general pressure the family. Likewise, single parent families at Dadaab needs such aides in physical assignments (planting wood, shield, gardens, gathering water and building) and kid care. At the point when guardians are socially isolated, they require arrangement to meet the formative needs of their kids. This is a specific issue for the displaced people settled in for separation camps; their living quarters are a long way from different exiles and network administrations and they are likewise kept disengaged by dialect hindrances. Such requires network outreach administrations.¹⁴⁴

3.4.1.1 Parental Support Networks

Parents in Dadaab refugee camp through the UNHCR efforts have been organized to help each other in taking care of the children. The networks formed are essential in teaching parental skills. Through the support of social workers, refugee women in Dadaab are taught basic child-care and early education skills. These teachings have enabled women become Play Group leaders, to an extent of running play centers for pre-

¹⁴³ UNHCR, *Guidelines on the Protection of Refugee Women for suggested actions to promote physical security of women*, 1998

¹⁴⁴ Interview of a refugee Child caregiver on the challenges experienced in protecting refugee children, 27th October 2018

school going children. This initiative has continued to assist reunification whenever there is need. Reunification coupled with counselling has continued to help parents understand the circumstances that their child has undergone, the way to take care of problematic conduct, and the way by which to assist a child.¹⁴⁵

In Dadaab, the society is vital to kids since grownups are necessary in their daily protection and coaching. The society is therefore the support system for the extended family. Moreover, independence among the refugees makes refugee communities and families as independent as is possible. The chance to manage a personal life has significant health and psychological benefits, whereas helplessness is debilitating as well as distressing. This study found out that, in settlements and refugee camps, refugee involvement in implementation, decision-making, management and evaluation, and planning; of all assistance measures should be very extensive. This in addition is essential in assisting many unaccompanied children who are later cared for by the through foster settings. Schools in Dadaab can pay more attention to the development of the children's social skills creativity.

3.4.1.2 Child Amnesty and Emotional Support in Dadaab

In cases where children were used as child soldiers, they are demobilization and put up in rehabilitation centers. This also applies to adult soldiers. Community reconciliation is necessary and important after any civil war in order for these children to be accepted back. The emotional development of a child is adversely affected if they are allowed to stay in seclusion after such ordeals. Efforts by various agencies are usually applied in trying to bringing normalcy to the children's lives. Through this study it was found out that that refugee children in Dadaab are restricted in their freedom of movement and they grow up with dependence on maintenance and care support often in deplorable conditions.

¹⁴⁵ UNHCR, Interview on best initiatives to alleviate stress and promote wellbeing of children and parents in Dadaab refugee camp, Held on 30th October 2018

Furthermore, lengthy stay in a refugee camps may always often leads to extremes with regards to children's behavior or change in children, making them submissive and passive or violent and aggressive.¹⁴⁶ Adolescence effects particularly on children without accompanying family members, as this study found out, range from apathy, depression, aberrant behaviors or violent acts to situational psychological disturbances, drugs and suicide in some extremes.¹⁴⁷ Sadly, these children when finally, outside refugee camps through resettlements or repatriation, are not out of the hooks yet, as the study found out; these children sometimes experience serious adaptation problems leave these camps.¹⁴⁸ However, in cases where camps are unavoidable, measures that allow refugee communities to live in the best way possible are an advantage to the children.

3.5 Deteriorating Security in Dadaab

North-East Kenya is a very insecure region, and it requires special permission from the government of Kenya before anyone can travel to Dadaab. With armed bandits and Islamist militia and the other continued group struggles implies that the risk of brutality against humanitarian agents is real. According to this study, operate under strict conditions that require them to travel in escorted armed convoys. The freedom of movement for the UN staff is limited by an imposed curfew from 6 pm to 6 am.¹⁴⁹ The Kenyans Defence Forces (KDF) so far have seized a several towns captures by the Al-Shabaab militants in Somalia. In retaliation, Al-Shabaab waged grenade attacks in Nairobi and some bomb attacks on the humanitarian and police convoys in Dadaab. A number of Kenyan police officers have been reported killed and seriously injured in bomb attacks while escorting humanitarian officials to Dadaab. The study also established that, the Al-Shabaab militants have continuously targeted refugee leaders' camp directors whom they accuse of working with the police. For instance, Community Peace and Security Team (CPST) chairman was killed in 2016.

¹⁴⁶ Ibid

¹⁴⁷ Interview, Challenges unaccompanied children refugees face in the camps, Held on 30th October 2018

¹⁴⁸ UNHCR, Interview on challenges refugee children undergo in and outside the Refugee Camps, Held on 30th October 2018

¹⁴⁹ Ibid

The acceleration of attacks by militia has made the UNHCR to essentially downsize activities inside the camps and due to this occurrences, as a sign of the level of insecurity, during one of the visits in 2015, the immediate former UN Secretary-General, in his visit to the camp, Ban Ki-Moon, did not visit the inner parts of the camps and rather chose to stay inside the safe UNHCR offices in town.¹⁵⁰ The removal of numerous humanitarian workers from the camps has negatively affected the security and protection of the refugees. This nonetheless, has incited the Kenyan authorities in 2016, to force a time limitation in the camps and deployed more cops, and there were reports of beatings and arrests of refugees during police sweeps for Al-Shabaab militia.¹⁵¹ In any case, Al-Shabaab's ability to operate in and around camps, for example, Garissa seems to confirm the fear of the Kenyans who believe that Dadaab is used as a base for militant activists.

3.6 Solution to Dadaab Security Problem

The concern on security related to Dadaab has prompted some Kenyan leaders to call for the establishment of camps in Somalia to support the delivery of aid and the closure of the Dadaab operation. These calls, and the Somalia invasion, show a momentous shift within the government of Kenyan towards a more vigilant position. The then Internal Security Assistant Minister Orwa Ojodeh (late) believed that the global community need to consider establishing IDP camps inside Somalia and offer humanitarian services there. Echoing his sentiments, Aden Duale, the Garissa member of parliament, said that camps be established in Jubaland and that the Kenyan and Ethiopia's government can participate in protecting them.¹⁵²

The establishment of a stable barrier against Al-Shabaab and other militias will have a significant impact on the Dadaab community, as shelters can be located in other countries instead of Kenya. This step may lead to the closure of most Dadaab camps and the relocation of the Somali refugee population to an area declared safe and conflict-free

¹⁵⁰ Ibid

¹⁵¹ Interview on the camp situation during security breaches (Given by A Refugee Head at Hagadere Camp in Dadaab refugee camp) Held on 27th October 2018

¹⁵² Human Rights Watch, *You Don't Know Who to Blame: War Crimes in Somalia* (New York: Human Rights Watch) 2011

by the Kenyan government, thus resolving one of Kenya's most important security concerns.¹⁵³ While the forced repatriation of refugees violates Kenya's international obligations, the absence of substantial enforcement mechanisms or sanctions and the reluctance of the international community to intervene in Somalia and Dadaab may make Kenya more than willing to risk the international community more than to ignore it.

3.7 The Security of Refugee Children

According to Articles 37 of the CRC, no child shall be exposed to cruelty, torment or any debasing or brutal discipline or treatment. Kids should be secure from, sexual, military, financial and every single other kind of misuse.¹⁵⁴ Consequently, if a must, restriction is to be connected if all else fails and for the most limited conceivable timeframe. The security of kids is once in a while undermined or manhandled in standard society; particularly in circumstances with respect to exiles. Young refugees all through the world simply like in Dadaab are regularly losses of military and equipped attacks, enrolled into military gatherings, kidnapped, utilized as constrained work, inconsistently embraced, and explicitly or physically mishandled including by torment, ignored, deserted, abused, oppressed and presented to savage detainment. A considerable lot of them here and there bite the dust whiles other experience troublesome mental damages.¹⁵⁵

The feelings of trepidation to the children refugees are often worsened by their absence of personal identity and documentation, lack of protection by their own governments, and the disruption of traditional clan and communities. The possible dangers to their security come many points both within and without. In Dadaab, some of them go through abuse and mistreatment at their home setting.¹⁵⁶ The individual wellbeing of refugees, especially which for children and women, is a vital element of global security. The term refugee used herein includes utilized in this incorporates anyone needing worldwide insurance notwithstanding lawfulness or wrongdoing. This

¹⁵³ UNHCR, Interview on possible solution to the security breaches at the Dadaab refugee camp, Held on 30th October 2018

¹⁵⁴ Articles 32,33,34,36 and 38 of the Convention on the Rights of the Child, 1989

¹⁵⁵ United Nations Humanitarian Commissioner on Refugees, The Safety of the Refugee Child, 2016, Available at [http://www.unhcr-safetyofrefugeechildren .org/pdf/](http://www.unhcr-safetyofrefugeechildren.org/pdf/)

¹⁵⁶ Ibid

comprises of asylum-seekers whose refugee statuses are yet to be confirmed. Promising physical security is usually a difficult task. Occasionally refugees stay in remote places, and are imperiled by winding up as casualties of brutality or experiencing responses when convicts as far as anyone knows stow away in camps.¹⁵⁷

A fundamental security dimension of is required and should be given for compassionate players. As per the UNHCR workplaces in Nairobi and Dadaab, notwithstanding amid proceeding with clashes, kids' essential needs are met through innovative endeavors.¹⁵⁸ However, in spite of the fact that not every now and again displaced people experience troublesome occasions and because of maltreatment of intensity by approves. In specific conditions for example Kenya, 2016, thorough authorizations of shut camp rules have prompted rough maltreatment on the coldhearted and borders conditions and viciousness inside Dadaab.¹⁵⁹ Some cross-border raids especially by the Al Qaeda led Al-Shabaab terrorist group have involved abduction of refugee children from Dadaab for terrorist military recruitments.¹⁶⁰ Furthermore, refugees in is placed people in specific places, for example, European nations and South Africa are liable to xenophobic assaults on non-natives and disdain by the nearby populaces. Also, urban zones, especially those that need appropriate documentation or if their quality isn't authoritatively approved, chance being kept, captured, blackmail abuse by police or others.¹⁶¹

3.7.1 Child Personal Security

Recognize that the government of the country of refuge has the fundamental duty regarding guaranteeing the wellbeing of outcast kids living inside its visitor, global philanthropic associations and non-state performing artists have a commitment to mediate with governments in order to guarantee that they protect the freedom and security of children refugees. UNHCR in Kenya for instance, accepts coordinate accountability by

¹⁵⁷ UNHCR, Interview on the Refugee Situation at Dadaab refugee camp, Held on 30th October 2018

¹⁵⁸ UNHCR, Interview on meeting refugee children's needs during conflicts, Held on 30th October 2018

¹⁵⁹ Ibid

¹⁶⁰ Interview on Safety of Refugee Children at Dadaab refugee camp during conflicts, Held at Dadaab on 25th October 2018

¹⁶¹ UNHCR, Interview on challenges refugee children face during conflicts, Held on 30th October 2018

and large to secure the freedom and wellbeing of outcast kids in Dadaab. Humanitarian protection and assistance organizations must act if the security and freedom of refugee children are directly or indirectly threatened.¹⁶²

To ensure personal security of refugee children, the host nation's administration must make mindfulness as the sole establishment for preventive or therapeutic activities. The offices commanded by the facilitating states should screen, explore and archive misuses and infringement of outcast kids' rights. They should give high need researching and watching exile kids' prosperity, passing and abuse of children, their confinement or military enlistment and distinctive authentic encroachment of their rights.¹⁶³

Furthermore, the facilitating states should reinforce the nearness of global compassionate players in areas where the physical security and freedom of exile youngsters is in danger. Nearness empowers specialists to be alarmed quickly to issues, encourages preventive activity by outcasts themselves and may serve to hinder assaults. Reinforcing physical nearness in Dadaab for example may incorporate guaranteeing nearness along departure courses, in gathering focuses, camps, or settlements.¹⁶⁴ A presence at night may also be necessary. Additionally, the increase in the presence of other third parties like the media delegates can further enhance the protection of refugee children in Dadaab.¹⁶⁵

3.7.2 Advocacy and Training

National and international humanitarian agencies field offices in Dadaab are relied upon to go about as solid supporters for the assurance of evacuee youngsters against all types of maltreatment and mischief. They are furthermore expected to work with, support and encourage activities by governments, other UN associations, NGOs and outcast gatherings to advise people in general of the need to secure exile kids and to help the individuals who have been hurt. These offices likewise are relied upon to organize the

¹⁶² UNHCR, Interview on the organization's mandate to refugee children in Kenya, Held on 30th October 2018

¹⁶³ The Safety of refugee children in Kenya, retrieved from the Refugee Affairs Secretariat Archives (Nairobi Office), 2nd November 2018

¹⁶⁴ Ibid

¹⁶⁵ RAS, Interview on the Government's role in securing the safety of Refugees at Dadaab refugee camp, Held on 2nd November 2018

preparation of exile pioneers, other UN organization and NGO work force, government officers and security staff in issues identifying with worldwide assurance where the wellbeing of displaced person kids is in danger.¹⁶⁶ However, where dangers originate from banditry or other criminal movement, for example, the Al-Shabaab fear based oppressor amass in the district, enhanced law authorization by national specialists, for example, the Kenya para-military police wing the General Service Unit (GSU) might be required. Support and preparing are important to guarantee that evacuee youngsters and their families get full assurance of law authorization frameworks.¹⁶⁷ Also, the agencies need to offer need to the prompt treatment for social, mental or potentially other physical restoration and recuperation of kids who have endured injury because of torment, misuse or other savagery. Given the highly specific and private nature of such intercessions, field representatives of organizations should seek the guidance of qualified professionals in the preparation of restoration projects. Further, people group encompassing Dadaab are urged to report occurrences of maltreatment, strike, kidnapping, confinement and military enlistment of kids to the national specialists and furthermore to UNHCR Headquarters to empower intercession as fitting in help of applicable field office interventions.¹⁶⁸ Since measures to protect young people living in exile are difficult to achieve and require an open judgement, field workplaces in Dadaab must report point by point, backed up with as much confirmation as possible

3.7.3 Dadaab Refugee Settlement and Location

To ensure or guarantee the wellbeing of asylum seekers and refugees in Dadaab, the government of Kenya through relevant humanitarian agencies often strives to maintain the humanitarian and civilian personality of Dadaab refugee settlements or camps.¹⁶⁹ This is because the existence of armed forces of resistance in refugee or settlement camps increases security challenges. Moreover, the position of Dadaab or other refugee

¹⁶⁶ Ibid

¹⁶⁷ Refugee Affairs Secretariat, interview on Refugee safety as mandate of the government, Held on 2nd November 2018

¹⁶⁸ United Nations High Commissioner on Refugees, Measures to Ensure Safety of Refugees by Host States, Available at http://www.unhcr.org_un.pdf/

¹⁶⁹ RAS Documents on the roles of the Kenya government at Dadaab to ensure safety o refugees, Accessed on 3rd November 2018

accommodations in the area ought to be at a safe distance away from the border of the country of refugees' origin (in this case, Somalia) or conflict zones so as to minimize dangers of armed bouts, harassments and terrorist recruitments.¹⁷⁰

Although necessary, there is lack of or minimum promotion of safe living arrangement environments for children and their families in Dadaab.¹⁷¹ The humanitarian agencies in Dadaab are mandated to offer living facilities that offer families and communities the most opportunities to protect children. In doing so, they should take into account data protection needs and make special arrangements for particularly vulnerable persons, such as unaccompanied young women, women's families or abused children.

3.8 The Legal Status of Refugee Child

The provisions of the CRC in all child related actions require that they must meet the child's best interest.¹⁷² It is required that every child be registered immediately after birth and acquire the nationality of the country of birth. All children seeking refugee status must be safeguarded and humanitarian aid provided.¹⁷³ In determining refugee status, the 1951 and 1967 Refugee Status Conventions define a refugee regardless of age and do not provide for specific provisions on refugee status. Defining the status of refugees basing on the case of unaccompanied children in Dadaab is very hard and calls for special consideration. However, depending states law a child seeking asylum can be granted if they exhibit well-founded fear of being oppressed in line with the 1967 Protocol 1951 and the Convention.

In Dadaab for instance, this study found basic methods or procedures to determine claim as follows: The first is the determination of the group when the movement of refugees is too large and the state can grant refugee status to all members of the group and every child in the group receives refugee status. Two, the determination of the refugee status based on an adult's claim where the head of the household is granted

¹⁷⁰ Ibid

¹⁷¹ Interview on promotion of safety environment at Dadaab refugee camp (Given by Refugee caregiver at Kambioos camp, Dadaab), 26th October 2018

¹⁷² Article 3 of the Convention on the Rights of the Child, 1989

¹⁷³ Ibid at Article 22(1)

refugee status. In this context, the State's current practice is to grant refugee status to its nationals. However, this is not a mandatory act in any Article of the refugee treaties.¹⁷⁴ When a child only has one parent, the family unity principle applies and, in most cases, a dependent child will be given asylum based on the parent's status. But when the child is in the company of a close relative the State might not consider the relatives as family, therefore require each person to individually make a claim. Through this, the relative might be granted refugee status based on their informed fears and the child being denied refuge. In such a case the child is separated from the relatives rendering them unaccompanied minors.¹⁷⁵

3.8.1 Unaccompanied Refugee Children

While status assurance methods exist in numerous nations, they ordinarily don't consider the extraordinary circumstance of unaccompanied youngsters. All office field workplaces in Dadaab ought to in this way step up or know about this and raise the administration's familiarity with it. In any case, considering the impacts that a drawn out remain in camp or camp-like circumstances may have on kids' physical and mental improvements, the displaced person status assurance or basic leadership on the youngster's best advantages must be made rapidly, and with the proper extraordinary consideration and methodology.¹⁷⁶ Keeping young people in limbo with respect to their status can hurt them and thus their safety and their future.¹⁷⁷

A guardian or a legal representative is promptly delegated to make sure that a minor asks for displaced candidate's person's status are completely secured.¹⁷⁸ The arrangement of such guardians has not worked attractively in a few states. A portion of the issues revealed with respect to this incorporate; extensive process before a legitimate agent is selected or the lawful delegates rolled out are less fit the bill to offer lawful security

¹⁷⁴ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, (UNHCR Geneva) p.181-188, 1994

¹⁷⁵ Ibid at p.185

¹⁷⁶ RAS, Interview on the status of Unaccompanied Refugee children in Dadaab refugee camp, Held on 2nd November 2018

¹⁷⁷ Ibid

¹⁷⁸ UNHCR, Interview on the safety and care of unaccompanied refugee child, Held on 30th October 2018

towards the child's right. In such a case, support to or preparing of watchmen is fundamental. Likewise, meet for status assurance can be extremely horrible to the child.¹⁷⁹

An asylum country likewise needs to decide the age of a youngster who has or guarantees an evacuee status. Systems or projects for displaced people underneath a given age, for example 16 years are in presence yet are characterized contrastingly relying upon the state. Laws applying to the all-inclusive community should give have age restricts in classes, for example, adolescent misconduct laws. What's more, the Agreement on the Children rights just applies to individuals under 18 years.¹⁸⁰ States experience loads of trouble in deciding age contrasts locating issues identifying with mis-enlistment during childbirth or non-enrollment through and through and even absence of the enlistment report.¹⁸¹ Even in order, the authorities may question their validity. In Dadaab for instance, age assessments based on physical appearance is used incase identity documents are unreliable.¹⁸² Sometimes scientific techniques are applied, such as wrist bone or dental x-rays.¹⁸³ In such cases where scientific procedures are used, authorities must ensure their methods are accurate and safe and respect for human dignity.

3.8.2 Birth Registration, Nationality and Statelessness

As set in the International Covenant on Civil and Political Rights every child will be enrolled after birth and will have the privilege to get a nationality.¹⁸⁴ Enrollment of birth is important to empower place and date of birth to be unequivocally recorded. These central human rights can be abused in asylum conditions except if uncommon consideration is paid to legitimate tyke documentation.¹⁸⁵

¹⁷⁹ UNHCR, *Guidelines for Interviewing Unaccompanied Refugee Children and Adolescents and Preparing Social Histories*, 2006

¹⁸⁰ Article 3 of the Convention on the Rights of the Child, 1989

¹⁸¹ RAS, Interview on Documenting unaccompanied refugee children, Held on 2nd November 2018

¹⁸² Ibid

¹⁸³ Ibid

¹⁸⁴ Article 7 of the Convention on the Rights of the Child, 1989

¹⁸⁵ UNHCR, Interview on the Importance of refugee child registration, Held on 30th October 2018

Nationless children lack the Nations' protection.¹⁸⁶ His legal status, basic rights, travel outside that country and security in the country of residence are subject to state preference. Statelessness usually caused by the nation's deliberate policies not to convene nationality to children from a refugee parent.¹⁸⁷ The existence of conflicting laws regarding nationality can also be a cause of statelessness for a child. Some countries give their nationality to children born within their jurisdiction. This indicates that a refugee child born from refuge parents is eligible for nationality to the country of birth.

All children refugees in the country of asylum must be seen as being able to get the effective nationality. This clause is applied to the Dadaab community as a measure to possibly reduce statelessness and assist stateless people their rights.¹⁸⁸ According to this study, these measures demonstrate that it is the responsibility of field staff to record newborns and establish structures to ensure that they comply with the laws and policies regarding the acquisition of citizenship and naturalization in host countries.¹⁸⁹ Two, field officers seek to help in articulating claims organizing lawyers who present and defend the cases for naturalization to the judicial and administrative authorities.

3.9 Right to Education of the Refugee Child

The Convention on the Children rights further provides for the right to education for each child. The goal is compulsory and free basic education for refugee children according to their host nation's education policies. Education is a universal human right, as it is important for a child's development.¹⁹⁰ This Article requires and binds host nations to adhere to the conventions by providing quality education to children refugees.

The Education for All Global Declaration refers to refugees as an underserved group.¹⁹¹ Children refugees need basic primary education and the necessary requirements are stated in the convention, stating all the basics necessary for the child with regards to

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ UNHCR, Interview on Registration of Stateless Refugee Children in Dadaab refugee camp, Held on 30th October 2018

¹⁸⁹ Ibid

¹⁹⁰ Article 28 of the Convention on the Rights of the Child, 1989

¹⁹¹ Jomtien Declaration on Global Forum on Education for All (Jomtien, Thailand) 1990

their education. Therefore, going to school offers continuity for children, therefore contributes immensely to their well-being. It is due to this reason that education is termed as a priority in regards to child protection and assistance activities.¹⁹² There are various obstacles that may hinder this provision such as cases where refugee children are denied education due to the host nation's inability to offer universal education for its own children. Inadequate resources, Poor infrastructure, and a lack of trained teachers are also some of the reasons that hinder education to the children refugees.¹⁹³ Other factors include language, lack of school learning materials and infrastructure. To facilitate refugee children educations, no-state players stationed in the host nations and governments should work together and come up with measure to address this case.

3.9.1 Right to Quality of Education of Refugee Children

Educational quality for refugee children should be as high as for peers in the same education system.¹⁹⁴ However, if education in the country of origin is of a higher standard and voluntary repatriation is possible, the higher standard must be implemented. To prevent the local populace from resenting the seemingly special treatment given to refugees, humanitarian agencies in partnership with the host governments should ensure that the locals in equal measure benefit from this higher standard.

UNICEF has been promoting such education in Dadaab.¹⁹⁵ Top most and careful consideration should be given to the teaching language in refugee schools. This is because children learn better in their first language, it is thus highly recommended that children's first language be implemented as the language for use in these schools.

¹⁹² Interview on the importance of Educating Children, Interview held between different Agencies in Nairobi

¹⁹³ Ibid

¹⁹⁴ Articles 7 and 9 of the Convention on the Rights of the Child, 1989

¹⁹⁵ UNICEF, Interview on the Provision of Quality education to refugee children in Dadaab refugee camp, Held on 27th October 2018

3.9.2 Child Education in Dadaab

According to the UNHCR, in Dadaab, there are approximately 73,390 children were enrolled in schools. Of this, 1,761 pupils were in primary and secondary through the Accelerated Education Programme (AEP).¹⁹⁶ The Instant Network Schools by Vodafone Foundation helped in applying ICT in education for refugee children. There has also been solar powered education center in the camps in the recent years therefore enabling the refugee children have a conducting friendly learning environment. Safaricom Foundation in its part assisted in providing internet that helps the learners to access local digital content. Tertiary education is offered through vocational skills in four centers in Dadaab and about one thousand learners have enrolled.¹⁹⁷

Scholarships are given in Dadaab for youth to access tertiary education in other institutions countrywide. These scholarships are from the UNHCR and other partners as well as well-wisher groups and global foundations. About 1,200 students have so far benefitted from these scholarships. Apart from these scholarships, various organizations and institutions have come together to pool their varied areas of courses and expertise towards benefiting the refugee children in regard to their education. Due to all this support, Dadaab's education unit has forged a good working partnership with Kenya's Ministry of Education, Science and Technology and the County Education Department and education partners through consultative fora and educational management engagements.¹⁹⁸ Education for refugee children and young people is a critical responsibility of the humanitarian agencies' global protection mandate. Education also donates to establishing long term solutions for refugees by equipping them with skills that can help in rebuilding their lives. In Kenya, the UNHCR partners with a variety of agencies in the quest to ensure education to the refugee child. They include; Windle Trust

¹⁹⁶ Ibid

¹⁹⁷ United Nations High Commissioner for Refugees, *New Beginning for Refugees in a Host Country*, Available at <http://www.unhcr.org/pages/4a16b1676.html> Accessed on 7th October 2018

¹⁹⁸ UNICEF, Interview on Education for the Refugee Children in Dadaab refugee camps, Held on 27th October 2018

Kenya, Danish Refugee Council, CARE-International, RET International, Save the Children International just to mention a few.¹⁹⁹

However, the importance of promoting the participation of children in their own protection cannot be overestimated. In addition, supporting advocates, including young people and adolescents, who work for positive change in refugees and local communities are therefore key strategies for the child protection responses of humanitarian agencies. This chapter also emphasizes the importance of humanitarian facilities to underline the accessibility and availability of special services for all refugee children affected by vulnerabilities. They do this by ensuring that services such as child welfare, family reunion, child welfare and welfare are available, and that children are well-trained and well-prepared for this important and sensitive task.

¹⁹⁹ UNHCR, Interview on provision of education to refugee children at Dadaab refugee camps through partnership, Held on 30th October 2018

CHAPTER FOUR

PROSPECTS AND CHALLENGES FACED IN THE APPLICATION OF LEGAL INSTRUMENTS TO PROTECT RIGHTS OF REFUGEE CHILD

4.1 Introduction

The Cartagena Declaration of November 1984 on Refugees stated that the definition of refugee not only covers the elements of the 1951 Convention and the 1967 Protocol, but also covers people who have fled their countries because their security, their lives or their freedom threatened a massive violation of human rights.

Today, the discussion has turned to the consideration of UNHCR and the other United Nations. Intrinsic strengths and merits of the human rights approach to the problem. It is becoming increasingly evident that such a methodology is not only useful for strengthening and improving the current Refugee Law and anchoring consistency with its arrangements through semi - legal human rights implementation bodies, but may also make it more compassionate and compelling. Since the current refugee problem is a global problem that affects not only people in their relations with states, but also states in their relations, a law is needed that not only identifies with legal status and protects refugees, but also includes the refugee problem overall, a solution - oriented law that forces collective obligation for all nations. It is the conviction of this research that a perception of human rights regarding the refugee problem will be useful in the reconstruction of the current mechanisms on these lines of law. In addition, human rights - based approach could be helpful in providing the basic legal basis for the safety of refugees in countries that do not comply with the 1951 Refugee Pact and the 1967 Pact.

4.2 Implementation Challenges for the Child Protection Framework

Deciphering global and domestic lawful measures into practice uncovered numerous executional hitches. CRC advises nations on the need to reassess their national child protection frameworks to guarantee additional safeguard which they should establish to fill existing security loopholes for all children, including for children refugees, stateless

children and children in migratory flows. Common requirements that child protection falls within the scope of family responsibilities and not that of the state can lead in some countries to a climate of low political will and weak public support for changes in child protection rules. The absence of government capacity in many states, regardless of whether destination or transit states, have not established the capacity to build effective frameworks for identification, referral, care plans, guidelines, procedures and protocols for instances of children in mixed migration flows. Systematic capacity building and coordination are crucial, with the ultimate aim of improving the capacity of the state to cope. This is sometimes due to a lack of state capacity of understanding the problems children face in migratory movements. Systematic capacity building and coordination are essential to improve the capacity of national and local officials to respond to significant migration flows involving children.²⁰⁰

Many states by large face the challenge of child age assessments, while several others have set up special processes for the support and protection of children in mixed migration flows, they may be inaccessible to these services in cases where children fail to demonstrate their age.²⁰¹ Consequently, matters around age valuation and documentation are significant for children in such cases. There is no scientific age assessment system at the moment leading to a wide marginal error in age establishing children's age. Through the system currently in place some children miss out in getting certain services yet they have the right to the same but cannot determine their exact age. For instance, according to Separated Children in Europe Programme (SCEP), assessment of age comprises developmental, physical, cultural and psychological factors.²⁰² Independent professionals familiar with the ethnic/cultural background of the child perform an age assessment test in camps where an age assessment is required. However, precise consideration ought to consider guaranteeing they are gender-appropriate. Superfluous exposures to intensive age assessment techniques such as x-ray beams might be conceivably hurtful for the

²⁰⁰ Peter Lachman, *Child Protection Challenges* (Lessons from the North), 2002

²⁰¹ Ibid

²⁰² Lazarus, R.S. *From Psychological Stress to the emotions: a history of changing outlooks*. Annual Review Psychology, P.44, 1993

children. Moreover, if children under 18 years don't see an advantage in professing to be minors, they may likewise dishonestly guarantee to be grown-ups. Humanitarian agents in charge of children globally regularly feature particular protection needs in asylum the processes. It is however important for different players to recognize that a child appearing to be a migrant needs global protection.²⁰³

4.2.1 Child Refugee Protection Challenges

The inclination for state immigration policies to outlaw uneven migration exposes children in mixed migration flows to security dangers. In various nations, children in mixed migration developments might be confined as a requirement of the migration approaches of a nation. Accordingly, prolonged confinement of children interferes with their growth and development and may cause mental and psychological impacts on the children. At times, children are kept in cells with grown-ups therefore putting them at further danger of exploitation, including sexual based violence. UNHCR rules provide that, detainment for children should only be applied by states as a last resort.²⁰⁴ Children should not be detained according to the immigration laws. As part of its protective mandate, UNHCR aims to prevent asylum seekers, refugees, stateless IDPs and others from becoming victims of trafficking in most countries. The UN humanitarian agency in addition has a mandate to see to it that people, (children included) that have been trafficked and are afraid of being persecuted when they return to their home country, or those that have the fear of being trafficked, are recognized as refugees and are treated according to the laws regarding refugees in line with the existing regulations.

Laws governing the activities in contradiction of trafficking in the global child protection system are spearheaded by government policies which are mostly centered on the criminalization and indictment of traffickers instead of protecting the victims. Trafficked children might be given misleading information or trained to guarantee that they lack travel documents. More so in this way, children might fear backlashes from

²⁰³ Detrick, S. *The United Nations Convention on the Rights of the Child guide to the "travaux pre'paratoires"*, (ed.) 1992

²⁰⁴ UNHCR Executive Committee Conclusion No. 107 (LVIII) issued in 2007 on children at risk

their reprisals in the event that they report their circumstance. Therefore, the exact number of trafficked children may not precisely reflect the genuine numbers. Even as it is, the general lack of access their guardians in host nations for the Unaccompanied and Separated Children (UASC) undermines the effective protection of the children. This likewise incorporates access to the provision of essential care facilities including proper transitory facilities, health, education and psychosocial care. The lack of guardianship also causes delays in solving children and hinders the likelihood that a child will apply for asylum. An autonomous guardian should therefore be selected immediately for UASC for free.

4.2.2 Lack of Documentation

The lack of certification of children refugee can put them at a greater jeopardy. Children without birth certificates or necessary identification usually find it hard to get vital basic services. They may also find it hard in proving their nationality in their adulthood. According to the UNHCR, less than 50% of newborn babies in refugee camps from refugee parents within the camps are given birth certificates. The challenges of registering children at birth may be related to the availability or accessibility of authorized birth registration processes in the country of destination. Lack of awareness on the requirements for birth registration often present obstacles to refugee parents. To counter this, the UNCHR had developed a pact with the refugee host nations ensure that all children globally access the international protection offered by a lawful identity within the country's jurisdiction. Moreover, most state executives are aided in creating the needs around registration of births for refugee children who arrive as asylum seekers or refugees.²⁰⁵

4.3 Best Interests Determination for Refugee Children

In UN humanitarian agencies' efforts to improve children refugee protection, they tried to implement the model of the 'best interests' as basic consideration in accordance with Article 3 of the CRC. The CRC gives the key responsibility to states to see to it that

²⁰⁵ Ibid

the best interests of the child is a key consideration in all decisions made with regard to children. Nonetheless, at times refugee children often lack access to domestic child protection systems; therefore, some UN humanitarian agencies have taken upon themselves to establish procedures for what is best for the refugee child. The best interest determination process for the UNHCR encompasses setting up of Standard Operating Procedures (SOPs), as well as a BID panel. This board usually comprise three to five experts in child related issues tasked with making child friendly decisions.²⁰⁶ The guidelines for determining the best interest serve as a foundation for improving national capacity to establish processes as part of national child protection systems, including addressing the protection needs of refugee children. A resource pack by The Action for the Rights of Children (ARC) was issued as a tool for training in 2009 by six UN agencies. This training pack informed other humanitarian actors about international legal instruments for the children rights. This agreement is a comprehensive training tool developed for humanitarian contexts. In addition, the organization shares approaches for the response, monitoring and prevention of issues arising from children in a migration context relating to: exploitation and abuse; landmine awareness; education; sexual and reproductive health; children with disabilities; UASC and children associated with armed forces.²⁰⁷

4.4 Improving National Child Protection Systems through Partnerships

The approach of child protection system calls for the unbiased access by refugee children to national child protection methods, and aims at supporting and strengthening state capacities where necessary. This approach further requires improved management and partnerships at the national level, particularly with UNICEF, state agencies, and other child protection players. Between 2008 and 2009, efforts by humanitarian agencies in implementing a system focused on the development of a document on child protection mechanism and field tests were conducted. However, to come up with a more comprehensive tool for child protection, UNICEF has partnered with other humanitarian

²⁰⁶ Ibid at p.53

²⁰⁷ UNHCR, *Guidelines on Determining the Best Interest of the Child*, 2008, Available at <http://www.unhcr.org/refworld/docid/48480c342.html> Accessed on 8th October 2018

agencies. This system is applicable in Ecuador where there has been an improvement in child protection standards and operating procedures. It has laid a foundation for improved coordination between the governmental, non - governmental and UNHCR counterparts as part of a system aimed at the protection of refugee children.²⁰⁸

UN humanitarian agencies like the UNHCR and other executing partners have worked to come up with good practices aimed at protecting the refugee children with the help of the states. A number of cases are in point. First in Mexico, for addressing the large number of separated and unaccompanied refugee children going across the southern border of Mexico as part of mixed migration flops, the government Mexican, with the support of international agencies, has launched an initiative to increase the protection space for refugee children. The Inter-Institutional Consultation on women and unaccompanied children migrants as well as child protection officers which included eleven different national and international agencies, which had a great influence on setting up and training groups of national child protection officers. However, in as much as this practice is encouraged, the independence of the children protection officers are often made weak through their association with the National Institute for Migration hence their capability to promote children is reduced. Nevertheless, the children protection officers have an important role in recognizing and solving the particular protection essentials of children.²⁰⁹ However, increasing the national child protection capacity in Mexico has reduced the risk of abuse, exploitation and trafficking, with child protection officers actively involved in monitoring and more specifically the cases of refugee children.

The second conference of experts for the UNHCR was held in Tunis, Tunisia in July 2009, with a ten - point action plan on the protection of refugee children. Experts from governmental and non-governmental organizations and other agencies have been invited by IOM, IFRC and UNHCR to discover ways of ensuring respect for the all immigrants’

²⁰⁸ Children’s Bureau, *How the Child Welfare System works* (Washington, DC:US Department of Health and Human Services), 2013

²⁰⁹ UNHCR, *Refugee protection and mixed migration: The 10-Point Plan in action*, (Geneva), p. 104. June 2009

human rights. The round table discussed about inter-organizational relations with aims at identifying the best ways of protecting displaced persons with special needs. Arrival phase involves address to different needs of people such as increased availability of reception arrangement and further ensuring the availability of basic necessities at the entry points and enhanced cooperation and reference mechanisms to relevant processes and procedures.²¹⁰

Moreover, in Morocco, children born to immigrants' parents often have difficulties when it comes to getting the necessary documents. The process of getting citizenship in Morocco is very difficult owing to the laws based on *jus sanguinis* or descent for foreign nationals and their children. The UNHCR and its partners have, however, used the rewritten nationality law to seek citizenship for children born to mixed parents. Despite the effort, a few of these requests successful. This shows the challenges experienced by children born to refugees.

4.5 Impact of Human Rights Principles on Refugee Protection Mechanisms

This research shows that, like anybody, refugees have rights and fundamental freedoms established within human rights treaties, declarations and covenants and even in Kenya's Constitution, 2010. From the perspective of this study, the obstructive practices implemented by countries with regard to refugees are legally unjustified. Therefore, the international community must take initiatives to respond positively and constructively to the human rights concerns of refugees. A victim-oriented approach is necessary.

There is also a need for better collaboration between the UNHCR, Human Rights High Commissioner and the United Nations. In the recent years, for example, the UNHCR has taken up various human rights principles under its obligations in a quest to strengthen its cooperation with international and regional human rights mechanisms and humanitarian support to internally displaced persons.²¹¹ As part of efforts to hinder refugee flocs therefore, the United Nations and other inter-state bodies, in particular

²¹⁰ UNICEF, *The State of the World's Children*, (UNICEF: New York) p.133 2009

²¹¹ Brian Gorlick, *Refugee and Human Rights*, Seminar (Spring), p. 19, 1998

NGOs are committed to provide technical support to States within the general human rights framework because the protection of refugees has now been recognized as part of the UN.

4.6 The Problems and Constraints for Refugees and Legal Instruments

In Africa, the UN's humanitarian agencies' operations and activities have not changed in character and nature from whatever the organizations have undertaken before, including; to deliver protection and support to refugees and to encourage durable solutions.²¹² The UNHCR for example has come across important challenges to the way that it partake these duties. The sources of such challenges as this study established are as follows: First is that the setting under which the UNHCR discharges its' mandate and operations have dramatically changed. Second, addition of other humanitarian necessities, are being increasingly contrasted to the responsibilities, activities and mandate of UNHCR. Third, there is a clear shift in politics and policy perspectives on the refugee problem across the continent. Finally, there are difficulties in finding solutions, especially for long-standing refugee caseloads, which increasingly take precedence over the concerns of the UNHCR, the states and the refugees themselves.²¹³

This study considers these challenge factors to identify gaps or inadequacies in the legal system that provide the basis and framework for the protection of refugees and the activities of humanitarian agencies. From the perspective of this research, however, the complexities resulting from an admittedly growing and increasingly complex humanitarian crisis do not essentially reflect the inadequacy of either the refugee law or the agencies ' mandate in view of the need for and provision of international protection.

²¹² This is the mandate of many humanitarian aid workers especially in Kenya caring for refugee children at Dadaab refugee camps

²¹³ UNHCR, Findings from the interview held at the UNHCR offices in Nairobi regarding the refugee children at Dadaab refugee camps

4.7 New Challenges, Constraints and Complexities

The humanitarian catastrophes related to the disturbances in Somalia, Burundi, Ethiopia, South Sudan, Eritrea and DR Congo epitomizes some examples that have compelled calls to reconsider traditional legal mandates, approaches and regimes. In similar circumstances, there has been a nearly complete breakdown of every appearance of civil society. In particular, the structure of the state has dissolved, and the national system of order has been ruined. An efficient national, political and exporting authority is no longer available. Instead, a diverse crew of liberation movements, warlords, armed bands or chiefs, militias and often plain thugs violently compete at different levels of competence, ideology and objectives. A certain level of structural and political normalcy exists in several African states along with a serious dysfunction in main sectors or institutions of society, especially social and economic ones. While this catastrophe may not essentially compromise the physical and legal populations' protection, its social security and material is usually threatened at the most basic level. This however is a mix-factor approach in the purview of the UNHCR which is authorized to offer protection and assistance to repatriates/returnees and refugees.²¹⁴

In addition, several factors can be considered with regard to the changing political and policy outlook for refugees. The characteristically massive and sudden flows of refugees initiated by fierce civil conflicts and the societal disintegration in Africa are considered to contribute to serious security glitches in the host nations. One of the main explanations for this is the mass of risky weapons that the displacement takes place in the refugee hosting communities.

Furthermore, given the continent's absence of strict government mechanisms over aspects relating to the state matters, there is recurrent competition between nationals and refugees on matters including land, water, public education and health facilities, grazing areas and firewood. As more and more countries engage in open, contradictory policies, refugees are suspected of being cruelly manipulated to participate illegally in the outcome

²¹⁴ Kibreab, Gaim, "Local Settlements in Africa: A Misconceived Option?" *Journal of Refugees Studies* Vol.2 No.6 p.650-700, 1989

of elections, referendums or constitutional votes in favor of one party or another.²¹⁵ In the context of Africa's particularly desperate economic performance in post - Cold War economies, asylum states and their populations are increasingly becoming aware of the economic and resource constraints of receiving large numbers of refugees. All these questions contribute to an increasing politicization of this question.²¹⁶ In addition to other constraints on the solution considered in this study, the longer the refugee situation continues to challenge solutions, the more likely it becomes uncontrollable and chaotic.

4.8 The Importance of Refugee Laws and Protection

As continues carnage in Somalia, South Sudan and some African countries illustrates, the capability to look for and get the material and physical safety of another authority, particularly alternative nation, more often the only alternative accessible to people caught in most political, cultural and other upheavals in Africa to assure their survival. Philosophically, is a truism that it is far more effective in all such cases to prevent the root causes of the upheavals and, consequently, the flow of refugees before or after they have started. As long as the refugee flow continues, the chances for these mediations have passed and do appear to be feasible in practice for a variety of reasons. However, it is clear from this strict view of refugee law and the international humanitarian regimes' mandate that they are both planned to serve a similarly precisely and strictly defined need. This means, the legal images of the problem of refugees viewed in this study differ considerably from those of the problem of refugees observed in an extensive political sense. The study argues that the scope of diversity and the various tasks involved in solving or answering the problems experienced by refugees have never been envisioned for the international protection system, the asylum institution and purposes of refugee law.²¹⁷

²¹⁵ Ibid

²¹⁶ Ibid

²¹⁷ Lewis, C. *UNHCR and International Refugee Law: From Treaties to Innovation* (Abingdon: Routledge), 2012

The combination of the observed and theoretical information in this study jurisprudentially balances international protection and asylum on one hand then prevention of concepts in country protection on the other. In Kenya specifically, an organization like the UNHCR becomes very subtle to embrace both concepts clearly within an undistinguishable frame of new approaches to the problems associated with refugees. The appearance that inside this legal matrix, policy, the two concepts are integrated or that one is deliberated to give a better and greater ability to solving problems relating to refugee compared to the others. From the reasons given in this research, such a mix is particularly attractive for states as a method of argumentation that allows a departure from the obligations of housing, for ideas of countermeasures, the clarity and definition of which are not yet necessary, the solidity that would legitimize this substitution as a truly useful answer to questions of exile or, in particular, the security conditions is realized.²¹⁸

Therefore, asylum and refugee laws and international protection and the mandates of the international humanitarian agencies therefore very unique and specific mechanisms existing to the global community to react to limited and specific facets of humanitarian emergencies like the children refugee crisis in Dadaab and any other refugee camp across the globe. The lawful, operational and institutional failure of the global mechanisms to react to other features of the catastrophe political, including, humanitarian and military aspects does not lead to an inadequacy of these specific instruments. This confirmation is principally crucial and important because: for political and other reasons, states seek all kinds of legal and other political rationalizations to weaken the establishment of asylum and refugee protection; especially in Africa, without such confirmation security, socio-economic and political tensions would seriously jeopardize refugee and asylum protection policies; no actual substitutions, including those that often appear or stand to stand against refugee and asylum protection, such as human rights monitoring, prevention, humanitarian interventions and country protection have been revealed to be feasible in a way that can be achieved in a way that is effective, comprising of those that

²¹⁸ Hathaway, J.C. *The Law of refugee Status* (2nd ed.) Cambridge University Press, 2015

often appear to stand against refugee and asylum protection, and no real substitutions, including those that often stand or appear to stand against asylum and refugee protection, have been shown as feasible in a way that seriously undermines the protection of human rights, the protection of countries and the humanitarian intervention.²¹⁹

The rather firm way where the refugee law, the need for international protection and children rights law have been observed in this research mean that there is no ready acceptance of criticism of the refugee law and other legal instruments that protects the rights of refugee children which are currently vague. Criticisms often points at inadequacies of the customary refugee law in claiming its alignment to the duties of the refugee nation, that it does not concern the situation in the mother country or the obligations of the said nation. It is doubtful these perceptions are lawfully viable. Moreover, the obvious standards which might be evoked in different human rights and global law circles could additionally uncover the narrowness of such accounts.²²⁰

The essential of the methodology used in this chapter is that the law on refugees alongside other global legal instruments for refugee child protection must necessarily be functional. These mechanisms must highlight the duties of the refuge nation and the global community, since the failure to provide actual protection in the mother country triggers it. The protection and safety of refugee children from forced return to danger must also be emphasized. Nevertheless, it is clear that asylum institutions and the protection of refugee children are under massive strain, especially given the ideological and political changes in the perception of the refugees' problems after the Cold War ended. It is therefore also clear that the reaffirmation of the protection of asylum and refugee rights for children are not simply a rhetorical exercise. On a legal theory point, however, it is considered that the current trend to use the character or magnitude of the refugee problem, burdens, its problems and other legal concepts, such as the State responsibility, to unilaterally regulate the extent and nature of the States obligations under the law concerning the refugee is lawfully wrong. Both the legal and political

²¹⁹ Hathaway, J.C. *The Rights of Refugees under International Law*, Cambridge University Press, 2005

²²⁰ Wouters K. *International Legal standards for the protection From Refoulment* (Antwerp: Intersentia), 2009

solutions to these hitches lie in the views of this research, in the concepts of international solidarity and burden - sharing that have historically established the solution of refugee problems. At the same time, consideration must be given to the other military, political, legal and economic areas that are relevant to the problem of refugees, as they are agreed on in a more political, general and international sense. Clearly, all these fields have an interface.²²¹

4.9 The Ineffectiveness of Legal Instruments

Discussions about operations of global organizations in multifaceted emergency cases, the request or non-use of lawful standards/instruments, their scope and nature, the obligations of the many organizations and other incremental issues set at protecting the rights of the refugee child tend to dominate. Nevertheless, the perennial refugee situations in Africa and around the world literally show that such issues are not closely as significant as the capability to work and become effective, even by bodies or organizations that have a vibrant legal responsibility to act. In UNHCR case for instance, it has remained difficult sometimes to access returnees or refugees in Liberia, South Sudan, Burundi, Rwanda, and Somalia, and offer assistance and legal obligations which are equal. The protection that UNHCR can offer as a humanitarian institution is based on the basic conditions of the stability of citizens, the rule of law and stability. The conditions of conflict, war, and the kind of insecurity observed in many African states actually make it impossible for the UNHCR to function. Even if it was able to function, it would not be clear whether the protection it could give could be effective in meeting the safety necessities of the vulnerable populace.²²²

An obvious gap can be identified according to the challenges being experienced by the refugee children.²²³ While a lot has been completed to emphasize the link between displacement and resolution issues and human rights and governance and political issues, there is less willingness to recognize the role of economic factors, particularly the impact

²²¹ Ibid

²²² Crawley H. *Refugees and Gender: Law and Process* p.22-77, 2001

²²³ Westra L. *The Limitations of the Present International Instruments for the Protection of Refugees*, in *Towards a Refugee Oriented Rights of Asylum*, p.15-50, 2015

of a highly unfair global system of economics. Few would reject that today in Africa, economic and social concerns, particularly lack of development and the general decline of the state of poverty inhabit an imperative place in the social breakdown, conflicts and human rights abuses in the continent. In practice, this research suggests that the use of typologies for every condition could also be considered to be the most practical and useful approach to the topic discussed in this chapter. This approach would specifically identify the problems and needs related to refugee children's rights and determine the necessary responses, including those that organizations are best qualified to take the required action and, the measures to be taken and the question.

4.10 The Cross-Mandate Approach in the Horn of Africa

The UNHCR and other international humanitarian agencies have developed a cross-mandate methodology for their work in the Horn of Africa in order to tackle the problems associated with the ineffectiveness of legal instruments designed to protect the rights of children refugees. Simply put, this means that the NGOs, UN system and relevant government agencies must combine their relevant material, administrative and financial capitals so as to meet the development and humanitarian needs of all the needy people (including children) in areas where returned persons or refugees may be. This approach is largely based on effective local integration in order to promote self - confidence and stability among the poor. Although a detailed research of this approach has not been carried out to date, the fact that interagency coordination and cooperation challenges can be attributed, the fact that agency systems lack of focus in decision-making therefore failing to identify flows in the standards for entry and exit.

Legally, the relevant issues raised by this study can be addressed in the following series of underlying questions: in general, how are UN humanitarian agencies going on to fulfill their protection mandates when lawful distinctions have been ignored (monitoring of human rights); are the distinctions only abandoned for assistance but not for p purposes? If so, what mechanisms are used for protection purposes when populations are intermingled indistinguishably? Is local integration merely a program or a legal notion in the cross-mandate approach? If so, what is the legal status of refugee children (are they

quasi-national?) under the cross-mandate approach; if the status of refugee children continues under the cross-mandate approach, how does it end? If new children seek asylum, is the determination of the status of refugee children nevertheless an important consideration? Recognizes the rights acquired for the acquisition of citizenship?²²⁴

4.11 Voluntary Repatriation

Philosophically, voluntary deportation is still seen as the best solution for refugees however, its feasibility is increasingly questionable in at least some situations. To support this concept, several situations may be considered. A situation of Rwanda, for example, where the official position of the Rwandan Government regarding local refugees (or IDP) for several years stated that any possible solution would not include returning from exile. Familiarly, refugees' failure to exercise their official return makes them devise ways of forced returns possibly leading to the invasion of Rwanda by Rwandan exiles in 1991.

In addition, the related restraint relates to the major ethnic, geographical and political reorganization of communities or countries of origin so that refugees could not return either way. In such cases, refugees may not have a place or even a country to return to; precisely they would not return to the same social, cultural and historical situation as before, even if they could return to a place. These associations are important for the effectiveness of returning as a long-term solution in emotional and practical terms. Additionally, the decline and destruction, that the potential return or communities of origin may have suffered means that a dignified return needs a massive investment in rehabilitation and recovery. Likewise, if people are returned without guaranteeing them the means of sustainability, relief support should continue to ensure that they are not merely transferred from one emergency situation to another.²²⁵

While the original source of danger (such as a war or conflict situation) or persecution (such as a state authority) may have changed in many societies, it may not be possible to safely return, as in the case of North - West Somalia and Angola, due to the high

²²⁴ Campbell, R. *Nationalism, Law and Statelessness: Grand Illusion in the Horn of Africa* (Abingdon, UK: Routledge), p.223, 2014

²²⁵ Stein, B.N. *Durable Solutions for developing Country Refugees*: International Migration Review, p.270-286, 1986

prevalence of land mines and other unexploded munitions. In all these cases, there is a gap between the formal legal criteria for repatriation and the obligation regime, which would ensure the best conditions for realizing the right to return to one's country, in physical and material security conditions. Therefore, the question is in what legal situation children refugee are placed if there is no longer an effective place or country of return due to fundamental regional, ethnic or political restructuring? What principles apply and how can the international community approach these refugees ' solutions? What are the principles of law then applied in terms of a nationality lost or forcibly attributed? Finally, how does international law relating to armed conflict relate to international humanitarian law governing repatriation and refugee aspects in these situations? This chapter did not contain an attempt to answer these questions. However, they are of fundamental importance for the entire field of refugee solutions and currently dominate the political and academic thinking of UN humanitarian agencies and the reality on the ground. The answer to these questions will undoubtedly be decisive in the extent to which the rights of children refugee during repatriation remain the best and most feasible solution for the refugee children rights, which is a problem in Africa. General international humanitarian and Refugees laws can contribute to this process by clarifying the legal obligations, rights and principles applicable.²²⁶

In sum, the fundamental importance of this chapter dwells in the functions of traditional refugee protection laws which according to this study must not continue to be reaffirmed. The study forcefully underlines inherent danger in a contrary approach, that refugee law (and especially on the protection of refugee children) must necessarily be strong. However, for those outside the protection network of the 1951 Agreement and in those cases, it was never intended to cover, it gets clear that any significant clarification can only met through building bridges initiatives. These necessitate ignoring traditional regime limitations, by implicating also the global community and of state of origin as a whole, and then addressing the entire problem before and after flight. In short, it is not a

²²⁶ Walker, R.J. *State Sovereignty and the Articulation of Political Space/Time* (Millenium: Journal of International Studies) p. 450-465, 1991

matter of replacing one legal system with another, but recognizing that the sheer complexity and scale of the existing problems faced by refugee is not just on the narrow base of the inherited international protection system and the practice of The Last Decade this steady expansion of the approach made clear.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

Children are affected by migration in at least three ways: they move with their families; they migrate alone, without their parents or legal guardians; or they are left behind by migrant parents who have no other option than going abroad to secure the means of subsistence for their family. In all these cases, children face specific challenges to the rights to special protection and care. Therefore, it is vital that policy and programme reactions to the refugee movements include provisions that grant children the continuum of care and access to relevant support services. Only in this way can children continue to flourish amidst migration and be positively integrated in whatever community they live in.

This chapter discusses summary findings established in the entire study in line with the broader objectives of analyzing the effectiveness of legal instruments of the child refugee as outlined from chapters one to four. Moreover, it specifically summarizes lessons learnt and knowledge established concerning the nexus between rights of the refugee children and the effectiveness of legal instruments in place to promote and protect the same. This study summary is grounded on the objectives which seek to assess and analyze the legal mechanisms set out towards the protection of the child refugee in Kenya; the protection and promotion of rights of the refugee child in Dadaab and prospects and challenges faced in the application of legal mechanisms to protect rights of refugee child. Consequently, this chapter makes a well-informed conclusion based on the empirical evidence established by the study and finally provides policy recommendations tailored to suit specific areas of improving or strengthening refugee child protection.

5.2 Summary of Findings

This part outlines the summaries of the findings from each chapter of the study. Specifically, it gives the summary findings of chapters two, three and four.

5.2.1 Domestic and International Legal Instruments for the Protection of the Refugee Child in Kenya

Kenya's legal system plays a dynamic and vital role in making part of or accommodating the international legal system as part and parcel of its laws. This is testament to Article 2(5) and (6) of the Constitution of Kenya, 2010. Moreover, Articles 26, 45 and 53 which speaks of fundamental rights to life, family and basic fundamental rights of Children caps it all and tells of the import of rights of human beings from all walks of life. Hence, Kenya as a State has the obligation to effectively apply the legal instruments adopted both domestically and internationally. However, despite the fact that Kenya's national laws caters for fundamental rights of all children within the confines of her boundaries, there still exist key holes, prominently in mainstreaming and adhering to the applications of effective laws to Protect children's rights in refugee camps.

International regimes assemble under the body the United Nations to effectively pass laws that cater for the rights of human beings of all races in the world. The international community under the UN umbrella recognizes the rights of children across the globe which they have enacted, the laws which have continued to guide both non-state and states players in the effective applications thereby ensuring that children live comfortably without any fear of displacements into refugee camps due to violence and conflicts. Effective legal instruments which are meant for the refugee child has so far managed to restrict than to facilitate, hence affected refugee children negatively instead of facilitating them to achieve their potential.

5.2.2 The Promotion and Protection of Refugee Children Rights in Dadaab

The UN humanitarian agencies, together with host governments are required to continue spearheading the protection of children and mostly in response to the refugee children crises within their regions. The international humanitarian agencies also need to

be dedicated to working together with the government and its partners. This partnership will strengthen the national comprehensive child protection systems that will resultantly universally serve all the children. Also, community members, families and children have roles to play in the prevention of violence by establishing community schemes and systems aimed at fostering unity and bolstering education, demystifying norms and cultures that encourage and endorse violence and exploitation on children. However, the importance of promoting the participation of children in their own protection cannot be overestimated. Supportive advocates, including youth and youth, who are committed to positive change in refugees and local communities, are also key strategies for the response of humanitarian organizations to child protection. Humanitarian agencies are expected to be key to ensuring that adequate specialized services are available to all refugee children facing protection risks. To do this, they ensure that services such as reunification and care placement, specialized family research and child protection services are available and that employees working with children are trained and equipped with the tools needed to handle this crucial and delicate work.

Refugee children are effectively protected by: Ensure access to global protection; strengthen procedures to ensure that children's best interests and children's views are central to all matters affecting their future and welfare; strengthening procedures aimed at promoting children's right to family unity and responses to the needs of unaccompanied and separated children; registration and documentation immediately after birth; investing in national child protection mechanisms to toughen their quality and capacity to reasonably protect refugee children; supporting programs providing specialized protection services to refugee children; working with relative partners to call for increase in resource allocation to the refugee child and Finally, invest in improved knowledge and information on the issues of child protection and effective responses.

5.2.3 Prospects and Challenges Faced in the Application of Legal Instruments to Protect Rights of Refugee Child

The functions of traditional refugee protection laws must not continue to be reaffirmed. The inherent danger in a contrary approach that refugee law (and especially on the protection of refugee children) must necessarily be strong. However, for those that are outside the protection boundaries of the 1951 Pact and in those instances, it was unintended to cover (including; mass extermination of a population due to brutal government policies, complete state system breakdown, voluntary repatriation schemes on a large scale are considered the only feasible options), it becomes clear that any meaningful solution can only be found by building bridges. This requires moving beyond the boundaries of the traditional regime, concerning the international community and state of origin the as a whole, and addressing the whole spectrum of the problem from before flight to after flight. It is therefore not just a question of changing legal regimes, but also of recognizing that the sheer complexity and magnitude of the problem of contemporary refugees cannot be tackled solely on the narrow basis of the international protection system inherited, and the practice of recent decades has illustrated this gradual expansion of the method.

5.3 Conclusion

People are entitled to universal human rights in all circumstances, just like everyone else. International law provides special protection for migrants, asylum seekers and refugees to enable them to exercise these rights in countries of origin, transit or destination. In practice however, their rights are often infringed and treated arbitrarily and discriminatorily. Children are no exception to this, although the Convention on the Children rights places on states the duty in ensuring that all children enjoy their rights, regardless of their parents or their own migration status. The practice of holding migrant or refugee children in detention for weeks or months as reported in both developing and more prosperous states in Africa and beyond, is only one example of child rights violations happening worldwide.

The situation of Dadaab refugee children in Kenya is not left behind, which remains a cause for concern despite the efforts of the Kenyan Government and its partners, in particular UNHCR, UNICEF and other humanitarian organizations. It is now very early for the government of Kenya and the United Nations humanitarian agencies to consider the updating of one of the following sustainable solutions proposed under the refugee protection regime: voluntary repatriation to the country of origin, local integration in country of asylum and resettlement in a third country. On the ground, it is reported that over two hundred new refugees (half of which are children) are registered on weekly basis in transit centres and/or in Dadaab Camp. None of the three solutions can be envisaged in the immediate as long as the situation of refugee children in Kenya still is an emergency. The efforts to hold the crises in Somalia and South Sudan, among other neighboring states within the Eastern and Central Africa should finish the grounds which continuously force people flee their home countries. Therefore, the insistence to compel these state's political actors, especially those in power and oppositions to settle their existing disputes and reach a concession on comprehensive management of political affairs for the benefit of their nationals. This however should greatly apply in Somalia as the many of children refugees in Dadaab camp are from Somalia as a state and are not effectively protected by legal instruments hence, international instruments provisions regarding children's welfare are so far not beneficial to the refugee children in Dadaab refugee camp.

5.4 Recommendations

The following recommendations are developed to suit and strengthen legal ways of protecting and promoting the rights of children refugees both in Kenya and beyond. The policy-oriented recommendations are tailored to serve as good model for African refugee care and protection and especially children caught up in the unfortunate situations of migration and flight. Therefore, to ensure that children continue receiving suitable care and treatment, regardless of their migration status or that of their parents, guardian and in line with international standards, this study recommends that: Children should always be

treated like children, regardless of their migration status or that of their caregivers. States must explicitly prioritize the rights and best interests of children before any other political or administrative consideration. Moreover, state parties to UN humanitarian agencies must clearly affirm that under no circumstance is it acceptable that children end up alone, destitute, on the street, in detention, in squalid camps or any other inhumane condition. Child-sensitive and child-centered approaches, recognizing that children should always be treated in respect of their universal human rights and case by case according to their specific needs as individuals, must be mainstreamed in all states' laws, policies, practices, procedures and monitoring systems that involve migrant and refugee children.

There should be guarantee on safe, regular channels for migrants and refugees. States should always prioritize saving lives by expanding safe regular channels for migrants and refugees, including resettlement. This will ensure that more migrants and refugees are no longer forced to rely on smugglers and can move towards their destinations in human conditions, without risking their lives or the lives of their children.

States should enhance international cooperation, among countries and with NGO partners, to detect and prevent trafficking and all forms of violence, abuse and exploitation of children. This is particularly rife in mixed migration contexts, especially when children are unaccompanied or separated from their primary caregivers and are more easily subjected to physical attacks, robberies, criminal groups' activities and other dangers during their journey. States must also grant special assistance to children who were victims of violence, regardless of their migration statuses, and ensure they have timely access to relevant health and psychological rehabilitation services.

States should also end immigration detention of children and their caregivers. In a number of occasions, there are reports of detention of migrant children and families due to lack of documents to enter or remain in transit or destination countries. This practice is considered a form of violence against children, since it discriminates and criminalizes children on the basis of their migration statuses and threatens children's health and development. Among other things, detention exposes children to abuse and neglect,

denies their access to good education and relevant services, and undermines children's psychological and physical well-being, with negative long-lasting impact on their cognitive developments. This study urges states' policy makers to end immigration detention of children, consistent with their Convention on the Children rights obligations; and to replace these practices with non-custodial, community-based alternatives, in which children can live together with their parents or primary caregivers (principle of family unity) while authorities complete their immigration status assessments. When children are unaccompanied or separated, states should provide a range of alternative care arrangements that fulfil their needs and best interests, such as family and community-based solutions.

States' authorities should ensure that human rights and basic needs of migrant and refugee children are met as children form a considerable part of large population movements. According to the 2017 UNHCR estimates, 51% of refugees are children. Poor and unsafe conditions in mixed migration contexts can have traumatic effects on children's health, psychological recovery and long-term development, which can be mitigated if adequate child care and protection responses are put in place timely. While recognizing that states have a right to control their borders, this study recommends that states should ensure that their border management policies do not prevent access to international protection. States as well as regional and local authorities should cooperate among each other and with non-governmental partners to ensure food, shelter, sanitation, and medical care, education, and child friendly spaces. Moreover, greater investment should be put in psychological rehabilitation and emotional care: this should be provided case by case to all children in need, especially those unaccompanied or separated, but also to their caregivers.

States should protect every child's right to quality care, regardless of migration status, since there is growing numbers of children who leave their countries without their parents, or are separated from them along the way. In 2015, among the asylum seekers applying for international protection in almost 78 countries, unaccompanied or separated

children were approximated at 98,400.²²⁷ The same year, the European Union alone reported about 88,300 unaccompanied children, nearly four times more than in the period 2008-2013.²²⁸ Moreover, states have the duty to take appropriate actions to ensure quality care for every child, in accordance with international or domestic laws and procedures. The following actions should be given priority:

- Prevent unnecessary family separation: All efforts should be made to keep migrant and refugee children within or even return them to, the care of their families and within the community, unless this is assessed to be against the child's best interest.
- Grant guardianship to migrant and refugee children deprived of their family: immediately an unaccompanied child is identified, states should appoint qualified custodian with legal authority, to assist the child through the status determination. The appointed custodian should help the child to keep safe and access the necessary services, as well as see to it that the child's best interests stay central to any process of decision making affecting his or her life. Also, the child should be enabled to participate and have a voice in such a process.
- Increase support of and remove barriers to family reunification: States should make all reasonable efforts to trace a child's family immediately a separated or unaccompanied child is taken in, and re-establish family ties in the shortest possible time, unless this is not in the best child's best interest and would endanger those involved. Any restriction to the family reunification procedure should be removed, in order to avoid unnecessary children's separation of from their families.
- Devise return policies that prioritize child's best interest: Children must not be taken back to their nation of habitual residence if there are reasons to believe that their safety and security would be in jeopardy; if no suitable caregiver in the

²²⁷ United High Commissioner for Refugees, 2016

²²⁸ European Statistical System, 2016

country of origin has been identified prior to the return; and if, for any other reasons, competent authorities assess that return is not in children's best interest.

- Provide quality family and community-based care to unaccompanied and separated children: States must provide individualized family and community-based care to all children who have temporarily or permanently lost parental care, and refugee and migrant children are no exception. In order to do so, states should implement the Guidelines, and in particular: remove barriers to the provision of family and community-based care to separated and unaccompanied children, such as discrimination based on the origin of children, or lack of financial resources or professionals prepared to deliver specialized alternative care; identify and work together with transparent and trusted service providers to ensure a variety of alternate care options for needy children, with family and community-based care as preferable options; avoid institutionalization of children; invest in training of professional and voluntary caregivers in the areas of child protection, care and human rights, so that alternative care meets international standards and constantly review the decisions on the types of care to be delivered, case by case, in order to respond to context developments and the child's evolving needs.
- Use ICTs and other tools to help displaced people maintain contacts with their families: Access to communication and information technologies (ICTs) is an increasingly important factor securing people's enjoyment of their rights. Migrants and refugees, separated from family members and friends, are particularly dependent on good communication services along their route to connect with their loved ones and alleviate psychological and emotional stress. In addition to the right to personal relations and direct contact with parents or other family members, other rights are particularly linked to access to ICTs, such as freedom of access to information and expression. In order to grant these rights in mixed migration contexts, access to ICTs for migrants and refugees should be provided as part of states' response.

Consequently, states have an obligation to ensure proper registration of all children and to ensure their care and protection from abuse, neglect, violence and exploitation. Yet, it is often very difficult to keep oversight of migrant and refugee children, due to gaps in national and international monitoring and in the capacity to process relevant information about them. However, to address these gaps, this study recommends the following actions: all countries should report and share information on the numbers of separated or unaccompanied children looking for asylum; States should increase efforts towards universal birth registration (a target in the 2030 Agenda for Sustainable Development under SDG 16.9), in order to register all children, including transit and children who have lost or children born in the country of asylum or are temporarily separated from their parents or families; States should also introduce safeguards in nationality laws against statelessness at birth, to grant nationality to all children, including those in mixed migration contexts.²²⁹

In order to ensure that all migrant and refugee children can realize their rights, states should invest in the necessary support and specialization of actors involved in the range of state responsibilities concerning these children. That is, training, re-training and psychological support must be available for social workers, family counsellors and care professionals to effectively contribute to humanitarian assistance and continue responding to the protection needs of children during and after the migration and refugee crisis. Also, immigration and law enforcement actors should be properly equipped to apply child-rights based approaches to their work.

States should invest in sustainable developments such as vision 2030 Agenda for Sustainable Development. States should realize that international migration is extremely relevant in the development of all countries involved: countries of origin, transit and destination countries. At the same time, many of the root causes of forced migration and displacements, like poverty, inequality, unemployment, conflict and violence, poor education and climate change, among others are connected with underinvestment in

²²⁹ United Nations High Commissioner for Refugees' Stateless Report of 2015

sustainable development at the international and national level. Comprehensive measures must be devised by nations to react to the root causes of forced migrations and displacements, through stronger anti-poverty and employment strategies, greater inequality-reduction efforts, higher investments in quality education, conflict and violence prevention, climate change mitigation, and measures to address inappropriate care of children like family strengthening and alternative care programs.

Finally, states should foster participation of migrant and refugee children and young people since such are crucial stakeholders in migration and refugee policies, practices and programme responses. Involving them in policy design and implementations and in awareness raising activities in their communities contributes to the development of effective child-centered and child-sensitive responses and to the realization of their right to participation. States must recognize the active roles that children can play in the implementation and identification of solutions in migration and refugee matters, and foster opportunities for their engagement and leadership building.

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APPENDICES

Appendix I: Introductory Letter

Benjamin L. Onyango
P.O Box 28854-00100, GPO
Nairobi

23rd May, 2017.

P.O Box

Dear Respondent,

RE: ACADEMIC INTERVIEW REQUEST

I am a Masters of International Studies student at University of Nairobi. I am conducting a research study on the **effectiveness of legal instruments of the child refugee: a case study of Dadaab in Kenya**

It is my humble request to schedule an interview with you. The interviews conducted will be purely for fulfilling this research study objectives.

During and after the interview, I the researcher assure you utmost confidentiality in the information shared.

Yours sincerely,

Benjamin L. Onyango
R50/87638/2016

Appendix II: Interview Guide

Brief introduction before the interview:

I am conducting a qualitative semi structured interview with you for my master thesis at the University of Nairobi. You have received detailed information about the research project through the confidentiality letter that was sent to you earlier. What is said during the interview is completely confidential. The information will only be used in accordance with this research project. I will record the interview, as I have informed you before the interview. Please just inform me if you want me to turn the recorder off as we begin.

Orientation questions

Name:

Tell me about the organization you work for.

How long have you worked in this organization and what is your position?

Substantial questions

1. In your organization's view, what are the situations of children in Dadaab refugee camp currently like?
2. Does your organization hold any significance to international treaties on the protection of children?
3. In what ways does your organization work to ensure that legal instruments for the protection of the refugee child are adhered to?
4. What are some challenges you face in your work in line with the implementation of the legal instruments?
5. Why do you think these challenges arise?
6. How do the children's statuses as refugees affect their access to education in Dadaab and Kenya in general?
7. How do you believe these children's access to schools could improve?

Role of the CRC in child rights protection

8. Please explain the role of the organization to the protection of the Children rights
9. Could you explain generally about the CRC in your work?
10. Could you explain your role at work?
11. Could you explain the need for care for refugees who come as unaccompanied minors?

Cooperation

12. Could you say something about how your organization cooperates with other institutions?
13. How is your organization cooperating with other state institutions and/or NGOs?

Work with refugee children

14. Could you explain how your organization works for refugee children's rights?
15. What is your organization's strength?
16. What does your organization consider as the most important work in relation to unaccompanied refugee children's rights?

Rights for refugee children

17. Please say something about your general impression of the protection of refugee children's rights?

Age

18. Could you explain the meaning of age for a refugee child?
19. How does your organization work with age regarding to unaccompanied minors?

Conclusion

Is there anything else that you find important on this theme that you would like to add or any answer you would like to clarify?

Thank you so much for meeting me and for your interesting information. I will send you a transcript of the interview, and later the final thesis. Is it ok if I contact you by phone/e-mail if I need any clarification or have any further questions?

Appendix III: Research Authorization Letter from the University



UNIVERSITY OF NAIROBI
College of Humanities and Social Sciences
Institute of Diplomacy and International Studies

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P.O. Box 30197
Nairobi
Kenya

August 16, 2018

TO WHOM IT MAY CONCERN

RE: BENJAMIN L. ONYANGO – R50/87638/2016

This is to confirm that the above-mentioned person is a bona fide student at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi pursuing a **Master of Arts degree in International Studies**. He is working on a research project titled, **“EFFECTIVENESS OF LEGAL INSTRUMENTS OF THE CHILD REFUGEE: A CASE STUDY OF DADAAB IN KENYA”**.

The research project is a requirement for students undertaking Masters’ programmes at the University of Nairobi, whose results will inform policy and learning.

Any assistance given to him to facilitate data collection for his research project will be highly appreciated.

Thank you.

DATE: 16/8/2018
[Signature]
Professor Maria Nzomo,
Director, IDIS
&
Professor of International Relations and Governance


Appendix IV: Research Permit from NACOSTI


THIS IS TO CERTIFY THAT:
MR. BENJAMIN LAXMANN ONYANGO
of UNIVERSITY OF NAIROBI , 28854-100
Nairobi , has been permitted to conduct
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A CASE STUDY OF DADAAB IN KENYA

for the period ending:
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