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DEPARTMENT OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

**A CRITICAL ANALYSIS OF THE LEGAL IMPLICATIONS OF HOSTING
REFUGEES BY THE HOST STATE: A CASE STUDY OF SOMALIA REFUGEES IN
DADAAB REFUGEE CAMP IN KENYA**

BY

GRACE WARUGURU MACHERU

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SUPERVISOR

DR MUMMA-MARTINON

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DECLARATION

This research work is my original work and it has not been presented to any other learning institution or university for awarding of any degree program.

Name: Grace Waruguru Macheru

C50/67975/2013

Signature-----

Date -----

RECOMMENDATION

This research project has been submitted for examination with my approval as the supervisor

Name: Dr. C.A. Mumma-Martinon

Project Supervisor

Signature-----

Date -----

DEDICATION

I dedicate this work to all the refugees at the Dadaab Refugee camp and the neighboring community. May they understand that we are all human beings who were created in the image and the likeness of God.

ACKNOWLEDGEMENT

I wish to acknowledge the almighty God for the gift of life, good health and grace that has enabled me to come this far. Thank you lord for your Care. May I acknowledge the guidance of my supervisor Dr. Connie Mumma- Martinon, for her much needed support and wise counsel that has enabled me to sharpen my academic prowess. Am grateful to you. I also wish to thank my family members for their encouragement while I was undertaking this heavy task. Thank you so much good people and may God bless you.

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LIST OF ACRONYMS

CDTPDP	-	Council Directive on the Temporary Protection of Displaced Persons
CRSR	-	Convention Relating to the Status of Refugees (Geneva Convention)
DRA	-	Department of Refugee Affairs
EU	-	European Union
IDPS	-	Internally Displaced Persons
KNCHR	-	Kenya National Commission on Human Rights
NGOs	-	Non-Governmental Organizations
OAU	-	Organization of African Union
OAUC	-	Organization of African Union Convention
R-ARCSS	-	Revitalised Agreement on the Resolution of Conflict in South Sudan
RCK	-	Refugee Consortium of Kenya
RSD	-	Refugee Status Determination
UDHR	-	Universal Declaration of Human Rights
UIC	-	Union of Islam Courts
UN	-	United Nations
UNHCR	-	United Nations High Commissioner for Refugees
UNRWA	-	United Nations Relief and Works Agency

ABSTRACT

The purpose of this study is to explore the legal implications of hosting Somali refugees in Dadaab refugee camp. A large number of Somalia refugees (approximated to be 400,000 in number) have been living in Kenya for more than two decades at the Dadaab Refugee Camp. There exists numerous domestic and international legislature enacted to address the matters of refugees. The question is whether the refugee host countries have been adhering to the existing legislature and what challenges they experience in implementing the same. The study analyses the legal implications of hosting refugees and the challenges of being a host country. The study sought to answer questions; Why is Kenya not complying with the International Conventions? What are the legal implications of Kenya failing to comply with the International Conventions? And What are the challenges Kenya is facing in complying with the International Conventions? The study tested three main hypotheses namely; Firstly, that the Kenya's national interests influence violation of the provisions of the international refugee laws at the Dadaab refugee camp. Kenya has been accused of violating the international refugee laws even though it's a signatory to the same. Secondly, that Kenya non-committal to International Conventions has legal implications to be faced. Where a State fails to comply with the international obligations, there ought to be legal repercussions to be faced which repercussions are meant to deter States from violating the provisions of the International Conventions. Thirdly that Domestic Laws have influenced Kenya's challenges in compliance with the International Conventions. There is an argument that the International Humanitarian laws have contributed to Kenya's security dilemma where it has a challenge of balancing its national security and interests of the refugees. Kenya has an obligation to care of the interests of its nationals even as it hosts refugees. The study utilized both primary and secondary sources of data. Secondary data was obtained from published and unpublished works, internet sources, UNHCR reports and government of Kenya. Primary data on the other hand was collected through interviews from refugees, UNHCR officials, government officials, judiciary, lawyers, security personnel and teachers within the camp.

CHAPTER ONE

INTRODUCTION

1.1 Background of the study

The question of refugees is increasingly becoming sensitive the world over as a result of war and conflicts happening in numerous parts world over. People in search of protection have migrated and sought refuge in countries where they believe their lives will not be in danger.

The crisis of refugees in the African continent keeps escalating because of continuation of wars in most African states. The emergence of these refugees was either voluntary, but in most cases forced (Fynn, 2009). Refugees in Africa keeps on migrating between third world states within the continent (Loester, 1993). This means that apart from peaceful environment, the conditions in the host states are almost similar to those in the home state. For example, there have been lots of refugees from States such as Somalia, Ethiopia, Uganda, Kenya, Yemen, Malawi, Liberia as well as Bangladesh. All these countries are located in the third world counties. Loester (1993) observes that although these States from the third world countries are known for their cultures that promotes hospitality and a heart for others, they are usually not well equipped to host large numbers of refugees and specifically in terms of funding and hence they are compelled to depend on the developed countries for aid. He noted that most of these States find it hard to continue shouldering the burden of hosting the refugees in their territories. According to him, this is because the numbers keep on swelling as days goes by. They feel that their budgets are severely overstretched, as they are expected to provide social services that include education, health care and security to their nationals but the hosting of refugees hamper these expectations. This is in addition to distortion of the local economies as well as dilapidation of the infrastructure and the environment where refugees are located.

For over two and a half decades, the state of Somalia has been in constant wars. This has forced many citizens to scamper for safety, by migrating to the neighbouring states. The major reason for the refugees to get out of Somalia is because of the continuation of conflict since it attained its independence in 1960. However, in 1991 when the government of Mohammed Siad Barre was toppled things worsened for Somalia (Khan, 2015). Since the Somalia got plunged into chaos, a number of challenges emerged which included violation of human rights such as the

right to life, and ownership of property. This violation was propagated by those in authority and the fighting groups. In addition to this, the people were not being provided for with adequate social services despite the heavy taxation and this has forced most Somalis to move out of Somalia and seek refuge in the neighbouring States so as to seek for protection of their lives by the international legal regimes. Kenya has been one of their best destinations. The continuation of conflicts between the Hawiye and the Degordia of Somalia clans has caused lots of deaths, prolonged periods of drought, famine, increase of IDP groups, and increase of forced displacements. The refugees in their thousands are being hosted by Kenya at both the Dadaab and Kakuma refugee camps. There has also been a significant presence of the Somali refugees in Nairobi's Eastleigh area (Khan, 2015).

Meenye (2012) observes that the continuous process of the refugee migration into Kenya from Somalia has had an impact felt at the national level as well as at the local level. For instance, the Kenyan government has accused these refugees of being behind the rising cases of insecurity. Secondly the local communities living around the three northern counties where refugees have also had problems with the refugees over the assumed comfortable lifestyles that the refugees live as compared to that of the host community. Case in point is the fact that the refugees do not pay for water, food, education and health care in addition to remission of taxes. According to Meenye (2012), the local communities have to pay for all these services. Sometimes, despite the local communities being heavily taxed, they do not receive all these services as per their expectations. This has been one of the reasons as to why the North Eastern part of Kenya has been lagging behind in terms of development.

Having assented to the 1951 Convention Relating to Status of Refugees, Universal Declaration on Human Rights, the 1984 Cartagena Declaration on Refugees, the 1966, 1967, 1988 Protocols and the 1969 OAU protocol on refugees as per the parties' report by UNHCR, there is a legal obligation bestowed upon Kenya to host the refugees.

The UNHCR report of 2005 noted that there existed limited options as far as the refugee crisis was concerned. Around the year 2005, Somalia refugees were repatriated to Somaliland with the assistance of the Kenyan government a move that was faulted and termed unwise and unfair deportation. The UNHCR was of the view that the refugees should be resettled, or integrated with the local communities as an alternative lasting solution to the refugees. However, the idea

of integration has never been accepted by the Kenyan government because for the reason that it would have negative economic effects to the local natives. Section 25 (f) of the Refugee's Act of 2006 states that it is unlawful for any refugee to be found residing outside a refugee camp. Instead, the refugees are to rely on the Global support through the UNHCR while residing in the camp and in this case Dadaab refugee camp. This Section in a wider perspective does not support the notion of integration as this would mean a refugee would reside outside the designated areas.

It is therefore upon this background that this study picked an interest in the Dadaab Refugee camp and the whole focus of legal implications of hosting Somalia refugees. Since it's only the refugees residing in Dadaab refugee camp who have been threatened with repatriation against their wishes, the camp formed an area of interest in this study. This camp is also the most populated camp in Kenya as compared to other countries which host refugees in the whole world. As such, it represented all other refugee camps in Kenya since all the refugees in Kenya are governed under the same legal regime.

1.1.1 Hosting of Refugees Globally

The mass influx of refugees is the first impact that is felt by the host country. Turkey has been hosting refugees from various States. They include Kurds who originated from the Northern Syria and the Yazidis who happen to be Christians from Iraq (Ferris and Kirisci, 2016). According to Ferris and Kirisci (2016), over 40,000 to around 50,000 frightened Iraqis were compelled to flee to Turkey after the capture of Mosul including its environs by the terrorist organization known as ISIS in June 2014. The number of refugees kept increasing from about 240,000 to roughly 250,000 in a span of a limited period of time.

The refugees who settled in urban areas presented economic problems to the citizens of Turkey. For instance, there was increase in prices of many commodities and social services, and especially in the housing sector which gave rise to complaints among local residents who were greatly affected (Ferris and Kirisci, 2016).

In Turkey, many refugees are often ready to be underpaid and this has resulted into unemployment of many citizens of Turkey. This cynical consequence felt especially in the regions close to Syria has made the locals conclude that the refugees move has made many employers prefer to employ the refugees over them (Ferris and Kirisci, 2016). A similar survey

was carried out in Lebanon and Jordan and its finding was such that since refugees don't pay taxes, and they do not contribute social security expenses, this has destabilized the economy of Lebanon and Jordan. (Ferris and Kirisci, 2016).

As maintained by Ferris and Kirisci (2016), even though hosting of refugees has had negative impact, the crisis has on one hand been beneficial to job seekers economically in that it opened up job opportunities for skilled labourers. Further, organizations tasked with the responsibility of giving aid to the Syrians have created employment opportunities to the citizens of the host countries.

Ferris and Kirisci (2016) further noted that these job opportunities have compelled refugees to be compelled to cheap labour, and unfair child labour in a bid to put food on the table all across Turkey, Lebanon and Jordan. This in itself according to them presents a legal implication in Turkey, in that child labour is prohibited by the law. In other instances, some women in a bid to provide for their families' result into prostitution which is a negative social impact to the receiving country (Ferris and Kirisci, 2016).

Thirdly, the non-stop call/influx of huge numbers of refugees has brought about political effects. The publics' attitude toward the ran away clouds has changed and most of them would rather the refugees depart as according to them, their presence has had negative effects to the society (Ferris and Kirisci, 2016). These calls however are not uniform and they all depend on ethnic and religious affinities. For instance, there are members who support the government's openness to receiving refugees provided they belong to the Sunni Arabs. According to Ferris and Kirisci (2016), the non- sacred Turks, Alevis and Kurds are optimistic that members of the Sunni Arabs may alter the genetic demographics of local community and politics of the day which change might result into unfair and unlevelled political competitions. They further observed that the suicide bombings orchestrated by ISIS affiliated groups in 2015, and the cycle of violence that followed thereafter have continued to be a threat to the stability of Turkey and this has heavily affected the domestic politics.

In Lebanon, the influx of refugees who consists of Sunni, Shia and Christians was too high such that refugees settled in that country added up to a fourth of the population. The demographic balances as a result of the refugees have taken the centre stage of political debates which has had

negative consequences. The civil war in Syria was the reason as to why there are very many refugees in Lebanon and these refugees have negatively affected its local politics to such an extent that there is a likelihood of provoking another unrest (Ferris and Kirisci, 2016).

They noted that more than half a million Syrian refugees arrived in Jordan an influx which reminded them of the influx of Palestinian refugees in the years 1948 and 1967 (Ferris and Kirisci, 2016). In 1971, Palestinian groups vehemently rejected the Hashemite Kingdom a move that brought about ramifications memories of Jordanian heavy feeling of ownership of national identity and national security. Further, according to them, approximately over 2 million Palestinians still remain as registered refugees all over Jordan and the indefinite stay of large numbers of Syrian refugees who are presumed to be more than half a million happens to be an unpleasant situation and politically sensitive for a country of only 6.7 million nationals.

One common challenge in these countries according to Ferris and Kirisci (2016) is how to cope with citizens' attitude towards refugees and more so because of their long-term presence in the host countries. The citizens of these countries have not come to terms with the fact that refugees might in the long run have to become a permanent part and parcel of the host communities. The thought of them ultimately being integrated within the host communities is not welcome.

1.1.2 Hosting of Refugees Regionally

To begin with, the refugee hosting countries in Africa almost share similar challenges. In Uganda, one of the most notable negative effect is the continued escalation in refugee numbers. The seemingly unending warfare in Somalia, South Sudan, Democratic Republic of Congo and Burundi are reason behind the overly considerable refugee flows in Uganda (Ahimbisiwe, 2018).

Uganda was estimated to hold approximately 1.8 million displaced persons by the close of the year in 2018 (UNICEF, 2017). The progressive increase of flow of asylum seekers in their large numbers is constraining the country's provision of resources and social services. The unexpected influx of refugees from South Sudan as a result of civil wars and in addition to starvation, drought and high unemployment means that it is next to impossible for these vulnerable groups to be shown hospitality by the locals particularly in places where settlement of the refugees seems to outnumber the local population (The Guardian, 2017).

The very same additions in number of refugees as well threatens Ugandan policy of allocation of land to refugees as a temporary reprieve of taking care of them. The size of land which used to be allocated per refugee household has since been minimized from 50x50 to 30x30 meters so as to accommodate the ever new arrivals (Ahaibwe and Ntale, 2018). According to the Relief Web, (2018) and the Refugee Law Project (2014) the continued increase of the refugee numbers might result into unavoidable strained relationships coupled with hostilities between the refugees and host communities, as they battle for land and social services.

The second challenge is the question of protracted refugees. UNHCR explains that protracted refugee comes about in a set of circumstances where refugees find themselves in some form of long-lasting and unmanageable condition of oblivion (Ahimbisiwe, 2018). It is also a situation whereby more than 25,000 and more refugees coming from the same nation have been in exile for quite some time in a third world country (UNHCR, 2004:2). These circumstances are fuelled by the unending conflicts and numerous ceasefires from the ancestral countries. This is for instance the cases of refugees originating from Somalia Burundi, Democratic Republic of Congo and the Southern Sudan (Ahimbisiwe, 2018). In cases where International aid is not forthcoming, recipient countries are usually faced with the undesirable predicament of the responsibility of providing for the requirements of the refugees. The resultant consequences have in most cases been met by the restriction of refugee rights, warehousing them in camps, restricting movement outside the camps and denial of employment (UNHCR, 2006 114-115); Milner, 2009). Ahimbisiwe (2018) noted that much as the host countries are bound by international obligations, they still violate these functions a move that amounts to breach of refugee rights and an abandonment of their international duty.

The third challenge is about lack of resources and limited support from the international community. For instance, Uganda has been ranked as one of the countries that host large numbers of refugees both in Africa and globally. Unfortunately, the country face challenges in meeting the demands and needs of both the refugees the locals (Ahimbisiwe, 2018). On top of settlement of the ever increasing numbers of refugees, Uganda has a fast-growing population which was estimated to be at an annual growth rate of a minimum of 3.28% by 2018 (World Population Review, 2018). This basically means that Uganda also faces main challenges of full feeling its responsibilities of its citizens.

Safeguarding refugees is a burden sharing principle where states are expected to offer free support to one another. This principle is known as responsibility sharing moral rule (Amnesty International, 2017:5). The Amnesty further emphasises that in accordance with the set out International human rights and laws relating to refugees, States have an obligation to offer support to one another other in providing for them. Unfortunately, this concept of shared responsibility has never been fully implemented by States and in particular from the developed Countries. The third world countries continually face the almost sole responsibility of keeping huge numbers irrespective of the fact that there is limited support from the international community (Ahimbisiwe, 2018). The UNHCR has on numerous occasions sought for refugee funding in Uganda but their efforts have borne very little fruits as the support received is very minimal. As humanitarian requests continue to be receive little attention, the apprehension and vulnerabilities of refugees proceed to be on the down fall by day, not forgetting the pressure of meeting national interests (Government of Uganda, United nations & UNHCR, 2017).

Fourthly, the host country experience insecurity and environmental degradation as a result of hosting refugees. There are two types of security threats and the same are direct and indirect threats. The direct threats occur when conflicts spill-over to the host country. The indirect threats are posed by the refugees themselves by changing either the range of pain or by being opportunistic within the host State (Milner, 2000:17). According to Milner (2000:17), direct security threats occurs when refugees get involved in wars and criminals in exile proceed to engage in warring activities within the bounds of the host State. The country where the refugees originated from then retaliates in order to manage the escalation of security threats brought about by the warring groups. For instance, Rwanda was forced to invade Zaire in the year 1996 so as to neutralize the armed Interahamwe and ex-FAR groups which were residing in the refugee camps. Burundi as well had to act by dropping explosives in the refugee camps within the western part of Tanzania so as to neutralize Hutu rebels who were causing a lot of insecurity in the Country. (Ahimbisiwe, 2018). In instances of indirect threats, the refugees engage in breaking of laws of the host Country by involving themselves in crimes such as theft, conflicts of resources, competition for job opportunities and land amongst other limited resources (Konrad-Adenaver-Stiftung & Young Leaders Think Tank, 2017:6). According to Ahimbisiwe (2018), the host community within refugee settlement arears always presume that refugees are normally given favours at their expense and this can result to hostilities from the local residents.

Ahimbisiwe (2018) further stated that hosting of refugees has a negative effect in that they result to degradation of environment in the areas where they settle as a result of cutting down trees for wood fuel, construction poles for their shelter, cultivation of lands, do fishing all these activities meant to mitigate their livelihood. This leads to lasting environmental abuse because the limited resources are never enough to the large numbers of refugees.

1.1.3 Dadaab Refugee Camp Description

This camp is located in Garissa County within North Eastern part of Kenya, a location deemed to be an arid area. The camp was estimated to accommodate more than 400,000 refugees as at May 2015 (UNHCR report (2015)). The UNHCR set up the camp in the years 1991 and 1992 with the initial plan to host 90,000 Somalia refugees. There have always been complains by the Kenyan Government and the host communities that the refugees have been the source of insecurity, job unemployment, environmental degradation in Kenya. Indeed, there have been pronouncements by the members of Kenyan Government threatening to send back Somali refugees to the Republic of Somalia. It is as a result of these repercussions, the Kenyan Government, Somalia Government and the UNHCR entered into a tripartite agreement whose main aim was to ensure a voluntary repatriation of the said refugees back to Somalia in the long term (Tripartite Agreement, 2013). The camp is situated near the Kenyan Somalia border, and although the local community and the refugees share language, culture and religion, the two groups have never really bonded. The main reason as to why this study has chosen to focus on the Dadaab refugee camp and not any other camp is because first and foremost the camp has been in existence for more than 25 years and of late it has been pointed out to be harbouring terrorist groups who pose as refugees. Secondly, the camp is at the centre of controversy between the government of Kenya on one hand and the UNHCR over its closure and the forceful repatriation of the refugees back to Somalia. Lastly, it has been noted by the Kenyan government that the refugee numbers of Somalia origin have kept on escalating to alarming numbers in Dadaab refugee camp since its inception to a point where it has become a security concern to the nation.

1.2 Statement of the Research Problem

Kenya hosts refugees from various countries which include Uganda, Rwanda, Southern Sudan, Ethiopia, Burundi, Eritrea and the Democratic Republic of Congo as a result of civil wars associated with political instability in the said Countries.

Dadaab refugee camp complex is cited as the largest and most populated camp globally (Registered Somali refugee population, UNHCR, November 2013). Dadaab Refugee Camp was established in the early 90s and it was designed to hold 90,000 individuals. However, more than 300,000 refugees are housed in that camp (Fynn, 2009). The camp came into existence in 1991 when the government of Mohammed Siad Barre collapsed and the refugees started trickling in to Kenya. The UNHCR report of (2010) reported that in Kenya, there existed 343,000 refugees. Out of this figure, there were 204,570 refugees of Somali origin, 30,130 refugees from South Sudan, 16,040 refugees from Uganda, 9,810 refugees from other nations, as well as over 80,000 stateless individuals and 2,500 asylum seekers from different states (Kenya Human Rights report, 2009).

Since the beginning of hosting of refugees in Kenya, there have been security lapses experienced over the years. In April of 2016, the Government of Kenya cancelled the *prima facie* status of Somali escapees vide Gazette Notice No. 46. Subsequently, in May of the year 2016, the Government issued an order indicating that owing to national security, Dadaab Refugee Camp was to be shut down and that all refugees of Somali origin would be repatriated by November 2016. On numerous occasions, there have been complaints that as a result of hosting Somali refugees, crimes such as terrorism, proliferation of arms and human trafficking which compromise security of the Country have been on the rise. The threats to close down the Camp can be traced from way back in 2013 when the Government of Kenya had to enter into a tripartite agreement with the Somalia Government and UNHCR concerning voluntary repatriation of the refugees.

Even though Kenya hosts refugees from a couple of Countries, refugees of Somalia origin have on several occasions been singled out and labelled terrorists, coupled with threats of *re-foulement* which action discriminates them as well as goes against the international practice of individual criminality.

The Republic of Kenya cannot forcefully repatriate refugees back to the Countries where their lives will be put in danger as it has acceded to the Conventions that highlight issues that safeguard the rights of refugees. Among these treaties are the UN Convention Relating to the Refugee Status (1951), 1966, 1967 and 1981 Protocol as per the state parties report by UNHCR, 1969 OAU Convention on refugees. This OAU Convention dealt with the specific challenges that refugees go through in Africa, it was signed in 1969 and subsequently ratified in

1992. The 1984 Convention against Torture and other Cruel Inhumanities prohibits ill treatment, torture and other forms of illegalities from being subjected to the refugees.

The UN treaty specifically the 1951 Convention, under Article 1A (2) defines a refugee as a person who is forced to be outside his country because he is unreservedly convinced that his civil or political associations puts him at risk of provoking serious harm within his country and further that his very own government cannot or is not willing to afford him protection. According to this treaty, the refugee's claim must be proved to be a well- founded fear of persecution against which his Country is unwilling and/or unable to give the expected protection as noted by Foster (2007). The Convention's legal definition of a refugee is occasionally incompatible with the usual interpretation of social and cultural domestic legal standing. International law cannot dictate how host countries can handle sudden influx of refugees. States on the outward appears to recognize the great significance of defending the rights of asylum seekers. Unfortunately, their strongest view and what they actually do is to try as much as possible to keep refugees out of their borders.

The 1969 Organization of African Unity Convention (OAU) currently known as The African Union Convention governing the specific aspects of refugee problems in Africa adopted the 1951 UN Convention and the 1967 Protocols and the basic universal instruments relating to the social position of refugees. The Organization reiterated the UN Convention definition of the term refugee. However, it went ahead and broadened the definition by including provisions that relate to *non-refoulement* at the frontier, asylum, the area of the refugees' settlement, the prevention of intended unlawful moves by refugees, and the question of voluntary repatriation. Kenya cannot breach the International Conventions she has ratified, as it has to abide by the provisions of the conventions when dealing with refugees. However, as at the time Kenya was ratifying the aforementioned Conventions, there was no understanding of what she was appending her signature to, and what future impacts the treaties would result into to the host Country and the host communities.

Just like other States in the world, Kenya has adopted measures in form of enactment of policies, legislation, as well as embarking on actions toward refugees that contradicts the UN position through the UNHRC. In 2006, Kenya came up with its own legislation namely the Refugees Act Cap 173 Laws of Kenya. The same was enacted with the main aim of addressing matters that affect refugees and asylum seekers as well as looking into the national interests of Kenya as a

Country even as it plays the role of a host to refugees. The Constitution of Kenya 2010 too, and more specifically Article 20 enshrines that the provisions of the bill of rights are to be applied uniformly to all persons regardless of whether they are citizens of Kenya or foreigners. Indeed, the refugees are foreigners and their rights are well covered under this provision. However, in as far as refugees are concerned, this provision is only in theory as it does not seem to be applied practically.

According to UNHCR, most criminal cases brought to its attention within Dadaab Refugee Camps involve arrests and detention of refugees accused of the offence of “illegally residing outside a designated area”. Section 25 (f) of the Refugees Act (2006), Cap 173 Laws of Kenya provides that it’s an offence for a refugee to be found and without authority outside the designated areas specifically refugee camps. If such a person is found guilty of the said offence, then he or she will be fined up to Kshs. 20,000 (\$200), imprisonment of up to six months, or both. Of importance to note is that Dadaab and Kakuma refugee camps were gazetted on 28th March 2014 through Gazette Notice No. 1927. It was however still an offence for a refugee to be found outside the camps even before these camps had been formerly gazetted as designated areas for refugees. The Kenyan Citizenship and Immigration Act No. 12 of 2011 came into force in order to regulate matters relating to citizenship. Section 56 (c) of the same Act states that Kenya as a sovereign Country has a right to choose who to allow and who not to allow to be within its territory. This Section basically stamps the Kenyan authority as a sovereign Country which can make decisions on its own without seeking directives from elsewhere and more so from non-state actors and/or from the developed countries. It in essence seeks to promote its resolution to either take in asylum seekers, foreigners and immigrants or turn them away.

Section 25 (f) of the Kenya’s Refugee Act is in contravention with Article 26 of the 1951 Convention relating to the status of Refugees which indicates that all contracting States are bound by the Convention. It provides that the States shall accord all refugees legally residing in its territory the right to have freedom of movement within its territory, which should be similar regulations applicable to any other foreigners generally facing the same circumstances. All Countries have been bestowed with an obligation by the International Law not to breach the principle of *non-refoulement*. The obligation appears under Article 33 (1) of the same Convention, and Article 11 (3) of the OAU Refugee Convention which states clearly that no

refugee will be refused entry and or repatriated to any other country where their lives will be in danger. Section 33 of the 1951 Convention specifically indicate that no Country shall expel or return (“*refouler*”) any refugee back to his/her home country if there is a security scare in his home country. This security scare can be in form of one’s tribe, religion, colour, race as well as creed.

Article 2 (1) of the Constitution of Kenya (2010) provides that the Constitution is the supreme source of law of the Republic, and that it binds all persons not forgetting all State organs at both levels of government. Sub Article 4 proceeds to state that any other Law that contradicts the Constitution shall be deemed as null and void. The very same Constitution enshrines the types of rights and fundamental freedoms that are beneficial to every person. Indeed, Article 39 (1) provides that every person is entitled to right to freedom of movement within the territory of the Republic of Kenya. Article 27 (4) proceeds to provide that it is against the spirit of the Constitution to discriminate directly or indirectly against any individual on account of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Article 34 of the 1951 Convention highlights the significance of assimilation and naturalisation of the refugees. This in essence means that refugees can be integrated as citizens of the host countries. However, in Kenya, the procedure of integration to the status of citizenship are limited. The Constitution of Kenya specifically under Article 16 (2) indicates that a foreigner who has lawfully resided in Kenya for an uninterrupted period of time adding up to seven years or more qualify to be naturalised and/or admitted as citizens of Kenya if they meet additional conditions. The conditions include; having legally entered the jurisdiction of Kenya, being in a position to speak a national language the same being Kiswahili or mother tongue of one of the 42 tribes in Kenya and the ability to make positive and reasonable contribution to Kenya’s economic, educational, religious and/or any other form of positive development. The conditions given in the Constitution bar the refugees from being naturalized because it’s next to impossible for them to qualify by fulfilling the criteria set out and are rarely granted citizenship (Lindley, 2011).

In Kenya, refugees are warehoused within the camps with strict rules and regulations that they are not free to move out of the camps, and if found outside the camps they are usually arraigned

in Court and charged with the unlawful act of illegally residing outside designated areas. This move in itself is in contravention with the Constitution of Kenya (2010) and the 1951 Convention in regards to their freedom of movement. The provisions therefore express that non-Kenyan citizens who happen to be refugees from Somalia are entitled to enjoyment of freedom of movement within and outside the Dadaab refugee camp as they so wish without being stopped because the Supreme source of law and the 1951 Convention which Kenya is a signatory gives them freedom of movement as of a right. Much as the Government of Kenya restrict the movements of the refugees by confining them in Dadaab refugee camp, both the international law that exists in the various treaties that Kenya has signed and which are also domesticated in the Constitution of Kenya (2010) bars the government from restricting the refugees into camps, unless there are justifiable reasons to do so as noted by Human Rights Watch (2009). Where a country and in this case, Kenya fails to comply with the International Laws - Refugee Laws, what sanctions can be applied to compel the Country to comply?

On to the question of repatriation, Kenya being a signatory of conventions that gives provisions on how to handle refugee matters cannot forcefully repatriate refugees back to their ancestral countries where their lives will be endangered. In the year 2016, the Kenyan Government gave a tough press statement that all Somali refugees be repatriated back to Somalia. The fact that the Kenyan Defence Forces are still in Somalia is a clear indication that the country is not yet safe for resettlement of the refugees. The directive was made on the strength that Kenya had entered into a three parties' agreement dubbed the Tripartite Agreement with Somalia and UNHCR to conduct a voluntary repatriation of Somalia Refugees in the year 2013 within a period of three years. When the three years lapsed and the Somali refugees had not gone back to Somalia and now coupled with the many terrorism activities that had happened in Kenya, the Government threatened to close down the Dadaab Refugee Camp and repatriate Somali refugees. The directive was averted by the High Court of Kenya on 9th February 2017 where the Honourable Judge held that the directive to shut down the camp was in itself a contravention of Article 2(5) and 2(6) of the Constitution of Kenya (2010) and the existing Conventions which provide the obligations bestowed upon Kenya by the 1951 UN Convention and the 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa. However, the refugees who originated from Somalia are still being discriminated against in that they are

always in fear of being repatriated and their plight needs to be addressed comprehensively before things get out of hand.

1.3 Research Questions

The study sought to respond to the following questions:

1. Why is Kenya not complying with the International Conventions?
2. What are the legal implications of Kenya failing to comply with the International Conventions?
3. What are the challenges Kenya is facing in complying with the International Conventions?

1.4 Objectives of the Study

1.4.1 Overall Objective

To discuss the legal implications and obligations of Hosting Refugees in Kenya.

1.4.2 Specific objectives

1. To examine the reason as to why Kenya is not complying with the existing International Laws.
2. To find out if there are any legal implications of not implementing International Conventions in regards to refugees.
3. To analyse the challenges Kenya is facing in complying with the Refugee International Conventions considering that Kenya has got her own Domestic Laws

1.5 Justification of the Study

1.5.1 Academic Justification

There is existing literature on refugees and the law by various authors and/or writers. Hathaway (2005) in his book entitled “The Rights of Refugees under International Law”, he observes that the rights of a refugee are part and parcel of the provisions of international law in that they are derived from sources such as the treaties, customs, general principles and provisions of the set up laws. He further argues that there is a discrepancy between the treaties and the domestic laws of the state and poses the question; in case of conflicts between the two laws, which one takes precedence? He further asks the question, “when it comes to matters dealing with justice for instance, how should rules be derived from customs, adopted general principles and provisions of the law?” His literature makes a good attempt in analysing the refugees matters at the global

level as it is required by the UN convention on refugees. It should be noted that in the modern world, most nation states are torn between accepting or rejecting the idea of accommodating the refugees. If the refugees are accommodated, the question that arises is; should their accommodation be restricted or should they just be allowed to enjoy the same rights and freedoms of movement, work as well as investing like the citizens of the host countries? Most states due to their historical experiences find it very difficult to grant all the rights enjoyable by the refugees. The argument has always been that they do not consider it as their duty to do so.

Although Hathaway (2005) likens the standards of UN convention to the global norms and global regime of the international law. In his book Hathaway fails to examine how domestic laws are harmonized with the UN Refugee Convention. It also fails to indicate if States have been complying with the UN Refugee Convention. The literature also fails to take into consideration that there are other laws that are applicable to refugees such as the OAU Convention on Refugees and the 1967 Protocol on refugees.

Gill and Macadam (2007) authored a book known as “The Refugee in International Law.” In this book, they examined the problems that relates to the implementation of the 1951 Convention by contracting States. They extensively analysed refugee status, application of asylum, protection of the refuges, stateless persons, IDPs, visiting refugees, prevention from the emergence of refugees, security of refugees, matters dealing with children as well as women who happen to be refugees. They at the same time looked into the role that UNHCR plays in advocating for the wellbeing of refugees. This study however fails to address the question of existence of domestic laws and how the same are harmonized while applying international laws. It also fails to state whether all host countries have an obligation to register refugees calling on them and further whether refugees can be integrated in their host countries after a specific period of time.

Feller (2003) in his book “Refugee protection in International Law” examines a couple of key challenges that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol faces. The challenges, according to the scholar include the aspect of the principle of *non-refoulement* and embracing the concept definition of the term refugee as per the spirit of the 1951 Convention. This author however fails to address the challenges that the host countries face while hosting refugees which challenges include connecting refugees to insecurity and economic strains.

It is worthy to note that all the above mentioned literatures do not offer any objectivity in regards to the performance, successes and failures of the Kenyan Constitution (2010) Refugees Act of Kenya (2006) and The Citizenship and Immigration Act (2011) which statutes address matters of refugees in Kenya vis a vis international law. The literature further does not adequately address the question of challenges faced by Somalia refugees who have been living in Kenya since the years 1991-1992 nor the question of warehousing refugees in refugee camps. The notion of integration has transcended to politics of the day an area that scholars have failed to address in their various literature. Thus the gap this study attempted to fill was to examine the body of laws that existed in Kenya with a view of establishing the loopholes that needs to be sealed in order to address the question of harmonizing the International Laws and the National Laws. There was the question of open discrimination against refugees of Somali origin that was also analysed.

1.5.2 Policy Justification

The findings and recommendations made by this study will be beneficial to the art of policy making in Kenya, to the law students and the non-state actors in advocating refugee matters in Kenya. This is because the researcher analyzed the domestic laws vis a vis the International ones to establish if they are harmonized. This study highlighted on the need of governments to analyze International Laws of refugees before they decide to ratify them as a host a Country. This to a greater extent will enable host countries examine the legal implications of refugees and what needs to be done to avoid negative implications as a result of playing the host to the refugees. On the other hand, while formulating other legislations, Policy makers must always have in mind that refugees are not just intruders, but human beings who deserve to be treated with dignity. Loescher (1994) emphasizes on the need of recognition and acceptance that the refugees are not only a humanitarian and/or social problem but also as a political problem particularly when it comes to security.

1.6 Scope and Limitations of the Study

The study critically analysed the legal implications of hosting refugees in Kenya. The study mainly focused on Dadaab Refugee Camp as a Case Study. The target population was the Somali Refugees residing in the Dadaab Refugee Camp, employees of UNHCR and government employees that handle refugee matters within the Dadaab Refugee Camp. The Study covers the period between 1991- 2015. This was because this was the period the Somali refugees called

into Kenya seeking for asylum and when critical legislatures were enacted. The study took in to consideration the fact that Kenya enacted its first Refugees Act in the year 2006.

The researcher established that since 2006 when the Refugee Act was enforced, there has been no serious impact in managing refugees' affairs. The focus is between 1991 when Somali refugees started tripling in to the Kenyan territory up to 2015 after the Refugees Act 2006 was enacted. This is because there have been issues cropping up with regards to the refugees, leading to none-compliance of both the International Laws and the local legislation.

Among the limitations of this study was language barrier. The demographic composition of Dadaab Refugee Camp posed a serious challenge during sampling and data collection. Most Somalia people residing at the Dadaab Refugee Camp were not educated and were only familiar with their mother tongue.

The other challenge is that of confidentiality and anonymity of the respondents. The researcher considered this topic quite sensitive to refugees. Matters refugees were considered private and confidential even to the organizations tasked with the responsibility of addressing issues of refugees. This posed a challenge in that some of the respondents were not willing to provide information because of fear of the unknown. There was also the challenge of being denied the chance to access documents by UNHCR officials at the Dadaab Refugee Camp. Further Dadaab Refugee Camp where data was collected is approximately 472 kilometres from Nairobi where the researcher resides. There was also the challenge of fear of insecurity as there is the believe that there are criminal elements hiding within the refugees and in the refugee camps.

To overcome these challenges, the researcher explained the purpose of her visit to the respondents and got their consent prior to interviewing them. Further, the respondents were at liberty to ignore the questions they were not comfortable to discuss. To avoid bureaucratic challenges, the researcher had with her permit from RAS, student's I.D and National I.D.

The researcher also sought the services of an interpreter to communicate with the refugees who were illiterate. Further a good rapport with the UNHCR correspondents and the government respondents before and during the period of data collection was established so as to get the required research data. Further, the researcher having created a good rapport with the correspondents, transport by UNHCR and police vehicles was provided so as to easily access the

refugee camps. Because of anticipated challenge the researcher relied on instrumental resources about refugees.

Finally, as technical review of legal documents and the instruments that have been used to implement them, and the influx of refugees in the host county, this study is of qualitative and quantitative nature.

1.7 Definition and Operationalization of key Concepts

Host state/nation: According to Black's Law Dictionary the term host state means a nation that another nation visits by an invite from the government.

For the purpose of this study, the term host nation refers to the republic of Kenya as the country that is hosting Somali refugees.

Refugee: The 1951 UN Convention on the Status of the Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa defines a refugee as an individual living outside his mother land because of his fear of persecution on account of his political affiliation, religious beliefs, citizenship, ethnic group, membership of specific social movement/group and is unwilling to avail himself to his motherland for protection or return there for being apprehensive that their lives will be jeopardized. The provisions proceed to state that these are persons who reasonably feel that their lives are in danger if they continue staying in their countries of origin. They are also people who firmly felt that their governments have no capacity to shield them from imminent danger.

For the purpose of this study, the term refugee refers to the Somali refugees who reside at the Dadaab refugee camp. Further, the term refugee was applied to refer to a person who has fled from Somalia for fear of being persecuted, because of hunger, is registered as a refugee in Kenya and resides in the Dadaab Refugee Camp.

Somali Refugees: For the purpose of this study, the term Somali refugee was applied to identify refugees of Somalia origin who sought refuge and have been dully registered as refugees in Kenya.

Asylum Seeker: According to The Refugees Act of Kenya (2006), asylum seeker “means a person seeking refugee status in the Country where they fled to”. For the purposes of this study,

asylum seeker will be applied to mean a person of Somalia origin who has fled from Somalia and is within the Kenyan territory, has not yet acquired refugee status but is awaiting registration.

Refugee Camps: The Kenyan Refugees Act 2006 defines a refugee camp to mean any place specifically gazetted by the Minister of Security to be an enclosure that will operate as a refugee camp.

For the purpose of this study, a refugee camp was used to mean an enclosed area where refugees reside, for purpose of receiving aid to wit protection, food, shelter, medication and education. The Dadaab Refugee Camp was the main focus in this study.

Non-refoulement: Article 3 of The Convention against Torture and Article 33 (1) of the 1951 Convention relating to the Status of Refugees defines *non-refoulement* as that act which bars the state from sending back the refugees or expelling the refugees from its territory due to any reason. This is so because the refugees in most cases feel that their lives are threatened when they are taken back to their home countries.

For the purpose of this study, *non-refoulement* was applied to meant the obligation of the Kenyan Government not to forcefully expel Somali refugees back to their Country where their lives will be exposed to danger

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The refugees have existed since time immemorial. However, since the establishment of the states in the 1628 Treaty of Westphalia; refugees have been in existence because of a number of reasons such as conflicts, war, discrimination coupled with abuses of human rights from various warring States. Throughout the past century, there have been many peaks and troughs in the overall numbers of refugees and other displaced people in the world, with huge numbers during the two world wars and during the 1980s and 1990s (Betts, 2012). According to Betts (2012), from the beginning of 2011 the office of UNHCR estimated that there were 43.7 million forcibly displaced people throughout the world.

Welcoming of terrified exhausted strangers, the victims of who have faced persecution and ethnic divisions and violence unreasonably meted upon them has been the norm throughout the world and for quite a long period of time (Kate, 2001). According to Annan (2000) while contributing in a UNHCR preface, he stated that the U.N is tasked with the responsibility of maintaining peace and security throughout the world over. He emphasised that it so happens that vulnerability hits intensely groups of people who are displaced, for various reasons including but not limited to conflict, persecution or other human rights violations within their home counties. He proceeded to note that the challenges of dealing with forced displacement has been a major problem and the most pressing tasks of the United Nations since its inception.

UNHCR began as a small organization in the year 1950, during the aftermath of the Second World War. It had come up with a three-year mandate to deal with the main aim of helping to resettle European refugees who were homeless after the Second World War which occurred between the years 1939-1945. However, even after the three-year time frame, the organization could not be disbanded as its purpose has continued expanding in that it has always handled displaced persons' matters in all parts of the world (Office of UNHCR, 1st October 2000)

2.2 Legal Implications and Obligations for Hosting Refugees Globally

The Convention on the Status of the Refugees (1951) as well as UNHCR were the international instruments that were established to address the question of refugees in Europe according to

(Boccardi, 2002). The 1951 Convention was drafted following the aftermath of the World War II. According to Boccardi (2002) the interpretation of a refugee by the Convention on the Status of the Refugees (1951) placed its main focus on displaced persons who fled their countries they once called home and had become refugees following unfavourable conflicts happening in Europe or other parts of the world before 1st January 1951. He observed that the influx refugee crisis did not stop occurring. Every now and then new refugee crisis kept on emerging during the late 1950s and early 1960s. According to Graham et al (2019), it was absolutely inevitable to expand both the scope of duration and territorial jurisdiction of Conventions that touch on refugee matters so as to include other parts of the world. This resulted to the drafting and adoption of the 1967 Protocol so as to embrace the provisions of Convention of 1951. The two treaties share three main subjects which include the standard definition of refugees, their legal status and/or position in the respective countries granting refuge and/or asylum, their legal entitlements and obligations expected of them in the host country, including the duty of the host State to observe the principle of *non-refoulement*. This means not to *refoul* the refugees and asylum seekers to a State and/or an area where their lives or their lawful freedoms would be put to danger, are likely to face death, violation of their rights and interests. The principle vests the obligations of cooperation with the rules and regulations of the UNHCR on the host State as it carries out its functions and mechanism of ensuring that the provisions of the international Conventions are complied with (Graham et al, 2019).

In 1967, the UN General Assembly admitted a Declaration on Territorial Asylum which was directed towards States. The Declaration's main objective is to ensure that when each and every State is expected to grant asylum as a peaceful and humanitarian act and in an unfriendly manner. The State granting asylum is empowered with the commission of vetting all the asylum seekers and confirm that indeed their claims of coming from a Country where their lives were in danger are genuine. This way, it is possible to avert individuals who might cause insecurity in the host country. Article 14 (1) of the Universal Declaration of Human Rights provides that it is the right of every asylum seeker to freely and without any hindrances to enjoy living in other countries of asylum without threats and actual persecution (Graham et al, 2019).

The concept of *non-refoulement* according to the Convention Relating to the Status of Refugees (1951) clearly demonstrates that refugees enjoy a right within their respective host countries to

be protected against forcible return which act is widely known as *refoulement*. Article 33 (1) of the Convention expressly enshrines upon all States bound by the Convention not to expel or return ('*refouler*') a refugee in whatever commission and/or omission whatsoever to the frontiers of territories of countries of their origin where their lives or freedom would be put to immense threats on account of various grounds which may include nationality, race, religious beliefs, association of a certain social group or affiliation of political views. Prohibition of *refoulement* is not a matter of choice. It has been declared as a key norm of international law applied across the world. It does not matter if a State is a signatory of the International Conventions that govern refugee matters or not. The strict rule is that every State regardless of its assumption of sovereignty status must respect and adhere to the principle of *non-refoulement*. Where the principle is breached or there are threats of violation, the UNHCR responds by seeking the intervention of relevant institutions which includes filing of suits in Courts of law, and if it deems necessary, will formerly put across its concerns to the public in a bit to protect the lives of the vulnerable groups the same being refugees and asylum seekers (Kate at al, 2001).

Currently, Europe has become the destination for most migrants from the third world states. This means that all European states in one way or another play host to migrants (Kogan, 2007). All these migrations have been caused by political, economic as well as social cultural challenges all over the world. During the World War 11, it's estimated that over 15 million refugees migrated at the end of the war which war occurred during the years 1939-45 (Graham at al, 2019). This is because the people who were fighting that war were taken back to their home countries or expelled from the host states. The hostility, aggression and unrest were coming from Axis Powers-Germany, Italy and Japan- and the Allies-France, Great Britain, the United States, the Soviet Union and to a lesser extent, China (Graham at al, 2019). Many victims were forced to migrate. For instance, Germans who were staying in Poland, Czechoslovakia, Hungary, Romania as well as Yugoslavia together with prisoners of war who were of German origins were taken back to Germany (Kogan, 2007).

The Conventions and Declarations on refugees were brought about as a result of emergence of refugees in the wake of World War 11 which took place between 1939-1945. The Conventions and Declarations have been adopted by States globally.

Curtis (2011) observes that currently, there is a huge migration of the refugees from Greece heading to different European states such as in Italy. He argues that the reason for this mass migrations is that there is a severe financial crisis in Greece in that they are unable to contain the harsh economic challenges. For instance, the state of Italy which has hosted these refugees from Greece is finding it difficult to sustain the burden because of impeding service delivery to the Italian citizens by the sitting government. As a result, Italy is torn between sticking to the principles of dealing with refugees and implementing them. Since Italy has acceded to the UDHR, it is bound by Article 14 of the same treaty supported as well by the EU stand on the Temporary protection of the displaced people which demands that the mass influx of asylum seekers migrating from their Countries must be admitted to the country to first call. Even though this first country is not in a position to host the asylum seekers for long or on a permanent basis, it must ensure that the asylum seekers are given sufficient protection before they are relocated to another country where they can reside either permanently or for a considerable long period of time (Curtis, 2011). Ahsan (2011) noted that Italy's hands have been tied by the UN convention which demands that refugees cannot be expelled back to where they came from. Again, Italy is a signatory to the Dublin agreement which demands that Italy continues to house the refugees. According Ahsan (2011), there is no suggested way of what Italy can do in order to resolve such a legal puzzle, and this study has identified that there is a huge legal gap in sorting out the refugee problems in the host states.

Palestinian refugees form the largest group of refugees in Middle East region. These refugees have since settled in Jordan, the country where they first landed, where more than 1.6 million refugees have been registered according to (Chatty, 2010). Palestinian refugees could not return to their lands after Israeli State refused to accept a UN Resolution 194 resolving that any refugee who may wish to go back to his/her home country should be encouraged to do so and those who in one way or the other wishes to stay put and never to go back to their home country's then their decision should also be respected. In addition to this, any refugee who lost his/her property, the International Law demands that he must be adequately compensated by his home government or the authorities concerned as per (Chatty, 2010). He observes that with the exception of Palestinians living in Jordan, most of the Palestinian refugees have not been granted citizenship in the countries where they have settled regardless of the fact that they have resided there for a considerable period of time. As it can be seen in the Israel Palestinian case, there is no legal

regime that has legislated to ensure that the rights and interests of the host state are safeguarded thus leaving a lacuna in the law on how the rights of the refugees and the country of refuge can be balanced. However, from all the views of the above writers, there is nobody who has mentioned anything about the legal implications that the host countries experience while housing the said refugees. In fact, studies have pointed out that most European states reacted by instituting tough immigration policies which discouraged the migration of the refugees.

2.3 Legal Implications and Obligations of hosting Refugees Regionally

After the fall of colonialism, conflicts erupted in most of the African Countries leading to displacement of thousands if not millions of people. The move turned out to be large-scale refugee migrations. The enactment and embracing of Protocol (1967) and the OAU Convention (1969) was prompted by the population displacements Africans from one third world country to another (Kate at al, 2001). The OAU was established in 1963. Subsequently, the OAU Convention which came about to address the refugee and asylum seekers menace was enacted in 1969 and it came into force in 1974 (Okello, 2014). Although it is widely accepted that the 1951 Convention is the leading global instrument regarding to the conduct of refugees, to date, the OAU Convention happens to be the only regional refugee treaty that is legally binding in the African continent (Kate at al, 2001). The main reason that OAU Convention was enacted was to set standards for the receiving countries in terms of the treatment accorded to refugees in the countries they have settled. The Convention however failed to address itself to the events that led to displacements from the country of origin.

There is a general observation that 1969 Convention is a relatively short instrument though this does not make it less important. It adopted the contents of the 1951 Convention. The most notable thing in the 1969 Convention is the definition of refugee which made some additions. Article 1 of the OAU treaty defines a refugee as “a person who has sought protection outside his territorial country as a result of unfavourable external hostility, occupation, foreign control or serious incidents which results into disturbance of public order in a certain part or the whole country or nationally, is forced to flee his/her aboard in search of refuge elsewhere away from his home country.”

Article 2(3) of the 1969 Convention adopted the principle of *non-refoulement*. The said Article talks about prohibition of rejection of any individual at the boarder by either a member or non-

member state, expelled or compelled to leave their country where his/her life, rights or privileges will be curtailed.

Owing to lack of stability in many of its constituent countries, the African Continent has recorded the worst incidents in that there are many situations that result into creation of refugees generating circumstances (Poku et al, 1998). It has been noted with a lot of concern that global conventional refugees have greatly increased in numbers from around 2.5 million in the early 1970s to a whopping approximately 23 million in the 1990s. The number of non-conventional refugees (internally displaced persons) as per Kane (1995) is currently bigger than the conventional refugee population and is estimated to be 27 million globally.

Although its common knowledge that most refugees have migrated to the first world states most of which are based in Europe and the United States, it should not be taken as a surprise that a large number of refugees nowadays are found in many third world countries as opposed to the first world states. Often, the reason that the third world countries host considerable large numbers of refugees is simply because of proximity to arrears of conflict (Riley, 2007). The scholar argues that this has got huge legal implications to the host state since the refugees are in one way or the other becoming a liability to the hosts state and the host state is torn between satisfying the needs of the UNHCR laws and the meeting the interests of its citizens This study has brought up suggestions on how the impasse can be resolved.

The refugees in Africa are scattered all over the continent, with arrears of major concentration shifting regularly. Wars in the Democratic People's Republic of Congo (DRC), Zambia, Rwanda, Uganda, Burundi, and Congo (Brazzaville) gave rise to large number of refugees in Africa in the 1990s (Rwomire, 2001). When genocide broke out in Rwanda, many refugees mainly Hutus escaped from the country in order to seek refuge in other countries such as Burundi, Tanzania and Kenyans (Rwomire, 2001). A considerably good number of refugees from Mozambique have settled in South Africa (Kok, 2006). He further argued that because of the continuation of war and civil unrest in Mozambique between FRELIMO & RENAMO, prolonged periods of droughts, hunger and famine made a lot of Mozambican citizens to flee to countries such as Malawi, South Africa as well as Zimbabwe.

Since the month of December, the year 2013, violent conflicts and unrest in South Sudan have resulted into loss of lives of thousands of people and displaced nearly four million people who have fled from their habitual residences in search of refuge elsewhere (UNHCR Report 2013). The Inter-Governmental Authority on Development (IGAD) oversaw the ratification of the Revitalised Agreement on the Resolution of Conflict in South Sudan (R-ARCSS) on 12th September the year 2018 which move has resulted into a partial reduction of fighting. South Sudan became the 143rd Country to ratify both the 1951 Convention and its 1967 Protocol. This event took place on 28th September 2018 according to UNHCR Report (2018). In the year 2016, the Country became a member of the Organization of African Union Convention on refugees (1969). Despite this Country being the world's youngest nation, signing of the three instruments was a commitment to assume more responsibility to protect refugees and asylum seekers residing within the Country who numbered 300,000 (UNHCR Report 2018).

The 1994 genocide in Rwanda and the subsequent overturning of the then incumbent government by RPF occasioned into a large-scale exodus of millions of people from the country who were fleeing the chaotic Country (UNHCR Report 1st January 2000). According to UNHCR, there were numerous refugees and specifically in their millions who had settled in neighbouring countries, who included approximately 1.2 million in Zaire, over 580,000 in Tanzania, over 270,000 in Burundi and some 10,000 in Uganda. Refugee camps which had been established in Goma within the Kivu province located in Eastern Zaire were very close to the Rwandan border. These swiftly turned into the planning and execution avenues of both the defeated legal Rwandan armed forces (Forces Armies Rwandaises or FAR) and the members of the Hutu militia group, known as the Interahamwe. Since the camps were being dominated by the FAR's, their actions created unimaginable security troubles for the vulnerable refugees and this situation brought about strenuous dilemma for UNHCR as it was applying its efforts to ensure their successful protection (UNHCR Report 1st January 2000). By the end of 1994, the refugee camps which had been set up in the Eastern part of Zaire were in chaos and in imminent danger of forceful repatriation of the refugees. The citizens of Zaire felt like the Rwandese refugees were the cause of their problems and they wanted them out. The government of Zaire, which had a responsibility of managing welfare of the refugees was giving an indication of its failure to survive under the circumstances. Further the new government of Rwanda was also giving mixed signals. UNHCR on the other hand confirmed that their mandate and means were

not equal to the requirements that would have effectively addressed the intense crisis in the camps as the establishment had ceased to be a place of refuge but a place of powerful war zone (United Nations Report 15th December 1999). In August 1995, the Zairean government closed down one camp and forcefully repatriated 15,000 Rwandese refugees back to Rwanda in hired trucks (United Nations Report 15th December 1999).

In the year 2016, a delegation sent from Rwanda and representatives from 11 African host countries, the O.A.U and the U. N refugee Agency came up with a time table to reconcile the situation of Rwandan refugees who had fled the country between the years 1959 and 1998 (UN News centre 2016). The members hailed from various host countries including Rwanda, Kenya, Cameroon, Angola, the Democratic Republic of Congo, Burundi, Zimbabwe, Malawi, Uganda, South Africa and Zambia. The participants confirmed their earlier commitment to implement their plans in management of Rwandese refugee crisis which had been launched in October 2009 and bring it to its conclusion by end of 2017 (UN News 2016). All the states confirmed their willingness to continue promoting the option of voluntary repatriation to Rwanda in safe and dignified manner, including provision of all the relevant and adequate information that was expected upon return (UN News 2016). In the same breath, the UNHCR agreed to give its support to the refugees in form of cash, which cash was meant to be start off package to ensure that they were restored if not to their previous positions, a position that would enable them to effectively manage their affairs (UN News 2016).

In the year 1996 the South African government became a partner of both the UN Convention (1951) on the Status of Refugees and the 1969 OAU Convention which are commissioned with the responsibility of governing the protection and treatment of asylum seekers and refugees by appending its signature (De la Hunt, 1997: 1). At the same time, its Parliamentarians passed the South African Refugees Act No. 135 of 1998). This move was meant to ensure that South Africa as a country adhered to the International regulations and conform to the set up standards relating to refugees matters. However, the recent acts of Xenophobia in South Africa have displayed to the world how South Africa is far away from implementing the provisions of various International Treaties that it has acceded to with regards to refugees and migrants.

2.4 Legal Implications of hosting Refugees in Kenya

As per Article 2 (5) and (6) of the Kenyan Constitution (2010), Kenya has acceded to a couple of international laws which form part its law. Amongst these treaties are those that are applicable to refugees and asylum seekers. The Treaties that are applicable to refugees include the 1951 United Nations Convention Relating to the Status of Refugees which was ratified on May 16, 1966, and its 1967 Protocol in 1981, the 1969 OAU convention (formerly known as the Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, which it ratified in June 1992, the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment which it signed in February 1997 and the Cartagena Declaration Refugee Act. The most significant provision in regards to refugee issues is Article 33 of the 1951 Convention that brings about the principle of *non-refoulement*. The realm of *non-refoulement* is to ensure that “no member state or non-member shall expel, drive out, return (*refouler*) or extradite a person to an area where there are reasonable grounds to believe that he will be in eminent danger of being subjected to torture, violence or loss of life.”

In Kenya, the office tasked with the responsibility of governing refugee matters and more so in complying with the principle of *non-refoulement* is the Refugee Status Determination. The office is empowered with the responsibility of implementing the obligations bestowed upon Kenya under international law and relate the same with the Refugees Act (2006). It further went ahead and came up with subsidiary legislation, the same being the Refugees (Reception, Registration and Adjudication) Regulations, in 2009 (Refugees Regulations). Section 8 of the Act establishes the Department of Refugee Affairs (DRA) and confers it with the mandate under Section 7 (2) to perform amongst others the functions of responsibilities of receiving and registering refugees as directed by Commissioner for Refugee Affairs. Initially, these functions were managed and controlled under the now repealed Immigration Act and Alien Restriction Act. All other functions of provisions of services including food, health and shelter relating to refugees were delegated to UNHCR. This practice did not stop even after Kenya enacted its own legislation in the year 2006. It was however until the year 2014 that the DRA took up some of the functions of RSD. The functions included the approval of refugee status decisions done by the UNHCR and issuance of notifications once a refugee has been formally recognized after having met the

required standards under the Refugees Act of 2006. Plans to transfer the functions of the RSD to the DRA by UNHCR have been underway.

This study seeks to analyze the key features of the Kenyan refugee legal framework under the Refugees Act (2006), the Refugees Regulations set up in 2009 and the recent legal developments relevant to resolving asylum seekers and refugee matters.

2.4.1 Key Legislations and Provisions in Kenya

i) Key Provisions of the Refugees Act 2006

Section 3 (1) and (2) of this Act states that there are two categories of refugees namely the statutory and *prima facie* refugees. Statutory refugees refer to an individual who is able to prove that he/she is in imminent danger of being subjected to hostility on account of sex, race, nationality, religion, association of a particular social group or affiliation of political support. *Prima facie* refugees makes reference to a person who is a victim of circumstances resulting from external hostility, profession, foreign interference or events seriously upsetting public order in any part or whole of his country habitual residence. The Act proceeds to define asylum under Section 2 as the act of providing shelter and protection to persons awaiting registration as refugees, while an asylum seeker is a person seeking recognition of refugee status in his host country.

The Minister of Interior and Coordination of National Government has powers to grant specific persons the status of *prima facie* refugees and to amend or alter such declaration if there are enough reasons to do so. For instance, in June 2014 South Sudanese individuals who had fled civil war and settled in Kenya were declared *prima facie* refugees by the then Interior Minister, Hon. Joseph Ole Lenku whose move was purely on humanitarian grounds. The same move was replicated the same to persons who had fled to Kenya from South and Central Somalia.

ii) Disqualification and Cessation of refugee status

Sections 4 and 5 of the Refugees Act, 2006 gives grounds under which one may be disqualified and/or cease from holding refugee status. Circumstances under which one may be disqualified refugee status includes where it is proved that a person has committed a crime against humanity thus breaching international treaties which Kenya is a signatory, unlawful activities committed

outside the jurisdiction of Kenya, has been guilty of any acts that violates principles of U.N or A.U, has more than one nationality and cannot give sound reasons of any imminent persecution.

Section 5 of the same Act provides that a person may cease to be a refugee if; he voluntarily returns to his country, has from valid reasons lost his nationality, he re-gains his nationality, acquires citizenship of another state, circumstances under which he had acquired refugee status ceases to exist and is guilty of a serious non-political offence outside the territory of Kenya before being granted refugee status.

The DRA has powers to withdraw the refugee status of any individual if there are valid reasons to believe that the person is no longer a refugee or was not supposed to have been granted refugee status from the word go. This may occur if the person did not qualify to be granted the status or the status was granted after misrepresentation or non-disclosure of material facts concerning his determination of refugee status. Additionally, refugee status of an individual maybe withdrawn by DRA if it has reasonable grounds to believe that the person is a threat to national security or public order to any community in the country.

When the refugee status of a person has been withdrawn, he/she loses all other benefits that are associated with refugees. This is because refugees are entitled to privileges that are also accorded to their family members by association. In the event refugee status is cancelled, the refugee's family members also suffer the same fate. However, any family member who feels aggrieved by this decision may petition independently for the decision to be overturned.

iii) Right of Appeal

Section 9 of the Refugees Act (2006) establishes a Refugee Appeal Board and confers it with the mandate of hearing and deciding appeals. Hypothetically, asylum seekers and refugees have a right to appeal any decisions of DRA that they deem unfavorable. The members of the Appeal Board consist of an experienced legal professional, members competent in matters relating to immigration, refugee affairs, national interest, security, local governance and foreign affairs. The Board is expected as per the Act to perform its functions free from any influence from third parties. Though there is a mention of the Appeal Board in the Act, the same has not yet been formerly constituted. DRA and UNHCR therefore have not been declining applications of

asylum claims as there is no appeals board in place that unfavorable decisions can be heard and determined.

iv) Non-Return and Voluntary Return

Section 18 of the Refugees Act (2006) is in line with Section 33 (1) of the 1951 Convention in that it promotes the principle of *non-refoulement*. The Section gives the principles upon which the exercise of promotion of refugees' welfare as a measure of adhering with human rights standards are dealt with in Kenya. This Section regulates the wellbeing of refugees by stating that no person shall be denied entry into Kenya, sent away and/or extradited from Kenya, *refouled*, or expelled to his home country where his life will be subjected to persistent harassment or endangered his life, physical integrity, or freedom.

A tripartite agreement was entered into in the year 2013 the Governments of Kenya, Somalia, and the UNHCR to peacefully repatriate Somali refugees back to their territorial country. As part of the consensus, Somali refugees were to be repatriated voluntarily within a period of three years. The repatriation was to be in compliance with international law so as to encourage the refugees to return to their Country and start their lives afresh. However, survey carried out in 2014 established that only 2.9% of Somali refugees in all the Dadaab sub-camps were willing to return to Somalia owing to the fact that the security in the Country is not stable. The Kenyan government has on numerous occasions threatened to forcibly repatriate Somali refugees and asylum seekers to Somalia a decision which would amount to violation of the Act and its contract with Somalia and the UNHCR

2.4.2 Other Legislatures Applicable in Kenya

Sections 33 and 34 of The Kenya Citizenship and Immigration Act (2011) regulates the operation of the right to admit or not to admit any non-Kenyan in the Kenyan territory especially those who are considered to be a threat to Kenya's national security. These sections give Kenyan Government the liberty to reject asylum seekers. Of importance to note is that both the Kenyan domestic and the International law are in agreement that Kenya should admit anybody who claims to be an asylum seeker. In case the Kenyan government cannot grant him asylum, then the person should be handed over to the UNHCR. Every refugee and asylum seeker has got a right to be heard (Human Rights Watch, 1999).

The Kenyan government has on several occasions threatened and actually engaged in a deportation spree of the Somali refugees who are numbered in hundreds of thousands hence violating the principles that the International Law intends to promote. The rules and specifically the principle of *non-refoulement* as enshrined under Article 33 of the 1951 UN Convention, bars member states from forcefully transferring the refugees against their will. This is so especially if the refugees feel that their countries of origin are not safe. This move by the Kenyan government also violates its 2010 Constitution, specifically Article 27 (4) which provides that discrimination of all forms whether by the state or individuals is prohibited. This discrimination maybe in form of sex, race, religion, creed, ethnicity, pregnancy, colour, marital status, health status, conscience, religious belief, cultural background, dress, language, birth just to mention but a few. Since Kenya has acceded to the 1969 OAU Convention, it cannot expel or repatriate refugees against their will especially to a war tone state such as Somalia. Even though states have national interests in controlling access to their territorial boundaries, they are bound by international obligations to provide protection to those persons fleeing persecution from their own countries. Such persons have a fundamental right to seek asylum from a country of their choice as enshrined under Article 1 of the 1951 UN Convention on Refugees and this right needs to be preserved (Office of the UNHCR, 2002). Kenya is bound by this instrument even as it attempts to protect the national interests. The argument has always been that the refugees are in one way or another affecting the Kenyan government's capacity to effectively meet the needs of its citizens. In any case the Government of Kenya exists at the pleasure of the people of its citizens whom they are accountable to. And therefore, this is a legal puzzle that both Kenya and the UNHCR are unable to resolve, hence the justification for this study.

Although Kenya acceded to both the 1951 UN Convention as well as the 1969 OAU Convention on refugees, it has never been keen to observe the provisions of these two treaties to the letter. Instead, there has been a tense relationship between the Government of Kenyan on one hand and the refugees especially those of the Somali origin on the other hand. On a number of occasions, the Kenyan government has issued continuous threats in regards to closing down the Dadaab refugee camp and subsequently expel the Somali refugees back to their home Country. These declarations have always been met with strong objections from the UNHCR and the international community at large who argue that in case the Kenyan government goes ahead to implement such threats, it would have strongly violated all the treaties that they have signed concerning the

refugees. But to be fair to Kenya as the host state, Kenya has hosted the Somali refugees for the last 27 years or so and it has had to dig deeper into its own public coffers so as to cater for the needs of these refugees.

Although the International Law treaties that concerns the conduct and government of the refugees across the world which Kenya has signed provides that the refugees should enjoy their freedoms of movement, work, owning property just to mention but a few, these freedoms are not granted to the refugees within its territory. The Refugees Act (2006) under Section 25 (f) prohibits the refugees from enjoying freedom of movement and as such they cannot work and/or own property as they must remain within the confines of the refugee camps. This basically translates to warehousing of refugees as they are not allowed to move outside the camps. Whenever they wish to live the camps for various reasons, a movement pass must be obtained from the management of the camps. Section 16 of the Act provides that the refugees are entitled to enjoy all the legal entitlements and be subjected to the obligations of the international conventions to which Kenya is a party to. It further provides that the refugees must comply with the laws of Kenya. This to some extent must be confusing to the refugees for the main reason that some provisions of the Kenyan laws for instance in respect of freedom of movement contradict the provisions of the international laws which guarantees this liberty. The same Section 16 and specifically under subsection 4 proceeds to state that every refugee together with members of his family who is in a wage-earning employment must be subjected to the same rules and regulations that are imposed to other foreigners. This study would wish to point out that it's unfair to categorize the refugees in the same class with other non-Kenyan citizens in terms of wage-earning employment. This is because they do not choose to be refugees but are just victims of unfortunate incidents from their home countries which they have no control over. The Government of Kenya has therefore out rightly violated the provisions of the international law which are all domesticated in the Kenyan Constitution of 2010. But on the flipside, doesn't Kenya as a sovereign State and in this case being the host state have its own rights when it comes to pursue her own national interests? This legal puzzle is what this study attempts to answer.

Further, Section 16(3) of the Refugees Act (2006) promotes the encamping of refugees camps in well maintained and managed environmentally sound areas. First of all, the refugee camps are located in semi-arid areas where no much developments are expected. Further, these areas and in

particular Dadaab are the most under developed in terms of infrastructure. There have been numerous cases of sexual violence, inadequate health and educational facilities reported in Dadaab Refugee Camp. The refugees live in dreadful surroundings and are entirely dependent on support from well-wishers. It is regrettable to note that despite the fact that the Kenyan Government is under an internationally prescribed assignment to protect the refugees, there seems to be no commitment to ensure this duty is given priority over other matters. Article 28 of the Constitution of Kenya (2010) promotes the inherent dignity of every person and it emphasizes that this privilege has to be honoured and protected. However, clearly when it comes to this vulnerable group, this same birth-right is not protected and especially when threats to forcefully repatriate Somalia refugees are pronounced and actuated. The Somali refugees' dignity was for instance violated in the year 2014 when they were assembled from the city of Nairobi and detained at Kasarani Stadium which move was deemed to be an illegal community punishment.

There is existing literature in regards to Refugees settled in Kenya. They include “The Social-Economic Impact of Refugees on the Neighbouring Camps” (Meenye, 2012), “The Dilemma of Hosting Refugees” (Kirui and Mwaruvie, 2012), “It is Better to be a Refugee than a Turkana in Kakuma” (Aukot, 2003), It's appreciated that the conflicts in other countries have an impact on development in Kenya as a host country and in other various sectors. The authors however only highlight the social-economic issues experienced by the host community. They fail to address the legal implications of hosting refugees in Kenya as another aspect in his study. The researcher seeks to address the challenges faced by both the host country and the refugees in the camps while relating these challenges to the existing local laws and International Instruments. The challenges faced by the host community of refugees the same being Turkana in Kakuma mainly involves degradation of the environment (Kirui and Mwaruvie, 2012). The author however fails to address challenges faced by the refugees themselves and more so those residing in Dadaab Refugee Camps. None of the writers has addressed the question of whether Kenya is implementing the International Refugee Laws. Further no author has addressed the question of whether Kenya is experiencing any challenges in harmonizing the International Refugee Laws with the domestic laws and the link between these laws.

2.5 Challenges Faced by Kenya as a Host Country

Kenya has been entertaining refugees since the 1960s. The main reason why this has been so is because of its relative peace and stability, its ability to recover fast economically and because its borders are porous thus making it easy for persons seeking for refuge to cross over easily (Abuya, 2007). The 1990s marked an influx of refugees in their large numbers into the Kenyan territory. The refugees were fleeing uncontrollable conflicts and insecurity emanating from Somalia, Rwanda, and other neighbouring counties. By the end of 1992, Kenya was a host to close to 300,000 Somali refugees, a very large an unexpected number by that time (Abuya, 2007).

Kenya has been ranked amongst of the tenth-largest refugee population world over, in addition to hosting the highest number of Somali refugees globally (UNHCR, 2016). As such, demographic impact is felt in arears hosting refugees. In regards to Kakuma refugee camp, the camp appears to have had an effect on Kakuma's local population, in that there has been an increase in terms of density. By the year 2004 the inhabitants in Kakuma rose to over 50,000 as a result of high levels of in-migration (Garcia et al., 2017). Unlike Kakuma, the host community in Dadaab are Kenyan Somalis who coincidentally share the same ethnic ancestry, customs, language, and religion with the refugees of Somalia who arrived in Kenya from the early 1990s. In some cases, the host community and the refugees share clan affiliation (O'Callaghan and Sturge, 2018). It is highly impossible to differentiate between Somali refugees and local populations and due to the ethnic clan ties between the two groups as such it is easy for the locals to obtain the refugee ration card for the main purpose of gaining from the free services offered to the refugees (Ikanda, 2008 and Enghoff et al, 2010).

Secondly, refugees especially those of Somalia origin have always been accused of causing insecurity in the host countries. There have been complaints that the migration of refugees in Garissa County has caused insecurity which activities have to a large extent affected the direction of infrastructural developments within the area (GDDP report, 1994-1996). The Republic of Somalia has been politically unstable for long the reason as to why it has been reported that there has been continuous influx of more than 150,000 refugees even of late. As a result, there have been reports of terrorism activities in the district being experienced every now and then. The Government of Kenya has been forced to divert a lot of resources towards

addressing refugees matters in a bid stem down the problem of insecurity. It is believed that criminal elements who come to Kenya in the name of refugees have been able to bring in complex weaponry into the County thus increasing banditry, cattle rustling and other forms of violence in the district (GDDP report of 1997-2001). The GDDP report of 2002-2008 still reiterate that the presence of refugees in Dadaab and the proximity of Somalia Republic border makes insecurity a challenge to development.

Major insecurity occurrences on top of the refugee influx creating a humanitarian crisis have drawn Kenya's and the international community's attention to Dadaab refugee camp. This has been as a result of combatants and militia groups such as Al Shabaab hiding behind the tag of refugees. These insecurity activities caused by the combatants have affected security management of North Eastern province and Kenya at large (Kirui and Dr. Mwaruvie, 2012). In a bid to curb threats brought about by Al Shabaab, Kenyan Defence Forces invaded Somalia in October of 2011 in what was dubbed "Operation Linda Nchi" after it became obvious that the ungovernable militia groups had destabilized economic developments through piracy in the Coastal areas and kidnapping of tourists. The move by Kenyan Defence Forces provoked the terrorists to attack Kenya through waves of land mines and grenade attacks which are believed to have been planned and executed from Dadaab refugee camps. This is enough proof that armed gangs who hide behind the name tag refugees easily sneak into the camps undetected and plan the heinous attacks (Kirui and Dr. Mwaruvie, 2012). One of the greatest security problems is occasioned by the difficulty in differentiating authentic refugees from the militias owing to the fact that Somali refugees and Somalis of the Republic share many aspects which include mode of dressing, language and religious beliefs. (Kirui and Dr. Mwaruvie, 2012).

Thirdly, there have been complaints of negative environmental impacts in areas where camps have been located. A research by Braun et al. (2015) explains that there has been an estimated 11.8% reduction in natural resources, which include water and plantations, approximately within five kilometres from Dadaab complex. Since the refugees rely on firewood as source of energy, it has been reported that there has been depletion of firewood, building materials and grazing areas competition in the immediate environment (Enghoff et al, 2010). According to him, this competition between the refugees and the local community has created a lot of tension with the locals demanding for relocation repatriation of refugees to war torn Somalia.

Lastly, much as refugees are seen and deemed to be a liability to the host country, there is one positive aspect that cannot be ignored. To some extent, refugees are considered to be profitable valuables for local economies, mainly because they get their financial support externally and to be precise by the developed countries. However, the benefits that comes with refugees are not felt equally by the locals as a result of limited strategy engagements with economies gained from the camps. The outcome of this is that there are no efforts to share out the benefits more equally amongst host community and this creates hostility towards the refugees. The failure to have well managed and formal camp economies also means that potential revenue that can be tapped from the camps to enable Kenya draw benefits from hosting refugees are not realised. The Somali refugees do not take out licences for their businesses and this results into loss of revenue for the government. Unemployment has been a major problem within refugee camps. It is noted that not many people from the local communities have benefited in terms of employment opportunities created by the presence of aid organisations working for the refugees. Most job opportunities are occupied by refugee incentive employees, foreigners and non-local Kenyans thus leaving the local communities who are employable out. This is an aspect that the local communities have publicly objected to but with no solutions to address the issue being given (Montclos and Kagwanja, 2000). The locals also complained that significant markets which used to be operated in Dadaab town were moved into the camps, thus affecting the economic developments of the local a move that caused a lot of hostilities between the refugees and the host community (Ikanda, 2008).

2.6 Theoretical Framework

The theoretical framework adopted in this study is liberal institutionalism theory. This theory first emerged in the fall of the World War 11. This was a time when European States were recovering from the aftermath and the effects of the war. The European states decided to come together in the mid 1950's to form the famous European Union which was the first regional integration initiative (Haas,1957). This theory was propagated by Ernest Haas, Pollack, Lindberg, Scheingold, Armstrong, Bulmer and Rosamond among other theorists.

The theory is based on several assumptions. First and foremost is that, in order to have law and order in the international system, emphasis should be placed on global governance and international institutions as a way of maintaining law and order in the international system.

Secondly the theory assumes that there exists closer cooperation among the States and non-state actors in the international system and that all these actors are pursuing the same goals. Thirdly, is that the said international institutions will create common norms, practices, interests and similar regimes across the international system in what is famously known as spillover effects (Rosamond, 2011). All States are expected to abide by these norms and practices.

Fourthly, this theory assumes that the States and non-state actors have surrendered part of their sovereignty to the international institutions who will intern oversee the implementation of various treaties, norms and internationally accepted regimes. Finally, the theory assumes that States are not the sole actors within the international system. Instead, the non-states actors such as the international institutions are also actors in the international system who have rights, duties and responsibilities just like the State actors (Pollack, 2001).

This theory was chosen due to its relevance in this study. This is mainly because it puts much emphasis on non-state actors and in particular international institutions such as the UNHCR as important actors alongside States in the international system. This means that global issues such as the refugee and asylum seekers issues can be addressed by the international institutions such as the UNHCR. The organization is in a position to manage the refugee matters properly because it not only accommodates all the refugees across the world, but it also creates norms and international best practices of managing the refugee affairs by all States in the world. The UNHCR and other associate organizations that deals with the refugee affairs also causes spillover effects to all States across the world to manage the refugee matters in a similar manner. The same institutions are also responsible for guiding the behaviors of the States in cooperating with the refugee issues.

This theory is characterized by a number of limitations. First and foremost, it assumes that there will be closer cooperation between States and non-state actors on global issues such as the refugees' issues. It however fails to put into consideration that this cooperation is voluntary and not forced. In the circumstances where a State has refused to cooperate with the set-out norms, the theory does not explain what repercussions will follow. Secondly, the theory does not capture the issue of state sovereignty. No State across the word would want to surrender or negotiate about its sovereignty. Finally, the theory does not explain how these institutors will be managed,

by explaining who will finance them, and in case they undergo institutional challenges, who will be there to sort out these challenges.

Further limitations which includes; too much assumptions that there will be State cooperation by all States in the world considering the fact that no State will be willing to surrender their sovereignty to supra national institutions such as the UNHCR. This is just a myth since many a times, sovereignty questions and the idea of nationalism cannot be ignored by the international institutions since there is no state which is willing to surrender on its sovereignty. The theory has also been limited by the fact that it is still the State which issue passports. It is also the State that determines immigrations in and out of its territory. Clearly, as long as this position still stands, there is no way international organizations that can dictate to States on how to carry out its internal and/or national affairs.

2.7 Research Hypotheses

This study was guided by these hypotheses;

1. Kenya's national interests influence violation of the provisions of the International Conventions even though it's a signatory to the same.
2. The non-compliance with the International Conventions has legal implications to be faced by the Republic of Kenya.
3. Domestic Laws have influenced Kenya's challenges in complying with the International Conventions.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter mainly describes and focuses on the research design, data collection procedures, target population, location of the study, sample size, instrumentation, and data analysis. The chapter also highlights the ethical principles and the general framework that the study employed to achieve the objectives.

3.2 The Study Area

The study was conducted at Dadaab Refugee Camp within Garissa County. Dadaab Refugee Camp is estimated to be 100 kilometres away from the Kenya-Somalia border line. This camp held approximately over 450,000 Somalia refugees by the year 2017 (UNHCR report, 2017).

There are three Camps namely *Hagadera, Ifo and Dagahaley* which are all ran by UNHCR and other organizations including institutions of the Government of Kenya. Hagadera is located in Fafi Sub country. It consists of around fifteen sections which are occupied by mainly refugees from Mogadishu who came after the fall of the government of Somalia in 1992. It has approximately 78,000 refugees. *Ifo* and *Dagahaley* are located in Dadaab Sub county. They are occupied by refugees who came from Baidoa and Juba land. *Ifo* was established in 1991 while *Dagahaley* was established in 1992 after the fall of the Somalia government. *Ifo* has 65,000 while *Dagahaley* has 60,000 refugees. 96% of the refugees are from Somalia while 4% are from other nationalities which includes Rwanda, Burundi, Ethiopia and South Sudan (UNHCR report, 2019 and RAS report data base, 2019). The number of the refugees has drastically reduced because of Voluntary repatriation back to their frontiers and relocation to other States such as USA and Australia under the government of Kenya 2015 repatriation policy.

The Refugee Camp also hosts Refugees from other countries for instance from Rwanda, Burundi, and Ethiopia which percentage is roughly about 4% of the entire refugee lot in the camp. However, the studies focused on Somali Refugees only as they are the majority and the only ones who have ever received threats of repatriation due to insecurity issues associated with them.

3.3 Study Area Selection

Dadaab refugee camp was selected as geographical context within which the research questions were explored. The camp was established in early 1990s with the main aim of hosting Somali refugees who had fled to Kenya after the Government of Mohammed Said Barre was toppled in 1991. This played a major role in creating the influx of the Somali refugees into Kenya as they ran away from a war torn country. The choice of this study area is justified on four grounds. The first ground is the fact that Dadaab refugee camp is the largest refugee camp as compared to other refugee hosting Countries across the world. Its ability to host a sizeable number of refugees forms the basis for our study. Secondly, the study focuses on Somali refugees mainly because the camp was initially established to host Somali refugees. Many Somali refugees in Kenya are found in Dadaab refugee camp and hence it provides a good context for the study. Thirdly, the Dadaab refugee camp has been under threats of closure by the government of Kenya. The Government has always argued that there are criminal elements within the camp who have been planning attacks/terrorism activities in the camp. The study sought to answer the question of repatriation on account of insecurity vis a vis International Conventions that prohibits *refoulment*. Fourthly, UNHCR, RAS and RCK were tasked with the responsibility of registering refugees, maintaining their records and ensuring that refugee affairs are catered for have set up their offices in the Refugee Camp, they were instrumental in providing information about refugees from first-hand experience. The results of this study will therefore, be of great importance in streamlining policy implementation, and adding knowledge to the existing literature.

3.4 Target Population

The target population was 600 people. The researcher distributed the target population as follow; 40 Camp managers, 20 immigration officers, 20 foreign affairs officials, 50 UNHCR officials, 40 legal officers from Refugee Consortium of Kenya, 250 refugees, 40 sheiks and camp leaders, 30 incentive teachers within the camps, 30 Kenya police officers, 20 judges, 20 magistrates, 20 lawyers and 20 prosecutors.

By the virtue of their positions in the society or in relation to the study, the above-mentioned persons were considered to have vital information on how the Kenya has been responding to matters of refugees and especially those ones who originate from Somalia.

3.5 Sample Size

The sample size of this study was 60 respondents and the researcher applied purposive sampling. This figure of 60 was arrived at after picking a reasonable number of respondents from each cluster that bears the typical characteristics of the entire cluster. Out of the 60 respondents, at least 20 of them were to be of either gender so as to conform to the 1/3rd gender rule. However, out of the targeted 60 respondents, the researcher managed to interview 45 respondents. The sample size was distributed as follows: Two camp managers, two immigration officer, two personnel from UNHCR, two officers from Refugee Consulting of Kenya, thirty refugees, two teachers, two police officers, one judge, one magistrate, two lawyers and one prosecutor.

Table 3.1: Summary of the Sample Size

Categories of respondents	Respondents	Number
Refugee Affairs Secretariat	Camp Manager	4
Department of Immigration	Immigration Officer	2
Department of Foreign Affairs	Foreign affairs officer	2
UNHCR	Human rights officers	5
Refugee Consortium of Kenya	Legal officers	4
Dadaab Refugee Camp	Refugees	25
Dadaab Refugee Camp	Sheiks and Camp leaders	4
Teachers	Incentive teachers	3
Kenya Police Service	Police officers	3
Judiciary	Judge	2
Judiciary	Magistrate	2
Law Society of Kenya	Lawyers	2
Director of Public Prosecution (DPP)	Prosecutors	2
Totals		60

3.6 Research Design

The study used the descriptive survey design. This type of design refers to that strategy whereby a large group of people was studied using a very small size that had the typical characteristics of the whole population (Mugenda and Mugenda, 2003). This is case study method in accordance to the views of (Kerlingers, 1983). This design was useful in this study in that it enabled the

researcher to acquire correct information for a large number of respondents using a small sample, to analyze the relationship between the variables, as it allowed generalization across the population.

3.7 Sampling Procedure

The researcher used the purposive sampling technique whereby the researcher in her own judgement was able to identify the most suitable respondents so as to get a sample size for data collection. The reason for using purposive sampling technique was to enable the researcher to pick only those respondents who were of great relevance to the study by providing the required information with respect to treatment of the refugees in Kenya and what the written Laws provide so as to answer the objectives of this study. Purposive sampling was applied in the study with respect to the Somali refugees so as to establish how the refugees are being treated by the Kenyan Government and the developed countries through Non-Governmental Organizations (N.G.Os and relate the same treatment with the existing Laws.

3.8 Data Collection Tools

The researcher administered questionnaires, interview schedules and Focus Group Discussions (FGD) to gather primary data from the subjects. Open and close ended questionnaires coupled with structured interview guides were applied to gather primary data from the selected respondents. The researcher also relied on secondary materials which included books, journals, publications, speeches and on line reading materials.

3.9 Validity and Reliability

Scientific studies are based on empirical and accurate data and researchers are expected to put into consideration this interpretation when conducting a study. In order to enhance verifiability and importance of collected data, the researcher should design and use data collection tools that preserve high level of validity and reliability. Validity conveys how accurately a test measures what it is intended to measure (Jackson, 2008). In order to boost high level of satisfactory validity in this study, the researcher adopted questionnaires items and interview schedules items that aimed at responding to the research questions and its objective. In the same breath, the researcher adopted a practical theory to influence the study, an element that was employed to ascertain content validity was accomplished during the study.

An Empirical study assert acceptable quality of consistency in collecting, analysing and presenting data, and this study was no exceptional. So as to measure consistency prevailed when the study was being carried out, the researcher conducted a pre-testing pilot study and subjected collected data to reliability tests. While conducting the pre-testing pilot study, the researcher presumed that, data collection instruments contained two sets of items numbered as odd and even as per (Eisinga, TeGrotenhuis, and Pelzer, 2013).

The Researcher computed a score for each set of items and, used the split half technique to calculate the correlation coefficient scores of the two sets of items. Using the calculated correlation coefficient, the researcher was in a position to assess whether data collection instruments maintained high level of consistency or not. After calculating the correlation coefficient score, the researcher obtained a correlation coefficient +0.9.

The researcher used and adopted the data collection instrument for the reliability co-efficient for the instrument in respect of data collection because they fulfilled this requirement (Mugenda and Mugenda 1999). Additionally, the researcher corrected inconsistencies and weakness discovered when conducting reliability test before embarking on the actual study.

3.10 Data Collection Procedure

The research employed two sources of data collection namely, primary and secondary data. Primary data was collected through use of structured questionnaires and an interview guide. It is always advisable to accompany questionnaires with some in- depth interviews, in spite of time constraints (Armstrong, 2006). The questionnaires in some cases consisted of structured (closed ended) questions for the purposes of gaining consistency.

Secondary sources relied on UNHCR and refugees related documents and books, online publications from different scholars, journals, stake holder's reports, Acts of parliament, executive orders, case law among many others. Key among these were publications from UNHCR Reports and Human Rights Watch.

3.11 Data Analysis Presentation

The researcher used both qualitative and quantitative analysis. This is because the researcher was examining an area that required quantifiable data in respect of the number of refugees. The study also looked into, historical analysis of the different legal conventions and case law touching on

refugees. The researcher critically explored the existing laws that relate to issues of refugees and this consisted of both the international treaties and domestic laws. The same Laws included; The 1951 Convention on Status of Refugees and its 1967 Protocol, the 1969 OAU Refugee Convention, Cartagena Declaration on Refugees (1984), The Refugees Act of Kenya, 2006, The Kenya Citizenship and Immigration Act, 2011, The Citizens and Foreign Nationals Management Service Act, 2011 and the 2010 Kenyan Constitution.

Qualitative data which consisted of general statements was analysed using content analysis from data that was organized along two themes as identified from the ultimate results drawn from the conceptual framework.

The first theme consisted of implementation of International Refugee Laws in Kenya while the second theme focused on how Kenya has been handling refugees in Dadaab Refugee Camp.

3.12 Ethical Considerations

Ethical Considerations refers to those acceptable practices which must be adhered to when conducting research (Osso and Onnen 2011). Its these practices that makes the study to be value free, respected and acceptable since it has adhered to the set ethical standards. Among the ethical considerations which this study adhered to was the practice of giving all the information to the respondents regarding this study and getting their consent before interviewing them. The researcher also tried to keep aside all her prejudice and personal opinions concerning the refugees. The researcher went ahead and assured her respondents of privacy and confidentiality in regards to all the information that they gave, and further explained to them that the information was going to be used for academic purposes only and not for any other purpose.

3.13 The Organizational Structure

The research is sectioned into five chapters. The first chapter is the introduction and presents the problem under study. It highlights the objectives of the study and its importance. The second chapter reviews the literature that helps develop the conceptual and theoretical approaches to the research questions. It then identifies the gaps in the existing literature, and guides the study. It also concludes by discussing the main theory and concepts applied in the study. Chapter three describes area of study, research design and methodology, and justification of the study. Chapter

four is the main chapter that discusses research findings. Lastly, chapter five summarizes and draws the conclusions as it makes the recommendations and the way forward.

CHAPTER FOUR

RESULT ANALYSIS AND PRESENTATION

4.1 Introduction

This chapter highlights a detailed analysis of the research findings and data which was gathered from the field in an organized form. As explained earlier, the focus was on a critical analysis of the legal implications of hosting Somali refugees in Dadaab Refugee Camp. In addition, the researcher aimed at finding out the status of the refugees and the challenges that they face while within the camps. This Chapter is organized into two segments. The first part provides information on the demographic characteristics of the respondents and their knowledge on the refugee matters. The second section gives a comprehensive analysis of the response of the participants in respect to the research objectives.

4.2 The Response Rate

The study interviewed 45 respondents out of the 60 who had been targeted. This was done through distributing 45 questionnaires and 15 interviews guides. Out of the 45 questionnaires that were distributed, only 36 questionnaires were responded to and out of the 15 individuals whom the researcher wanted to interview, only 12 of them turned up for the interviews. This translated to 75% response rate. A sample response rate above 50% is recommendable for generalizing the findings of the study (Mugenda and Mugenda, 2003). In this case, the response was 75%, thus fulfilling the requirement of the study.

Table 4.1: Response rate

Response	Questionnaire		Face-face-interview	
	Responded	N/Responded	Responded	Not responded
Frequency	36	9	12	3
Percentage	80%	20%	60%	40%
Total	36	9	12	3

Source: Author (2019)

4.3 The Demographics and Background Characteristics of the Respondents

The tables in this section indicate the demographics of the respondents. These include; gender, age as well as the level of education of the respondents. The purpose of these to the study is twofold. First and foremost is to justify how the sample was distributed in a manner that was representative. Secondly is to get first-hand information from either gender on the issues under study.

The Gender Distribution

The gender of the respondents is explained in the table below.

Table 4.2: Gender of the Respondents

Gender	Frequency	Percentage
Male	33	73.3%
Female	12	26.7%
Total	45	100%

Source: Author (2019)

The above table indicates that one third gender rule was not met according to the researcher. This means that the respondents were not evenly distributed in terms of gender due to the fact that there were more men than women. Additionally, the sheiks and camp leaders are men. Further, most women were not willing to fully participate in the interviews as they would explain that they had other pressing issues for instance children that they had to take care of first. Again, participants from various organizations like UNHCR, RAS and Police Officers who were interviewed coincidentally were men. One Mr. Imbenzi noted that women shun Dadaad work station because it is a hardship area and as such it does not favor women and especially those with families. Again, due to security challenges, women fear living in that area.¹ However, the study was able to secure at least 12 women from UNHCR, RCK, Legal profession and refugees to participate in this study which constituted 26%.

¹ Mr. Daniel Imbenzi is the Assistant Camp Manager at the Refugees Affairs Secretariat Dadaab main office, (Interview by questionnaire) (2019, March 13th)

Level of Education

Table 4.3: Respondents level of Education

Educational level	Frequency	No. of men	No of women	Percentage
Primary	6	2	4	13.3%
0-level	22	20	2	48.9%
Certificate	4	3	1	8.9%
Diploma	5	4	1	11.1%
Degree	8	4	4	17.8%
Total	45	33	12	100%

Source: Author (2019)

Table 4.3 above, depicts that a good number of the respondents had attained o-level certificate and primary education. This consisted of 48.9% and 13.5% respectively. Very few respondents had certificates onwards. For instance, only 4 respondents had a certificate, 5 respondents had a Diploma, while 8 respondents had a University degree. This consisted of 8.9%, 11.1% and 17.8% respectively. The above findings bring out one issue; that the idea of embracing education has not been well captured by most refugees and especially the older generation of people that were not born in the Camps. However, this study also focused on legal matters and all the professionals for instance the judge, lawyers, the prosecutor and human rights personnel who were interviewed had all attained degrees. This however, was not the same case when it came to the refugees as most of them had barely attained primary school education. As a result, these refugees have remained dependent on humanitarian aid as they cannot seek even for incentive jobs within the camps.

Further, most refugees are not aware of their rights as enshrined in various legislatures. For instance, whenever there are threats of *refoulment*, confinement of refugees in camps with no freedom of movement and they are not allowed to seek for employment outside the camps, the refugees do not oppose all these atrocities. One refugee who happened to be an incentive teacher at *Ifo* Secondary School pointed out that even with his education, if forceful repatriation was to be implemented by the Government of Kenya, he would have no choice but to go back to

Somalia.² Education is an imperative factor in enabling the refugees to understand their rights and thus be in a position to address challenges facing them.

The Age of Respondents

Table 4.4: Age of the Respondents

Age of the respondents	Frequency	No. of men	No. of women	Percentage
20-29	9	7	2	20%
30-39	14	11	3	31.1%
40-49	10	7	3	22.2%
50-59	9	5	4	20%
60-69	2	2	0	4.4%
Above 70	1	1	0	2.2%
Total	45	33	12	100%

Source: Author (2019)

Based on Table 4.4 above, the participants were grouped into various age sets of class intervals of 10 years. The age of the respondents was distributed from between 20 and above 70 years. Participants above 60 years had the lowest frequency while those between 20 and 59 years had the highest frequency. Most of the respondents were aged between 30-39 years which frequency consisted of 31.1%, followed by that of 40-49 which was 22.2% and 50-59% which was also 20% respectively. The ages of 60-69, and above 70 consisted of 2 and one respondents respectively. This frequency constituted 4.4% and 2.2% respectively.

The findings of this study shows that majority of the respondents were relatively young with over 73% of the respondents constituting of the ages below 59 years. Therefore, the population of the Respondents consisted relatively young people. Indeed, most of the refugees who were interviewed by the researcher were aged between 30 and 69 years.³ A refugee who agreed to be a translator disclosed that a number of refugees and especially the younger generation have relocated to other countries for instance Canada, the United States of America (USA) and

² Incentive teacher interviewed at Ifo Secondary School (Personal interview) (12th March 2019)

³ Distribution of respondents by age (Personal interview) (2019, March 12th)

Australia in search of greener pastures under the Refugee Resettlement Programme.⁴ Resettlement concerns the identification and migration of refugees from one State to a third State which has accepted to admit them on permanent basis. This arrangement where refugees are resettled is deemed a permanent solution to this unending menace has been in existence from as early as 1956. For instance, nearly 180,000 Hungarian refugees who had fled to Yugoslavia and Australia for protection were resettled in 37 third different countries where they were admitted within a period of 3 years (Couldrey and Herson, 2017). UNHCR has been at the forefront in promoting the resettlement programme of individuals who are determined to be refugees under UNHCR's mandate and for whom resettlement is the most suitable long-lasting solution. These refugees must fall under UNHCR's Resettlement Submission Categories which includes; legal and/or physical protection needs, survivors of torture and/or violence, medical needs, women and girls at risk, family reunification, children and adolescents at risk and lack of foreseeable alternative durable solutions. The identification of refugees potentially in need of resettlement is not a one-off event. The assessment of individual on a case to case basis is a progressive process which must be followed keenly to protect both the interests of refugees and the country of resettlement. In Kenya, the International Organization for Migration-Kenya is the resettlement center in Africa. The Organization provides the refugees with services such as transportation, coordination and assistance for resettlement activities in Sub-Saharan Africa. These services are done under the Refugee Resettlement Programme. Mr. Daniel Imbenzi⁵ stated that the government in conjunction with the UNHCR does not consider the age of refugees when they are conducting resettlement program as the criteria used to identify the refugees set for resettlement is the one given by UNHCR.⁶

4.4 Presentation of Findings

As alluded earlier, this study focused on the critical analysis of the legal implications of hosting Somali refugees in Kenya. The study was anchored on three objectives. The first objective aimed at examining the reason as to why Kenya has not been complying with the existing International Laws. The second objective aimed at finding out if there are legal implications of not implementing International Conventions in regards to refugees. The third objective aimed at

⁴ Refugee Resettlement Programme to third States (Personal interview) (2019, March 12th)

⁵ Mr. Daniel Imbenzi is the Assistant Camp Manager at the Refugees Affairs Secretariat Dadaab main office, (Interview by questionnaire) (2019, March 13th)

⁶ Government policy on resettlement of cation of refugees (Interview by questionnaire) (2019, March 13th)

analyzing the challenges Kenya is facing in complying with the International Conventions on refugees considering that Kenya has got its own Domestic Laws. These objectives formed the basis for result presentation and analysis.

Objective One: To examine the reason as why Kenya is not complying with the existing International Laws on refugees.

The views of the respondents with regards to this objective were divergent. Mr. Imbenzi⁷ an Assistant Camp Manager and Ms. Petronilla⁸ noted that the fact that Kenya has been hosting Somali refugees since early 1990s is an indication that it has been implementing the refugee International Laws. According to them, the principle of *non-refoulement* has not been breached at any one given time and that the decision to close down Dadaab refugee camp is not to repatriate them back to their countries of origin, but to relocate the camp to another area for security reasons.

According to the UNHCR officers, namely Mr Midiwo⁹ and Mrs Kemboi¹⁰ they both confirmed in their respective responses that there were an aggregate of 625,250 refugees and asylum seekers who had entered Kenya as at the year 2014. This figure escalated to 650,610 in the year 2015. The bulk of these populace (close to 70%) were Somali natives, while persons from South Sudan made up to around 20% of the displaced persons population. The rest comprised of 4% from other nationalities for example Ethiopians and Congolese and around 20,000 stateless people. Most of the refugees were Somalis mainly because Somali has not been war- plagued since early 1990s when the Government of Said Barre was overthrown. Further, Dadaab Refugee Camp was established mainly to host Somali refugees but over the years, refugees from other nationalities have been hosted in the said Camp.

Refugees in Kenya principally reside in the Dadaab refugee complex (which is in Garissa County and comprised of three encampments namely Dagahaley, Hagadera and Ifo) and the *Kakuma* Refugee Camp established within Turkana County. Moreover, by April 2014, there were apparently above 50,000 citified refugees in Nairobi predominantly from Somalia heritage.

⁷ Mr. Daniel Imbenzi is the Assistant Camp Manager at the Refugees Affairs Secretariat Dadaab main office, (Interview by questionnaire) (2019, March 13th)

⁸ Ms Petronilla-an immigration officer at Dadaab refugee camp (Interview by questionnaire) (2019, March 13th)

⁹ Ibid

¹⁰ Ibid

However, that was before the Government of Kenya introduced the encampment policy and stated that it will be an offence for a refugee to be found residing outside a refugee camp. The respondents noted that indeed, Kenya has not been turning away refugees who seek refuge within its borders. As such, in as far as being a host country is concerned, Kenya has been partially implementing the International Law.¹¹

According to Justice Kimani¹², the Government of Kenya acted in contravention with the principle of *non-refoulement* by threatening to close down Dadaab Refugee Camp. It was his assertion that Kenya having ratified the International treaties and especially the 1951 United Nations Convention Relating to the Status of Refugees and Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Kenya has an obligation to protect refugees by not sending them back to their motherland where their lives will be jeopardized. He further stated that the fact that the Government was only focusing on Somali refugees amounted to discrimination which was an infringement of Article 20 of the Constitution of Kenya (2010). Hon Nduva¹³, concurred with the observations of Justice Kimani in that she stated that Kenya being a signatory to the international treaties, cannot wake up one morning and decide to forcefully repatriate refugees as this is a breach of the principle of *non-refoulement*. Miss Gathara¹⁴ stated that in as much as whenever refugees are arrested and charged with the offence of being found outside designated areas, they are usually arraigned in court and given a chance to defend themselves, this move in essence means that the refugees' freedom of movement is curtailed. She observed that curtailing this freedom amounts to breach of Article 31(2) of the 1951 United Nations Convention Relating to the Status of Refugees and Article 39(1) of the Constitution of Kenya 2010. However, restraining the refugee's movement is in conformity with Section 25(f) of the Refugees Act (2006) which is the law that governs the affairs of refugees in Kenya. Miss Chege¹⁵, stated that the fact that Kenya has for more than two

¹¹ Mr. Midiwo, is a Human Rights Practitioner UNHCR, Dadaab office (Interview by questionnaire) (2019, March, 13th)

¹² Mrs. Kemboi is a Human Rights practitioner working with the UNHCR Nairobi office (Interview by questionnaire) (2019, April 12th)

¹³ Honourable Nduva is a magistrate of the High Court of Kenya based in Naivasha (Interview by questionnaire) (2019, April 5th)

¹⁴ Miss Gathara is an Advocate of the High Court of Kenya doing private practice in Nairobi (Interview by questionnaire) (2019, April 4th)

¹⁵ Miss Rahab Chege is an Advocate of the High Court of Kenya doing private practice in Nairobi (Interview by questionnaire) (2019, April 5th)

(2) decades hosted refugees and especially those of Somali origin is in itself compliance with the International Law. However, according to all the refugee respondents, even though the Kenyan Government has agreed to host them, they do not have liberty of movement since they are in warehoused in refugee camps. There have always been protestations that the refugees have to obtain limited movement pass before leaving the camps. Further, they cannot find jobs outside the camps.¹⁶

On a number of occasions, the Government of Kenya has threatened to forcefully repatriate refugees and especially those of Somali origin. In the year 2013, Kenya, UNHCR and Republic of Somalia entered into a Tripartite Agreement whose terms were such that Somali refugees were to be extradited back to homeland within a period of three years. However, the three years lapsed before repatriation was implemented. Further, a number of terror attacks in the country the major ones being Westgate, Mpeketoni, Garissa University, Nairobi Dusit D2, Bus attacks just to mention but a few triggered the threats. These attacks were linked to Somalia terror group and in particular Somalis-based Al-Shabaab militia group. It was the Government of Kenya's contention that these attacks have all been planned and executed at Dadaab Refugee Camp thus the declaration to close down the said camp and repatriate all the refugees more so those of Somali origin. Indeed, a number of Somali refugees have since gone back to Somalia albeit against their wishes which is against the principle of *non-refoulement*. Further, refugees are usually encamped in refugee camps and it's an offence for a refugee to be found residing outside a refugee camp according to the Kenyan laws. This again is a violation of the International Conventions which provides that refugees should be granted freedom of movement in the country where they have been afforded interim sanctuary. Refugees in Kenya are not granted work permits. Of importance to note is that there are laid out statutes that denotes the mechanisms under which foreigners should be granted work permits while in Kenya. However, refugees do not enjoy this privilege of being granted work permits so as to enable them engage in wage earning jobs. The 1951 Convention and its 1967 Protocol place a lot of stress on naturalization of refugees by the host country. However, in Kenya though the Constitution, 2010, provides that a person who has been in Kenya for an uninterrupted duration of seven years and who is in compliance with the conditions met out under the Citizenship and Immigration Act

¹⁶ Refugee respondents (Group focus interview) (2019, March 12th)

(2011) qualifies to be naturalized, this does not apply to refugees. This is a violation of the International Conventions on refugees. A refugee who happened to be an incentive teacher at Ifo Secondary School observed that in Uganda, the refugees are not confined in refugee camps. He further stated that the International Law provides that refugees who have no criminal records for a considerable period of time should be integrated in the host country. Indeed, the 1951 Convention relating to Status of refugees and its 1967 Protocol place a lot of emphasis on the question of integration of these vulnerable group of persons. Specifically, Article 34 of the 1951 Convention calls on States to promote the “assimilation and naturalization” of refugees. However, Kenya is yet to come up with policies and legal frameworks for integration to capacitate the implementation of this exercise. It is unfortunate that many a times, the debate of integration transcends to the politics of the day.¹⁷

According to, Mr Midiwo¹⁸ Kenya has endorsed a number of universal treaties which include the Convention Relating to Status of Refugees (1951), the OAU Convention about distinct challenges problems in Africa (1969), the Cartagena Declaration Refugee Act and the Convention on Rights of the Children (1989). It was his view that being International Instruments, Kenya is bound by these instruments. Mrs Kemboi¹⁹ as well reiterated the same position. Miss Gathara²⁰ stated that the Constitution of Kenya (2010) is the sovereign source of Law. According to her, Kenya having assented to the 1951 international laws in her Constitution is bound by the Conventions as the same treaties form part of law of Kenya as per Article 2 (6) of the said Act. Miss Rahab Chege²¹ as well mentioned the same Conventions and noted that refugees have rights just like any other human beings and that their rights of movement, employment, treatment with dignity as prescribed in the Conventions should be adhered to. Miss Winy Bati²² stated that she had on several occasions prosecuted refugee matters wherever they

¹⁷ Refugee Incentive teacher at Ifo Secondary School-Dadaab Refugee Camp (Personal Interview) (2019, March 12th)

¹⁸ Mr. Midiwo, is a Human Rights Practitioner UNHCR, Dadaab office (Interview by questionnaire) (2019, March 13th)

¹⁹ Mrs. Kemboi is a Human Rights practitioner working with the UNHCR Nairobi office (Interview by questionnaire) (2019, April 12th)

²⁰ Miss Gathara is an Advocate of the High Court of Kenya doing private practice in Nairobi (Interview by questionnaire) (2019, April 4th)

²¹ Miss Rahab Chege is an Advocate of the High Court of Kenya doing private practice in Nairobi (Interview by questionnaire) (2019, April 5th)

²² Miss Winnie Bati is a Prosecutor working with the Director of Public Prosecution (ODPP), based at Kisumu Law Courts (Interview by questionnaire) (2019, April, 2010)

are arraigned in her Court and charged with the offence of being found outside designated areas the same being refugee camps. She noted that much as the 1951 Convention Relating to Status of Refugees, the 1969 OAU Convention provides for freedom of movement for refugees, Kenya has its own Act the same being the Refugee Act of 2006. She stated that encampment was introduced due to the many terrorism attacks in Kenya and hence to contain and manage refugees, they have to be confined in refugee camps.

The respondents noted that although Kenya has acceded to a number of treaties which create part of its law, it has as well enacted its own legal framework which govern refugee matters. The same include the Constitution of Kenya (2010), the Refugees Act (2006) and the Citizenship and Immigration Act (2011). It is these legal frameworks that Kenya has been applying while overseeing refugee matters. There has been no one particular legislature that has been enacted harmonizing the Kenyan Laws and the International Conventions to make it easy for Kenya to comply with the International Conventions as they are.

Through the Refugees Act, Kenya took up limited control of refugees' affairs under the Refugee Status Determination (RSD) process, the full mandate of their management in terms of provision of housing, food, health, education and the general wellbeing was left to UNHCR. Among other things, the respondents stated that, the 2006 Act established the Department of Refugee Affairs (DRA), which is empowered with the responsibilities of receiving and undertaking the processing of registration applications by the asylum seekers before they are fully granted refugee status. Justice Kimani²³ stated that the DRA had been disbanded in the year 2016 when the government threatened to close down the two leading refugee camps namely the Dadaab and Kakuma refugee camps.²⁴ The directive was later reverted by Justice John Mativo in his judgment where he held that the directive was irregular.²⁵

Although it is against the law to return a refugee to his frontiers, according to Ms. Petronilla²⁶, under the Refugee Act, 2006, there are compelling circumstances that would result into

²³ Justice Kimani is a judge of the High Court of Kenya based in Nakuru (Interview by questionnaire) (2019, April 14th)

²⁴ Government directive on closure of camps on 6th May 2016

²⁵ Nairobi Constitutional Petition No. 227 of 2016 judgment delivered by Justice John M. Mativo on 9th February 2017

²⁶ Ms. Petronilla-an immigration officer at Dadaab refugee camp (Interview by questionnaire) (2019, March 13th)

disqualification of one attaining refugee status. It was her contention that it is also possible for a person who had been granted such status to lose it if there are well-founded reasons to cancel the status. She explained that according to the Kenyan law, a person is ineligible for refugee status if the person; has committed a crime that breaches peace, a warfare crime, a crime that amounts to violation of humanity or a serious nonpolitical crime in or outside of Kenya. She further stated that disqualification also occurs where an individual attains double nationality and is in a position to seek for safety in one of the countries of his choice, and hence his fear apprehension possible prosecution ceases to exist. Under these circumstances, such a person would be rejected and taken back to his home country. These actions however amount to violation of the International Conventions.

In addition, the Act specifically under Section 6 instituted the Department of Refugee Affairs (DRA) whose mandate include receiving, and vetting applications presented by the exiles as they seek to be granted refugee status. The Commissioner of Department of Refugee Affairs (DRA) has powers to take away the refugee standing of any individual where are appropriate rational to hold that the person is likely to jeopardize state security or endanger any section of its citizens in the country.²⁷ Mr. Barnaba²⁸ and Mr. Omora²⁹ were both in agreement that there are criminal elements within the refugees and that they do not deserve to be granted refugee status.³⁰

The termination of the refugee status of a person is consequential to all the privileges that he/she has been enjoying as they also suffer the same fate. When a person is granted refugee status, members of his family including ward living in the his or her household are also accorded the same rights. In the event one's refugee status is terminated, his family members also lose their status. Where a family member is aggrieved by termination of his refugee status by association, he or she has a right of appeal against that determination independently.³¹ Other than withdrawing a person's refugee status, the DRA has the discretion to expel any refugee or a member of his family if it has reasonable grounds to believe that the presence of such an individual in the country will amount to threat of national security or public order.

²⁷ Ibid

²⁸ Mr. Barnaba is a police officer at Hagadera-Dadaab Refugee Camp (Interview by questionnaire) (2019, March 14th)

²⁹ Mr. Omora is a police officer at Hagadera-Dadaab Refugee Camp (Interview by questionnaire)(2019, March 14th)

³⁰ Ibid

³¹ Ibid

According to Mr Imbenzi³², Kenya, Somalia, and the UNHCR entered into an agreement to willingly and peacefully repatriate Somali refugees back to their country. It was his observation that this program which was meant to be conducted on a voluntary repatriating basis specifically in respect of Somali refugees has not borne much success. One of the provisions of the agreement required that the repatriation be voluntary. Specifically, the provision provided that the parties had reaffirmed that repatriation as per the agreement, the stakeholders would ensure that Somali refugees who have sought refuge in the Republic of Kenya shall take place in conformity with international law pertaining to voluntary repatriation. He noted that a survey carried out in 2014 established that only 2.9% of Somali refugees residing in Dadaab complex had expressed interest in returning to Somalia within the first two years post repatriation agreement. He proceeded to explain that in the year 2016, the repatriation policy was revisited and that a huge number of refugees had either been relocated to other countries for instance Canada, U.K, the USA and Australia and/or voluntarily repatriated back to Somalia. Mr. Imbenzi³³ stated that the Government wishes to close down Dadaab refugee camp and relocate it to another area as currently its proximity to Somalia has been the reason as to why criminal elements have gained access to the camp.³⁴

Kenya has its own laws that govern refugee matters. It is not a question of intentionally refusing to implement the International Laws but a question of applying its local laws with the main aim being to protect national interests.

Objective 2: To find out if there are any legal implications of not implementing International Conventions in respect of refugees residing at Dadaab Refugee Camp.

Kenya may make certain decisions based on its status as a sovereign country. However, sovereignty is not absolute. Kenya has ratified a number of Conventions on refugees which include 1951 United Nations Convention Relating to the Status of Refugees on May 16, 1966, and its 1967 Protocol in 1981, Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Universal Declaration on Human Rights, and

³²Mr. Daniel Imbenzi is the Assistant Camp Manager at the Refugees Affairs Secretariat Dadaab main office, (Interview by questionnaire) (2019, March 13th)

³³ Ibid

³⁴ Government policy to close down Dadaab Refugee Camp (Personal interview) (2019, March 14th)

the Cartagena Declaration on Refugees (1984). As such, Kenya is under an obligation to comply with the provisions of these treaties and whenever any of the provisions is breached remedy can be sought from the Courts.

Justice Kimani,³⁵ noted that Kenya has acceded to quite a number of international and regional instruments that touch on refugee matters and which are also applicable to individuals in need of asylum and protection. He stated that the treaties have been ratified by the Constitution of Kenya and that the most notable ones include the 1951 United Nations Convention Relating to the Status of Refugees on May 16, 1966, and its 1967 Protocol in 1981, Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Universal Declaration on Human Rights, and the Cartagena Declaration on Refugees (1984). It was his further observation that when the Kenyan Government threatened to completely shut down Dadaab Refugee Camp in 2016, his brother Justice John Mativo relied on the aforementioned treaties when he held that the directive of the Government was in contravention with Article 2(5) and 2 (6) of the Constitution of Kenya (2010). Kenya is expected to observe international legal obligations as enshrined under the 1951 United Nations Convention Relating to the Status of Refugees and Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. He further noted that the directive to close down the camp was mainly to forcefully repatriate Somali refugees which directive was discriminatory and in breach of Article 20 of the Constitution of Kenya and the *non-refoulement* principle. Honourable Nduva³⁶ was also in agreement that Kenya has acceded to numerous international treaties through Article 2 (6) of its Constitution. She further stated that Kenya is a signatory to regional treaty namely the OAU Convention (1969) which was enacted to specifically address the unique aspects of refugee challenges in Africa. According to her even though refugees have a right of movement as per the 1951 Convention, in Kenya this movement is curtailed by the Refugee's Act (2006) which prescribes that it is an offence for a refugee to be found outside designated areas. She observed that the main reason why refugees are encamped is because of national security. However, this restriction of freedom of movement amounts to violation of the International Conventions.

³⁵ Justice Kimani is a judge of the High Court of Kenya based in Nakuru (Interview by questionnaire) (2019, April 14th)

³⁶ Honourable Nduva is a magistrate of the High Court of Kenya based in Naivasha (Interview by questionnaire) (2019, April 5th)

According to Mrs Kemboi,³⁷ it is against human rights to give a blanket condemnation against all refugees by presuming that they are all criminals. According to her, criminal liability is not transferrable and that each case should be dealt with on its own.³⁸

A series of terrorism attacks in Nairobi and other areas within the jurisdiction of Kenya were rampant an experience that compelled the Kenyan government to pronounce an encampment policy towards the end of 2012. The adoption of the policy required all refugees and asylum seekers settled and working in the urban areas be evacuated and relocated to refugee camps with the ultimate plan being to repatriate them back to their home countries.³⁹ This move triggered a legal action being a petition before the Nairobi Kenya High Court, Constitutional and Human Rights Division. In a ruling delivered in July 2013, the Honourable Judge held that the government's proclamation was, among other things, a violation of the constitutional freedom of movement and the principle of *non-refoulement* as provided for in the Refugees Act (2006).

The government of Kenya issued another instruction in the month of March the year 2014 ordering all urban refugees to go to designated camps and remain there. The government cited national security and State operational challenges which according to it emanated from the presence of refugees and asylum seekers who were living in urban areas. The terms of this directive were such that all refugees residing outside of the designated refugee camps must relocate to the camps with immediate effect. According to Mrs. Kemboi⁴⁰, in the year 2014 most Somali refugees were arrested and detained on suspicion that they were aiding the infamous Al-Shabaab militia group. Those who were deemed to be suspects of those crimes were deported back to Somalia but according to her some of them have since returned to Kenya.

As at May 2014, more than 350 Somalis, six amongst whom had already been granted refugees' status, were deported back to Somalia against their wish. However, this time round the government's actions of extraditing the said foreigners albeit illegal survived judicial scrutiny in that a petition before the High Court of Kenya at Nairobi challenging the legality of the directive was dismissed.

³⁷ Mrs. Kemboi is a Human Rights practitioner working with the UNHCR Nairobi office (Interview by questionnaire) (2019, April 12th)

³⁸ Connecting refugees to insecurity (Interview by questionnaires)

³⁹ The impact of hosting refugees and Government of Kenya encampment policy of 2012

⁴⁰ Mrs. Kemboi is a Human Rights practitioner working with the UNHCR Nairobi office (Interview by questionnaire) (2019, April 12th)

The various petitions that have ever been filed in Court are a clear indication that there are legal implications to be faced for failing to comply with the International Conventions on refugees. Mr. Imbenzi⁴¹ mentioned that there are sanctions enshrined in the International Conventions that can be applied whenever a host country breaches their obligations and responsibilities to protect refugees. He categorized the same coercive measures as economic, military and political sanctions. He proceeded to explain that on to the economic sanction, the International community may withdraw from doing business with the country that has violated the conventions thus sabotaging the country's economic development. With respect to military sanctions, the international community may refuse to sell security weaponry to the country that has breached the refugee conventions as a sign of punishment. Political sanctions may face challenges because of arguments of State sovereignty which is not easy to interfere with. However, the UNHCR and the International community which provides aid and funds to the host countries for the benefit of refugees have never applied any such sanctions against Kenya wherever they breach the conventions and more so whenever there are threats to close down the camps and repatriate Somali refugees. Implementation of such sanctions may stop the Government from breaching the International Conventions and instead beef up security of its nationals.

However, on the other hand, hosting of refugees is a shared responsibility. Kenya should not be left to shoulder the responsibility of protecting refugees. There have been complaints that the UNHCR and the international community has not been giving Kenya enough support in terms of security and funds. Considering that Kenya has been hosting Somali refugees for over two decades, their resources must have been overstretched. The burden has been left to Kenya to figure out how to protect its own citizens and at the same time the refugees. This is one of the main reasons as to why there have been terror attacks in Kenya as it is overwhelming to balance the two responsibilities. Kenya sent its own Kenya Defence Forces (KDF) to Somalia after several crimes were witnessed including kidnapping of tourists within its jurisdiction. This measure to curb more terrorism attacks was dubbed "Operation Linda Nchi" which was a sign of Kenya's commitment to beef up its security.

⁴¹ Mr. Daniel Imbenzi is the Assistant Camp Manager at the Refugees Affairs Secretariat Dadaab main office, (Interview by questionnaire) (2019, March 13th)

Objective 3: To analyse the challenges Kenya is facing in complying with the Refugee International Conventions considering that Kenya has got her own Domestic Laws

Kenya is a sovereign Country the more reason it has come up with its own local laws to address and manage matters refugees. The sovereignty of the country is enshrined under Article 1 of the Constitution of Kenya (2010). The most notable legislature about refugees in Kenya is the Refugees Act of 2006. The Act was enacted in order to address the challenges that Kenya has been facing by hosting refugees. Although Kenya has acceded to a number of International Conventions which include United Nations Convention Relating to the Status of Refugees (1961), and its 1967 Protocol, Organization of African Unity, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Universal Declaration on Human Rights, and the Cartagena Declaration on Refugees (1984), there was need to enact its own Act so as to address its unique challenges. To further demonstrate its sovereignty, Kenya also enacted the Citizenship and Immigration Act of 2011. Under this Act, Kenya has a right to choose who to remain within its territory and who to remove from its territory mainly for security reasons.

According to Mr. Barnaba⁴², hosting of refugees has been the reason there have been challenges of insecurity in the Country. He observed that Somali refugees are not innocent in as far as insecurity in Kenya is concerned. He categorically stated that some refugees withhold information or host criminals within the camps.⁴³ It was his further observation that the recent terrorist attacks ranging between 2012 and 2019 have been planned from the camps a clear indication that there are criminal elements masquerading as refugees. He mentioned a number of terror attacks in the country the major ones being Westgate, Mpeketoni, Garissa University, Nairobi DusitD2, Bus attacks just to mention but a few. He linked the attacks to Somalis terror group and in particular Somalis-based Al-Shabaab militia group.

The police officer stated that some refugees have been engaging in contraband businesses by smuggling illegal goods in the country which move has caused insecurity in Kenya. He also indicated that small weapons have been illegally brought into the country and hidden in the

⁴² Mr. Barnaba is a police officer at Hagadera-Dadaab Refugee Camp (Interview by questionnaire) (2019, March 14th)

⁴³ Ibid

camps. Mr. Omora⁴⁴ stated that human trafficking has been on the rise as refugee family members left in Somalia are usually trafficked so as to join their family members in the camps believing that there is better life in the camps.⁴⁵ He further stated that some of Somali refugees are terrorists and that it's hard to identify and distinguish them from the Kenyan Somalis because they share language, life style and culture.

All the refugees who were interviewed were categorical that there are no criminal elements within them. According to a Sheik⁴⁶ and a Camp elder⁴⁷ who were refugees from Hagadera Refugee Camp-Dadaab Refugee Camp, they noted that it was unfair to associate the refugees with the terrorists. They stated that Somali refugees fled their country because of insecurity caused by Al Shabaab. They are in Kenya because of fear of persecution by Al Shabaab and therefore could not be aiding the same group which they escaped from.⁴⁸ They stated that the Government of Kenya should beef up security along the border and involve the community in security matters. They stated that additionally, the Government should eliminate corruption in security departments to ensure that criminals do not bribe their way into the country.

According to Mrs. Kemboi⁴⁹ a human rights practitioner with UNHCR, she observed that the recent terrorist attacks seem to have informed the decision that Kenya made in drastically varying to its policy on asylum seekers and refugees. One of the key changes came in the form of an announcement of an encampment policy. Prior to establishment of these new developments, Kenya used to allow refugees and asylum seekers to settle in urban areas, a policy that received official approval when, in 2011, the government began registering refugees in urban centers specifically Nairobi, Malindi, Mombasa, and Nakuru. The refugees would then be issued with refugee certificates that gave them the right to move freely within the aforementioned urban centers. By the year 2012, it was estimated that more than 100,000 refugees had settled in Nairobi, a number that was over three times the officially registered refugees living in the city as compared to the year 2006. Terrorism attacks in the Country compelled the government of Kenya to introduce encampment policy at the end of 2012 thus

⁴⁴Mr. Omora is a police officer at Hagadera-Dadaab Refugee Camp (In terview by questionnaire) (2019, March 14th)

⁴⁵ Ibid

⁴⁶ Refugee respondents (Group focus interview) (2019, March 12th)

⁴⁷ Ibid

⁴⁸ Connecting refugees to insecurity according to refugees (Personal interviews) (2019, March 13th)

⁴⁹ Ibid

revoking its earlier endorsement of allowing refugees to live in urban areas. The plan was to ensure that once all refugees reported to the camps, they would eventually be repatriated back to their home countries.⁵⁰ This move resulted in a legal tussle at the High Court of Kenya, Nairobi between the government and human rights advocates who argued that warehousing the refugees and repatriating them against their wish was a violation of their freedoms which are enshrined in the international treaties and the Constitution of Kenya (2010). The government's encampment policy was meant to address its national interests in that it has a responsibility of taking care of the welfare of its citizens. The High Court in its judgment delivered, declared that the government's announcement was a breach of the constitutional right of movement and the principle of *non-refoulement* as enshrined in the International law, Refugees Act (2006) and the Constitution of Kenya (2010).

Even with such an order in place, the government still went ahead and issued a directive in March 2014, ordering urban refugees to go to and remain in designated camps. It has remained a challenge to balance the provisions of the international conventions and national interests of Kenya. According to Mrs. Kemboi⁵¹, in the year 2014 most Somali refugees were arrested and detained on suspicion that they were aiding Al-Shabaab. Those who were suspected were deported back to Somalia but some of them have since returned to Kenya.

The judiciary of Kenya in May 2014 authoritatively made it clear the Kenyan laws are not an academic exercise by allowing the government's decision to deport about 350 foreigners six amongst whom were recognized refugees, were said to have been extradited back to Somalia. In December 2014, Kenya made further amendments in its legislature by repealing the Refugees Act of 2006. A salient development in the 2014 amendment sought to make it irreversible the encampment system, by stating that "every individual who has requested to be admitted as a refugee together with all members of his/her family shall abide by the guidelines of the policy in that they will remain in the designated refugee camp until the procedure of registration is completed and approved." Another section that was introduced the one requiring every refugee and asylum seeker not to leave the territory of the identified refugee camp without the authority and movement pass issued by a Refugee Camp Officer.

⁵⁰ The impact of hosting refugees and Government of Kenya encampment policy of 2012

⁵¹ Mrs. Kemboi is a Human Rights practitioner working with the UNHCR Nairobi office (Interview by questionnaire) (2019, April 12th)

Amongst the rest of the amendments, the most pronounced provision was one that sought to tragically narrow down the sum total of refugees and asylum seekers in the country, possibly by involuntary repatriation. The provision states as follows:

“(1) The sum total of refugees and asylum seekers admissible at any one given time to stay in Kenya shall not surpass one hundred and fifty thousand individuals. (2) The National Assembly has the mandate to change the number of refugees or asylum seekers allowable to be in Kenya. (3) In the event the National Assembly varies the number of refugees or asylum seekers in Kenya, such an alteration shall not last for period not exceeding six months. (4) The National Assembly has the authority to review the period of variation for a further six months.”

The strict execution of this law today would result into *refoulement* of thousands of refugees and asylum seekers who would sum up to more than 200,000 persons, a majority of them being Somali citizens. After the ratification of this amendment, numerous constitutional law suits challenging the legitimacy of the law were filed in Court. On February 25, 2015, the High Court of Kenya at Nairobi Constitutional and Human Rights Division declared that this specific provision was “unconstitutional, and therefore null and void.” The Court observed that restricting the number of refugees and asylum seekers that may be present in Kenya would invariably result in the unlawful expulsion of hundreds of thousands of refugees and this would result into violation of the principle of *non-refoulement*, which is a part of the law of Kenya and is expected underpin as it is enshrined by the Constitution.

Following the April 2, 2015, lethal onslaught at Garissa University by the Somalia-based terrorist group Al-Shabaab, where nearly 150 lives were lost, Kenya indicated that it would halt the operations of Dadaab refugee complex immediately and extradite its residents, back to their home countries. Kenya reportedly recanted its decision as a result of demands from the developed countries, including the United States of America. This was after a constitutional petition was filed at Nairobi Law Courts by the Kenya National Commission on Human Rights and the Legal Advice Centre T/A Kituo Cha Sheria opposing the directive. Justice John M. Mativo held that the proposed repatriation of refugees and asylum seekers of Somali origin was unlawful, unreasonable, illegitimate, discriminatory and humiliating and as such in breach of Articles 27 and 28 of the Constitution of Kenya (2010). The Court further held that the

government's decision particularly targeting Somali refugees was an act of group persecution, an illegality, discriminatory and therefore unconstitutional.

From the above finding, it is clear that though Kenya is a signatory of the International Laws on refugees, there are a number of challenges experienced in complying with the same. Of importance to note is that every host country has its own unique experiences that come about on account of hosting refugees. In the case of Kenya, Somali refugees have been within the Kenyan territory from the early 1990s. These are individuals who fled to Kenya after the fall of the then president, Said Barre. The Republic of Somali has been in a state of lawlessness thus giving rise to growth of terrorists. Due to proximity of Kenya to Somalia, and the fact that Dadaab refugee camp is a few kilometers away from Somalia border, there are criminal elements who have gained access to the Camp where it is believed that a couple of terror attacks are planned and executed as according to Mr. Barnaba.⁵²

Kenya has enacted its own laws to address its own unique legal challenges. Harmonizing the domestic laws with the international conventions has not been possible mainly because of the insecurity problems it has been facing as a result of hosting refugees. As such, it has proved difficult to fully comply with the International Conventions that provides that refugees should be granted freedoms for instance freedom of movement. The Kenyan situation can only be managed by encamping refugees in refugee camps even though this is against the International Conventions to curtail for freedom of movement. The encampment policy is in line with the Refugee's Act of 2006 even though it's against the 1951 UN Convention and the 1969 OAU Convention.

Further, there are limited resources to cater for the refugee needs. Kenya has been compelled to overstretch its resources by having to provide protection to the refugees. Kenya gave up portions of land where refugees reside, set up police stations in the camps and government offices for from RAS, RCK and the Immigration officials. Security officers who would be protecting other Kenya's have been compelled to live in the camps so as to manage the security matters in the camps. This is in spite of the fact that protection of refugees as a policy is a shared responsibility and hence there ought to be security details from the international community so as to share the

⁵² Mr. Barnaba is a police officer at Hagadera-Dadaab Refugee Camp (Interview by questionnaire) (2019, March 14th)

responsibility. As such, the Kenyan situation and especially in regards to insecurity due to its proximity to Somalia puts it in a unique place thus making it hard to strictly adhere to the provisions of the International Conventions.

Again, although the 1951 UN Convention puts a lot of emphasis on integration of refugees, in Kenya, there is no legal framework to carry out this process. Further, it is hard to distinguish the Kenyans of Somali ethnic descent and Somali refugees of Somalia for this process to be implemented as the two groups share language, culture and life style. On to the question of work permits, Mr. Imbenzi noted that there has been rampant unemployment of Kenyans and hence refugees who are in their thousands cannot be granted work permits at the expense of Kenyans. This is a confirmation that it is hard to implement the International Conventions on work permits for refugees.

CHAPTER FIVE

DISCUSSION OF THE FINDINGS, SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter gave conclusion and summary of major findings on the legal implications of hosting Somali refugees in Kenya. It also provides an elaborate discussion about implementation of International Conventions and the challenges Kenya encounters in complying with these Conventions. The chapter further highlights recommendations to be implemented and ends with suggestions for further research on gaps identified and considered important by the researcher during the study.

5.2 Discussion of Findings

The discussions of the study findings were organized according to the study objectives which were as follows; Reasons as to why Kenya is not complying with the International Conventions, the legal implications of Kenya failing to comply with the International Convention and the challenges Kenya is facing in complying with the International Conventions.

Objective 1: Reasons as to why Kenya is not complying with the International Conventions

From the research findings, it was evident that Kenya has certified the existing International Conventions on refugees. These Laws include the United Nations Convention Relating to the Status of Refugees (1951) which Kenya assented to on 16th May, 1966, and its 1967 Protocol acceded to in 1981. Kenya is also a member of the African Union (AU) (formerly known as the Organization of African Unity, OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), which endorsed in September 1969 and ratified in June 1992. In addition, Kenya admitted the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in February 1997. Although Kenya has ratified the aforementioned conventions, it has enacted its own domestic laws. The same include, The Refugees Act (2006), the Constitution of Kenya (2010) and the Citizenship and Immigration Act (2011). These are the domestic laws that give guidelines on refugee matters in Kenya. There has never been any documented harmonization of the international conventions and the domestic laws to ensure that the Kenyan national interests and the refugee interests are balanced. For

instance, the findings revealed that refugees in Kenya are encamped for security reasons. The Refugee's Act Section 25(f) provides that it is an offence for a refugee to be found outside a designated area and that if this happens, the refugee is either imprisoned for a period of six months and/or fined Kshs. 20,000.00. This in essence means that their freedom of movement is curtailed a move that is in violation of the conventions.

The results derived from the Respondents in regards to compliance with the International Conventions were divergent. There were Respondents who believe that Kenya has been fully complying with the International Conventions. They supported this argument by stating that Kenya has been hosting Somali refugees for more than two decades a clear indication that the principle of *non-refoulement* has not been breached. It was observed that these Respondents were employees of the Government and specifically police officers, Refugee Affairs Secretariat officials and an official of Department of Immigration. However, the UNHCR officials and the refugees themselves gave different opinions. These respondents were of the view that on a number of occasions the Government of Kenya has threatened to close down Dadaab Refugee Camp and forcefully repatriate the refugees and especially those of Somali origin. They proceeded to state that indeed, over 200,000 Somali refugees were repatriated back to Somali from the year 2016 against their wish.

The findings established that the Kenya Somalia borders are porous. The refugees cross the border from two points the same being Liboi and Doblely and that no vetting is carried out at those crossing points. According to the Police officers who were interviewed, they indicated that there are criminal elements disguising themselves as refugees. These respondents stated that a couple of terror attacks for instance the Garissa University and Westgate attacks were planned and executed in Dadaab refugee camp. The research findings were such that refugees and in this case those of Somali origin have been encamped so as to manage insecurity issues which are linked to the Somali refugees. The same police officers stated that contraband goods and small arms have found their way in the refugee camps through the very same refugees. According to them, this is another mode of insecurity to the country. Based on the survey finding, it emerged that much as the international conventions requires that refugees be granted freedom of movement, in Kenya it is impossible to do so due to security lapses experienced on a number of occasions. One UNHCR respondent was however of the view that applying blanket

condemnation against the refugees was unfair and that each case regarding terrorism should be dealt with on a case to case basis.

The international conventions have put a lot of emphasis on integration of refugees by the host country. The findings established that there is a Bill being debated in Parliament so as to introduce a Section in the Refugee's Act (2006) on integration of refugees. Much as the Constitution of Kenya (2010), recognizes naturalization of foreigners who have been in Kenya for a duration of seven uninterrupted years, this privilege is never enjoyed by the refugees. Further, one can become a citizen through birth or marriage to a Kenyan as per the Constitution of Kenya. However, those refugees who were born in Kenya have never been granted citizenship under the Kenyan soil. Indeed, even when the refugees who were born in Kenya attain the age of majority, they cannot apply for national identification cards but they instead get registered as refugees by Refugee Affairs Secretariat. Those refugees who are married to Kenyans as well can never apply for citizenship status by marriage. There has never been any legal framework that would have guided Kenya on integration of refugees. As such, it is not possible to comply with the conventions' provisions on integration as the national interests of Kenya as well have to be put into consideration.

Based on the survey findings, it emerged that there is a conflict between the International Laws and the domestic ones and that there has never been an attempt to harmonize the two so as to have a win-win situation.

Objective 2: The legal implications of Kenya failing to comply with the International Convention

Like any other human being, refugees as well have rights. Their rights are prescribed in written laws to guarantee that their interests are well secured. The results of the study revealed that Kenya has ratified International Conventions on refugees. Other than that, Kenya has also enacted a number of laws which include the Refugees Act (2006), The Citizenship and Immigration Act (2011) and the Constitution of Kenya (2010) so as to address its own national interest vis-a-vis the refugees.

The findings revealed that there have been a number of petitions that have been filed at the High Court of Kenya as against the Government of Kenya whenever there are threats to repatriate

refugees back to their country of origin. The same petitions were filed when the Government of Kenya threatened to breach the provisions of the international conventions. These petitions are usually filed by human rights agencies with the backing of UNHCR. The Courts have always come to the rescue of the refugees by declaring that the directives amount to infringement of international legal obligations that Kenya is bound by. For instance, in the year 2016, a petition was filed by the Kenya National Commission on Human Rights together with the Legal Advice Centre T/A Kituo Cha Sheria when the government directed that owing to national interest hosting of refugees had come to be halted and that Dadaab refugee camp should be closed down indefinitely. Justice John Mativo ruled that the communique was in contravention with the principle of *non-refoulement*.

Based on the survey findings, it emerged that a majority of refugees and especially those who have been in Kenya since early 1990s are not educated and hence they are not conversant with the existence of laws that safeguard their rights. As such, whenever there are threats and/or directives to repatriate them, they just move back to their countries even if it's against their wish. The UNHCR and the international community has on several occasions intervened by warning the government of Kenya that such directives amount to violation of the provisions of the international conventions and more so the principle of *non-refoulement*. In the study, it emerged that there are sanctions that can be applied to deter States from violating the international conventions. The same sanctions include political, economic and military sanctions. The UNHCR has supervisory responsibilities but it cannot enforce the conventions. Even though sanctions may be levied against violators, the study revealed that there are no records of a Nation that has ever faced any sanctions. The furthest that consequences against violators have ever gone is public shaming in press and verbal condemnation by the UN and filing of multiple suits in Courts of Law. To date, these moves have never deterred Nations from violating the International Conventions.

Objective 3: The challenges Kenya is facing in complying with the International Conventions.

The Kenyan Somali borders are porous. It emerged from the findings that the refugees just cross the Kenya Somali border without being vetted. The refugee respondents revealed that they usually walk to the camp from two entry points the same being Doble and Liboi towns which

are close to the border. The results of the study revealed that criminal elements are able to gain access to the refugee camp as no screening is done at the border. In the study, the police officers indicated that the criminal elements hiding in the name of refugees have been the cause of insecurity in the country. They stated that terrorist attacks are planned and executed within the camps. They further stated that contraband goods, small arms and human trafficking are other challenges that Kenya is facing as a result of hosting Somali refugees and that these types of crimes have as well deteriorated security of the country.

Although Kenya has enacted a number of international conventions, there has never been any documented harmonization with the domestic laws so as to ensure compliance with the conventions. The study revealed that Kenya has been facing insecurity challenges as a result of hosting refugees. This was the rationale behind introduction of encampment policy as a measure to curb insecurity. However, encampment results into curtailing of the refugees' freedom of movement. There ought to be exemptions as to the freedom of movement of refugees so as to address the unique challenges faced by the host countries.

The 1951 Convention puts a lot of emphasis on integration of refugees. However, there is no legal framework and/or legal regime to guide the process of integration in Kenya. It emerged from the findings that there is a Refugees Bill being debated in parliament and that one of the sections sought to be introduced is about integration of refugees. The refugee respondents pointed out that they are willing to contribute positively into the economy of Kenya by paying taxes and other levies if integrated. They appreciated the fact that Kenya is a peaceful country and that given a chance, they are willing to contribute towards economic development of the country.

It is however a challenge for Kenya to comply with the provision of integration as enshrined in the 1951 Convention without proper guidelines on how to go about it. The police officers who were respondents in this study were of the view that it is as a result of hosting refugees that Kenya has gone through major terrorist attacks. The findings revealed that to some extent, the refugees are not fully accepted in our society and hence a lot of public forums need to be organized before integration is implemented if the bill goes through so as to collect the views of the public.

Hosting of refugees is a shared responsibility as a matter of international policy. No State should be left to shoulder the responsibility of hosting and protecting refugees on its own to avoid the temptation of rejecting and/or sending the refugees back to their frontiers. Based on the survey findings, it emerged that there are no enough funds channeled towards refugee matters in Kenya. Indeed, it emerged that Kenya has overstretched her resources towards refugee matters more so in the security sector. This has led to imbalance in terms of taking care of the national interests and refugees' interests. It is obvious that if more resources are enhanced to the host country and in this case Kenya, insecurity will be a thing of the past and the threats to repatriate refugees may cease.

5.3 Summary

From the study findings, it was evident that 73.3% of participants who took part in the study were male and the females accounted for 26.7%. The findings envisioned that majority of the participants were aged between 30-39 years. On to the question of education, the findings established that majority of the refugees have not gone beyond primary level and as a result they could not communicate in any other language other than their mother tongue.

The researcher established that though it is a collective obligation to host refugees internationally, this obligation has not been fully embraced in Kenya. It was noted that though there are international conventions ratified by Kenya, with strict provisions binding the country, there are also domestic laws enacted by Kenya with the main aim of addressing it's national interests. The harmonization of the two sets of laws to address the unique challenges that Kenya is facing will not only facilitate cooperation with the international conventions but also ensure that national interests are taken care of.

The study established that refugees cross the Kenya Somali border from two points the same being Doblely and Liboi. The refugee respondents revealed that no form of vetting is conducted as they cross the border and walk all the way to Dadaab refugee camp. It was vividly clear from the study that lack of presence of security agencies at the borders allows criminal elements to easily access the camp.

Based on the study results, it emerged that the reason behind numerous threats to repatriate Somali refugees is on account of insecurity. In the same breath, the police respondents cited that contraband goods, small arms and human trafficking brought by refugees in the camps, are amongst other factors that have contributed to the insecurity of the country. The study as well found out that enough funds should be channeled to the host country in order to guarantee that there will be a balance between refugee interest and national interest.

Based on the study results, it emerged that the reason behind a number of threats to shut down Dadaab refugee camp and repatriate refugees and especially those of Somali origin is insecurity. However, these threats are usually arrested through filing of constitutional petitions in court to ensure that refugees are not extradited to the frontiers where their lives will be jeopardized. Indeed, the survey findings confirmed from the UNHCR respondents that it was as a result of a number of petitions that the Government of Kenya has been compelled to abide by the principle of *non-refoulement*.

5.4 Conclusion

Based on the study results, harmonization of the international conventions with the domestic laws to address the challenges Kenya is facing as it hosts refugees would be a viable solution to address these challenges. It should be noted that refugees just cross the Kenya Somalia border without any form of supervision. Failure to vet the refugees as they cross the border headed to Dadaab refugee camp serves as a loophole to allow criminal elements to access the camp and plan terrorism attacks without being noticed. However, applying blanket condemnation against all the Somali refugees by associating them with insecurity is unfair and it leads to violation of their rights especially where there are threats of repatriation.

It emerged that since hosting of refugees is a shared responsibility as a matter of principle, sufficient funding of the host country will ensure that there is proper balancing of both refugee and national interests.

5.5 Recommendations

From the findings of this study and the conclusions that this study was able to make this study wishes to make the following recommendations:

The Kenya Somalia border is porous. It was established that there are no security check points at the two main points where refugees cross the border the same being Doblely and Liboi and walk to the camp. This has created a loophole for the criminal elements to freely cross the border and gain access to the Dadaab refugee camp. Contraband goods and small arms also get their way into the camp as a result of absence of security agencies at the border. Further, human trafficking also takes place at the border another aspect that has resulted into insecurity in Kenya. The researcher recommends that there be security details at the border to vet those crossing the border in the name of asylum seekers so as to do damage control early enough.

Random inspections should be conducted in the refugee shelters so as to nab any criminal elements within the refugee camp. This way any terrorists masquerading as refugees will be nabbed before they plan and execute any attacks. Further, any contraband goods, small arms and terrorism weapons will be located if at all they are usually hidden by the refugees.

The Refugee Act of 2006 was enacted so as to address national interests. However, some sections are not in line with the international conventions. For instance, Section 25(f) provides that it's an offence for a refugee to be found outside a refugee camp. This way, the refugee's freedom of movement is curtailed. As such, refugees who are specialists in certain professions cannot obtain work permits and engage in wage-earning activities outside the camps. Further, those refugees who would wish to engage in business activities will have a chance to embark on business activities and, in the end create job opportunities for other individuals. This move may deter refugees from engaging in criminal activities.

The Refugees Act 2006 also needs to be amended so as to include a provision on integration of refugees. Those refugees who have been in Kenya for a considerable period of time and have no criminal records ought to be considered for integration after thorough vetting and found fit for this process. Since there is a Bill being debated so as to include a section on integration, the host community should be interviewed so that they can give their views especially because they are the ones who will share job opportunities and living space with the refugees.

Kenya has been hosting Somali refugees for over two decades due to lack of lawlessness in the Republic of Somalia. Over the years, there have been terrorism attacks experienced within the country which attacks have been blamed partly on Somali refugees and other Somali criminals.

The international community which puts a lot of emphasis on the obligation of hosting refugees ought to consider enhancing funds given to Kenya as a result of hosting refugees so that these funds can be used to cater for refugee interests instead of compelling the host State to overstretch its resources so as to balance national interests and refugee interests.

5.6 Suggestion for further research

During the survey, the researcher established that since it is onerous to differentiate the Kenyans of Somali ethnic descent and Somali refugees of Somalia origin, the Kenyan Somalis have used this loophole to be registered as refugees so as to benefit from the free services given to the refugees. There have been complaints that Garissa County and especially Dadaab area which is semi-desert is under-developed. The host community has no source of income the more reason they opt to be registered as refugees. This study focused on the legal implications of hosting Somali refugees but further research can be done to examine the impact the refugees have had to the host community in Garissa County.

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APPENDICES

APPENDIX 1: QUESTIONNAIRE FOR THE COMMUNITY RESPONDENTS

A critical analysis of the Legal Implications of Hosting Refugees by the host state: A case Study of Somalia Refugees in Dadaab Refugee Camp in Kenya

Introduction

I am a student pursuing Masters of Arts in International Relations at the University of Nairobi (UON), Department of Political Science and Public Administration. My research topic is on “Examining the Legal Implications of Hosting Somalia Refugees in Kenya: A case Study of Somalia Refugees in Dadaab Refugee Camp” I kindly request your participation by providing me with information that will assist in my study. Please be advised that your demographic data to wit- age, level of education, occupation, religion, residence and ethnic identity will be gathered as well. However, while presenting my report, there will be no disclosure of names or any description that may reveal your identity. There are no risks besides those experienced in everyday life. Your participation is completely voluntary and all your responses will be treated with confidentiality.

SECTION A: DEMOGRAPHIC INFORMATION SECTION A: DEMOGRAPHIC INFORMATION

1. What is your age? (in years)

18- 29 () 30- 39 ()

40- 49 () 50 and above ()

2. Sex

Male () Female ()

3. What level of formal Education have you attained?

a) Primary ()

b) Secondary ()

c) College Certificate ()

d) College Diploma ()

e) University Degree ()

f) Post Graduate ()

g) Others (Specify) ()

.....

4. Religion

a) Christian ()

b) Muslim ()

c) Others (Specify) ()

5. What is your major source of income?

a) Business trading ()

b) Employed in private sector ()

c) Government worker ()

d) Others ()

Please, specify:.....

6. How long in terms of years have you resided in Dadaab Refugee Camp?

a) Less than 1 year ()

b) 1-5 years ()

- c) 6-10 years ()
- d) 10 years and above ()

SECTION B: THE IMPACT OF HOSTING SOMALIA REFUGEES IN KENYA

7. Did the Government of Kenya act in its own national interests by threatening to close down Dadaab refugee camp?

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.....

8. Are there any Somalia refugees who have been forcefully repatriated back to Somalia since the directive to close down Dadaab refugee camp was made?

If yes approximately how many have been repatriated?

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9. In your opinion, are Somalia Refugees victims of circumstances in as far as insecurity in Kenya are concerned?

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10. Are there Somalia Refugees who have been arrested and/or detained by the Kenya authorities? If yes why were they arrested/detained?

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11. Are all Somalia Refugees innocent as far as insecurity in Kenya is concerned?

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.....

12. Are Somalia Refugees allowed to move freely in and out of the Refugee Camps and live in other areas other than the Refugee Camps?

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13. In your opinion, should refugees be allowed to look for jobs and/or engage in other trading activities so as to earn a living?

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14. Should Refugees forever depend on humanitarian aid for their well-being in their host countries?

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15. Should Refugees be repatriated to their countries of origin so that they can develop their own countries?

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16. In your opinion, were arrests and screening of arrested persons at Kasarani Stadium amount to ethnic profiling of Somalia Community?

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17. In your opinion should all the Refugees be confined in Refugee Camps, will the question of insecurity in Kenya be answered?

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18. Is the UNHCR ensuring that all Refugees are well taken care of wherever they are?

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19. Is the Kenyan Government doing its best to ensure that Somalia Refugees are safe security, education and health wise?

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20. Are the Somalia Refugees entirely liable for insecurity in Kenya?

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21. What is your opinion in terms of connecting Somalia Refugees to insecurity in Kenya?

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22. What is your opinion in terms of the challenges that Kenya is experiencing in implementing the international laws in regard to Somalia Refugees in Kenya?

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Thank you for your participation

APPENDIX 11: INTERVIEW GUIDE

A critical analysis of the Legal Implications that the host countries experiences when hosting Refugees: A case Study of Somalia Refugees in Dadaab Refugee Camp in kenya

THE LAWS AND REGULATIONS APPLICABLE TO REFUGEES

- 1. Are there existing International and National Laws for refugees that you are aware of?
If yes which ones?

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- 2. Are there any linkages between domestic laws on refugees and international laws on refugees?

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- 3. When the government of Kenya threatened to close down all refugee camps, was the move meant to implement its own Refugee law in that it has a right to choose who allow in its boundaries and who to keep away?

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- 4. Do you think Kenya took its national interests first at the expense of the rights of the refugees?

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5. Is Kenya complying with the laws and regulations put in place to address the issues of refugees?

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6. Has the hosting of Refugees in Kenya affected the socio-economic well-being of Kenya?

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7. Should Refugees who have criminal records be forcefully repatriated to their countries of origin?

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8. Should the Refugees who have kept a long track of good conduct be integrated as citizens of Kenya?

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9. Did the rounding up of Refugees at Kasarani Stadium amount to violation of the Refugees rights?

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10. Should the International Community introduce sanctions whenever Kenya breaches the rights of refugees?

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11. Are there Refugee Camps that have specifically been gazetted by the Government of Kenya?

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12. Does warehousing/confining of refugees in Refugee Camps amount to violation of their freedom of movement?

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Thank you for your participation