

**IMMIGRATION AND NATIONAL SECURITY: AN ASSESSMENT OF
REGIONAL IMMIGRATION INTO KENYA USING HUMAN-SECURITY AS A
YARD STICK IN EVALUATING MIGRANTS'-IDENTITY AND SECURITY
DYNAMICS IN KENYA**

BY

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**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF MASTERS OF ARTS DEGREE IN
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DECLARATION

I declare to the best of my knowledge, that this is my original work submitted for the award of the degree of Masters of International Diplomacy at University of Nairobi.

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DEDICATION

To my late parents, William Opata Olila and Monica Achieng; my living memories. To my brothers, sisters and friends who have helped me appreciate human condition as a checkered past, A present disorder And a future promise and secondly to all global Migrants.....May you find Peace and human fulfillments that elude many in a globalizing World full of diversities, opportunities and challenges.

ACKNOWLEDGMENT

In a study of this nature, it is indubitable, that one has many debts to acknowledge. For practical reasons, it would be impossible to individually thank all those, who through their help and advice, generously contributed to the accomplishment of this study. In particular I want to register my in-depth appreciation to my academic mentor, the Late Professor Olewe Nyunya (R.I.P) and secondly to Dr.Ibrahim Farah who was always very patient with me, yet, encouraging, critiquing, and guiding me throughout my writing. Daktari your intellectual challenge and input cannot be quantified. Once again, thank you for your every kind of invaluable support.

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LIST OF ABBREVIATIONS

ACHPR- African Charter on Human and Peoples' Rights
CEDAW- Convention on Elimination of all forms of Discrimination
Against Women
COMESA-Common Market for East and Southern Africa,
COK-Constitution of Kenya
CSO- Civil Society Organizations
DRC- Democratic Republic of Congo
HDI-Human Development Index
HRN- Human Rights Networks
IGAD-Intergovernmental Authority on Development
ID- Identity Card
KHRC- Kenya Human Rights Commission
KNCHR- Kenya National Commission on Human Rights
MUHUR-I Muslims for Human Rights
MRG- Minority Rights Group International
NEP- North Eastern Province
NGO Non-Governmental Organization
NRB National Registration Bureau
UDHR Universal Declaration of Human Rights
UN-United Nation
OSIEA Open Society Initiative for East Africa
RI- Refugee International
UDHR- Universal Declaration of Human Rights
UNHCR- United Nations High Commission for Refugee
WMS- Welfare Monitoring Surveys

ABSTRACT

International migration reinforces interdependence between countries allowing for the transfer of knowledge and skills. The nature of migration into Kenya by regional migrants clearly indicates the above motivations and trend with many respondents agreeing to the fact that "migrating to Kenya was a decision made for various reasons mainly: - searching for peace and furthering personal development.

In an era of growing insecurity concerns within its neighboring states, coupled with the global war on terror, Kenya is increasingly caught between its global market and rights-based norms and values on one side and political- security pressures to effectively control her borders on the other. The key question that this study assessed was how Kenya can secure its borders in pursuing its national security interests and at the same time remaining a haven for humanitarianism in the region?

The general objectives of the study were:-first to map out regional immigrant's identity and their reasons to migrate to Kenya. Secondly was to analyse how regional international migration to Kenya has resulted to the adoption of control mechanisms by security agents, and lastly to assess the adoption of human-security intervention strategy as a yardstick towards national security policy formulations and implementation.

In order to achieve the above objectives, the study utilized historical analysis; critical-analytic and descriptive methods of research investigation through both interviews and library based research. The study found out that political regimes in Kenya have used laws and force in competing for their interests. This has been sustained by retention of the colonial form of laws that touch on immigration, policing and penal code. The security structure and institutions are also subject to political manipulation as each aspect of implementation awaits orders from above. The study also found that regional international migration has further been securitized based on fear of conflict spill over, spread of illegal small arms and light weapons, increase in crime, and terrorism and instability in Somalia. Kenya finds itself at a cross-road where global processes are redefining values, norms and cultures that have dominated the region at expense of individual human security.

While recognizing threats that come with regional international migration, nationalized responses risk a move towards regime security rather than focusing on human security. Hence a need for a review to the laws and policies frameworks that govern national security, immigration institutions and structures.

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CHAPTER ONE INTRODUCTION

1.0 Background

Population movements are as old as human history and in many situations result in betterment of human lives. This assertion is supported by Huntington when he contends that "if demography is destiny, population movements are the motor of history."¹ Migration in historical perspective involves a myriad of intentions and desires motivated by search for wealth, work, land, adventure, freedom, peace and stability. The nature of migration into Kenya by regional migrants clearly indicates the above motivations with many respondents agreeing to the fact that "migrating to Kenya was a decision made for expansion of the range of choices and furthering personal development.

Migration has however become a complex phenomenon going beyond the dichotomy of developed, developing and underdeveloped countries. At the regional level, Kenya has emerged as a progressive economy and a peaceful stable country thus attracting both economic and forced migrants. As one respondent highlighted "*there are business enterprises controlled by migrants from the region*". Migrants from Ethiopia and Eritrea have found a niche in matatu [mini buses] transport industry, (Gikomba) open-air market

¹ Huntington, P. Samuel, *The Clash of Civilizations and The Remaking of World Order*. Touchstone Books, Simon & Schuster Rockefeller Centre, NY, 1998, p.42.

has been dominated by Chagga people from Tanzania; manufacturing industry has been dominated by Indians and Arabs, while Somali migrants have transformed Eastleigh to a *small Mogadishu* for every aspect of trades in Nairobi.

Kenya's relative regional economic progress, geographical location in the Horn of Africa, its relative political stability and porous borders have resulted in many both voluntary and forced migrants and families to seek protection and opportunities within its borders. Thousands from South Sudan, Ethiopia, Somalia, DRC Congo, Rwanda, Burundi, Uganda, and other one-time unstable states have found their way across the borders into Kenya. The public debate shaped by political opinion leaders has mainly focused on where *they* are coming from and what *they are likely* to bring with themselves?

1.1 Statement of the Research Problem

International migration reinforces interdependence between countries allowing for the transfer of knowledge, skills and symbiotic mutual benefits. At the local level, this is seen in relation to the nature of interdependence between rural areas and industrialized urban cities. Young educated and skilled migrants are attracted to cities which act as centers of economy, politics and other social structures such as education and health. Migration here is related to push and pull factors as young adults and skilled personnel search for employment and betterment of their lives². However, at the international level, migration has become an area of focus following a dialectical expansion of multinational business network that demands a mobile human resource on one hand. On the other hand, transformation of globalised international crimes, civil conflicts and threat to national

² Ibid p. 40

economies associated with this mobility become a challenge to be dealt with within the framework of national security³.

In an era of growing security concerns within its neighboring states, Kenya is increasingly caught between its global market and rights-based norms on one side and political and security pressures to effectively control her borders, on the other. The key question that this study wants to assess is how Kenya can secure its borders in pursuing its national security interests and at the same time remaining a haven for humanitarianism in the region?

Lately, issues of migration have been heightened by the ongoing terror threats which have showed high level of international coordination and networking fused by global technological advancements. The case of the 9/11 bombing in USA elicits this fact as it fused aspects of migration and technological maneuvers in effecting terrorist activities. Causes, effects and future orientations towards migration have thus been reemphasized by Governments and non State actors in a manner to respond to emerging threats to peace and security of the world.⁴

The government of Kenya, just like any other, has the duty derived from its Constitution and Sovereignty associated herein, to defend and secure all people living within its territory. Viewing it from a social contract perspective as put by Rousseau, it thus implies that it is the duty of the State through its machineries to keep away all the "unwanted

³ C.Abbot, *Global Responses To Global Threats*, UK: Oxford Research Group, 2006, p.23.

⁴ Combs,C.Cindy,*Terrorism in the Twenty First Century*,(2nd ed) ,Prentice Hall,2000) p.6

category"⁵ of people from its borders and at the same time, take care of its constituents that have signed the common good reflected in the constitution. The unwanted category could either be illegal migrants as stipulated by Immigration Laws and the Penal Code or legal ones, whose intention is to get involved in illegal activities in relation to the laws of the State⁶. According to Kenya's Immigration Act, any person who is not a Kenyan citizen is unlawful unless that person is in possession of a valid entry permit or a valid visa. Some argue that the current immigration policies in Kenya pose a threat to national security. They draw relationship between immigration and terrorism or increased crimes in Kenya.

The former Police Commissioner, Mr. Nyaseda attributed the high rate of crimes in Kenya to high number of immigrants. He argued that Immigrants have been linked with arms robberies, drug-trafficking and forgeries of documents. This line of thinking and operations goes hand in hand with what Francis [1986] describes as migrants "not originally bound by, and probably not particularly familiar with the criminal laws"⁷ this has legitimated an attempt to apply a militaristic approach when operationalizing security policies at the expense of professional policing. This has in turn promoted the perception that criminals come from a given social-political-territorial category, to be dealt with as a designated enemy if national security is to be achieved. This criminological perception and identity to immigrants is worrying as it offers punishment tailored to classification of criminals

⁵ Rousseau The Social Contract - <http://www.fordham.edu/halsall/mod/rousseau-contract2.html>

⁶ Laws of Kenya, The Immigration Act Cap. 172:64

⁷ Francis, T. Samuel, *Conflict Studies*. The Centre for Security and Conflict studies [CSCS] 12/12G, Golden Square London, 1986, p. 183

especially when dealing with migrants' diasporas. Hence this study seeks to use an expanded notion of human-security as a yard stick instead of militaristic approach while dealing with immigrants who find themselves within Kenyan territory due to pull and push factors.

1.2 Study Objectives

The general objective of the study will be to identify how operationalizations of national security policies in Kenya affect human-security of migrants and host communities.

Specifically, the study will be seeking;

1. To map out regional immigrant's identity and their reasons to migrate to Kenya.
2. To analyse how regional international migration to Kenya has resulted to adoption of control mechanisms by security agents.
3. To assess the adoption of human-security intervention strategy as a yardstick towards national security policy formulations and implementation.

1.3 Literature Review

1.3.1 National Security

Security as a concept and a form of practice is viewed differently by the party concerned. Spiegel (1995) says that "it is constantly changing, meaning different things to different people in different environment."⁸ Security has traditionally been viewed from a militaristic approach that borrows heavily from the writings of Thucydides, Hobbes, Machiavelli and Rousseau. The writings of the four have been analyzed in what has

⁸Spiegel, L. Steven, *World Politics in New Era*. Harcourt Brace College Publishers, Orlando, Florida, 1995, p.501

formed the realist tradition in international relations. Realism concerns itself with the system of power politics and State-interest that are geared towards survival in an anarchic world. The French philosopher Jean-Jacques Rousseau in his support of this preservation aspect and interest orientations uses the analogy of the family and states that: "the most ancient of societies, and the only one that is natural, is the family, and even the children remain attached to the father only so long as they need him for their preservation...If they remain united they continue so no longer naturally, but voluntarily; and the family itself is then maintained only through convention...[man's] first law is to provide self preservation, his first cares and those which he owes to himself."⁹ This assertion therefore leads one to the conclusion that security perceived simply in a traditional sense involve self-preservation, protecting oneself and associations of individuals that one identifies with from threats and challenges of survival. Rousseau however, takes his stance and replaces society with the state as he considered society to be a collective grouping which would destroy the freedom of each other if not checked by conventions.

The 'founding fathers' of realism are grounded in a pessimistic conception of human nature. For Hobbes, human beings are problematic and always in a state of nature if left uncontrolled. In a state of nature, human condition is brutal, nasty and short. Man is seen as aggressive, competitive and passionately egoistic to maximize prestige. Man can only therefore find his fulfillment of his potential through the collective security provided by *Leviathan*- the artificial human creation. This artificial human-creation is the State, whose authority is inalienable once given. For structural realism that Hobbes laid

⁹ Rousseau, *The Social Contract* - <http://www.fordham.edu/halsall/mod/rousseau-contract2.html>

foundation for, State compensates for human deficiency in survival and security issues. Whereas Hobbes concentrates more with internal anarchy, unitary units [states] are taken to represent this anarchical nature internationally due to lack of a single unitary authority. Understood this way, it is therefore the role of the State to organize itself in a manner that will protect and preserve itself against internal and external enemies. While police and courts concentrate on internal security, military structure in turn carries with it the single goal of defending the State against external threats, thus an orientation towards war and enemy termination. The State therefore cannot be neutral in relation to other nations, individuals or collectives that threaten its security; The State becomes the creator and supplier of coercive force in a competing environment with other States.

Security studies define it as a speech act-the move that takes politics beyond established rules of the game and places the issue either as a special kind of politics or above normal politics. Security studies, conceptualizes security as a structured field, in which some actors are placed in position of powers by virtue of being generally accepted as voices of security.¹⁰ Treating security as a speech-act provides, in principle, for an almost indefinite expansion of the security agenda. National security has traditionally emphasized the security of the state as its primary concern, hence anything that enhances the security of the state is beneficial, and anything that detracts from its national security is harmful.

¹⁰ Buzan et al Security: A new framework of Analysis, (Colorado, Lynne Reiner Publishers, Inc., 1983.p 34.

Question about what contributes to or detracts from national security are often phrased in term of national interests and policy preferences. Deciding what is and not a matter of national security is a political matter.¹¹ Indispensible in the formation of national security is the decisional process and structure. In turn, the organizational framework within which such decisions are made reflects the basic characteristics of the society on whose behalf national security policy is formed. Ideally, the basis for national security policy rest upon the existence of a national strategy that flows from national goals and a conception of national interests. Moreover while decisional processes and structures inevitably form the context within which national security policy is shaped, they bear resemblance not only to the society whose interests they serve, but also reflect the scope and level of effort undertaken by the state: the greater the national security interests, commitments and capabilities of a state, the greater and perhaps more complex its decisional processes and structures are likely to be.¹²

Different scholars have given varied definitions of national security. Spanier (1980) argues that national security can be broken down to different categories. At the base, national security means the physical survival of a state. A second more common meaning of national security refers to preservation of a state's territorial integrity. A third meaning of national security is political independence, which refers negatively to a state's freedom from foreign control and, positively to the preservation of its domestic political and economic system. Spanier argues further that security involves more than a state's

¹¹ M.C.Williams, Words, Images and Enemies: *Securitization and International Politics*, UK: Oxford Research Group, 2009, pp.78-90.

¹² R.L Pfaltzgraff, Jr.*National security Decision making: Global Implications* in Pfaltzgraff, L.R.Jr.Publishers 1984, p.29.

physical survival and territorial integrity, it also includes the perpetuation of the values, patterns of social relations, lifestyles and varied other elements that make up a nation's way of life.¹³

For Buzan (1983), national security means security of the whole socio-political entity. It is about the country as well as the state. It concerns the way of life of self-governing people including their social, cultural, political and economic modes of organization, and the right to develop themselves under their own rule.¹⁴ Both definitions of national security by Spanier and Buzan reaffirm the view of security in traditional terms.

The traditional concept of security, borrows its core thinking from realist school of thought, which sees the international system as anarchical and determined by power. The traditional school of security view security as the absence of threats from other states and as the major threat to the existence of states is the threat of war, military threats take precedence over any other threat¹⁵.

The modern concept of national security acknowledges that there are other threats to national security apart from military threats. Dewitt et al (1993), argue that security no longer presumes a principal concentration on challenges to government and country from outside its borders, environmental degradation, absorptive capacity, illicit drugs, unregulated migration of people and goods, epidemic diseases and terrorism, all now are

¹³ Spanier-----

¹⁴ B.Buzan quoted in M.Baregu and C.Landsberg,(eds),From Cape to Congo: *Southern Africa's Evolving Security Challenges*,Colorado,Lynne Rienner Publishers Inc,2003,p.33

¹⁵ Z.Agostinho, *Redefining Security*, in Baregu, M. and Landsberg, C. (eds), 2003, Op.cit p.32.

seen by some governments and intergovernmental organizations, as potentially part of broadened security agenda.¹⁶

Jinadu (2000) argues that national security and stability largely rest on the ability of the individual state to meet economic and social needs of their people, observe human rights and afford all their citizens an opportunity to participate in political decision making processes.¹⁷

State power therefore becomes the focal point of interest to be spoken by realists. The central question here concerns the causes of war and the conditions of peace. Anarchism attributes the absence of a central authority to settle disputes as the essential feature of the contemporary system. International relations between States are considered to be that of anarchy and a jungle where only the fittest will survive. A call on security is thus as a result of the need for "self-help system where one State's search for security leaves its current and potential adversaries insecure."¹⁸

This perception to security has however been criticized from many directions for not taking into account the insecurity that is posed by states on their citizens and immigrants. The State, which is supposed to protect those who have agreed to pledge allegiance to it through the constitution, end up becoming the main source of individual insecurity. This comes in form of torture to opposition individuals, mass genocides based on social-

¹⁶ D.Dewitt, et al(1993), Op cit.p.2

¹⁷ L.A.Jinadu, *Political Economy of Peace and security in Africa*, Colorado, Lynne Rienner Publishers Inc, 1998, p.98.

¹⁸ Kegley, Jr. W. Charles, *Controversies in International Relations Theory: Realism and the Neo-Liberal Challenge*. St. Martin's Press Inc. 1995, p.37.

cultural hatred, sustenance of poverty through skewed policies and other processes that undermine human dignity. Global security and peace is however not determined by inter-states relations only. Globalization, which is emerging as a highly controversial concept and process, has already impacted the current world order, thus a redefinition of threats and benefits. While lives of individuals are improved by communication, technology, movement, and global market, there also emerge threats such as crimes, pollution, economic stratification and other negativities during the same process. The argument put forward in this paper carries the assumption that threats to peace and security go beyond those based on territory, sovereignty, and neighboring state militaries to cover those that result in a new global order where non-state actors are playing a major role in improvement of life as well as threatening the same.

Kenya as a country has had an internal double-construction of national identity. Firstly, there has been a tendency by political elites to construct national identity in terms of territorial borders. This takes regional differentiation between states that continue to follow the Westphalia thinking of territory and sovereignty. This way of perceiving immigrants identity is the main focus. Secondly, there have been attempts to politically construct *the nation* through different ethnicities that reside within the borders of Kenya. Ethnic communities that are close to the core of political power become the determinants of what to be considered as a core value and symbol of being Kenyan.

Communities and ethnic groups that are found in physical territorial border regions and those that are politically peripheral thus become marginal groups that have to find *their being or becoming into* dominant mainstream national identity. It is through these two ways of identity construction that regional migrants into Kenya are perceived as a threat to national security.

1.3.2 Immigration in Kenya

Papadimitriou, Demetrious G. (1984)¹⁹, has noted that international migration has been an enduring component of the world economic, social and political landscape. He says that following centuries of unregulated international population flows, the post-world war 1 period saw the beginning of a concerted effort to control immigration. He says that after the WW11, international migration in search of work has been almost impervious to effective policy intervention by receiving states.

Policies regarding immigration practices as seen today in Kenya are composed of events that have continued to unfold both within the country and in the entire international system from the beginning of 20th century. Many of these events occurred when Kenyans were actually not involved directly in the management and governance of their own country; it was the preserves of British government. In order to activate their commitment after independence to africanisation, a programme that sought to control key immigration policies in Kenya, decided to revise the 1956 ordinance into what became the Immigration Act, chapter 172 laws of Kenya. The most outstanding feature of the revised

¹⁹ Papadimitriou, D. *The Political Economy of international Migration*, in international social science journal, vol, 36, p.409-410.

Act was the creation of more further powers of the minister responsible for immigration to require a non-citizen or a class of persons who were residents of Kenya under the provision of the old ordinance to apply to an immigration officer in the prescribed manner for a permit or a visa authorizing the person to enter Kenya for a specific purpose and a period of time. Those who were not citizens of Kenya but mere residents were given three months to apply for an immigration status failure to which one would be render unlawful in Kenya.

1.3.3 Human security

Varied definitions of human-security have been advanced by individuals, institutions, and States. The Commission on Human Security's defines human security as "to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillments"²⁰. Putting Human security of people on the move at forefront therefore, means protecting fundamental freedoms that support human life and well-being. It means protecting people from critical and pervasive threats and situations going beyond inter-state wars and conflicts. UNDP has also offered a definition of human security that includes seven categories; economic, food, health, community, environmental, political, and personal security. This is considered to be the broadest possible conceptualization of human security. It places more emphasis on non-state actors. At the base, security is seen as a concern of ordinary citizen and not States. Canada on the other hand offers a definition of human security as "freedom from pervasive threats to people's rights, safety or lives."

²⁰ Commission on Human Security Report. *Human Security Now*. New York, 2003

It is a people-centered approach to security that takes care of "security against economic privation, an acceptable quality of life, and a guarantee of fundamental human rights" While duly recognizing these definitions and orientations, this paper has focused on freedom from physical violence and fear that immigrants faced during policy formulation and implementation by Kenyan policing agents.

1.4 Theoretical Framework

At the core of the study is the need to understand human-insecurity as a phenomenon faced by regional migrants and host communities during the process of security policy formulation and implementation in Kenya. Different theories have guided the study of national security and globalization which is emerging as a highly controversial concept and process. The intense and complex interdependence amongst states and non state actors has already impacted the current world order, thus a redefinition of threats and benefits. While lives of individuals are improved by communication, technology, movement, and global market, there also emerge threats such as crimes, pollution, economic stratification and other negativities during the same process. This study will be based on the theory of Realism which believes in the use of force to have certain situations remedied and is mainly concerned with human nature. It also believes that states are the principal and unitary actors in international system.

Realists hold the view that statesmen act in accordance with their national interest defines in terms of power²¹. They also argue that the state has one policy at any given time on any other particular issue. And the state's ability to attain certain objectives through various alternatives makes of it a rational actor. On the international scene, realists consider national security to be the most important component of a state. Paul Viotti and Mark Kauppi maintains that "a preoccupation with national security and the state by definition relegates other issues to secondary importance or bans them entirely from realists agenda"²².

At the political level, security is taken as a move that takes politics beyond normal established rules to a special kind of politics or an issue beyond politics. Securitization theorists agree that security has to do with a matter of life and survival. Anything that threatens legitimacy of life is therefore an existential threat that has to be defeated. Globalisation, corresponding decrease of state's role in market economy, international labor migration, and change of conflicts towards more intra [civil] rather than interstate ones, become processes that politics and politicians take to security level when legitimacy of state life is threatened. Processes that are considered as generating existential threats to state-security, migration being one of them, are thus put as security issues.

²¹ Ibid.p.29.

²² Paul R.Viotti and Mark V.Kauppi,International Relations Theory:*Realism,Pluralism,Globalisation and Beyond*,(3rd Ed),USA ,Ally and Bacon,1987,p.85.

Other theories such as dependency and interdependency would also be relevant for the study of this phenomenon, but not to the extent of realist theory. Dependency theory assumes that economies of developed capitalist states expand and maintain self sustaining growth while the economies of developing states can only expand and grow as a reflection of the expansion of the former. This theory is applicable to this work to a lesser extent because of its weakness of attributing all causes of underdevelopment to developed countries. It ignores other variables that can be used to explain underdevelopment in the developing countries such as policy failures, lack of political will and corruption among others.

Papadimitriou argues that one conceptual key to understanding the place of immigration in global political, economic and social context is the idea of interdependence. That in its most neutral sense interdependency refers to,

“a relationship of mutual relevance and emphasizes the symbiotic reciprocity inherent in all conduct among state actors”

While this theory can be used to explain Kenya’s foreign policy in general vis-à-vis her former colonial master, Great Britain, it is insufficient to explain specifically Kenya immigration policies as such. We cannot believe that the presence of many foreign investment and multinational corporations are benefiting the country per-se. On Visa and entry permit, American and Western Europeans citizens can come to Kenya and get visa on arrival while Kenyans have to apply at the local embassies to obtain entry visa to America and Schengen countries. The principle of reciprocity is lacking in this practice. That is why I wish to adapt the realist philosophy in this study to examine security policies towards immigrants in Kenya.

1.5 Hypotheses

The researcher set to the field with the following research hypotheses guided by research objectives:

1. Regional international migration has been taking place in Kenya due to pull and push factors.
2. The political-social-legal responses to international migration have not adequately addressed the question of individual human-security of migrants and host communities.
3. Human-security intervention standards have been ignored at the levels of policy formulation and implementation by security agents.

1.6 Methodology

1.6.1 Sources of Data

The study utilized both primary and secondary data. Primary data were collected from migrant key informants, NGO workers, government officers, and local residents where they were issued with structured questioners, focused groups and individual interviews. The study heavily relied on purposive sampling as defined by Nachmias and Nachmias where the researcher selected sampling units subjectively in an attempt to obtain a sample that appears to be an objective representative of the group under study²³.

Secondary data were collected from published, unpublished materials, journals, articles and internet resources like Jstor. Literature on migration and security issues were analyzed and reviewed to expand on issues that affect migrants locally and internationally.

²³ F. Nachmias and Nachmias, *Research Methods in Social Sciences*, London, St.Martin Press, 1996, p.184.

1.6.2 Method of data collection

Two main methods of data collection were used. These methods included firstly, semi-structured open-ended interview guides to key informants. Information gathered during the discussions were recorded as field notes. Secondly, in-depth interviews were conducted with the key informants.

1.6.3 Methods of data analysis

Data from the field were continuously analyzed as the study took much of a qualitative approach. The researcher only generated demographic characteristics of key informants that allowed for quantitative analysis. Open-ended interview guides and in-depth responses were categorized based on study objectives and working assumptions. Microanalysis based on words, sentences and explanations generated from discussions were carried out.

While recognizing the shortcomings, limitations and criticism placed on qualitative approach, the researcher chose to utilize case-study as a research design for the study. Case study as a design employs qualitative descriptive research as its strategy. The findings of the study therefore, illuminate a general feature of how international migration is constructed as a security threat. It is a study of threats emanating from the process of globalization and how policing of these threats affects individual human-security. This choice of design was therefore preferred for various reasons. Firstly, preference was the need for qualitative data "understood simply as the analysis of words

and images rather than numbers"²⁴. The study therefore followed this same preference in analyzing words and images as observed on migrants living in urban localities of Nairobi. The second preference was the need for observations and semi-structured interviews as techniques of collecting "naturally occurring data". This allowed for avoidance of a rigid, preconceived perception and attitudes towards key informants. Thirdly, the choice of design related to focusing on meanings as opposed to focusing on behavior. The researcher "documented the world from the point of view of the people studied"²⁵

Chapters outline

The study herein comes in form of chapters, with each section addressing specific issues in line with the objectives and overall goal of the study. Chapter one provides an introduction to the study, problem statement, study objectives, Literature review, theoretical framework, working assumptions/hypotheses , methodology used for the study, scope of the study and chapters outline are discussed.

Chapter two gives a discussion on national Security as a concept and practice is analyzed through an expanded notion of security that borrows from two approaches namely; that of Securitization theory and the human-security framework.

Chapter three addresses regional international migration and related Regional identities. It focuses on migrant identity and national security dynamics in Kenya. Here, an understanding of causes, nature and evaluation of migration as an alternative in

²⁴ H.Hyman, *Secondary Analysis of Sample Surveys*, Middle Town, Connecticut, Wesleyan University Press, 1987, p.17.

²⁵ *Ibid.*189.

furtherance of peace and Human-security is given weight.

Chapter four of the paper touches on the intelinkages between of immigration and Kenya Security Policing agents. This is a reflection on how public policing agents implement Kenya national security policies as they interact with migrants and migrant host communities. The analysis herein embraces the relationship between the national security implementation -identity nexus and human-security dynamics.

The last chapter comes as a way of conclusion. The title points towards a human-security orientation in policy formulation and implementation. This section looks at the human-Security challenges posed by various forms of security policy formulation and implementations. An attempt to suggest the way forward is presented here in the form of recommendations and future orientation to research that touches on human-security of migrants and host communities in a globalizing era.

CHAPTER TWO
IMMIGRATION AND NATIONAL SECURITY IN KENYA.
THEORETICAL DISCUSSION

2.0 Introduction

This chapter takes into consideration the ongoing new redefinition of national security and discourse. The aim is to unravel some of the perspectives and transformations that security as a concept and practice is taking. Particularly, discussion on expanding nature of security tied to extended notion of multiplicity of threats and referent objects is the point of departure. This section therefore, covers two perspectives based on an expanded notion of security. The Copenhagen school's securitization theory forms the first section. Here the reader is taken into the political process that involves the raising of an issue to a security platform and thus an interpretation of an issue as above normal politics.

Migration and its related migrant-identity are put at the center of discussion reflecting how Kenya's national security policies are responding to regional challenges to peace, human-security and development. The second part deals with the expanded notion of security based on a human-security yardstick. Here, the aim is to analyze the changing nature of global security based on a referent object and values put forward by human-security proponents. The political aspects of securitization, policy formulation and implementation of national security issues by security agents help to integrate the two theoretical approaches.

2.1 The Realist Approach

The concern for security of a nation is as old as the nation itself. The traditional conception of national security is a social construct rooted in a particular historical conjecture in the development of modern nation state²⁶. The traditional view of national security based on realism, emphasizes the physical aspect of national security. From the traditional perspective, the most obvious component of national security is the protection of state boundaries from intrusion by other states; according to realists this is a physical value so basic that no other goals can be pursued in its absence.²⁷

The concept of vital national interest is the focus of traditional study of security based on realism. To realists, the state sovereignty is the basic reality and the protection of sovereign interests is the state's important order of business. Because the protection includes the determination of those circumstances in which armed force will be contemplated, defining critical interests is the key to understanding security policy²⁸.

Morgenthau argues that national interest is defined in terms of power based on military measures to protect the sovereignty and integrity of states, political independence, and to ensure the physical survival of their people.²⁹

²⁶ Pentland, C.C. *European Security after cold war: Issues and institutions* in Dewitt et al, (1993), Op.cit, p.66

²⁷ Snow, D.M. 1998, Op.cit, p.23.

²⁸ Ibid.p.27

²⁹ Morgenthau, H.J. 1995, *Politics Among Nations: The Struggle for Power and Peace*, New Delhi, Kealyani Publishers.p.5.

Spanier³⁰ observes that a state can expect a degree of security, but not absolute security; it can feel only relatively safe, not completely safe. Taking a clearly realist thinking, Spanier observes that there is no such thing as absolute security in a state system composed of many national actors. State could achieve such security only by universal conquest and the destruction of all other independent states.

States living in an environment in which none can acquire absolute security are bound to feel insecure and are therefore driven to reduce their sense of insecurity by enhancing their power. The insecurity of all states in the system compels each to acquire greater security by engaging in a constant struggle for increased power. But as each state watches its neighbors' power grow, its own sense of insecurity recurs: it then tries all the harder to gain even greater power and strength. The result is that each state is faced with security dilemma.³¹

2.2 New Redefinition of National Security

In the period shortly before the cold war; realist conceptualization of national security dominated international relation approach over the concern with military threats to the exclusion of many non-military threats to national security.

Some scholars thought that military security was rendered irrelevant in Europe following the collapse of the former USSR in 1989-1990. They claimed that the events of the collapse solved the problem of the European military security and created virtually

³⁰ Spanier, J. 1990, Op.cit p.96

³¹ Jervis, R., 1978, *Cooperation under the Security Dilemma*, World Politics, pp.168-214.

overnight, a true “secure community” in which no European state would expect to go to war with any other state over anything. To the extent that security continues to matter ,they argued, it would increasingly take non-military forms³².Most of post cold war security issues for Europe include: economic security focused on availability of essentials raw materials and food, access to export markets, control of scientific knowledge and technology, and financial stability, environmental security focused on industrial pollution, water and land, demographic security focused on growing pressures on migration both within Europe and from poor countries in europe,cultural security focused on the threats posed to indigenous culture primarily by multiculturalism and American dominance in international affairs.³³

According to these new conceptualizations of security, the military threat to national security is only one of the many that the government must now address. The numerous new threats derive directly or indirectly from the rapidly changing relationship between human habitants and the earth’s natural system and resources. The unfolding stresses in this relationship initially manifest themselves as ecological stresses and resource scarcities. Later; they translate into economic stresses, inflation, unemployment, capital scarcity and monetary instability. Ultimately, these economic stresses convert into social unrest and political instability³⁴ which pose serious threats to national security.

³² Boyce Richardson, 1990, *Time to Change: Canada's Place in a World of crisis*. Toronto, Summerhill.

³³ Pentland p.65

³⁴ Kegley, C.W.and Wittkopff, E.R. (Eds), *The Global Agenda: Issues and Perspectives*, Random House Inc., New York, p.342.

The attempts to expand the rubric of threats to security beyond the traditional concern with military threats, has encountered opposition or resistance from various realists adherents. They argue that doing so would water down the concept of security and render it meaningless. Despite the resistance of realists to expand to notion of threats to national security, it has been generally accepted by most of the scholars that there are other threats to national security other than military threats. As a result, there has been a raging debate between the "expanders" and the "narrower" of threats to national security.

The commission on global governance argues that protection against external aggression remains an essential objective of the national governments and therefore for international community. However, other important security challenges arise from the earth's life support system, economic deprivation, the proliferation of conventional small arms, the terrorizing of civilians populations by domestic factions, and gross violations of human rights.³⁵

Security challenges become more complex when one turn to those issues that may not directly challenge the viability of the state in traditional terms, but never the less undermine the sovereignty of the state, compromise its ability to control the penetrability of its borders, and exacerbate relations whether between groups within the polity or states within the regional or global system.

³⁵ The Commission on Global Governance, *Our Global Neighbourhood*, Oxford University Press, 1995.

2.3 National Security and Securitization Frameworks

Security as a concept and a form of practice is viewed differently by the party concerned. Spiegel (1995), says that "it is constantly changing, meaning different things to different people in different environment."³⁶ National security has traditionally been viewed from a militaristic approach that borrows heavily from the writings of Thucydides, Hobbes, Machiavelli and Rousseau. The writings of the four have been analyzed in what has formed the realist tradition in international relations. Realism concerns itself with the system of power politics and State-interest that are geared towards survival in an anarchic world.

The French philosopher Jean-Jacques Rousseau in his support of this preservation aspect and interest orientations uses the analogy of the family and states that: "the most ancient of societies, and the only one that is natural, is the family, and even the children remain attached to the father only so long as they need him for their preservation...If they remain united they continue so no longer naturally, but voluntarily; and the family itself is then maintained only through convention...[man's] first law to provide self preservation, his first cares and those which he owes to himself."³⁷ This assertion therefore leads one to the conclusion that national security perceived simply in a traditional sense involve self-preservation, protecting oneself and associations of individuals that one identifies with from threats and challenges of survival. Rousseau however, takes his stance and replaces society with the state as he considered society to be a collective grouping which would

³⁶ Spiegel, L. Steven, *World Politics in New Era*. Harcourt Brace College Publishers, Orlando, Florida, 1995, p.501.

³⁷ Michael Bakunin on Rousseau - http://dwardmac.pitzer.edu/anarchist_archives/bakunin/rousseau.html

destroy the freedom of each other if not checked by conventions.

The 'founding fathers' of realism are grounded in a pessimistic conception of human nature. For Hobbes, human beings are problematic and always in a state of nature if left uncontrolled. In a state of nature, human condition is brutal, nasty and short. Man is seen as aggressive, competitive and passionately egoistic to maximize prestige. Man can only therefore find his fulfillment of his potential through the collective security provided by *Leviathan*- the artificial human creation. This artificial human-creation is the State, whose authority is inalienable once given.

For structural realism that Hobbes laid foundation for, State compensates for human deficiency in survival and security issues. Whereas Hobbes concentrates more with internal anarchy, unitary units [states] are taken to represent this anarchical nature internationally due to lack of a single unitary authority. Understood this way, it is therefore the role of the State to organize itself in a manner that will protect and preserve itself against internal and external enemies. While police and courts concentrate on internal security, military structure in turn carries with it the single goal of defending the State against external threats, thus an orientation towards war and enemy termination. The State therefore cannot be neutral in relation to other nations, individuals or collectives that threaten its national security; The State becomes the creator and supplier of coercive force in a competing environment with other States.

National Security of State therefore depends on its ability to guard against the two sources of threats. Firstly, against the local uninformed-irrational individuals according to Hobbes and secondly, the international hostile powers in an anarchic world order. International relations and dynamics of security and peace per se, therefore take States as major actors during the process of competition, fear, and prestige for glory. Graham and Nana agree with this notion and note that "this is a world of no permanent friendship or enmities but of constantly changing alliances dictated by no other sentiments such as religion, ideology, dynastic bond other than the reason of State."³⁸ From a structural realist perspective, it appears that where there is competition, fear of what the other can do, and combined by prestige for glory, possibility of battle is a continuous phenomenon.

State power therefore becomes the focal point of interest to be spoken by realists. The central question here concerns the causes of war and the conditions of peace. Anarchism attributes the absence of a central authority to settle disputes as the essential feature of the contemporary system. International relations between States are considered to be that of anarchy and a jungle where only the fittest will survive. A call on national security is thus as a result of the need for "self-help system where one State's search for security leaves its current and potential adversaries insecure."³⁹

Conflicts are taken as *a natural state of affair* by realists rather than historical circumstances and inadequacies. Ensuing conflicts and struggles therefore focus on

³⁸ Graham, T. David and Poku, K. Nana, *Migration. Globalization and Human Security*, Routledge, New Fetter Lane, London, 2000, pp.67-79.

³⁹ Kegley, Jr. W. Charles, *Controversies in International Relations Theory: Realism and the Neo-Liberal Challenge*. St. Martin's Press Inc. 1995, p.37.

geographically based actors as central actors in the anarchic world, organized on the basis of territorial sovereignty. Territorial sovereignty, which is represented by individual States become the guiding principle in pursuit of "national interests defined in terms of survival, security, power, and relative capabilities."⁴⁰ Following this, the State is taken to be a rational actor in response to external and internal forces.

This perception to security has however been criticized from many directions for not taking into account the insecurity that is posed by states on their citizens. The State, which is supposed to protect those who have agreed to pledge allegiance to it through the constitution, end up becoming the main source of individual insecurity. This comes in form of torture to opposition individuals, mass genocides based on social-cultural hatred, sustenance of poverty through skewed policies and other processes that undermine human dignity. Global security and peace is however not determined by inter-states relations only. Globalisation, which is emerging as a highly controversial concept and process, has already impacted the current world order, thus a redefinition of threats and benefits.

While lives of individuals are improved by communication, technology, movement, and global market, there also emerge threats such as crimes, pollution, economic stratification and other negativities during the same process. The argument put forward in this paper carries the assumption that threats to peace and security go beyond those based on territory, sovereignty, and neighboring state militaries to cover those that result in a new global order where non-state actors are playing a major role in improvement of life as well as threatening the same. Globalisation as a process has generated an intense

⁴⁰ Ibid

interdependence between and among countries. It has also generated "its own fanaticisms of information technology, free marketism.

Population control and ecologism that are seen to create pressure on global society."⁴¹

Globalisation as a framework of policy has promoted the flow capital; goods and services backed by technological advancement, have transformed market-state relations towards a reduced role of state in economic activities, and highly increased movement of people in form of labour human-resource. The last aspect, which is touching on international migration is the focus of this paper where impact of globalization that result to demand and supply of human capital, come with new opportunities and threats to lives of people.

Contemporary evaluation of world social [dis]order based only on a realist approach to national security is therefore, no longer appropriate in theory and practice. One founding member of Copenhagen school of security, Ole Waever agrees with the changing outlook of security, its conceptualization and says that "we have to come to terms with a new security agenda and its different inventory of threats"⁴². This line of argument put forward by Wasver, is one that advocates for widening of security concept and practice. The wideners of the security concept have come from different backgrounds ranging from environmentalists, economists, human-security proponents to critical security analysts. At

⁴¹Mwagiru, Makumi, *African Regional Security in the Age of Globalisation*. Heinrich Boll Foundation, Nairobi, Kenya, 2004,p.43

⁴² Ole Wasver in his working paper No. 6 'Security agendas old and new, and how to survive them' presented at the Universidad Torcuato Di Tella, Buenos Aires on Sept, 2000. 11-12.

the political level, security is taken as a move that takes politics beyond normal established rules to a special kind of politics or an issue beyond politics. Securitization theorists agree that security has to do with a matter of life and survival. Anything that threatens legitimacy of life is therefore an existential threat that has to be defeated.

Globalisation, corresponding decrease of state's role in market economy, international labour migration, and change of conflicts towards more intra [civil] rather than interstate ones, become processes that politics and politicians take to security level when legitimacy of life is threatened. Processes that are considered as generating existential threats to state-security, migration being one of them, are thus put as security issues. This means that more resources are prioritized and reserved for guarding against such sources of threat. To regard an issue as security therefore has some costs beyond politics as it demands urgent treatment. Mostly the cost involves the logistics of defense against such threats. While military concentrates itself with external threats to national security, police and judicial structures give more weight to internal security in promotion of national security policies. Prioritization given to these security machineries is therefore evaluated in terms of implementation through actions of agents occupying these positions and corresponding interplay between politics and law. The urgency with which an issue is treated can thus be interpreted as a reflection of fear that a State perceives and guard against.

Securitization as a process does not just happen but rather has to be set up by actors who base their justification on a referent object. Securitization as a theory and a framework of understanding takes security as a speech act. The utterance of security in itself becomes the act. This study however goes beyond mere speech utterances to cover what the

researcher refers to as *acted Securitization through policy implementations by security agents*. Here, real actions of security agents are taken into consideration. It is therefore imperative to consider the role of politicians, policy makers and implementers during the process of security presentation. Political elites and leaders at this stage carry with them a significant role to the process as they are able to shape public opinion and perception either in opposition or in perpetuation of a state of affair. Kenya's political history has demonstrated this crucial aspect that leaders play both in government and in opposition party politics.

As one key informant narrated, the previous regime headed by Moi left issues that touched on "usalama wa nchi" [national security] "*in the hands of ministries and a small group of agenda setters who acted as indicators of the direction to be taken*". Though not frequently in parliament, former President Moi would appear to evaluate group loyalists, based on debates taken to the house and how each member's contribution led to government-win on major motions and Bills. During his travel outside the country, his lieutenant politicians in the cabinet engaged in war of words in premeditated debates only for the president to come back and give a speech at the airport, offering solutions to the public debate generated. In extreme cases, final decisions involved firing and reshuffling of the cabinet.

This gave President Moi the position of the final decision maker and any feedback on a debate rendered some groups as losers and others as winners. This in turn, perpetuated dependency within security institutions as they had to rely on reasoning from above for any kind of implementation. This way of national security implementation has neither

made a big change with the coming of a new government under the umbrella of the NARC political parties and the National Coalition government. As one key-informant indicated *"the police commissioner is still answerable to internal security minister who in turn has to rely on orders from the president"*. It therefore goes without saying that any issue that threatens the center of power is securitized from above in an attempt to safeguard regime interests.

Looking at it from a societal perspective, national security implementation is meant to sustain and preserve the society. Society and its collective identity thus become the referent objects in securitization. Societal security understood this way becomes a situation where a society perceives a threat to its identity. This in turn results to introduction of emergency measures to safeguard against such existential threat to societal identity. Preservation of identity by whatever means becomes the most important task for the society as values, norms, and communal practices demand in-group cohesion. If something threatens the core symbol of "us" within the group, then a call for protection would be expected. Thus, whatever the members of a society perceive to be core values or symbols can become a referent object in a securitization process. With regard to migration, Jeff Huysmans (1998) notes that in 'political debates about immigration and asylum in the European Union, migration has easily emerged as an existential threat to the State, society, and the completion of the internal market'⁴³.

⁴³ Huysmans, Jeff, *The Question of the Limit: Desecuritization and the Aesthetics of Horror in Political Realism*, *Millennium* 27(3): 1998, Pp.569-589.

This has not been the preserve of Europe only as other States interested in preserving "national security and identity" come into this category, Kenya included. Securitization theory proponents however, give an early warning to any person carrying out an analysis of society and societal concepts. Firstly, a warning is given not to construe societal security as equivalent to social security. Buzan, Wasver and de Wilde [1998:128] say that "social security is about individuals and largely is economic, while societal security is about collectives and their identity." Societal security addresses on issues of collective identity and actions taken to defend it. The second warning is against the use of societal to mean a designated state population. In looking at state populations, the wider group does not necessarily have to be homogenous and with a common identity. This warning if taken seriously will then take care of the complexity in regions such as Africa where claims for nation-states could be as vague as national identity themselves.

The concept of societal is thus seen to apply to those communities that one identifies with and considers himself/herself as a member. This notion of identity goes with the thinking of such writers such as Jenkins [1996] who says that identity has to do with a process of *being and becoming*⁴⁴.

⁴⁴Jenkins, Richard, *Social Identity*. Routledge, 11 New Fetter Lane London, 1996, p.54

This paper follows this line of argument and tries to understand how regional international migration has been taking place in Kenya. Much emphasis is placed on the process that culminates to securitized form of migrant identity. Kenya as a country has had an internal double-construction of national identity. Firstly, there has been a tendency by elites to construct national identity in terms of territorial borders. This takes regional differentiation between states that continue to follow the Westphalia thinking of territory and sovereignty. This way of perceiving identity is the main focus in sections that follow starting with chapter three in the paper. Secondly, there have been attempts to politically construct *the nation* through different ethnicities that reside within the borders of Kenya. Ethnic communities that are close to the core of political power become the determinants of what to be considered as a core value and symbol of being Kenyan. Communities and ethnic groups that are found in physical territorial border regions and those that are politically peripheral thus become marginal groups that have to find *their being or becoming into* dominant mainstream national identity. It is through these two ways of identity construction that regional migrants into Kenya are perceived as a threat to national security.

2.4 Human-Security Approach

Both academics and policy-makers have seen the concept of human security as one that is hard to define. Critics have interpreted this concept as an expansive and a vague one. Some have seen it as a politically coloured label that allows everything and anything to pass as security. Policy-makers on the other hand argue that they have been met by the confusion of what to consider as major threat when it comes to prioritization in the light of limited resources.

In spite of the above, the concept of human security has increased in usage, shaping and influencing foreign policies of different countries such as Norway, Canada and Japan. The first major statements concerning human security appeared in 1994 under the United Nations Development program report. It came out that the concept of security had for too long been narrowed to meaning security of territory from external aggression or as a protection of national interests in foreign policy as a global security order. This kind of approach gives preference to states as primary players and actors in matters relating to peace and security ignoring non-state actors. The late Economist Mahbub Ul Haq played a key role in evaluating this kind of focus and advocated for a people-centered approach. He created the "Human Development Index [HDI]⁴⁵ and was also a moving force behind the recent Humane Governance Index [HGI]"

The UNDP definition of human security includes seven categories; economic, food, health, community, environmental, political, and personal security. This expansion of security places more emphasis on other non-military threats. In essence, security is seen as a concern for ordinary citizen and not the territorial borders and frontiers. The proponents of human security are concerned with the welfare of ordinary people in their daily life and in their quest for individual security. The governments of Norway and Canada have so far pursued this notion, which is a move towards the individual as a point of reference in what is referred to as the Lysøen conference agreement⁴⁶. The two

⁴⁵Kanti Bajpai in the paper "*Human Security: Concept and Measurement*. Kroc Institute Occasional Paper No. 19: OP: 1 August 2000.

⁴⁶ Lysøen was the meeting place where the idea of human security as a new leitmotif in foreign policy was adopted by Canadian foreign minister Lloyd Axworthy and Norwegian foreign minister Knut Vollebaek in May 1998.

states agreed to base their foreign policies on the values of human security. In 1999, other foreign ministers were invited from Japan, Netherlands, Austria, Chile, Ireland, Jordan, Slovenia, South Africa, Switzerland and Thailand⁴⁷, forming the Lysøen process. Debiel and Klein have argued that "human security concept goes beyond the traditional core issues of statism and national security, which are sometimes focused on political high grounds, sacrificing individual liberties and interest for collective prosperity."⁴⁸ Mahbub Ul Haq agrees with this view and answers the question of who should be the referent object to security. He says that "security is not about states and nations but about individual people"⁴⁹.

The argument here is on equating security of individuals and not security of states in the global security agenda. Haq is quoted by Bajpai as having put forward a normative direction by stating that "we need to fashion a new concept of human security that reflects on the lives of our people, not in the weapons of our countries."⁵⁰

Canada offers a definition of human security as "freedom from pervasive threats to people's rights, safety or lives."⁵¹ Lloyd Axworthy, by then the Canadian Minister for Foreign Affairs argued that a people-centered approach to security takes care of "security

⁴⁷ Asm", Suhrke, [1999] Chr. Michelsen Institute Bergen. Security Dialogue Vol. 30 Number 3, Sage Publications/Prio.

⁴⁸ Tobias Debiel and Axel Klein, *Fragile Peace: State Failure. Violence and Development In Crisis Regions*, Zed Books, London, 2002, pp. 190-205

⁴⁹ Kanti Bajpai in the paper "*Human Security: Concept and Measurement*. Kroc Institute Occasional Paper No. 19: OP: 1 August 2000,

⁵⁰ Ibid.

⁵¹ Roland Paris in the paper titled "*Human Security Paradigm: Shift or Hot Air?*" International Security Vol. 2 Fall 2001.

against economic privation, an acceptable quality of life, and a guarantee of fundamental human rights"⁵² This is an extension beyond the military defense of state interests and territory, thus a paradigm shift and redefined meaning to national security.

The main concern of national security thus becomes the concern of people rather than the state. Although security between states remains a necessary condition for security of people, the Post Cold War period has shown the inadequacy of state-centric security in guaranteeing individual security as new forms of threats coming from governments and other non-state actors flood the world. At the core of this paper is the process of globalization and migration. The two processes have the possibility of increasing internal and regional crises through capital and human transfer that undermine national economies and where markets based on neo-liberal ideology continue to expand rather than reduce the gap between the rich and poor.

Generally, there has been an attempt to interpret human security as comprising two aspects. The first aspect is that of "safety from chronic threats such as hunger, disease, repression and secondly, protection from sudden and hurtful disruption in the pattern of daily life whether in homes, jobs or in communities."⁵³ The focus on human security thus helps to unveil the lack of protection and security of large number of individuals, groups, and communities in the course of their daily life. With a widened concept of security, it follows that the security of individual migrants should be evaluated not only in terms of

⁵²Lloyd Axworthy, "Canada and Human Security" *International Journal* 52.2 1997 p. 184

⁵³Roland Paris in the paper titled "*Human Security Paradigm: Shift or Hot Air?* Reflected in *International Security* Vol. 2 Falls [2001]. The President and Fellows of Harvard College and Massachusetts Institute of Technology

security of their origin and receiving states but also on the direct and indirect threats that they face as individuals.

States and governments are therefore compelled to reconsider the much held Westphalian model of security. At the same time, immanent critiques within human-security approach brings into light the paradox of using human-security as an alternative approach. Human-security comes as an innovation of traditional security and also as a means of criticizing the way states organize national security apparatus. It is therefore an agenda set within a wider realm of globalization intertwined with immigration to take certain issues of concern to national security level thus a form of securitization. Bringing individual values and interests to the fore coupled by a call for liberal market economy by itself, undermines security of people within states thus an internal paradox. It is however clear that traditional model of security and its related territorial sovereignty has been put to test by globalization. National Security risks have gone beyond state borders to become security concerns for individuals in situations where borders have become almost imaginary if not meaningless. Cases such as HIV-AIDS, terrorism, environmental pollution, droughts and famine extend beyond state borders.

Refugees and immigrant minorities, who are recognized under international law as vulnerable categories, have found themselves victims for the second time in host communities where migration has been securitized. Human Rights Watch summarizes well the situation in Kenya by saying that Kenya police appear to be using cases such as the 28 November 2002 attacks on Israeli tourists in Mombasa to justify crackdowns on refugees

living in Nairobi. The police have continued to conduct "large raids and arbitrary arrests against refugees from Ethiopia, Somalia, South Sudan and the Democratic Republic of Congo in several neighborhoods of Nairobi with the largest arrests coming on November 15th. at approximately 9:00 pm and with over 40 police officers carrying house-to-house arrests"⁵⁴.

This crackdown was carried out in Kawangware slum neighborhood in Dagoretti constituency Nairobi. The timing of the activity raises some human-security questions as police continue to carry out their activities during night hours. As one key informant noted, *"it becomes hard to differentiate between police and criminals as violence is meted on anyone both while enjoying supper at home or walking from work in the evening"*. The same report indicates that more than "100 refugees of Somalian origin were arrested in December 2011 alone, with some describing being beaten during the process of arresting. All were pushed into two waiting trucks. Several other refugees avoided arrest during the operation by paying bribes to police. Among those arrested were two Congolese refugee women with UNHCR documents granting them permission to remain in Nairobi for security reasons."⁵⁵ These acts bring into question the applicability of international law, immigration policies and conventions to which Kenya is a party to.

As the study showed, National security policy formulation and implementation in Kenya have remained a preserve of government agents as the public is discouraged and distanced

⁵⁴ <http://www.hrw.org/refugees>

⁵⁵ Ibid.p87.

through barred access to information. The closest bits and pieces of information regarding individual insecurity have come through the media, who in turn have been interpreted as a threat to security during their work as reporters. It is therefore a system of policies used by state agents to give directions to planning and influence behavior that is only known to security agents. This amounts to security policies that give immunity to state agents as the public is left with no means to hold them to account during the process of implementation. Such implementations therefore lead to increased threat to the values of liberal democracies as civil and political security of individuals is undermined. Individuals are left with no recourse to counter or check errant behaviors by security agents.

While acknowledging the importance of planning, Clinton, Flash and Godwin [1972] gives a classical definition of policies as "general statements by some governmental authority defining an intention to influence behavior of citizens by use of positive and negative sanctions."⁵⁶ Kenyan national written security policies are yet to be accessed by consumers of security as they remain within the reach of security ministry and few reserved individuals in the government. Such security policies might as well not exist in written form and where they exist, they remain hidden without a chance for certainty. The few disjointed written national security frameworks come in form of fragmented immigration laws, Penal Code, Citizenship and Aliens law. These laws adopted by the

⁵⁶ Clinton, L. Richard, Flash, S, William and Godwin, R. Kenneth *Political Science in Population Studies*. D.C Heath and Company Publishers, Massachusetts, USA, 1972 p.27

government not only affect migrants who are already in the country but also potential immigrants as sanctions herein mainly put the focus on punishment, coercion, and instilling of fear. This is a move towards human insecurity as individuals should not operate under conditions of fear. As one key informant pointed, *"potential migrant into Kenya should re-evaluate coming as strict measures to immigration coupled by inconsistent legal codes render one unsure of what the police will use against the accused in the court of law"*.

In an attempt to down play the importance of migration, the government of Kenya considered "both the levels and trends of immigration and emigration as not significant and satisfactory with foreign born population by 1979."⁵⁷ Kenya has not had an outlined explicit policy with regard to immigration and implementation. Implementation of national security measures has mostly come as a result of *"ad hoc road-side announcements"* by political leaders or when big crimes are reported by the media. Regulations and responses have always followed presidential political directives. The different laws around the immigration Act, Aliens Act, Penal Code, and the Citizenship and Birth registration Act, have also had disjointed influences on practitioners. The police in particular have had to follow all these disjointed laws despite the short 6-9 months training and preparation that is given to them during police training. This has not made the work easier for ministries especially those touching on migrants and foreign policy issues.

⁵⁷ United Nations, Department, of Economics and Social Affairs, *World Population Policies' Document*. New York, 1989 Vo. 2

It is thus imperative to consider a network of interest groups to streamline the uncoordinated laws for both immigration and security at national, regional and global levels. Law has been used for long as a method for controlling behavior of people starting from customary laws to modern civil written laws. However, these laws have utilized negative sanctions in many states when addressing immigration phenomenon. Politicians in Kenya are particularly involved in playing the game of regional security similar to that of incriminating migrants. They follow the old French style where "politicians play up the threat of war or other disaster in an attempt to induce behavior suitable for their interests as was done in during the reign of terror."⁵⁸ Kenya government has mastered two methods in fighting for their interest in regard to regional international migration namely; the laws and the use of force. The law acts as the promoter of structural violence as reflected by immigration law, police Act, and other related laws.

Discrimination dominates the law books where "imposition of requirements or conditions disproportionately disadvantages some racial groups especially at the point of entry and permit application"⁵⁹. Conditions set aside as *rules of entry* directly point to limiting of those vulnerable groups that are in dire need for security and peace-the so called *forced immigrants*. Force has been used to intimidate the undesirability of some sections of migrants to live and come into Kenya. This undesirability is reflected by the way the police structure relates with different migrants from different regions coming into Kenya.

⁵⁸ Irungu, Kiunjuri, *The Machiavellian Art of Political Manipulation; The Kenyan Experience*. The House of Hedges, Thika, Kenya, 2000,p.11

⁵⁹Goldberg, David Theo, *Anatomy of Racism*. University of Minnesota Press USA, 1990, p.251.

Chapter three and four that follows herein gives an in-depth analysis of this interaction between police, citizens and migrants indicating this kind of desirability and undesirability categorization.

2.5 Conclusion

Globalisation as a process has generated an intense interdependence between and among countries. It has promoted the flow of capital backed by technological advancement, has transformed market-state relations towards a reduced role of state in economic activities, and highly increased movement of people in form of labour human-resource. The last aspect, touching on international migration was the basis of discussion of chapter two where impact of globalization that result in demand and supply of human capital, come with new opportunities and threats to lives of people. The Westphalian philosophy of territorial sovereignty, which put individual States as the only rational actor in pursuit of "national interests defined in terms of survival, security, power, and relative capabilities has been challenged by new redefinition of national security based on "borderless region in which economic, political and other activities are not constrained by traditional territorial borders but individual security is given emphasis and includes seven categories; **economic, food, health, community, environmental, political, and personal security**. This expansion of security places more emphasis on other non-military threats. In essence, security is seen as a concern for ordinary citizen and not the territorial borders and frontier

CHAPTER THREE

KENYA NATIONAL SECURITY AND REGIONAL IDENTITIES: MIGRATION AND SECURITY DYNAMICS

3.0 Introduction

This chapter addresses how Kenya national security apparatus deals with the immigrants in the country. It focuses on migrant identity and security dynamics. The links between international and national security depend, in large part, on the breadth of national security considerations. A narrow definition of national security which emphasizes minimizing risk could lead to the conclusion that all international migrations exchanges and contacts bring potential danger. National security, however, is also defined by the economic and social welfare of the nation's inhabitants. The potential contributing factors to national insecurity, threats and risks of international migration on national security are discussed. Secondly the chapter gives an overview on the understanding of causes, nature and evaluation of migration as an alternative in furtherance of peace and Human-security.

3.1 Dimensions and Dynamics of Migration Globally

The United Nation defines international migrant as a person who stays outside their usual country of residence for at least one year. According to this definition, the UN estimates that in 2010 there are about 214 million international migrants worldwide, including about 15.4million refugees and asylum seekers⁶⁰. Although each migratory movement has its specific migratory historical patterns, it is possible to generalize on social dynamics of migratory process. It is however necessary to differentiate between

⁶⁰United Nations High Commissioner for Refugee's UNHCR Global Trends 2010,
<http://www.unhcr.org/statistics>

economically motivated migration and forced migration. Most economic migrations start with young, economically active people. They are often, 'target earners', who want to save enough in a higher-wage economy to improve conditions at home perhaps by buying land, building a house, setting up a business, or paying for education. After a period in the receiving country, some of these, 'primary migrants' return home, but others prolong their stay, or return and then re-immigrate. As time goes on, many erstwhile temporary migrants send for spouses, or find partners in the new country. With the birth of children, settlement takes on a more permanent character⁶¹.

It is this powerful internal dynamic of the migratory process that often puzzles expectations of the participants and undermines the objectives of policy-makers in both sending and receiving countries⁶². In many migration, there is initial intention of family reunion and permanent settlement. However, when government try to stop flows-for instance, because of decline in the demand labour—they may find that the movement has become self sustaining. This is a result of the maturing of the migratory movement and of migrants themselves as they pass through the life cycle. It may also be because dependency on migrant workers in certain sectors has become a structural feature of the economy.

The failure of policy-makers and analysts to see international migration as a dynamic social process is at the root of many political and social problems. The source of this

⁶¹ Boyd, M., *Family and Personal Networks in Migration*, International Migration Review, Special Silver Review Issue, 23.3, 638-642.

⁶² Castles, S., *The Factors that make and unmake Migration Policies*, International Migration Review, 2004a, 38:3, 853-867.

failure is often one sided, focus on economic models of migration, which claim that migration is an individual response to global market factors. This has led to the belief that migration can be turned on and off like a tap, by changing policy settings which influence the costs and benefit of the mobility for migrants. But migration may continue due to social factors, even when the economics factors which initiated the first movement have been completely transformed.

The dynamics is different in the case of refugees and asylum seekers. They leave their countries because of persecution; human rights abuse and generalized violence that make life there unbearable and unsustainable. Most forced migrants remain in the neighboring countries of their first asylum application -which are usually poor and often politically unstable, themselves. Onwards migration to countries which offer better economic and social opportunities is only possible for small minorities. However there is selectivity: it is mainly those with financial resources, human capital (especially education), and social networks in destination countries who are able to migrate onwards⁶³. Onwards migration is motivated both by the imperative of flight from violence, human rights violations and by the hope of building a better life elsewhere. Attempts by policy-makers to make clear distinctions between economics and forced migrants are hampered by these 'mixed motivations'.

This has led to the notion of the *migration-asylum nexus*. Labour migrants, permanent settlers and refugees move under different conditions and legal regimes. Yet all these

⁶³ Zolberg, A.R. and Benda, P.M. (eds), *Global Migrants, Global Refugees: Problems and Solutions*, New York and Oxford: Berghahn Books, 2001, p.26.

populations are symbiotic of modernization and globalization. Colonialism, industrialization and integration into the world economy destroy traditional forms of production and social relations, and lead to the reshaping of nations and states. Underdevelopment, impoverishment, poor governance, endemic conflicts and human rights abuses are closely inter-linked. These conditions lead both to economically, forced and politically motivated flights. Many migratory movements involve both economic migrants and refugees, leading to UNHCR to speak of 'mixed flows'⁶⁴.

3.2 Migration Mobility within East and Horn of Africa

Most African countries experience both economic and forced migration. In some region, forced migration has been the main form of mobility as a result of long-drawn-out and recurring wars, both internal and external. This has applied throughout in the postcolonial period in the Horn of Africa, East Africa, the Great Lakes Region and central Africa—especially the DRC. In West Africa and Southern Africa, economic migration has dominated most of the time, but with large refugees flows during liberation wars in Mozambique, Angola, Zimbabwe and South Africa from the 1960s to the 1990s, and during civil wars in Nigeria in the 1960s and the recent internal conflicts in Sierra Leone, Liberia and Ivory Coast in 1990s and 2000s⁶⁵. The large flows of refugees during these conflicts remained internally displaced or forced to migrate to other countries within the

⁶⁴ UNHCR, 2010 Reports, *Global Trends, Refugees, Asylum-Seekers, Internally Displaced Person and Stateless Person*, Geneva.

⁶⁵ Mafukidze, J., A discussion of Migration and Migration Pattern and Flows in Africa, in Cross, C., Gelderblom, D., Roux, N. and Mafukidze, J., (eds) *Views in Sub-Saharan Africa*, Cape Town: HSRC Press, 2006, pp. 103-126.

region sometimes causing spill over into cross border conflict⁶⁶.

Over half of Africa's refugees have been displaced from the Horn of Africa and East Africa regions.

The Horn of Africa has been an area of turbulence, with protracted and repeated armed struggles concerning Ethiopia, Eritrea, Somalia and Sudan⁶⁷. The failed US-led military intervention of 1992-1993 in Somalia only made matters worse, while the US-backed intervention by Ethiopia in 2006 has also failed to restore stability, though now the Africa Union backed AMISON troops seems to be expanding their forces in eliminating Al-shabaab from their stronghold cities. The question is to watch and see to what extent this incursion will bring peace and stability in Somalia. Large numbers of Somalis have fled to Kenya, Yemen, Europe and North America, and remittances have become crucial to the survival of many Somalis⁶⁸. In addition to warfare, the Horn of Africa region has experienced drought, famine and government schemes to shift for economic and political reasons. All of these upheavals have led to internal displacement and refugees flows across borders-often under terrible conditions⁶⁹.

In East Africa, the Great Lakes Region has been particularly violent; long drawn out civil

⁶⁶ Duffield, M., *Global Governance and the New Wars: The Merging of Development and Security*, London, Zed Books, 2001, p.56.

⁶⁷ Oucho, J.O., Migration and refugees in Eastern Africa: A challenge for East Africa Community, in Cross, C., Goelderblom, D., Roux, N. and Mafukidze, J., (eds) *Views in Sub-Saharan Africa*, Cape Town: HSRC Press, 2006, p.132

⁶⁸ Linderly, A., *The Early Morning Phonecall: remittances from a refugee diaphora perspective*, working paper, 07-47, Oxford: Compass, 2005.

⁶⁹ Turton, D., *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, Oxford: James Currey, 2006, p.152.

wars in Rwanda, Burundi, Uganda and DRC have led to millions of death and mass displacement. The Rwanda genocide of 1994, Sudan has lived through over 30 years of warfare and massive internal and international displacement. In early 2008, political and ethnic violence came to Kenya too, in the wake of disputed presidential election.

However; East African countries have received refugees and internally displaced persons, even in the middle of their own conflicts. The international community came to rely on this 'Africans hospitality' to restrict flows of refugees to the North, but the expulsion of Rwandan refugees by Tanzania authority in 1996 signaled a shift in national security policies towards regional immigrants, hence many countries in the region developed restrictive policies towards hosting refugees.

Kenya bearing the burden of acting as a peaceful haven in the region have always had a sympathetic feeling towards immigrants especially refugees coming from conflict region marked by establishment of Kakuma and Daadab Refugee camps. The protracted presence of refugees is however challenging the government. The Kenya government has meticulously focused on the financial strains that it will be forced into, once the refugees are absorbed into the economy or remain in Kenya. This came during London Conference on Somalia in February 2012, Where President Kibaki while addressing on Somalia conflicts and its effects in the World.

Kenya has all along benefited from foreign aid that is geared towards the upkeep "of refugees and host communities". Coordinated funding systems have been set aside ranging from United Nations Trust Fund for Human-security to bilateral and multi-lateral funding in promotion of peaceful coexistence. The main question is whether political structures and Kenya national security infrastructure can sustain and manage international regional migration to benefit the intended individuals and groups.

3.3 Migrant-identity and security dynamics in Kenya

Population movements are as old as human history and in many situations result in betterment of human lives. This assertion is supported by Huntington when he contends that "if demography is destiny, population movements are the motor of history."⁷⁰ Migration in historical perspective involves a myriad of intentions and desires motivated by search for wealth, work, land, adventure, freedom, peace and stability. The nature of migration into Kenya by regional migrants clearly indicates the above motivations with many respondents agreeing to the fact that *"migrating to Kenya was a decision made for expansion of the range of choices and furthering personal development"*.

Geographers define migration as "a change in the place of residence."⁷¹ It involves a move from one place to another. In so doing, migrants make rational decisions in response to perceived opportunities or challenges to their lives.

⁷⁰Huntington, P. Samuel, *The Clash of Civilizations and The Remaking of World Order*. Touchstone Books, Simon &Schuster Rockefeller Centre, NY, 1998, p.48.

⁷¹ White, Paul and Wood, Robert, *The Geographical Impact of Migration*. Longman group Ltd. London, 1980 p.3

Economic sociologists, political scientists and peace researchers have focused on two factors during the process of migration namely; pull and push factors. The two factors generate two categories of migrants in the process of movement.

The first category of migrants related to pull factors consist of free, voluntary migrants with or without the family members, migrating willingly and are accepted within the laws of the receiving country to enjoy their stay either temporarily or permanently. The majority of people falling within this category include tourists, traders, industrialists, professionals/expatriates, workers, foreign students, family dependants, diplomats and foreign embassy representatives. Kenya has shown improvements in the tourism sector since independence with much support in terms of social marketing coming from both public and private companies. This industry has generated employment to many people and in turn, acts as a pulling factor to regional migrants who come as a way to meet other foreigners visiting Kenya. Many migrants who were interviewed indicated that Kenya was mainly chosen as a *"transition point to other places especially to Europe and America."*

The second category of migrants consists of forced migrants. Individuals and groups in this category migrate as a result of negative forces that act as push factors. This category mainly consists of refugees, asylum seekers, natural disaster victims and victims of human trafficking. There is a growing argument to include those individuals migrating from underdeveloped and developing nations for economic reasons in this category of forced migrants. Such migrants are given the label of *"economic refugees"* in a globalizing

world. The case of Kenya's loss of its prominent middle and long distance runners to countries such as Qatar, Bahrain, Denmark, Netherlands and USA are some examples of such cases where athletes migrate for economic reasons.

The concept of *economic refugees* directs its attention on issues such as "uneven development, poverty, and exploitation within and between nations."⁷² The uneven development and global inequality between developed and underdeveloped countries are interpreted as emerging from structural violence in the global economy. Understood this way, international migration is thus seen as representing a "symptom of inequality, underdevelopment, legacy of colonization and contemporary economic globalization"⁷³ The concept of globalization and its consequences viewed in this manner is portrayed as having a negative effect on people's lives.

Migration has however become a complex phenomenon going beyond the dichotomy of developed, developing and underdeveloped countries. Kenya, which is the focus of this study, is classified as an underdeveloped Sub-Saharan state ranking position 143 in the medium human development category.⁷⁴ As a developing state, Kenya has continued to experience migration in both directions [emigration and immigration]. Immigration in particular has become an issue that the Kenyan government seeks to understand from its

⁷² Kegley Jr. W. Charles, *Controversies in International Relations Theory: Realism and the Neo-Liberal Challenge*. St. Martin's Press Inc, 1995 p.45.

⁷³ Kimberly, A. Hamilton in the Paper titled '*Europe, Africa, and International Migration: Uncomfortable Triangle of Interests* [1997:2] Population Training Center, Brown University. Working Paper No.99-02

⁷⁴ Human Development Report 2011, UNDP New York. Oxford University Press.

source and receivership dynamics as world (dis)order is undermined. The immigration department in Kenya has its own branch that specializes in carrying out research on migration dynamics for the purpose of advising policy makers. At the regional level, Kenya has emerged as a progressive economy thus attracting economic migrants. As one respondent highlighted "*there are business enterprises controlled by migrants from the region*". Migrants from Ethiopia and Eritrea have found a niche in matatu [mini buses] transport industry, Gikomba⁷⁵ open-air market has been dominated by Chagga people from Tanzania; manufacturing industry has been dominated by Indians and Arabs, while Somali migrants have transformed Eastleigh to a *small Mogadishu* for every aspect of trade in Nairobi.

At the conceptual level, immigration has been defined by many scholars in different ways. Harris and Levey define the concept of immigration as "entrance of a person into a new country for the purpose of establishing permanent residence."⁷⁶ However, Kenya not only has immigrants with intentions of living permanently but also those who are on transit, those that come as tourists and those that seek temporary stay as recognized refugees.

Kenya's relative regional economic progress, geographical location in the Horn of Africa, its relative political stability and porous borders have resulted in many both voluntary and forced migrants and families to seek protection and opportunities within

⁷⁵Gikomba is the biggest open air market in Nairobi specializing in sale of second hand clothing.

⁷⁶Harris W.H and Levey, J.S (ed). The New Columbia Encyclopedia. Columbia University Press New York, 1975p.137.

its borders. Thousands from South Sudan, Ethiopia, Somalia, DRC Congo, Rwanda, Burundi, Uganda, and other one-time unstable states have found their way across the borders into Kenya, The culture and social identity linked to such in-coming population has however, elicited public scrutiny by both the security structure and the general Kenyan society. The public debate shaped by political opinion leaders has mainly focused on where *they* are coming from and what *they are likely* to bring with themselves.

When a respondent working as a civil servant was asked to comment about regional migrants, the first reaction was "*whether the research was geared towards addressing the problems of crime that migrants have caused in Kenya and if this was the case then it was advisable to dig deep*". This assertion points towards the perception that regional migrants have resulted in high rates of crime in Kenya. In what appears to be a counter argument by one migrant living in a Somali populated Eastleigh estate, he questioned whether "*individuals operating in business would want to promote crime within their localities*". This came as a response indicating that migrants operating businesses are interested in creating a secure environment for customers and clients to visit without fear.

As it appears herein, the perception held by migrants tend to oppose the one coming- from host community and particularly, security agents. These different ways of interpreting crimes causation become a contested area as each group is willing to justify its perception in the eyes of the general public. The public on the other hand has ignored to follow the debate and all that is at focus for the ordinary citizen is the laxity of police officers to curb crimes. A Kenyan resident indicated that "*apart from making house rents to rise to rocket high levels, immigrants from the region have had a positive interaction with*

residents". For many residents, cases of illegal migrants staying in the estate are linked to poor border policing and corruption within the security sector.

At the time of drafting the Immigration Act, Kenya had eight airports, four seaports, fifteen land entry points and two railway entry points⁷⁷. The number of immigration officers and police workers stationed in these points has not matched the rate of entry and exits. Cases of illegal immigrants, illegal proliferation of small arms and light weapons, human smuggling, drug trafficking, cross-border banditry and criminality raises many questions and as I will argue later, the presence of regional migrants in Kenya become a securitized issue based on these risks which are in turn connected to fear of conflict spill-over and international terror networks from conflicting neighboring countries.

Sections of migrants have, shared much of the blame in gun-related robberies, drug trafficking, human trafficking and terrorism. Migrant-identity thus becomes an issue that an individual migrant has to deal with especially when it is based on such socially constructed negativities. Complaints that mainly come through the mass media have reflected on how borders have been poorly policed at national and regional levels thus the call for stricter surveillance. This sentiment is echoed by Opon Odhiambo who argues that Kenya's "current policies and regulations are not in harmony with the needs of the government and the needs of the consumers of immigration services."⁷⁸

⁷⁷ Laws of Kenya, The Immigration Act CAP 172:64

⁷⁸ Odhiambo, Dan Opon in his Thesis '*African Immigration Policies: The Case of Kenya, 1906-2000*' Dept. of Political Science and Government, University of Nairobi, 2001.

Immigration policies have encouraged differential visa regulations and restrictions to different countries and nationalities, have sustained colonial laws and rules in issues relating to entry permits, have excluded some citizens from passport acquisition and have all along discriminated against women structurally and overtly.

These mixtures of disharmonies bring with them some anger from different individuals and groups that suffer exclusion during implementation of such policies thus laying a base for immigrant-citizen tension. Major urban towns such as Mombasa and Nairobi have been some of the areas where this tension is threatening to explode. Other areas characterized by this tension are those that are close to state territorial borders. The historical border mistrust and tension in the East, the Great Lakes and the Horn of Africa is still going on. This is witnessed by occasional cross-border criminality such as banditry, cattle rustling and armed conflicts that take toll of many lives and destroy properties.

3.4 The Link between National security Mechanisms and identity recognition

In an attempt to tackle the challenge inherent in defining the concept of social identity, Jenkins [1996] suggests that social identity must be seen as both individual and collective⁷⁹. At the same time, social identity should be taken as a process as it involves 'being' or 'becoming'. Jenkins agrees that even death cannot freeze the picture of identity as there is always the "possibility of post mortem revision of identity."⁸⁰ Identity and the process of identification allow for a comparison between two things or persons. It brings into light the social construction of similarities and differences. It forges the "we" and

⁷⁹ Jenkins, Richard *Social Identity*. Routledge, New Fetter lane London, 1996, pp.207-220.

⁸⁰ *Ibid.* p.119.

"*they*" relationships. Seen in this way, migrants are identified based on a number of differential forms. The first and obvious form of identification is based on physical appearance of an individual. This could be based on one's color of skin, height, size, hair, accent etc and mostly carried through overt observations. This identification process places people in different groupings based on myths, narrated experiences and the mental map that one has acquired during the process of socialization.

Within Kenyan context, this identification process firstly depends on narrated stories of who Kenyans are, how they look and where they reside or were born. Many of the stories are documented and sourced from history books and geography books that support primary and secondary school curriculum. This line of perception has been perpetuated by leaders who have all along argued that *Kenya is an island of peace*. Once the stories are put on a political platform in *this manner [text books]*, they easily become institutionalized in a way that fit those shaping the national identity. The government therefore finds it easy to blame the incoming populations for any violence or criminal activity.

The second form of identification process that is involved in Kenya's context and in many other places is the legal processes. One becomes an immigrant when s/he does not possess the legally prescribed national documentations. Failure to justify one's membership through birth certificates, national identity cards, voting cards, or school leaving certificates leads to a direct way of classifying *insiders* and *outsiders*. It has therefore become a *usual way of acting* for policing agents to ask for personal identification once an individual's identity is put into question. A migrant from Somalia noted that the police

have mastered the art of questioning about documents with intentions of "*not getting to know whether one has them or not, but to know how much to ask for in terms of bribes*".

Politically, national identity is claimed as a collective property. However, claim for national identity has been criticized from many angles as it involves construction of interests which are not necessarily national. In the case of Kenya with its multi-ethnic diversity, a call for national identity brings with it the challenge of whose identity is "being Kenyan." At the minimal level, national identity in Kenya has been reduced to geographical and ethnicised geopolitical claims for its legitimation. It is therefore not only the preservation of territorial sovereignty but also demarcation of who belongs to "our space" and who belongs to the other neighboring states. The call for what '*we Kenyans are*' therefore become intrinsic in what '*we as Kenyans fear*'

Thus invoking threats to Kenyan identity is an "important strategy in identity construction and consolidation"⁸¹. The presence of Diasporas from neighboring states thus invokes the national security question of *how far the Kenyan identity is affected and how far it will take for the incoming to become Kenyan*. In this line of questioning, Buzan, Wasver and de Wilde [1998] note that identity is prone to securitization as it is always possible to claim that as a result of development, "we will no longer be us, no

⁸¹ Campbell, David, *Writing Security: United States Foreign Policy and the Politics of Identity*. Minneapolis: University of Minnesota Press, 1992, pp.567-569.

longer the way we were or the way we ought to be true to our identity".⁸²

Globalisation, Post Cold War trends in global security and the changing nature of organized crimes have however challenged national identity. Identity has traditionally been organized through territoriality and sovereignty. The two "have been the ordering concepts of modernity and where State borders serve as the material and symbolic expression."⁸³ Many states have physically operationalized this Westphalian thinking by limiting crossing of external borders to certain points for different categories of migrants. On many occasions, these points mark frontier-"lines that must not be crossed unless authorized, without danger to life and often marked by physical fences, minefields, barbed wires and protected by armed guards"⁸⁴ Emerging trends in common security and regional security characterized by formation of organizations such as the African Union, European Union and other direct ones in Africa such as IGAD, EAC, ECOWAS and COMESA have brought to light the need for de-territorialized security thinking.

⁸²Barry Buzan, Ole Weaver. and Jaap De Wilde, *Security: A New Framework for Analysis*. Lynne Rienner publishers, Boulder Colorado, USA. 1998, pp.5-10.

⁸³ Immerfall, S., *Territoriality in the Globalizing Society: One Place or None?* Spring-Verlag, Berlin, Germany. 1998, p.153.

⁸⁴ Carlton, David & Schaerf, Carlo, *International Terrorism and World Security*. Groom Helm Ltd, London, 1975, pp.65-79.

Development of this kind where markets are enlarging and security becomes a concern for many states and their constituent therefore require a system of harmonized frameworks.

For states that argue for enhancement of traditional security, checkpoints are raised for enhancing surveillance and ensuring that nobody is able to go beyond them. The physical *limiting factors* to migration have been a focus for scholars such as Nigel Harris who says that “more than 2000 men and women died on the borders trying to enter Europe in the past decade and are likely to have fallen victim of barbed wire fences that surround Fortress Europe.”⁸⁵ Though tightly guarded, illegal migrants have had their maneuvers and managed to pass through these points. The case of the East, the Horn and Great Lakes of Africa is even more complex, especially in situations where security personnel are inadequate.

Armed conflicts in the horn of Africa and Great lakes have increased the number of asylum-seekers and refugees. While borders have not been the main cause of conflicts, the political constructions around them become an opportunity for going to war and calling for secession. This has been the case for inter-state conflicts such as Ethiopia-Eritrea and Sudan and South Sudan War. People who have all along been organized under one nation state identity resort to armed conflicts only to end up as 'brothers and

⁸⁵ Nigel, Harris. *The Immigration Myth Exposed: Thinking The Unthinkable*. I.E., Tauris Publishers London, 2002, p.76.

sisters' fighting each other. The end result is mass movement of population, moving away from created borders thus a case towards forced migration. For some, relocation is internal but for those torn between two national identities, they find their own ways into neighboring country as fear between new created states is generated. Ethiopian, Eritrea, Sudan and South Sudan migrants in Kenya are an example of such categories especially for families where husbands and wives were differentiated when Eritrea and South Sudan became states after secession.

Majority of migrants who literally manage to cross the borders by foot end up in refugee camps. These camps become their defining contexts while awaiting elusive peace in their countries and other documentation processes involved towards integration or relocation to a third country of choice. Jeff Crisp who has carried out in-depth research on refugees in Kenya indicates in his paper that many refugees "undergo a lot of frustration in the camps and liken these camps to being in prison and if free, all would go to Nairobi or other urban centers for an escape"⁸⁶.

Migration into and out of Kenya has thus become a contested area between the state on one side and individual migrants who are in search for human security on the other as a result of changes in the regional and global order, demand-supply - pull-push factors. Migrant issues therefore become national security challenges and opportunities for redefining practices by authorities and policy makers. One area that requires such redefinition is brought to light by the events that followed after the bombing of the American Embassy in Nairobi in 1998. The Kenya government became more cautious of

⁸⁶ UNHCR working paper no, 16 of 2011 (<http://www.jha.ac/articles>)

immigration and was quick to review some of its visa and passport issuance requirements. The government went ahead and banned all night flights to and from Somalia, on the grounds that it harbored pockets of terrorists. This was followed by raids in search of illegal migrants in Nairobi and withdrawal of Somali passport-legitimacy by the Kenya national security department. However, as a contradiction, Kenya has continued to encourage export of miraa [khat] which generates a big market in Somalia thus a dilemma between revenue, jobs and national security threats associated with the business.

Other national security contradictions have emerged in the tourism sector where Kenya commands a lot of resources. The climate, topography, variety of wild animals, comfortable hotels, and hospitable citizens are some of the factors that have played a great role in visitors always wanting to enjoy holidays in Kenya. Since the US embassy attacks, 1998, the Israeli-owned hotel in Mombasa in 2002 and many recent terror strikes threats against citizens of America, British, Israelis and Saudi Arabia, the government has continued to deal with this contradiction and dilemma in its desire to increase the number of visitors while at the same time taking maximum security precautions against international criminals. Close policing of immigrants has thus been considered as a vital response to perceived threats in a region with diverse ideologies and Multicultural identities.

3.5 Regional Conflicts and national identities

The 'otherness' associated with migrants coming into Kenya from neighboring countries that have suffered armed conflicts makes the status to be linked with considerable amount

of stigma. The presence is interpreted as *risking a spread of conflict* into relatively peaceful communities. Any migrant coming into Kenya from any conflicting countries will therefore want to shed off the identity of "otherness" as soon as possible thus putting high pressures for integration and a sense of belonging.

The need for integration has however not gone along with many politicians' perception of national identity as a collective belonging. Politicians are only interested in migration issues when their ethnic interests are to be promoted and cemented. Immigration laws have at the same time perpetuated the thinking of the dominant at the international relations' level; in particular, international law has intricately related the issues of nationality and citizenship to migration where migration is taken as a function of nationality.⁸⁷ Migrants are therefore seen to move from one nationality to another and if deemed fit within the realm of integration, then citizenship is given as an option. While international law recognizes nations to begin with citizenship of an individual, it is mostly linked to state membership. The individual is thus compelled to belong to a recognized state before acknowledgement at the international court.

This view has not taken care of stateless people who find themselves in inter-state conflict as well as people living in failed states such as Somalia where they have lived for more than two decades without a central government. Migration in and out of Somalia has continued without the presence of a recognized government, making management of

⁸⁷ United Nations: *International Migration Policies* ,New York, Department of Economics and Social Affairs Population Division, 1998,p.27

regional migration a challenge. The notion of citizen-state membership for Somalia therefore begs the question as to whether the state should come first or it should be an individual to be recognized by international law in cases of continued forced migration.

A claim for national identity therefore, cannot fail to recognize the challenge generated by global and regional forces of economics, politics, conflict and culture. In a continuously globalizing world where armed conflicts, terrorism and international crimes loom, international migration has generally continued to be seen as a "menace to territorial borders and cultural identities. This has been the case in Kenya's situation where terror attacks in particular have been linked to its role played by the state in global business and promotion of secular culture.

Presence of multi-national companies, international humanitarian organizations, United Nations offices and other country-specific firms and foreign missions have been interpreted as not reflecting cultural diversity within Kenya. While Kenya remains a highly multicultural state, there is an emerging competition between three main cultures. Firstly, there is the western-linked culture that advocates Christian values at the core. This has links rooted during the colonial period where many schools, health institutions and political power favored those coming from a Christian background. Secondly, there has been an Eastern-linked culture that is promoted through Islam and Hinduism in Kenya.

The two Eastern-linked cultures have influenced the political shape of Kenya as the political power game is linked to business. The Hindu community in Kenya as indicated earlier has had a niche in the manufacturing industry and thus the link between protecting business interests through political power bargaining. A key informant working closely with residential associations noted how Indian businessmen helped to fund KANU political party during election campaigns. Coast province, which is dominated by Islamic-values oriented followers on the other hand, places more emphasis on trade and religion as a way of life. Coast Province records high numbers of tourists coming to visit Kenya's coastal beaches and hotels making it a focus for politics and business. The triangle of conflicting identities is completed by those who want to promote traditional African culture and mix it with politics.

Traditional culture has elicited human security challenges such as those associated with early girl-child marriage, female circumcisions and rebel movements grounded on traditional culture such as Mungiki, Mombasa Republican Council (MRC), many tribal vigilante groups in Kenya. However, such triangle of competition becomes complex as sections of each group and category become entangled by process of globalization through education, information and business that is highly accelerated by migration.

Within the East, the Great Lakes and the Horn of Africa, borders become almost meaningless where ethnicities living around them continue sharing language, culture and traditions. This is the case for Hutu and Tutsi in the Great Lakes, Somali, Oromo and Maasai ethnicities in East and Horn of Africa. Such ethnicities are pitted against each other by political sentiments that are geared at territorial and nationalistic supremacy. This is a perpetuation of exported identity categorization that came with drawing of boundaries by

colonial powers. At the same time many nationalistic leaders at policy-making levels have proceeded with securitization of open borders as portrayed by a move towards controlled borders in preservation of national sovereignty and identity.

The governments of Kenya and Ethiopia have pursued this process by holding joint talks geared towards a regional agenda. The Oromo ethnic community, located at the borders between Kenya and Ethiopia has always threatened to secede from "Ethiopian national identity" while the Kenyan government has been accused of allowing Oromo rebels to train and source manpower within its borders.

With many of its neighbors at war and others recovering from conflicts, Kenya cannot ignore what is going on with populations on the "other side" of physical boundaries which are being challenged not only by globalization but also by the dynamics of internationalized conflicts in the region. Security policies in the region are operationalized in a manner to expose the level of intergovernmental mistrust and tension. Peter Kagwanja argues that this mistrust has resulted in the Kenyan government resorting to "limiting the number of refugees on the country's territory and rejecting the suggestion that exiled populations be given some land and be allowed to settle in the country on a long term basis."⁸⁸ This has coincided with refugees being crowded together in Kakuma and Daadab refugee camps with minimum mobility.

⁸⁸ <http://www.jha.ac/articles>

The populations in these camps make more than 300,000 encouraging neither integration nor economic mobility for refugees. While many refugees are to be found in camps, some have found their way to Nairobi and other major urban cities in Kenya through legal and illegal means. Some estates in Nairobi such as Eastleigh and Zimmerman have become Diasporas for Somali and South Sudanese migrants respectively. Armed conflicts in northern part of Kenya keep on re-emerging following border tensions that take the shape of cattle rustling and banditry. This region is home to Kenya's population of Somali origin who profess Islam as their religion, Borana and Gala who share culture with Ethiopia's Oromo, and Turkana who have the same Nilotic cultural traditions as those to be found with southern Sudanese ethnicities. This is interpreted as a zone of protracted ethnic competition by previous and current regimes.

The previous regimes in Kenya have always considered Somali ethnic community to be under threat of joining other bordering national identities while the question of Ethiopian Oromo, South Sudan Dinka and Nuers raises the question of trust between Kenya, Ethiopia and Khartoum governments respectively. The level of State fear within the region has led to arming of ethnic communities living on borders. Recurring crimes of cattle rustling, highway car-jacking and banditry have been the outcome in what the government of Kenya has labeled *shifita wars*. As a result of this, security policy implementation and control strategies adopted by the Kenyan government have targeted these various categories and groups of people. Such categories are spotlighted with a symbolic imagery that has reflected them as enemies who should not have a face, and more of an evil-like bother to political regimes.

Eastleigh community in Nairobi which has a high number of Somali and Ethiopian population, both citizens and immigrants has always been on the list when a national crack-down on crimes have been carried out by security forces. This form of policy implementation is linked to the global political hegemonic competition linked to external security funding and cooperation by foreign states. Funding directed to military and police departments by foreign governments have given such external actors the ground to thump their interests when it comes to hard diplomatic relations.

Continued budgetary dependency by Kenya's national security agencies has failed to stand firm on decisions that relate to national security policies of countries such as Britain, USA and Israel. As a demonstration of this tagging and pulling behind the curtains of security secrecy and covert actions, USA has showed its discomfort with sections of Muslim foreigners in Kenya saying that Pakistanis working at jobs that could be done by Kenyans are a threat to American interests. By 2008, it was reported that Kenya received between 40,000-50,000 Gujarati and Pakistani unskilled and semi-skilled laborers.⁸⁹

The American government has all along recommended that some of the working permits be revoked and that the Kenya immigration department be overhauled. Failure to take these actions has led to America's numerous travel advisories to its citizens against traveling to Kenya on the basis that Kenya is insecure.

⁸⁹ <http://www.frieiids-partners.org>. Report, 2008

3.6 The Interlinkages between Kenya Security Policies, Immigration Laws and Immigrants

The focus of the Kenya immigration laws and its exemptions does not however promote positive peace. The manner in which the law has been written has clearly followed a negative line as it starts by focusing on "unlawfulness" rather than "lawfulness"⁹⁰ of incoming migrants. This is a negative perception by the law in regard to incoming people and thus a direction towards negative peace. Creating peace has obvious reasons for individuals, communities and States to focus on reduction and avoidance of violence. This corresponds to curing and preventing direct and structural violence.

Direct violence can be detected easily as it takes overt characteristics while structural [indirect] violence is embedded in structures. According to Galtung [1996] peace can be defined in two compatible ways; firstly "absence/reduction of violence of all kinds and secondly, as nonviolent and creative conflict transformation"⁹¹. The first definition of peace is thus violence-oriented where one's knowledge of peace, demands to know about violence. The second approach to Galtung's definition of peace is conflict-oriented where one's knowledge of conflicts, how they are transformed non-violently and creatively results to knowing peace. The two approaches focus on human beings in a social set up making peace studies a form of applied social science. It is in line with this kind of thinking that international migration is evaluated in terms of how national security policy formulation

⁹⁰ Laws of Kenya, The Immigration Act Cap. 172:64

⁹¹ Galtung, Johan, *Peace by Peaceful Means: Peace and Conflict. Development and Civilization*. Sage Publications Ltd. 6 Bonhill Street London, 1996, pp.9-13.

and implementations respond to global and regional dynamics. One aspect put to test by this outlook is the political and legal responses to regional migration by States in the age of globalization.

Chapters 13 of the Laws of Kenya [The Aliens Restriction Act], the Penal Code and the Immigration Act have borrowed heavily from the colonial regime and its way of administration. Laws crafted in this manner have maintained the coercive and forceful nature that only serves the regime in power at the expense of individual security. The exceptions provided for by the law as already covered in this chapter openly portray the state's insensitive nature to non-political individual migrants as it gives priority to those individuals attached to foreign government offices and embassies.

At the extreme, forced migrants in search of personal security and peace automatically fall in the category of "illegality" unless they prove otherwise. In the same line of thinking, Laws ignore gender relations when it comes to security of immigrants as it gives priority and reference to the *man* and *husband* at the expense of woman and a *wife*. A woman and a wife residing in Kenya therefore, have not been given guarantee under the law towards human-security of her spouse or partner. It is thus likely that many individuals and groups in dire search for peace and security will be labeled as illegal migrants and thus translates to criminality.

The concept of illegal immigrant becomes a 'label' given to victims and oppressed categories in an attempt to denying them their dignity on one side and failure to acknowledge their suffering on the other. The legislative organ of the state is concerned

with the making of laws and review of the existing ones. This organ consist of political leaders entrusted with the authority to make laws that support peace and security and at the same time propose changes to laws that deem oppressive to the people they serve. The legislative organ in Kenya for the last four decades has maintained the laws that governed and served the interests of minority colonial powers⁹².

In an attempt to respond to threats to security after the bombing of USA embassy in Nairobi on August 7 1998, government leaders exploited the situation to advance unnecessary restrictive and punitive policies against refugees, asylum-seekers, and selected groups of foreigners. The researcher's working experience with homeless people and refugees exposed to him the rampant arrests that were carried out by security agents on refugees and street children. Internally, the government cynically took advantage of the situation to intensify its own crackdowns on political opponents and religious groups. The problem of terrorism became nationalized with more interests serving local politics than addressing the issues at core. The broadest measures proposed by the government were the introduction of Anti-Terrorism Legislation, creation of a special Anti-terrorism police unit, reforming of airport security, carrying out estate-to-estates crack down on illegal migrants coupled by many other covert actions within the immigration department.

⁹² <http://web.amnestv.org/libranof-ENG-KEN>. Amnesty International is an NGO whose work deals with protecting internationally recognized human-rights.

Since the beginning of 2003 up to today in response to perceived risk of further attacks by terrorists, security agents and actors have taken the following selected measures:

- Established a specialized Anti-Terrorism Unit within the Kenya Police Force;
- Established the National Counter-Terrorism center in Nairobi in January 2004, under the responsibility of the National Security and Intelligence Service aimed at providing "timely" and "factual" intelligence in the fight against terrorism
- Imposed a flight ban between Kenya and Somalia on 19 June 2003. The ban was lifted on 8 July 2003
- Strengthened security measures at points of entry into Kenya, including airports
- Strengthened security measures at public places and hotels
- Engaged in cooperation to fight "terrorism" in the region, under the auspices of the Inter-Governmental Authority on Development (IGAD)
- Published the *Suppression of Terrorism Bill* in April 2003⁹³
- Kenya sends in troops to Somalia in pursuit of al-Shabaab militants, October 2011
- Kenya troops formally join AMISON to fight al-Shabaab in Somalia, July 2012
- Reemergence on debates about Anti-Terrorism Bill 2012

⁹³ Kenya Gazette Supplement No. 38 [Bill No. 15]. The Suppression of Terrorism Bill [2003:455]

The Anti- terrorism bill in particular has reflected a number of biases following its proposals to the immigration department and the police force in the pursuit of peace and security. It has become clear from the above proposals that Kenya is highly becoming a police-state. In a response to the Bill; The Supreme Council of Kenya Muslims (SUPKEM) has opposed the new Anti-Terrorism Bill terming it as ‘discriminatory and targeted to the Muslims community. SUPKEM National Chairman Abdulghafur El-Busaidy called for major scrutiny of the Bill and asked for input by all major stakeholders before it goes to Parliament.

“He said if the Bill was passed into law the way it is, it will not deal with the injustices in handling terrorism suspects. The proposed Anti-Terrorism Bill goes against the spirit of the Constitution which protects the rights of all citizens regardless of colour, tribe, sex, region and religion,”

SUPKEM also want previous investigations into torture and harassment of innocent Kenyans as suspects of terrorism be carried out. “Kenyans would wish to develop their own counter-terrorism policies that are suited to their unique conditions and developed with widespread public participation as opposed to being bulldozed by foreign people whose interest are not well known to them,”⁹⁴.

⁹⁴ The Supreme Council of Kenya Muslims (SUPKEM), National Chairman Abdulghafur El-Busaidy on the new Anti-Terrorism Bill, July 2012 at a press conference in Nairobi Kenya.

Muslims and people of Somali ethnicity have become a major target with threats perceived to be coming from Coastal communities. Kenya's scholar Prof. Ali Mazrui says that "Islamophobia" within Kenya will find policemen arresting Jesus Christ as a potential terrorist "if he walked on the streets of Nairobi with his long beards and Arab-style robes"⁹⁵. On matters relating to wearing and clothing in particular, the Anti-terrorism Bill allows for "a member of the police force to arrest a person without a warrant if he has reasonable ground to suspect that the person is guilty of an offence." This proposal leaves the policing agents with a lot of discretion on what to consider as reasonable threat without any recourse for accountability. The process of suspecting and arresting thus follow physical-overt evaluation of policing agents guided by 6-9 month training that they acquired at the police academy.

Migrants and migrant-hosting communities have been affected by these emerging national policing activities carried out by state in its everyday preventive and curative security measures. The direct effects are visible during the swoop-operations that take the form of estate-to-estate crackdown on illegal migrants. This is done with intentions of reducing the number of migrant-related criminality and threats to security as communicated by police heads. Within the objectives of these police operations is the improvement in peace and security. Contrary to this, there has been complaints coming from migrant diasporas concerning the manner with which policing is affecting their security. The following are selected cases reflecting how security actors and agents have pursued the issue of migration in Kenya. On February 8th 2009, 1000 suspected illegal

⁹⁵Daily Nation Newspaper Jan. 23rd 2004

immigrants were arrested in a country-wide crackdown on crime, a survey carried out by Nation media on February 20th 2010 indicated that around 400-500 illegal immigrants from Somalia enter into Kenya through Wilson airport. On May 3^{0th} 2011, more than 800 refugees were arrested in a four-hour operation at Eastleigh Nairobi; on July 24th 2012 more than 70 illegal immigrants were arraigned in court in Mombasa⁹⁶.

Foreigners are generally seen as the "other", coming from outside, strange, alien and in many situations likened to problem makers. The concept of 'alien' has been used in the law. Under the *Aliens Restriction Act* to mean "any person who is not a citizen of Kenya"⁹⁷ and thus a strange and dangerous unknown identity different from that of "being Kenyan". The security gatekeepers have promoted a public attitude that tends to be built on the quick assumption that immigrants and non-citizens bring along with them some conflicts and ignorance of the laws of the land. The former Police Commissioner, Mr. Nyaseda attributed the high rate of crimes in Kenya to high number of immigrants. He argued that Immigrants have been linked with arms robberies, terrorist attacks, drug-trafficking and forgeries of documents. This line of thinking and operations goes hand in hand with what Francis [1986] describes as migrants "not originally bound by, and probably not particularly familiar with the criminal laws"⁹⁸

⁹⁶ All the figures were taken from The Daily Nation Newspaper of respective dates

⁹⁷ The Aliens Restriction Act cap [173:2] of the Laws of Kenya

⁹⁸ Francis, T. Samuel. *Conflict Studies. The Centre for Security and Conflict studies* [CSCS] 12/12G, Golden Square London, 1986, pp.183-1941.

This has legitimated an attempt to apply a militaristic approach when operationalizing security policies at the expense of professional policing. This has in turn promoted the perception that criminals come from a given social-political-territorial category, to be dealt with as a designated enemy if security is to be achieved.

Nairobi has attracted voluntary migrants, recognized refugees and asylum seekers who have undergone psychological, social, economical, and political transformations and sometimes frustrations, trauma and aggression of many kinds. Immigrants who reach Nairobi may want to turn it into a place for redefining the context of home, business, friends, family, and a community for a feeling of peace and security. The challenging experiences resulting from economic and social-political insecurities for incoming migrants invites an alternative approach on how immigrants are able to adjust and adapt in these new environment once they are recognized by law. The government has laid down laws and procedures concerning how one can acquire visa, permits and citizenship but have ignored to lay down a coordinated integration framework for immigrants interested in long-term stay.

3.7 Conclusion

Migration is now a global phenomenon, with 3% of the world's population living temporarily or permanently outside their country of origin (World Bank, 2009). Climate change, urbanization, internal conflicts, and expanded trade are likewise driving increased population mobility within and between countries. Like most countries, Kenya is host to diverse typologies of migrants. The dynamics is different and can be differentiated

between economic migrants, often, 'target earners' and forced migrants - refugees and asylum seekers. They leave their countries because of persecution; human rights abuse and generalized violence and conflicts that make life there unbearable and unsustainable. Within Kenya, poverty is pushing people to move in search of work.

In Kenya, the vast, remote, and arid frontier areas bordering Somalia, Ethiopia, Sudan, and Uganda, and more importantly the collapse of the Barre government triggered a massive exodus of hundreds of thousands of Somalis into the northern Kenya creating national security threats. The chapter captured on identities of immigrants, their experiences with Kenya security agencies, host community and towards the end elaborated on Human security, which is linked with human-rights, protecting vital freedoms, and protecting people from critical and pervasive threats and situations thus become the challenges to be incorporated into security frameworks. In Kenya Migrant individuals continue to lack protection and empowerment in political regimes that continue to base international migration policies on inter-state political rivalry and basically, on regional-ethnicised and biased approach to policing and police structures.

CHAPTER FOUR
THE RELATIONSHIP BETWEEN NATIONAL POLICING AGENCIES,
IMMIGRANTS AND THE HOST COMMUNITIES

4.0 Introduction

This chapter dwells on policing migrants and host communities. This section puts at the core of its discussion the interaction, perception and identity of immigrants by the policing agents and the host communities in Kenya. This is a reflection on how public policing agents implement national security policies as they interact with migrants and migrant host communities. It goes further to elucidate the perception of close connection between international migration and terrorism especially after 9/11. Irregular migration, which appears to be growing in scales in many parts of the world, is sometimes regarded by politicians and public alike as a threat to national sovereignty and security. In a number of destination countries, host societies have become increasingly fearful about the presence of migrant communities, especially those with unfamiliar cultures that comes from parts of the world associated with extremism and violence. The analysis herein embraces the relationship between the national security implementation -identity nexus and human-security dynamics.

4.1 Emerging Issues within National Security Operation.

4.1.1. History and Evolution of Kenya's police force

The Kenyan police force has its beginning in the period 1886-1902⁹⁹, which is also marked by the foundation of the Imperial British East Africa [IBEAA] company. It was through the interests of IBEAA, led by Sir William McKinnon that a security organization was initiated. There arose a need to protect the stores of the company along the Kenyan coastal town of Mombasa where the company had its headquarters. Duties and responsibilities of the police at this point rested on protecting the business of IBEAA with the majority of police officers coming from the Indian community. The duties of the police at this point were also minor and limited to directions and need of the founders. At the core of its business, IBEAA was interested in the building of the Kenya-Uganda railway line. As railway construction extended inland, the need to hire more.

Security personnel arose. Africans were absorbed during this time though very marginally in performing non administrative duties. At the formal State level, the history of policing in Kenya started in 1896 when the British Foreign Office ordered the first police station to be opened in the city of Mombasa¹⁰⁰. Many of the officers who served in the force came in from India and Zanzibar. By the time the railway line reached Kisumu in 1906, there were quite a number of police personnel and structures in many inland towns. More and more police officers were recruited.

⁹⁹The Kenya police strategic plan 2003-2007. This five year draft plan is expected to inform and guide far-reaching institutional reforms within the force. The objective of the reforms is to transform the Kenya Police from a "Force" to a "Service"

¹⁰⁰<http://www.cla.sc.edu/socy/faculty/defiem/zcolpol.html>

The training of officers at this stage was militaristic in nature¹⁰¹. This kind of training was to become part of pre-training for Africans who later fought the First World War alongside the military and colonial armies in other parts of Africa and Asia. Professional police training was therefore sacrificed at the expense of war orientations. In order to improve the police performance, Sir Hayes Saddler who was governor by then, appointed a committee to look into the affairs of the Kenyan police force.

Out of many recommendations given by the committee, it came out that there was a need to set up a police training school in Nairobi. The training of officers was to give greater emphasis to police work over military training. Training of professional police officers thus commenced in Nairobi in 1911 together with a small fingerprint section.¹⁰² It is clear therefore that the inception of the force arose as a result of interests held by external constituents at a point when colonialism was thriving in Africa, The birth of the force is therefore colonial in nature and carried with it external business interests.

The First World War in 1914 -1919 disrupted the continuation of police training as many were absorbed in the military. The difference between military and police became ambiguous as police became fluid, operating between war situations and at the same time maintaining security and social order internally. After the war in 1918, the police force began to be reorganized. Some developments involved increase of personnel, creation of better administration, residential housing and establishment of education schools. Africans

¹⁰¹The Kenya police strategic plan 2003-2007

¹⁰² Ibid.

were considered to be lacking in terms of formal education and thus a need to increase the performance capacity through education. Schooling improved the literacy level of African police officers and many were sought from education institutions mostly run by missionaries¹⁰³.

In 1920, the force changed its name from Kenya East Africa Protectorate police to Kenya Police Force after Kenya East Africa was proclaimed a crown colony. The powers of the Kenya police were however limited since they did not extend the services to the ten-mile wide coastal strip which had been leased to Sultan of Zanzibar. In 1926, the criminal intelligent unit was established with the sole responsibility of collecting, tabulating, recording history and data of criminals, undesirable and suspicious persons. This showed a clear categorization of people, with those opposed to colonial interests portrayed as suspicious and potential criminals. Special police officers from Britain and South Africa were also invited to form a CID bureau that specialized in finger printing. At the same time, a railway police unit was established to deal with prevention and detection of offences along the railway lines.

As years progressed, the scope of policing was extended to take care of cattle rustling, traffic and parking problems¹⁰⁴. The 1930s also saw the deployment of police in the Northern frontier district to counter threats from Italian Somaliland and Ethiopia. The tension

¹⁰³ Ibid.

¹⁰⁴ ⁸² The Kenya police strategic plan 2003-2007

between colonial powers in the horn of Africa thus created a platform for police involvement during the Second World War. The Kenya police acted as guides, interpreters and carried out reconnaissance missions in the enemies' territories¹⁰⁵. It was obvious not to trust any of the neighbors' police force owing to the spying and intelligence gathering that went on between the countries in East and horn of Africa. This initial tension has continued in post-war period and currently manifested by inter-state mistrust that exists between the states in the region.

In 1946, the police force was placed under the office of the Attorney General and a new police training depot was opened in Maseno town in Western Kenya. In 1948 some crucial changes were initiated. The Kenya police reserve was formed as an auxiliary of the force. The unit was given armored cars and mostly deployed in trouble spots. This unit has seen some reforms since then with the current government doing away with reserve police officers. The police reservists in Kenya have colluded with criminals for a long time during the previous regimes, increasing rather than reducing insecurities. Some of the reservists have had criminal records and it had been easy for them to plan with already established criminal gangs in Nairobi and other major cities¹⁰⁶.

¹⁰⁵Ibid

¹⁰⁶[IRJN] Integrated Regional Information Networks is part of the UN Office for the Coordination of Humanitarian Affairs (OCHA). IRIN, which was born out of the 1994 crisis in the Great Lakes region of central Africa, pioneered the use of e-mail and web technology to deliver and receive information to and from some of the most remote and underdeveloped places in Africa.

This interaction and interplay between criminals and reservists have led to an evaluation conducted by the government with results leading to suspension of the unit. This is positive change that by its objective gears towards reduction of crimes and thus a reduction of violence that is injurious to ordinary persons.

The formation of a dog section and the general service unit [GSU] followed in 1948. The two sections were meant to address to emergency areas and situations. This was a move geared towards a more effective crime control. The GSU have continued to be involved in such situations in what has been translated to "*fanya fujo none*" [create a problem and face the consequences] machinery by local people. They have participated mostly in tackling rioting groups and in major estate swoops in areas considered to be dangerous. Most of the operations involving GSU have been marked by police violence and resentment from ordinary citizens.

The police air wing was formed in 1949 and continues up to date. The main duties at formation consisted of communications and evacuation of sick persons to hospital. These services were made part of permanent police services in 1953.¹⁰⁷ However, such services have remained at the service of government oriented services with very little done on evacuation of ordinary sick persons. The office of the president houses the special programme on disaster preparedness and response where this unit can benefit citizens in time of droughts, famine, floods and general disease catastrophes.

¹⁰⁷ The Kenya police service strategic plan 2003-2007

Following the Mau Mau insurgency, a state of emergency was declared in 1952. This was followed by an immediate increase in police personnel in order to cope with the situations. A commission whose work was to review the organization, administration and expansion of the force was formed later in the year 1953. The outcomes of the commission saw the establishment of the Police Headquarter in Nairobi in 1958 and in the same year, the police force was integrated into the defense ministry.

4.1.2. A Major Paradigm Shift within Kenya Security Policy Formulations

Kenya's independence on 12th Dec. 1963 from Britain came with drastic changes. The departure of many administrators of British origin created a need to *Africanize* the force and the government in general. Many Africans of Kenyan origin joined the high ranks and since then, the police force has had tremendous development. It has however not been smooth all the way. Population growth, cross-border cattle rustling, terrorist threats, internal insurgency groups like Mungiki, Mombasa Republican Council, banditry, increase in crime and chaotic urbanization are some of the challenges that the police force has come to face so far.

In order to adapt to these changes in national security dynamics in Kenya, various police units have been formed to date. They include the Anti-stock Theft Unit, Anti-Motor Vehicle Theft Unit, Tourism Police Unit, The Anti-Corruption Police Unit, Presidential Escort Unit, and the latest Anti-terrorism Police unit and Anti-Narcotic police unit¹⁰⁸. The government has also gone ahead to propose far reaching reorganization of the police force with an aim of reclaiming confidence in the public eyes. Some of the changes are

¹⁰⁸ The Kenya Police service strategic plan 2008-2012.

enshrined in the new Constitution 2010¹⁰⁹, article 243-247 specifically reforming the whole police force to a National Police Service that will strive for the highest standard of professionalism, discipline, transparent and accountable to the public. The CID section of the force has come up with four additional sub-units to respond to the new security challenges in Kenya. These are *Kanga* [guinea fowl], *Spider*, *Rhino* and *Scorpion* units¹¹⁰. All these units have animal labels suggesting differential mobility and energy directed to each aspect of security implementation. The *Kanga* unit deals with prominent cases like street protest and terrorist threats, the *Spider* deals with rape and carjacking, *Rhino* deals with the feared *mungiki*¹¹¹ and other *rebellious* group while *scorpion* deals with street families. The foregoing thus gives a clear picture of perceived source of insecurity and in turn leads to categorization of crimes of some individuals, groups and movements.

4.1.3. International Security Dynamics and Migration

The attacks on 9/11 and the subsequent bombings in Madrid, London and elsewhere greatly altered international security state of affairs, resulting in increased relevance of the security dimension of international migration. Indeed, the new scrutiny given to migration and security is part of the politisation of international migration. Security and migration have become more of a salient concern in the post –cold war period than the

¹⁰⁹The constitution of Kenya 2010, art.243-247.

¹¹⁰ The Kenya Police service strategic plan 2008-2012

¹¹¹ Mungiki is a Kikuyu ethnic word that translates to "the mass". The group is believed to be propagating ethnic purity and observation of traditional cultural values such as circumcisions of women. The followers take themselves as the true sons and daughters of Mau Mau movement that fought the British colonial Authority for Kenya's independence

post-world war II era. The fact that international migration is now perceived as a significant or priority issue virtually around the world reflects ideological as well as material transformations.

Much of migration from the south is driven by lack of human security that finds expression in impoverishment, violence, lack of human rights and weak states. Such political, social and economic underdevelopment is linked to histories of colonialism and the present condition of global inequality. Where states are unable to create legal migration systems for necessary labour, many migrants are also forced to move under conditions of considerable insecurity. Smuggling, trafficking, bonded labour and lack of human and worker rights are fate of millions of migrants. Even legal migrants may have insecure residence status and be vulnerable to economic exploitation, discriminations and racist violence. Sometimes legal changes can push existing migrants into illegality as happened to *Sans papiers*¹¹² ("undocumented") in France in the 1990s. The frequent insecurity of the people of poorer countries is often forgotten in discussion of state security, yet the two phenomena are closely linked.

Frequently, such migrants' insecurity is linked to perceived threats, which can be divided into three categories: cultural, socioeconomics and political¹¹³. The first perceived threat, the perception of migrants and migrants-background population as challenging the

¹¹²In August of 1996, the "Sans-Papiers" ("Undocumented") of France gained international recognition when some 300 undocumented African women, children, and men were evicted by police from St. Bernard Church in Paris, where they had taken sanctuary to demand the regularization of their status.

¹¹³ Lucassen, L., *The Immigration Threat: The Integration of Old and New Immigrants in Western Europe since 1890*, Urbana and Chicago: University of Illinois, 2005, p.80

cultural status quo, may contribute most to migrants' insecurity. Such perceptions were common place in Europe in the 1980s and have contributed to the aforementioned securitization of migration policies¹¹⁴. Oftentimes, the religious identity and linguistic practices of migrants loom large in perceived threats.

The perceived threats of international migration to national identity and the maintenance of cultural cohesiveness are an important aspect of the challenges posed by international migration to the sovereign state¹¹⁵. International migration affects the autonomy of states, their sovereign prerogative of control over all matters transpiring within their territory of the state, and the capacity of states to implement public policies and to enforce laws. Alternatively, international migration can also increase state power. It can facilitate economic growth and is frequently viewed as indispensable to a state's economic wellbeing.

A state's immigration policies can also contribute to its 'soft power', its ability to achieve foreign policy and security objectives without recourse to military or economic means of persuasion. Nye views the large body of foreign students studying in the USA as an important source of soft power. Similarly, treatment of immigrants can affect a state's reputation abroad, a not inconsequential matter for diplomacy and 'smart power', influence that arises from investing in global goods that better enable states to address

¹¹⁴ Messina A.M., *The Logics and Politics of post Cold war 11 Migration to Western Europe*, Cambridge: Cambridge university college, 2007, p.75.

¹¹⁵ Adamson, F.B., *Crossing Borders: International Migration and national Security*, *International Security*, 31:1, 2006, p.186.

global challenges¹¹⁶.

International migration has also had a significant impact on the changing nature of violent conflicts. Migration flows can interact with other factors to fuel violent conflicts in three ways: by providing resources that fuel internal conflicts, by facilitating networks of organized crime and by serving as conduits for international terrorism¹¹⁷. Migrants and diasporic communities often provide financial aid and recruits to groups engaged in conflicts in their homeland. For example Tamil Sri Lankans and Somalis/Muslims in Europe, America Canada, India and elsewhere have aided and abetted the Tamil Tigers' and Al-Qaida and Al-Shabbab insurrection in Sri-Lanka and Somalia respectively.

Since 1990, the foreign and national security policies of most countries around the world have prioritized the combating of human trafficking and other types of transnational crime. While the growing awareness of the security dimensions of international migration since 9/11 has sometimes led to restrictive policy measures, it should be obvious that certain kinds of migration and certain blends of public policies enhance security rather than undermine it. It is through this dynamics of international security policies that Kenya as a country tries to put across national security policies that would deter -would be-immigrants in line with international set standard.

¹¹⁶ Nye, J.P., and *Soft Power: The Means to Success in World Politics*, New York: Public Affairs, 2004, p.207.

¹¹⁷ Adamson, F.B., *Crossing Borders: International Migration and national Security*, *International Security*, 31:1, 2006, pp.190-191.

4.2 Legitimacy within National Policing Structures

The Kenya police force is governed by rules and regulations found in the Police Act Cap.84 of the laws of Kenya. The Act sets up the functions, composition, and structure of the police "force". According to the Act, "the force is employed in Kenya for the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of all laws and regulations with which it is charged."¹¹⁸

The police are therefore recognized as people sanctioned by the state with the powers to enforce the law and keep peace¹¹⁹. This means that the priority of the police institution is in policing of public peace. Many advocates of modern policing agree that policing is a necessary process that serves the function of reinforcing social order in an environment of peace-building and calls for unitary policing between police and civilians. A critical observation of law enforcement in Kenya however calls for a redefinition of values and referent object to policing activities. The emphasis here is on taking civilians and individuals as the referent object during the process of policing.

Policing in Kenya has so far followed a state-centric approach in its implementation of security policies. This kind of approach to policing continues to take migrants as people coming from other competing states and thus always to be handled with suspicion. A policing agent summarized it by saying that, "*any immigrant is taken as a suspect*

¹¹⁸Laws of Kenya, The Police Act Cap. 84 Revised Editions, Government Printers, Nairobi. 1988:6

¹¹⁹ Maguire, Morgan, and Reiner; *Handbook of Criminology*, Oxford University Press, 2002.pp.36-40.

especially considering what is happening around the world complicated by networks of crimes".

Though a highly democratizing state in Africa, Kenya still lacks in terms of institutional capacity in the implementation of national security policies. The few policing agents that the state can afford concentrates their energies on high political grounds as the police structure remain highly concerned with the office of the president, politicians and urban centers. This top-down approach leads to skewed priorities by security ministry whose aims surround that of cementing political power.

As Maguire, Morgan and Reiner [2002] argue, public peace is not kept by the police but by primarily an intricate, almost unconscious, network of voluntary controls and standards among the people themselves and enforced by the people themselves¹²⁰. This has not been the case in many states of Africa, Kenya included, where state policing has become isolated from the people whose peace it is supposed to be promoting.

Immigrants who form part of the community contribute to this network of relationships and thus any threats to their communities and Diasporas are also part of their concern. When a host community becomes a target of swoops and rounding off, feelings of fear engulf not only immigrants but citizens too. Interpreted this way, any host community will ultimately start perceiving immigrants as an expense and a source of threat of

¹²⁰ Ibid

everyday surveillance. Surveillance of this kind generally will clash with individual privacy and civil liberties.

As noted in the history and philosophy of policing in Kenya, much activity has taken the shape and interests of the state in a trickle down approach. This one-dimensional approach by the police force has marginalized the community in efforts to maintain peace and security. In order to discourage illegal immigration into Kenya, law enforcement agency carries out ad hoc estate operations to crack down on illegal immigrants. Local and international media have accused the police force of mishandling individuals, both citizens and immigrants in the name of swoops that camouflage as estate operations. Many swoops take place in regions dominated by immigrants from Somalia, South Sudan, DRC, Rwanda and other African ethnic communities.

Areas dominated by western populations located in suburbs and outskirts of Nairobi are not given the same priority thus indicating a differential perception on who breeds problems. At the same time, these "operations" have created tensions between human rights organizations in their interpretation of national security and especially the state's handling of immigrants. In its annual report KHRC reported that "police brutality remained the most visible form of state-perpetrated violence"¹²¹.

¹²¹ Kenya Human Rights Commission. *Quarterly Human Rights Report* Vol. 3 No.4 October-December 2001,p.30

Police brutality has come in the forms of excessive use of force, sexual violence against women, illegal confinement, arbitrary arrests, torture, with little action taken against the police force.

However, many non-governmental organizations which have been vocal on issues of human-rights and freedom of expression risk their community-oriented focus as they get swallowed by government. Many civil society organizations that sided with the opposition political parties during the time of Moi regime are now shifting their favors to the advantage of the government. This transformation coincides with a change of power that happened in the year 2002, 2007 and the promulgation of the New Constitution in 2010 which have created many positions in reforms agenda. The government at present is perceived by public to be purely the conglomeration of former opposition activists and popular civil society organizations that found their way to power. This puts civil society movements in Kenya at risk of losing credibility in its fight for individual and group rights as political power shifts between opposition and government.

In the analysis of violence in Kenya, less is known about immigrant victims who not only fear to report crimes to police stations but also have no organization to run to. The only place left for them to report to is their families and country's representative embassies. A Muslim respondent noted that *girls and women who are abused during the time of swoops feel comfortable to report their cases to family members and mosque committees*. Many of the committees however, have men as the majority thus the question on how effective such committees can offer for individual and group female counseling and reconciliation. On the other hand, an approach to migrants' security that takes the shape of embassy

involvement takes a long time to solve due to structural protocol and procedures. The *Diplomatic arbitration* that takes place between governments takes long to trickle down, leading to delayed justice. The situation is that of desperation when dealing with migrants originating from already failed government such as Somalia. Any immigrant from Somalia has no government representative to run to thus the likelihood of *don't care attitude* when dealing with such migrant cases.

The need for an extended immigrant-diasporas-police relationship thus remains a paramount issue for promotion of national security in a terrain without fear and tension. Many of immigrants living in crime prone areas of Nairobi's Eastland have suffered frequently especially when police carry out door to door searches of illegal weapons and suspected terrorists. In a statement given by local human-rights groups, it came out that swoops have taken place beyond the streets and houses into places of worship with much cooperation of Kenya police force and some foreign intelligence wings. The statement signed by representatives from People against Torture, Independent medico-Legal Unit, Release Political Prisoners, National Constitution Executive Council and Citizen for Justice and National Youth movement expressed "doubts that the US, UK or Israeli governments would allow Kenyan police to interrogate their citizens in their own countries"¹²²

¹²² The Christian Post [Tuesday 11th Nov. 2003] <http://www.christianpost.com/article>

4.3 Immigrants as source of National Insecurity

4.3.1. Proliferation of Small Arms

It is estimated that Nairobi registered 174 cases of robbery, 71 cases of hijacking and 28 murders in 2011 and all involving use of arms¹²³. The case of small arms in Kenya becomes a complex issue mainly because it is not only as a result of armed conflicts in the neighboring countries, but also demand induced by structural violence inherent in day to day running of social-economic and political policies by the government. The issue of tackling proliferation and illicit trafficking of small arms has recently been acknowledged as one of the key challenges for human-security."¹²⁴

The demand and supply of small arms and light weapons has all along been a process of interaction by states in pursuit for military and law enforcement services. However, in countries with failed governments, small arms have reached the hands of civilians. This has fueled illicit transfer of arms since there is no central authority to control the transfers. Conflicts in Somalia, the former larger Sudan, Great Lakes and Northern Uganda have increased the number of illegal weapons in the region making it easy for criminals to acquire guns as a tool for seeking power and wealth.

At the international level, an attempt to check on the problem of arms proliferation and illegal business across borders has resulted in "aviation and travel sanctions that have

¹²³ Muchai, Augusta, and Jefferson, *Kenya Crime Survey*. Security Research and Information Centre, Nairobi, 2011, p.56.

¹²⁴ Gamba, Virginia *Governing Arms: The South African Experience*. Pretoria Institute for Security Studies, 2000:p.4.

become increasingly common forms of targeted sanction policies".¹²⁵ Such policies work towards discouraging air transportation of weapons for rebel groups and authoritative governments that could sustain armed conflicts. The problem of weapons proliferation in Africa is made complex by states having borders and airports that are poorly policed.

As escalation of regional tension continues, immigrants in Kenya are given collective deadlines to re-establish their status in Kenya. The government justifies such actions to the growing number of foreigners working without proper documents. The process of "renewing migrants' information" mostly target civil society sector and the private business sector. The two sectors have reported high number of foreigners due to international business and humanitarian activities operating from Kenya towns and rural areas. Questions have been raised by few foreign governments and international media critiquing the government's intention which is interpreted as carrying with it some racial overtone.

Though not at war, Kenya has become entangled in the problem of proliferated weapons and especially in Kenya-Somali-Ethiopia borders. In an attempt to tackle this problem, various civil society organizations have pursued simultaneously, actions that limit the trade in and circulation of small arms together with those that reduce the demand for these weapons. Africa Peace Forum (APFO) with the help of Norwegian Church Aid convened a "partners for peace" gathering which brought together the police, media, and civil society for enhancement of peace and reduction of crime by controlling the illicit

¹²⁵ Cortright, David and Lopez, A. George, *Sanctions and the Search for Security: Challenges to UN Action*. Lynne Rienner Publishers Inc. Boulder, Colorado, 2002,p.133

proliferation and misuse of firearms in August 2011¹²⁶. In spite of all these efforts by civil society and government agencies, guns continue to claim lives of innocent civilians, migrants, criminals and police officers.

The problem of small arms in Kenya has been linked to yet another complex problem of terrorism. The Anti-terrorism Bill published in the year 2003 recognizes the problem of small arms in its drafting. The proposed Bill considers "a person who invites or gets training from another on matters relating to firearms and explosives as constituting a crime of terrorism and is liable for ten year imprisonment, to a fine or both."¹²⁷ The problem of small arms proliferation has been closely linked to migrants from conflicting countries which are also seen to support terrorism activities. Somalia, Sudan, DR Congo, Ethiopia are some of the neighboring countries that Kenya security agents have given close observations. Other countries outside Africa are Pakistan, Iran and Yemen who have been singled out as potential targets for close policing.

4.3.2. Immigrants as terror threat and Policing Mechanism

There are different meanings of terrorism. Cindy C. Combs defines it as "a synthesis of war and theatre, a performance of the most proscribed kind of violence-that which is perpetrated on innocent victims-played before an audience in the hope of creating a mood of fear, for political purposes"¹²⁸. This means that there are "stages" that are produced and reproduced for such kind of show and as Lincoln Bruce (1994) says, "the activities on the

¹²⁶ Progress Report on Implementation of the Nairobi Declaration to tackle small arms in the Great Lakes region and the Horn of Africa. May 2002 by Nairobi Secretariat on Small arms, SRIC, and Safer world Africa

¹²⁷ Kenya Gazette Supplement Bills [2003:450]. Suppression of Terrorism Bill. Government Printers, Nairobi.

¹²⁸ Combs, C. Cindy [2003:10] *Terrorism in the Twenty-First Century*. Pearson Education, Inc. New Jersey,2

stage are designed to attract and hold its audience, while also advancing the interest of the backers"¹²⁹. Don DeLillo is quoted by Juergensmeyer as saying that terrorism is the language of being noticed. Without being noticed, it would not exist¹³⁰.

In setting the stage where the acts are to be committed, terrorists are interested in one that will produce the most remarkable. For example the Nairobi and Dar es Salaam proved to be excellent for a variety of symbolic reasons in August 7th, 1998 at around 10am, a bomb exploded outside the Embassy of United States in Kenya killing 246 Kenyans and 12 Americans¹³¹. Al-Qaida has highly featured in these attacks with its sympathizers noting that Nairobi was chosen by Osama Bin Laden because it acted as "a symbol of secular political power"¹³². The embassy of USA in Nairobi was specifically chosen as having valued interests by Kenya government and its allies. Acts of terrorism directed to states aim at destroying that which the state values most. Because of this, terrorism becomes a threat both to national interests of states and to their national security, it is through this reasoning therefore that cultures and identities that support terrorism are subjected to securitization.

In terms of terrorism, Kenya government has not come out clearly to let the victims as well as the citizens know the reasons as to why Nairobi was chosen. The societal security gatekeepers in form of national-identity elites have gone ahead to securitize culture and practice of certain ethnic and religious groupings, specifically, the foreign policies

¹²⁹ Lincoln, Brace, 1994 p.129.

¹³⁰ Juergensmeyer, Mark 2000, p.139

¹³¹ Bwakali, David John in his article "Kenya's terror devils" <http://proquest.umi.com>

¹³² Juergensmeyer, Mark, 2000: p.60

supported by the government have been interpreted by the attackers as not serving regional Islamic population. United States of America and Israel government have been crucial political, economic, and cultural partners with Kenya for a long period since independence, during the Cold War and in post Cold War periods. The two Western oriented states have been targeted by Islamic terrorists in a global cultural, political and economical power struggle.

At the regional level, these two security power houses have had countless diplomatic problems with Somalia and Sudan; two countries whose cultural and religious identity appeal to Islam. The two countries border Kenya and have had a long spell of internal armed conflicts. Aid disbursement and relief in form of money, food and machinery to refugees displaced by these internal conflicts become the play grounds for international political power struggle. Nairobi has numerous local NGOs, international NGOs, foreign government supported missions where politics of relief takes place. As a way of ensuring, guaranteeing and securing these international interests, Kenya has shown extra commitment to security as external funding continues to flow in for support of military activities.

The relative peace in Kenya has thus been associated to a myriad of factors with one being the military support that depicts Kenya as a regional hegemonic power. Any military funding to Kenya, especially from western countries has therefore been interpreted by competing countries as a way of maintaining Kenya's hegemonic power in the region.

The political and cultural tension between countries of the Horn, the East and the Great Lakes of Africa thus makes use of a long history of competition, animosity, and mistrust between the region's different religious groups backed by different external powers. Somalia has been accused of offering a hiding place for terrorists especially the group identified as Al-shabaab. Sudan on the other hand is accused of using state machinery in oppressing Christian South for many decade of civil conflict that has left many dead.

At the core of regional politics, Kenya was accused of betraying Muslim community when it handed over Kurdish rebel leader Abdullah *Ocalan*, when he sought refuge at the Greek Embassy in Nairobi to his Turkish government for prosecution. The foregoing tension, conflict and mistrust in the region are thus highly internationalized, turning Kenya into an international political and religious battle ground¹³³.

The Anti- terrorism bill in particular has reflected a number of biases following its proposals to the immigration department and the police force in the pursuit of peace and security. It has become clear from the above proposals that Kenya is highly becoming a police-state. Muslims and people of Somali ethnicity have become a major target with threats perceived to be coming from Coastal communities¹³⁴.

¹³³Makumi Mwagiru in his paper, *Nationalisation of Terrorism: National Responses to terrorism through National legislation*". Paper presented at a symposium on Responding to Terrorism. Institute of Diplomacy and International Studies, University of Nairobi. ,2003

¹³⁴Mazrui, A. Ali., *The Africans: A Triple Heritage*. Little, Brown and Company, Boston and Toronto, 1996,P. 12

Kenya as a nation-state and its secular culture has all along been blamed by Al-Qaida for collaborating and housing foreign influence of secularization, westernization and globalization. These processes are interpreted as connected with colonial regimes but this time coming with disguised *different faces*. At the ground level, these processes are interpreted as posing a threat to interests and survival of Islam as a religion and a way of life. Kenya's post colonial leaders have also continued to adopt the exploitative nature of colonial structures where religious and ethnic groups are administered separately. Colonialism looked at from the Western perspective demanded from Africans "not just the labour but also territory and its promise in all its dimensions."¹³⁵ Kenya's Independence however did not address this problem and its contradictions. The change of political power and state guards from British to Africans only led to "deracialization of the state but not detribalization."¹³⁶

Karuti argue that "the state became the main field of accumulation and the field on which patron-client networks were woven for purpose of political hegemony and legitimacy." Failure by the government to address these negative aspects of ethnicity and nepotism is illustrated by decay in government institutions during the previous regimes and in the current government. The petty bourgeoisies, who inherited the colonial positions, quickly adopted the norms and values of the west without the equivalent generation of Western skills to its population for sustenance.

¹³⁵ Lincoln, Brace, 1994,p.129

¹³⁶ Bahemuka, M. Judith and Brockington L. Joseph: *East Africa in Transition: Communities, Cultures and Change*. Acton publishers. Nairobi. Kenya, 2001, pp.54-59.

Ali Mazrui likens it to a state of war and competition when he says that "Africa is at war of culture between indigenous Africans and the forces of western civilization."¹³⁷ According to Mazrui, this conflict of culture is portrayed by inefficiency, corruption, unemployment amongst young people, poor infrastructure and mass poverty in the states of many African states.

4.4 Conclusion

The attacks on 9/11 and the subsequent bombings in Madrid, London and elsewhere greatly altered international security state of affairs, resulting in increased relevance of the security dimension of international migration. Indeed, the new scrutiny given to migration and security is part of the politisation of international migration. The perceived threats of international migration to national identity and the maintenance of cultural cohesiveness were some of the issues discussed in this chapter. The chapter elaborated the evolution of Kenya National security policies which have been shifting posts in order to effectively respond to the emerging global insecurity dynamics caused by regional and international migration security trends.

¹³⁷Mazrui, A. Ali., *The Africans: A Triple Heritage*. Little, Brown and Company, Boston and Toronto, 1996,

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION: TOWARDS HUMAN-SECURITY APPROACH

5.0. Summary

Human security as already presented in previous chapters embraces more aspects than the absence of violence. It addresses human rights, governance, access to education, health care, empowerment of individuals and preservation of environment. This means that the range of actors is expanded to cover more than state actors. As highlighted in the introduction, this paper does not offer an alternative to state security but proposes human security to complement state security, development and enhancement of human rights. This is done through an appeal to address insecurities that have not been considered during formulation and implementation of security policies. It broadens security to cover development based on growth with equity and respecting human rights at the core of international migration.

Promoting and protecting migrants and host communities is a step toward attaining human security and development. It enables individuals to participate in governance and voice their views without intimidation or fear. This requires building strong institutions, establishing a rule of law and empowering people. The Commission on Human Security defines human security as "to protect the vital core of all human lives in ways that

enhance human freedoms and human fulfillments¹³⁸. Putting human security of migrants and host communities at forefront therefore, means protecting fundamental freedoms that support human life and well-being. It means protecting people from critical and pervasive threats and situations going beyond inter-state wars and conflicts. While duly recognizing this definition and orientation, this paper has focused on freedom from physical violence and fear that is operationalised explicitly and structurally during policy formulation and implementation within Kenya national structures.

5.1. Key Findings to the Study

Based on the three objectives and hypotheses that guided this study. The study found out that Kenya is host to diverse typologies of migrants. Within Kenya, poverty is pushing people to move in search of work. Kenya also absorbs a variety of migrants and refugees from its neighbours namely: Burundi, Ethiopia, Rwanda, Democratic Republic of Congo, South Sudan, Somalia, Tanzania, and Uganda. Although each migratory movement has its specific migratory historical patterns, it is possible to generalize on social dynamics of migratory process. It is however necessary to differentiate between economically motivated migration and forced migration.

Secondly it found out that political regimes in Kenya have used laws and force in competing for their interests. This has been sustained by retention of the colonial form of laws that touch on immigration, policing and penal code. The security structure and

¹³⁸ Commission on Human Security, 2003 Report-Human Security Now.

institutions are also subject to political manipulation as each aspect of implementation awaits orders from above. Furthermore regional international migration has further been securitized based on fear of conflict spill over, spread of illegal small arms and light weapons, increase in crime, and terrorism. All the above aspects of security are influenced by internal politics and international hegemonic power play that considers the East, the Horn and the Great Lakes of Africa as strategic in terms of politics, economy, business, security and development. Culturally, Kenya finds itself at a cross-road where global processes are redefining values, norms and cultures that have dominated the region. At the legal level, laws touching on migrants exist in many forms with little coordination. As noted in the study these laws revolve around The Aliens Restriction Act, the Immigration Act, and the Penal Code. All these legal frameworks carry with them colonial aspects that by far are yet to recognize changes in global security and related dynamics.

The third hypothesis taken by the study touched on implementation of national security policies. Policing as a form of social control was evaluated as promoting regime-security at the expense of Professionalism. At the heart of police structure and operations are political and economical interests. The study has elucidated the violence perpetrated on migrants and host communities during ad hoc operations to crack down on illegal migrants and terrorists. Migrant victims considered reporting police abuse to fellow police officers as a self-defeating logic as no actions are likely to take place within such set-ups.

The core of the study looked at the possibility of adopting human-security as a yardstick to policy formulation and implementation. Human-security as a yardstick to security issues has been lacking in planning and implementation. National Security policies continue to follow the Westphalia system of sovereignty where states in the region plan according to their own interests. There is less regional cooperation in terms of causes and implications of migration and where they exist such as in the revived East African Community, they have not been harmonized with state policies. To some extent, this has been as a result of political mistrust held by regional leaderships.

5.2 Recommendations

Recommendations herein carry with them considerations for applying human-security principles, values, and norms as benchmarks during the process of policy formulation and implementation.

While acknowledging the primary role of states as key actors in shaping security policies and implementation, it is also clear that the process of globalization and Post-Cold War period in particular, comes with new forms of threats to people's lives. This study takes international regional migration as one way of enhancing peace and development and therefore, a call for human-security corresponds to achieving peace and stability. Policy formulation and implementations should therefore follow this new line of threats to consider migrants who are not only vulnerable, but find themselves in states other than their origin. Politicians, policy makers and security gatekeepers should therefore consider the causes of migration and at the same time utilize the chance for benefiting from the presence of migrants at regional and internationally levels.

The political-social-legal responses by government in regard to international regional migration elucidate gaps inherent when tackling regional problems to national security and peace. At the core of these responses is the interplay between internal politics and international political arena that influences the manner in which national security policies are shaped and formulated. While recognizing threats that come with regional international migration, nationalized responses risk a move towards regime security rather than focusing on people's security. At the legal level, there is need to review laws and frameworks that govern national security institutions and structures. Where possible, a total overhaul of schemes of work and implementation should be done to reflect the needs of migrant individuals and host communities.

Such areas of improvement fall under the various laws that touch on international migration and policing structures. Values and principles of human-security should be applied to monitor and evaluate human-rights conditions, empowerment, and development of migrants. It is within these institutions of national security that unethical conduct, corruption, physical abuse of individuals and general violence be subjected to independent bodies where accountability and responsibility of policy formulators and implementers is checked. Such independent bodies will offer migrants and host communities a forum to air their grievances and at the same time participate in good governance practices.

Redefinition of national security based on "borderless region in which economic, political and other activities are not constrained by traditional territorial borders"¹³⁹

¹³⁹ Mwagiru, Makumi African, *Regional Security in the Age of Globalization*. Heinrich Boll Foundation, Nairobi Kenya 2004, p..34

require a regional approach to root causes and impacts of migration. Regional bodies that address regional security issues such as IGAD, COMESA, and EAC at best, require harmonized frameworks on how to deal with regional international migration. This has to be guided by human-security values backed by political will of regional political leaders. It is within these harmonized frameworks that national responses should borrow from when addressing cross-border criminality, conflict transformation and policing. Within such harmonized frameworks and structures that, it will be easy for promotion of positive peace that puts reduction of violence, empowerment and development issues at the fore front.

Peace and stability in the region requires a coordinated efforts and Kenya cannot therefore ignore its role in peace building and promotion of development. The Sudan and South Sudan Peace agreement, reintegration of refugees and internally displaced persons, the stability in Somali, reintegration of rebels into mainstream political process, case of protracted refugees, legitimacy of policing and independence of national security institutions, regional economic integration and cooperation in matters relating to crimes and policing remain areas that require more than funding of state security to include empowerment of region's populations.

5.3. Suggestions for Further Research

Concerning future research and scholarship, security infrastructures should promote security based on the principles of democracy where accountability, access to information and governance based on the will and the right of people is promoted. While the state has

the duty to guarantee security to its citizens, there is a need to de-securitize information concerning migrants and host communities to reflect governance that is ready for monitoring and evaluation of human-security standards.

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APPENDICES

APPENDIX I: QUESTIONNAIRES TO GOVERNMENT OFFICIALS, NGOS

1. Name and Position of officers
2. What government/ nongovernmental institutions do you interact with in performing your role in society in policy making, conflict prevention and administration of justice?
3. Who are migrants?
4. Does your department deal with immigrant issues in any way?
5. Are there categories of migrants? How is categorization done?
6. What would you say is the Scope of immigration phenomenon in Kenya? [Diversity and factors contributing to its increase or decrease]
7. What security problems are associated with presence of migrants?
8. How do you go about managing the presence/cases of migrants?
 - Regulatory framework- what frame works do the org/dept. have for taking care of security of migrants and protecting the rights of citizens?
 - Decision-making-what is the process for making decisions regarding recruitment, exit and entrance of migrants?

- Is there a structured system of authority and roles within the department?
- In terms of regions, which regions and countries send many migrants to Kenya?
And to do what [social economic or political] activities?

9. What do you think is the level of public confidence with your department?

10. What are the complaints that the public report to your department or to the media concerning the presence of migrants?

11. Are immigrants involved in any criminal offences? Explain

12. What is the level of immigrants' involvement in international crimes and terrorism?

13. On the other hand, do you think that immigrants are faced with any danger from host communities?

- What forms of migrant insecurity and violence do you think are rampant and affecting their stay in Kenya? Name some categories of violence reported?

14. Do you think the police force has a role to play in preserving human security of immigrants? Yes OR No

- What role do you think they should play?

15. Are there arrested cases of immigrants and for what offences?

16. What will happen to them later? What will happen to their family members who are in?

Kenya? _____

17. What are your reform strategies concerning?

- Understanding migrants and making the public aware of their security needs?
- In integration of immigrants and allocation of resources?
- Decision-making on how to handle criminal activities by migrants and ensuring justice is upheld? _____
- Regional and other collaboration efforts in management of human security of migrants?

APPENDIX II: INTERVIEW GUIDE

1. Name and Country of origin-----
2. What considerations did you make before migrating into Kenya in terms of Documentation, housing and work?
3. Do you stay with your family in Kenya? Yes OR No
4. How do you go about your everyday life in Kenya? _
5. Do you come into contact with Police officers and immigration Officers?
6. What issues make you interact frequently with immigration officers on one hand and the police officers on the other?
7. When you come into contact with police officers, how is your security enhanced or jeopardized? Explain_____
8. Have you ever been arrested by the police? Tell me more about it_____
9. What insecurity do you experience here in Kenya that is related with immigration and police departments?
10. What do you think about the police officers in Kenya in terms of honesty, commitment, and responsibility?
11. How is your relationship with the community and local people?
12. How do host communities receive Migrants?
13. What are the major security risks that you experience in the community that you are living in? _____